

An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1,  
D01 V902

<b>AN BORD PLEANÁLA</b>	
LDG-	078017-25
ABP-	
17 FEB 2025	
Fee: €	50
Type:	CASH
Time:	16.15
By:	HAWD

23 Richmond Ave,  
Fairview,  
Dublin 3  
16<sup>th</sup> February 2025

**Re: St. Margaret's Recycling & Transfer Centre Ltd, Sandyhills Planning Reference SU06F.321466**

Dear Sirs,

I refer to the planning application ABP No: 321466 which were submitted by Saint Margaret's Recycling & Transfer Centre Limited, and I have a number of observations to make on the matter.

1. I note that the application has been submitted under the name of **Saint Margarets Recycling & Transfer Centre Limited**. According to the CRO, no such legal entity exists on the CRO register, accordingly the applications should be returned due to incorrect legal entity.

There is a different entity on the register by the name of **St. Margarets Recycling & Transfer Centre Limited**; See Exhibit No 1

There are certain legislative provisions in making a planning application.

The appropriate applicant should firstly make the application, in this situation the applicant according to the newspaper cutting, site notice and the application form must be made by a person or legal entity.

Saint Margarets Recycling & Transfer Centre Limited is not a legal entity in the Republic of Ireland.

There must be an opportunity for the public to carry out an assessment of the environmental impacts of the development and that their participation in such an assessment has not been impaired as per policy under section 177K of the Principal Act.

This element has not been conducted fairly as the notices at the site are not positioned as per normal notices would be and therefore erected to conceal them from the general view of the public. Thus, not allowing fair participation from the public.

It is noted in Section 2 site location and description specifies the site entrance onto the R122 is formed by the high block concrete walls with a metal panel gate, a concrete splayed area is situated between the entrance and the roadside boundary. It is clear from this description that the site notice is not positioned correctly for public

viewing and is concealed at the narrow part off the splayed entrance. In fact, at the gateway and not at all at the public road, the R122.

While I consider the application is invalid and should be returned as such to the applicant as invalid, based upon the name used in the application form, site notice and newspaper notice, that is, an entity that does NOT legally exist, I wish to make the following observations

Within this Section 2.0 the authors of the report state that the operation is in place 29 years. This is not correct as waste acceptance operations at this facility had ceased in June 2006 until circa July 2007 and there were no commercial activities on site during this period

As Greenstar Limited had ceased their operations in June 2006 and subsequently formally surrendered their EPA licence in 2007 there were no actions on site.

The authors in their wording imply that an ATF (authorised treatment facility) for end-of-life vehicles (ELVs) was in place since 1995 this is not correct, and the statement is deceiving.

The ELVs planning and waste permit was authorised only in 2011 for a three-year period The final sentence within this section reveals that "all input material is weighed and recorded at the facility Weighbridge, input tonnages are monitored on a monthly and quarterly basis by the applicant "

This statement really gives the two fingers to any form of environmental control or monitoring where it implies that the facility has been professionally run yet the tonnages accepted exceeded the legal acceptance criteria of both the planning and the waste department of Fingal County Council as both sections collectively have input into the operations of the facility which has been largely ignored by the applicants.

The hypocrisy of the statement is highlighted by the applicant and his team continuing with ongoing breaches of facility permit with exceedances of excessive amounts as listed in Table 2 paragraph 3.1.2. of CWPA report The facility has exceeded the intake volumes allowed under the permit in violation of the undertakings given and declarations made under the permit issued in 2019

It is important to note that regardless of the claims made in the planning application for retrospective planning for the facility due to unauthorised development, relying on as in paragraph 3.2 establishing non-conforming use on the site is not tenable as the permit holders were prosecuted for continuous breaches of tonnage acceptances and likely that this will happen again under the recently expired permit.

The facility can only operate from receiving waste from commercial "bona fide" operators the applicants claimed that their "bona fides" in the information provided in their submission in both their substitute consent declaration planning applications.



Yet on Page 19 of 55 of CWPA in the first sentence claims that because of the lapse of permissions in August 2019 it accepted that no assessment or permission for the period existed and in any event the tonnage exceeded the threshold for an EIA.

It should be noted that the applicants engaged with planning authorities during the period from 2019 to 2024 that left the authority in a situation that the planning process was in train or was under appeal and indeed the applicants first party appeal to the ABP planning during this period also included a High Court Judicial appeal of an ABP decision, by the facility operators themselves. They subsequently engaged in early 2024 the process of seeking substitute consent or other means, the applicants have not provided the communications between the local authority including environmental section in relation to the ongoing activities. The authorities relied on as suggested the "Bona fides" of the applicants.

The application for planning for a waste facility permit on the particular site must also consider the regulatory requirements and needs of the environmental section of the local authority and the applicant needs the consent of both the planning and the environmental section of the local authority. This has not been apparent and those using facility i.e. those that had delivered material to the facility believe that facility was authorised, but in fact the applicants now admit that was operating illegally, and if breaches of planning regulations are criminal, so are breaches of environmental governance. The gardai whom the applicant believes rely on services at this facility should not be misled about the non-conforming use on site.

Those that dispose of material on site are aware of the "Chain of custody of materials" requirements, delivered to such facilities were also unaware of the breaches and the environmental risk associated with the tonnage exceedance on the permit of the facility where no EIA existed.

The facility encourages waste from outside Fingal County Council area to be delivered to this facility. This does not benefit the proximity theory of dealing with local waste, or waste origin.

### 3.2 Established non-conforming use on site.

The facility did not provide service to handle scrapped waste or ELVs outdoors. The play on the operation of F97A/0109 permission did not involve scrapping of cars, oils, batteries are other hazardous materials. There was no bailing of metals, shredding of car shells or other environmentally polluting activities. The activity really involved the transfer of waste from skip to large trailers or ejectors. I believe that all operators we're not operating in a non-conforming matter but in a regulated manner at all stages, regulated by the authorities either local authority planning office or the E.P.A.

There was always regulation, and everybody operated within those regulations and approvals bar minimum infringements that were regulated or advised upon.

**The applicants or owners of the land have applied and used the various temporary permission sought and granted over the site in recent previous since 2006 when there was no activity. There was no appeal by the**

owners/operators to An Bord Pleanála in respect of the permissions granted over the years and the planning authorised was commenced and acted upon by the site owners/operators.

In figure 3.4 Unauthorised development.

The information provided refers to machinery comprising of hammermill, shredders and balers on site since 1995 in the position noted on the drawing. This is not correct please see attached Google Maps satellite photographs: **Exhibit 2**

The tilters alluded to on figure 3.4 were introduced post 2013 for turning containers (40 foot) for loading scrape, so we're not on site in 1995. The information provided in this section is false.

Please note that all waste acceptance activities stopped on site in June 2006 till July 2007 so there was not a continuous use of the facility.

#### 6.0 Substitute consent provisions.

The applicant has not provided correct information relation to EIA or AA. The all-recent application provided did not respond to the proper implementation of environmental legislation and monitoring. The EIAR provided with the application does not deal with water run-off from the site, has no mention of recent or any testing of water quality in the aquifer and well used for irrigation of the local agricultural land.

No substantive details on how the facility would deal with fire water runoff or retardant within the water.

No information on solvents being released in the water traps and processes to deal with leakages.

No information on the cumulative effect of the development of adjacent lands where also there is a proposal for a petrol station (By the same landowner) with car and truck washing facilities being released and the subsequent release of water into local groundwater, despite this development containing specific risks from chemicals, hydrocarbons, grease etc

The additional use of reed beds was proposed and other filtration systems which is inadequate

2. It is noted that this site has been the subject of a number of planning applications, appeals to An Bord Pleanála, as well as a two-day hearing of a Judicial Review which found in favour of An Bord Pleanála decision not to grant either planning or retention planning to this facility, (See RECORD NO: 2022/58JR Judgement issued on 24<sup>th</sup> February 2024)

2. I will now address the planning statement submitted and advise of a number of inaccurate statements made within the document. It is noted that the applicant is relying on Section 177k of the principal act refers to

(b) whether the applicant had or could reasonably have had a belief that the development was NOT authorised.

(f) whether the applicant had carried out an unauthorised development complied with

previous planning permissions granted or has previously carried out unauthorised development.

I understand that when an entity applies to a planning authority they are supposed to do so “ *good faith doctrine* ” and if shown that this has not been the case should be denied their application.

Additionally the CWPA application states at on page 12 of 55 under para 3.1 that

*“ 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 the operations on site.” ( Quote end)*

This is factually incorrect; Mr Mc Donnell has been involved in the activities on this site since 2005 and ever since then, was fully aware of the planning issues that pertained to the site. Additionally, he was fully aware of the Waste Permit Facility conditions that were obligated to the site, and I will exhibit documentation that will show a consistent pattern in ignoring/failing to comply with previous planning conditions and waste permit conditions while operating the facility.

The Bord will also be aware that Waste Licensing, is within the remit of the EPA under separate legislation, i.e, Environmental Protection Agency Act 1992 as amended as well as specific Legislative Regulations associated with the Act, while the granting of Waste Facility Permits are permitted under the Waste Management Acts 1996 -2007 and specific legislative regulations that flow from the Act. The Waste Facility Permits are issued by Local Authorities and are monitored for compliance by the issuing local authority.

It is also stated at page 17 of 55 that CWPA state that a planning application F10A/0177 was made by St. Margarets Recycling Centre Limited. This is factually incorrect. The application was made by Sandyhills Environmental Services Limited, which Mr Brain Mc Donnell was a director of at time of application.

And by way of background to Mr Brian Mc Donnell’s involvement established a company by the name of Sandyhills Environmental Services Limited which was incorporated in May 2005, whose directors were Mr Peter Costello and Mr Brian Mc Donnell and whose shareholders were Mr Brian Mc Donnell and Mr Pat O’Halloran on an equal basis. **Exhibit 3** Sandyhills Environmental Services entered an “ Agreement for Lease” of lands owned by Mr Brian Mc Donnell (Senior) on 02<sup>nd</sup> June 2006. This agreement was signed by the Directors of Sandyhills Environmental Services Limited, Mr Peter Costello and Mr Brian Mc Donnell ( jnr) and

their signatures were witnessed by Mr Brian Devaney, Solicitor. **Exhibit 4**

It should also be noted that rent was being paid on a monthly basis to the property owners Mr Brian (Snr) & Rita Mc Donnell on behalf of Sandyhills Environmental Services Limited from August 2006

#### Waste Matters

As Sandhill's Environmental Services Limited was now intending to operate a C & D facility on Mr Mc Donnell's ( Senior) lands, they had to apply for a Waste Facility Permit from Fingal County Council. While the application to Fingal County was made on 02<sup>nd</sup> August 2006 for the permit but the application only be processed after Greenstar Limited had formally surrendered their EPA license , which was deemed surrendered on 31<sup>st</sup> January 2007 **Exhibit 5** It should be noted that Greenstar Limited ceased taking material on 15<sup>th</sup> June 2006 **Exhibit.6**

Sandhill's Environmental Services Limited were granted a Waste Facility Permit, for 36 months, under WPT 112 on 08<sup>th</sup> March 2007. **Exhibit 7**

You will note that the registered address of Sandhill's Environmental Services Limited is "No 6 Mulberry Crescent, Castleknock, Dublin 15 "According to the CRO this is home address of Mr Brian Mc Donnell.

**On Page 9 of 54 of waste renewal application confirms this assertion. Exhibit 8**

It should be noted that NO waste material accepted on this site from mid-June 2006 to beginning of Q3 2007 and the material that was accepted from Q3 2007 was only C & D material, i.e. rubble. Mr Mc Donnell asserts that he had NO involvement with the waste activities on site until 2010, additional documentation shows that he was contracted Barnmore Ltd, CRO 144262 in July 2007 to manage the contract between Barnmore Ltd and Sandyhill's Environmental Services Limited for the ongoing operations at St. Margaret's. **Exhibit 9**

As part of WPT 112 there were a number of obligations placed on Sandyhills Environmental Services Limited as part of mandatory duties in respect of the notifications and record keeping and I have included a copy of same at **Exhibit 10**

On 23<sup>rd</sup> July 2007 Sandyhills Environmental Services Limited sent a letter to Fingal County Council confirming payment of annual monitoring fee and confirmation of a Bond with AIB as part of conditions for

**WPT 112 Exhibit 11**

On 31<sup>st</sup> March 2009 Fingal County Council issued a monitoring fee notice for WPT 112 to Sandyhills Environmental Services Limited to the home address of Mr Brian Mc Donnell **Exhibit 12**

3. On 18<sup>th</sup> December 2009, Sandyhill Environmental Services Ltd. applied to Fingal County Council for Review of Waste ( Facility ) Permit WPT 112 for **Exhibit 13**

On page 11 of 54 of that review application for the renewal application Mr Brian Mc Donnell stated he was the facility manager at the site in question. **Exhibit 14**

Similarly on Page 21 of 54 of the renewal application outlined the plant that was on site and you will note there is NO mention of hammermills, bailers or tilters or forklifts. **Exhibit 15**

Again on Page 22 of 54 of the application for review of waste facility permit, outlined the material that was proposed to be accepted which only included Bulk Demolition Waste (e.g. concrete, rock) Soil & stones, glass, gypsum) **Exhibit 16**

On 30<sup>th</sup> November 2009 Mr Brian Mc Donnell made a statutory declaration to An Garda Siochana in respect of the Application to Review of Waste ( Facility) Permit WPT 112 stating that everything submitted in the application was in order. **Exhibit 17**

On 15<sup>th</sup> February 2010, Fingal County Council wrote to Patel Tonra, Consultants for Sandyhills Environmental Services Ltd and outlined a number of issues of concern to the Council. The letter was also copied to Mr Brian Mc Donnell at his home address. **Exhibit. 18.**

You will note that the Council had issues over the planning status and advised within the document that planning had only been granted for 10,000 tonnes of material.

On 05<sup>th</sup> March 2010, a reply was issued by Patel Tonra on behalf of Sandyhills Environmental Services Ltd. Please note opening paragraph whereby Mr Brain Mc Donnell is engaging with the planners in respect of the site and the planning process in general. **Exhibit 19**

**As is demonstrated within the documentation, Mr Brian Mc Donnell ( junior) has been directly involved with this site, as a Director of Sandyhills Environmental Services Limited from 2005 to 2011 inclusive dealing with the local authority, Fingal County Council on all regulatory matters associated with the site.**

Circa December 2010, a new application was submitted to Fingal County Council for a Waste Facility Permit by St. Margarets Recycling & Transfer Centre Limited. It should be noted that Fingal County Council were advised by Louise O'Donnell on behalf of Mr Brian Mc Donnell that Sandhills Environmental Services Limited had changed the company name to St. Margaret's Recycling & Transfer Centre Limited which in fact was not correct. By making this assertion to Fingal County Council, Brian Mc Donnell was manipulating the procedural requirements for a Waste Facility Permit. The reality was St. Margarets Recycling & Transfer Centre Limited was a new legal entity and as such a full application including public notices would be required for a waste facility permit. In my opinion, Fingal County Council accepted the bona fides Louise O'Donnell's email as a statement of fact but in fact the statement was untrue. **EXHIBIT 20**

On 23<sup>rd</sup> May 2011 Fingal County Council granted a new Waste Facility Permit number WFP-FG-11-00012-01 for two years seven months, to St. Margarets Recycling & Transfer Centre Limited, formerly Sandyhills Environmental Services Limited and supersedes the previous permit WPT 112. It should be noted that the registered address of St. Margarets Recycling & Transfer Centre Limited was the same address as Sandyhills Environmental Services Limited and is also the home address of Mr Brian Mc Donnell. It should also be noted that Waste Permit WFP-FG-11-00012-01 referred to the specific planning permission F10A/0177 **Exhibit 21**

By Email dated 07<sup>th</sup> November 2014 Fingal Waste Section corresponded with Louise O'Donnell (Patel Tondra, Environmental Consultants for St. Margarets Environmental Section) advising them that their Waste Facility application should reflect the recently granted planning permissions granted. **Exhibit 21 A**

#### Planning Matters

On 07<sup>th</sup> May 2010 Sandyhills Environmental Services Limited registered a planning application with Fingal County Council for retention permission, see **exhibit 22**

As part of that process, it was noted that Mr Brian Mc Donnell attended a preplanning consultation with FCC planners on 16<sup>th</sup> March 2010 and at the meeting was advised by the Council that he was operating outside of permitted areas, **exhibit 23**

The planning decision given on 11th December 2010 to Sandyhills Environmental Services Limited by Fingal County Council was for a limited period of three years and it appears that FCC were giving an opportunity to the users/owners of the site regularise their planning status.

They acted upon the planning and it should be noted that NO appeal was made by

Sandyhills Environmental Services Limited or the property owners to An Bord Pleanála in respect of the temporary permissions granted. **Exhibit 24**

It should be noted under condition 3 of temporary permissions for F10A/0177 that there was a requirement to submit a re-instatement plan to Fingal County Council within three months of the grant.

The plan was eventually submitted to Fingal County Council on 09<sup>th</sup> December 2013, **Exhibit 25**

On page 30 of 55 of the C WPA submission and I quote “ *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 nonconforming use on site as we do not believe that has been comprehensively explained or understood in previous applications. The applicant in carrying out the development , i.e 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 as through exceptional unforeseen circumstances arrived in this position. The unauthorized not confirming use established on the site was established while being operated by third parties independent of the applicant, and existed at the time the acting applicant took control of operation on site 2010 at which time he endeavored to regularise matters “*

Accordingly, the documentation exhibited so far clearly demonstrates that Mr Brian Mc Donnell was involved in activities pertaining to this site from 2005, was directly involved as a director in the applications to regulatory authorities, running of the facilities at this site for years and was fully aware of planning status of the lands well before 2010. The information provided by the applicants is designed to mislead the Board and the public.

On 03<sup>rd</sup> July 2012 Fingal County Council gave a three-year permission to St. Margarets Recycling & Transfer Centre Limited to establish an ELVs facility. Under condition 2 of the permission all activities associated with the ELV were to be carried out within the boundaries of permissions granted under 97A/0109 and NO activity associated with the treatment facility was to be carried out outdoors.

Under Condition 3. There was a requirement at the end of the three-year period, the site was to be reinstated to the satisfaction of the planning authority and all temporary structures and equipment was to be removed.

**Exhibit 25 A**

On 31<sup>st</sup> October 2013 Fingal County Council registered a planning application from St. Margarets Recycling & Transfer Centre Limited. The record of Executive Business and Chief Executive Order on this application, P 14 and P 15 made a number of comments by the applicant in respect of returning the lands to agricultural use. **Exhibit 26**

The same report on P 16 noted that the applicant's consultants advised that the waste input was 22,250 and that there would be NO intensification. **Exhibit 27**



However, these limits were breached, and the Directors would have been aware of same as **there is a weighbridge on site**. Additionally in an application to Fingal County Council, which was withdrawn, F19A/0135 the applicant wanted to increase intake to 49,500 tonnes.

As a consequence of continuous breaches of tonnages accepted Fingal County Council initiated legal proceedings against the company on 15<sup>th</sup> March 2021, Case No S. 2021/209457, for 2020 which the company pleaded guilty to **Exhibit 28**

The Company was again subject to two other charges in February 2023 Case No S: 2023/1016 Charge 1 for year 2022 and S. 2023/1016 Charge 2 for year 2021 on 24<sup>th</sup> January 2023 which they pleaded guilty to.

#### **Exhibit 29**

Additionally on page 18 of 55 of CWPA planning report, the facility also confirms excess waste accepted over and above that permitted by their Waste Facility Permit and also for years after the firm was prosecuted.

A five-year planning permission was granted by Fingal County Council under F13A/0409 which contained specific conditions. The planning was acted upon and neither planning conditions nor the temporary five-year limit was appealed by the company nor landowners to An Bord Pleanála.

#### **Compliance with Permits.**

**There were a number of non-compliance with Waste Facility Permits issued to Mr Brian Mc Donnell and his fellow Director from Fingal County Council on various dates as outlined below with some replies from the company being acknowledged by Fingal County Council. It is very clear that Fingal County Council have raised many issues with Mr Brian Mc Donnell as to issues/activities in the site which he has full knowledge of.**

04<sup>th</sup> August 2009 **Exhibit 30**

17<sup>th</sup> September 2009 **Exhibit 31**

09<sup>th</sup> September 2010 **Exhibit 32**

02<sup>nd</sup> May 2012 plus Reply 18/5/2012 **Exhibit 33**

07<sup>th</sup> Jan 2013 **Exhibit 34**

14<sup>th</sup> Feb 2013 plus reply 01/03/2013 **Exhibit 35**

01<sup>st</sup> March 2013 **Exhibit 36**

26<sup>th</sup> June 2019 **Exhibit 37**

30<sup>th</sup> August 2019 x 2 **Exhibit 38**

21<sup>st</sup> Nov 2019 **Exhibit 39**  
04<sup>th</sup> Dec 2019 **Exhibit 40**  
12<sup>th</sup> Dec 2019 **Exhibit 41**  
18<sup>th</sup> Dec 2019 Notice Under Section 18 (1) (D) Waste Management Act 1996 **Exhibit 42**  
18<sup>th</sup> Dec 2019 **Exhibit 43**  
03<sup>rd</sup> March 2020 Acknowledges receipt of Boylan Engineering Ltd reply to Section 18 notice. **Exhibit 44**  
08<sup>th</sup> April 2021 **Exhibit 45**  
10<sup>th</sup> May 2021 **Exhibit 46**  
14<sup>th</sup> May 2021 Acknowledges receipt of Boylan Engineering Ltd letter of 16<sup>th</sup> April 2021 **Exhibit 47**  
05<sup>th</sup> July 2021 **Exhibit 48**  
11<sup>th</sup> April 2022 **Exhibit 49**  
28<sup>th</sup> July 2022 Section 18 (1) Notice **Exhibit 50**  
03<sup>rd</sup> Oct 2022 Follow up letter **Exhibit 51**  
05<sup>th</sup> Oct 2022 **Exhibit 52**  
06<sup>th</sup> Oct 2022 – Issue with Fire Safety Plan submitted to the Council **Exhibit 53**  
24<sup>th</sup> Oct 2022 **Exhibit 54**  
15<sup>th</sup> Oct 2022 **Exhibit 55**  
20<sup>th</sup> Feb 2023 **Exhibit 56**  
20<sup>th</sup> March 2023 **Exhibit 57**  
17<sup>th</sup> April 2023 \* 3 **Exhibit 58**  
24<sup>th</sup> April 2023 **Exhibit 59**  
12<sup>th</sup> June 2023 **Exhibit 60**  
21<sup>st</sup> June 2023 **Exhibit 61**  
23<sup>rd</sup> June 2023 FCC acknowledge receipt of a dust fall audit of 19<sup>th</sup> June 2023 **Exhibit 62**  
06<sup>th</sup> July 2023 **Exhibit 63**  
24<sup>th</sup> July 2023 FCC ack receipt of letter from CWPA replying to letter of 17/April 2023 **Exhibit 64**  
24<sup>th</sup> July 2023 **Exhibit 65**  
24<sup>th</sup> July 2023 **Exhibit 66**  
21<sup>st</sup> September 2023 **Exhibit 67**  
27<sup>th</sup> November 2023 **Exhibit 68**  
15<sup>th</sup> April 2024 **Exhibit 69**

CWPA on behalf of the applicant at para 3.2 asserts ,

*"since this time the site compromised significant amount of plant and machinery and the types of waste and materials processed is consistent with that process today, and include the processing of end of life vehicles and processing of certain waste outdoors. These activities exist on site prior to F97 A/0109 being permitted (in 1998) and have not materially changed in nature and the intervening years." End of quote*

However the license granted by the EPA on 18<sup>th</sup> December 2001 only allowed for inert waste with a limit of 35,000 tonnes of Construction & Demolition Waste and 25,000 tonnes of Commercial & Industrial Waste. The license also requires under condition 4 a Restoration and Aftercare Plan to be drawn up for the facility. Additionally, all activities dealing with the waste segregation were to be carried out indoors/under cover.

*For the purpose of clarity, in accordance with the Waste Management Act 1996*

*Commercial Waste is defined as means* waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste;

Industrial Waste is defined as "industrial waste" includes waste produced or arising from manufacturing or industrial activities or processes.

Based on these definitions, it would NOT have been authorised for ELVs to have been processed at this facility.

Additionally the EPA license WO-134 , only refers to items of plant as weighbridge, wheel wash , waste loading vehicles and ejector trailers.

In Figure 3.4 CWPA planning report, on behalf of the applicant advises that

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

yet in a Waste Facility Application to Fingal County Council in December 2009, there are a number of basic items of plant listed as being used/required for the site activities but there is NO mention of hammermills, bailers or tilters or forklifts of being on site See **EXHIBIT 15**

On Page 48 of 55 of CWPA submission there is an assertion, and I quote

*"the applicant could not have reasonably envisaged the activities becoming unauthorized, following the board refusal and lapse of 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 license. "*

It should be noted that Fingal County Council under F10/0177 gave three-year permission with specific



## ORDER

## DUBLIN METROPOLITAN DISTRICT

CASE NO S:2021/209457 CHARGE NO 1

PROSECUTOR: FINGAL COUNTY COUNCIL

Accused: ST. MARGARET'S RECYCLING AND TRANSFER CENTRE LIMITED  
SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

At the sitting of the Court at Court No. 8, Four Courts, Morgan Place, Dublin 7 in the Dublin Metropolitan District on the 12-Apr-2022, a complaint was heard and determined that the above-named accused of SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

That on or before the 15th of June 2021 at Sandyhills, St Margaret's, County Dublin, in the court area and district aforesaid, you did dispose or undertake the recovery of waste in excess of the permitted 21,900 tonnes as per Condition 5.3 of Waste Facility Permit WFP-FG-13-0002-03 granted to you on the 5th of September 2019 at Sandyhills, St Margaret's, County Dublin, contrary Section 39 (4) and Section 39(9) of the Waste Management Act 1996 as amended pursuant to Section 9(1) of the Waste Management Act 1996 as amended.

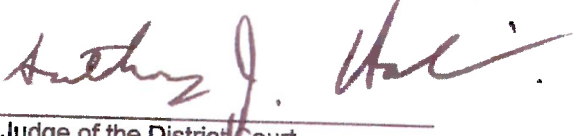
and the said defendant having pleaded guilty

It was ordered as follows:

without proceeding to a conviction the Court found the facts proved and did dismiss the charge pursuant to Section 1(1)(i) the Probation of Offenders Act 1907.

Dated this: 17th APRIL 2022

Signed

  
Judge of the District Court

I certify that the above is a true copy of the original which is held in my custody.

Signed:   
Clerk of the District Court

Dated: 04/12/22





## ORDER

## DUBLIN METROPOLITAN DISTRICT

CASE NO S:2023/1016 CHARGE NO 1

PROSECUTOR: FINGAL COUNTY COUNCIL

Accused: ST. MARGARET'S RECYCLING AND TRANSFER CENTRE LIMITED  
SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

At the sitting of the Court at Court No. 8, Four Courts, Morgan Place, Dublin 7 in the Dublin Metropolitan District on the 14-Feb-2023, a complaint was heard and determined that the above-named accused of SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

That on or before the 28th of June 2022 at Sandyhills, St Margaret's, County Dublin, in the court area and district aforesaid, you did dispose or undertake the recovery of waste in excess of the permitted 21,900 tonnes in the year 2022, as per Condition 5.3 of Waste Facility Permit WFP-FG-13-0002-03 granted to you on the 5th of September 2019 at Sandyhills, St Margaret's County Dublin, which is an offence to contrary Section 39 (4) and Section 39(9) of the Waste Management Act 1996 as amended pursuant to Section 9(1) of the Waste Management Act 1996 as amended.

and the said defendant having pleaded guilty

It was ordered as follows:

without proceeding to a conviction the Court found the facts proved and did dismiss the charge pursuant to Section 1(1)(i) the Probation of Offenders Act 1907.

Dated this: 14th FEBRUARY 2023

Signed

  
Judge of the District Court

I certify that the above is a true copy of the original which is held in my custody.

Signed:

  
Clerk of the District Court

Dated:

04/12/23







## ORDER

## DUBLIN METROPOLITAN DISTRICT

CASE NO S:2023/1016 CHARGE NO 2

PROSECUTOR: FINGAL COUNTY COUNCIL

Accused: ST. MARGARET'S RECYCLING AND TRANSFER CENTRE LIMITED  
SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

At the sitting of the Court at Court No. 8, Four Courts, Morgan Place, Dublin 7 in the Dublin Metropolitan District on the 14-Feb-2023, a complaint was heard and determined that the above-named accused of SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

That on or before the 27th of June 2022 at Sandyhills, St Margaret's, County Dublin, in the court area and district aforesaid, you did dispose or undertake the recovery of waste in excess of the permitted 21,900 tonnes in the year 2021, as per Condition 5.3 of Waste Facility Permit WFP-FG-13-0002-03 granted to you on the 5th of September 2019 at Sandyhills, St Margaret's County Dublin, which is an offence to contrary Section 39 (4) and Section 39(9) of the Waste Management Act 1996 as amended pursuant to Section 9(1) of the Waste Management Act 1996 as amended.


and the said defendant having pleaded guilty

It was adjudged that the said offence be taken into consideration with the order(s) imposed on Case 2023/1016 Complaint No. 1 in Court No. 8 on 14-Feb-2023

Dated this: 14th FEBRUARY 2023

Signed   
Judge of the District Court

I certify that the above is a true copy of the original which is held in my custody.

Signed:   
Clerk of the District Court

Dated: 04/12/23

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## ORDER

## DUBLIN METROPOLITAN DISTRICT

CASE NO S:2023/1016 CHARGE NO 1

PROSECUTOR: FINGAL COUNTY COUNCIL

Accused: ST. MARGARET'S RECYCLING AND TRANSFER CENTRE LIMITED  
SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

At the sitting of the Court at Court No. 8, Four Courts, Morgan Place, Dublin 7 in the Dublin Metropolitan District on the 24-Jan-2023, the above entitled proceedings having appeared in the Court's list in respect of a complaint that the above-named accused of SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

That on or before the 28th of June 2022 at Sandyhills, St Margaret's, County Dublin, in the court area and district aforesaid, you did dispose or undertake the recovery of waste in excess of the permitted 21,900 tonnes in the year 2022, as per Condition 5.3 of Waste Facility Permit WFP-FG-13-0002-03 granted to you on the 5th of September 2019 at Sandyhills, St Margaret's County Dublin, which is an offence to contrary Section 39 (4) and Section 39(9) of the Waste Management Act 1996 as amended pursuant to Section 9(1) of the Waste Management Act 1996 as amended.

and the said defendant having pleaded guilty

It was adjudged that the said complaint be adjourned to DUBLIN METROPOLITAN DISTRICT District Court sitting at Court No. 8 on the 14-Feb-2023 at 10:30.

DPA01 COSTS 2600 EURO DONATION 1000 EURO TO LFPD

Dated this: 24th JANUARY 2023

Signed

Judge of the District Court

I certify that the above is a true copy of the original which is held in my custody.

Signed:

Clerk of the District Court

Dated:

04/12/23

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## ORDER

## DUBLIN METROPOLITAN DISTRICT

CASE NO S:2023/1016 CHARGE NO 2

PROSECUTOR: FINGAL COUNTY COUNCIL

Accused: ST. MARGARET'S RECYCLING AND TRANSFER CENTRE LIMITED  
SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

At the sitting of the Court at Court No. 8, Four Courts, Morgan Place, Dublin 7 in the Dublin Metropolitan District on the 24-Jan-2023, the above entitled proceedings having appeared in the Court's list in respect of a complaint that the above-named accused of SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

That on or before the 27th of June 2022 at Sandyhills, St Margaret's, County Dublin, in the court area and district aforesaid, you did dispose or undertake the recovery of waste in excess of the permitted 21,900 tonnes in the year 2021, as per Condition 5.3 of Waste Facility Permit WFP-FG-13-0002-03 granted to you on the 5th of September 2019 at Sandyhills, St Margaret's County Dublin, which is an offence to contrary Section 39 (4) and Section 39(9) of the Waste Management Act 1996 as amended pursuant to Section 9(1) of the Waste Management Act 1996 as amended.

and the said defendant having pleaded guilty

It was adjudged that the said complaint be adjourned to DUBLIN METROPOLITAN DISTRICT District Court sitting at Court No. 8 on the 14-Feb-2023 at 10:30.

DPA01 COSTS 2600 EURO DONATION 1000 EURO TO LFPD

Dated this:

24th JANUARY 2023

Signed

Judge of the District Court

I certify that the above is a true copy of the original which is held in my custody.

Signed:

Clerk of the District Court

Dated:

04/12/21



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







**Private & Confidential**

Mr. Brian McDonald,  
Sandyhills Environmental Services,  
Sandyhill,  
St. Margarets,  
Co. Dublin.

Date: 07/08/09

Our Ref: PW WPT112

**Re: Non-Compliance with your Waste Permit WPT 112**

Dear Mr. McDonald,

Your premises, Sandyhills Environmental Services, was audited on the 28/05/2009 by authorised persons from the waste enforcement unit. The following non-compliances were found in relation to your waste permit,

- The amount of waste accepted in 2008 exceeded the specified 25,000 tonnes, a non-compliance with condition 1.5.
- Weights for all loads entering the facility are not being recorded exactly, a non-compliance with condition 3.2. (It is noted however that due to power surges at the facility weights for all loads except gypsum are estimated to an approximate value).

Failure to comply with any condition of your waste permit is considered a breach of Section 39 of the Waste Management Act 1996, as amended, and an offence for which you may be liable for prosecution. Non-compliance with the above conditions may also result in further action being taken by Fingal County Council to rectify the situation.

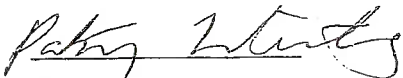
Environment Department  
P.O. Box 174,  
County Hall,  
Swords,  
Fingal,  
Co. Dublin

An Roinn Seirbhísí Comshaoil  
Bosca 174,  
Áras an Chontae,  
Sord,  
Fine Gall,  
Contae Átha Cliath

Telephone  
01 890 6274  
Facsimile  
01 890 6270  
Email  
envserv@fingalcoco.ie  
www.fingalcoco.ie

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended, and the Regulations made thereunder.

Yours faithfully,



Patsy Winters,

Authorised Person,

Waste Enforcement Unit.

**Fingal County Council Comhairle Contae Fhine Gall**



**Mr. Brian McDonnell**  
**Sandyhill Environmental Services**  
**No. 6 Mulberry Crescent**  
**Castleknock**  
**Dublin 15**

**17<sup>th</sup> September 2009**

**Re: Storage of plasterboard on site – Waste Facility Permit WPT112**

Dear Mr. McDonnell,

Fingal County Council's Waste Enforcement Officers met with Paul Corcoran & Brian McDonnell on 24<sup>th</sup> August 2009 at Sandyhill Environmental Services site in St. Margarets.

During this inspection it was noted that the plasterboard is stored outdoors and not contained in skips as previously discussed with Paul on 10<sup>th</sup> August 2009.

Please provide within 2 weeks of receipt of this letter details of how and when the management of plasterboard on site will be rectified and the specified Corrective Actions carried out.

Yours faithfully,

*Eleanor Scally*  
**Eleanor Scally**

**Environment Department**  
**Fingal County Council**

**Environment Department**  
**P.O. Box 174,**  
**County Hall,**  
**Swords,**  
**Fingal,**  
**Co. Dublin**

**An Roinn Saibhíocht, Tionscail**  
**Rosca 174,**  
**Áras an Chontae**  
**Súio,**  
**Fine Gall,**  
**Contae Átha Cliath**

**Telephone** 01-829 6000  
**Facsimile** 01-829 6000  
**Email** [environment@fingal.ie](mailto:environment@fingal.ie)  
[www.fingal.ie](http://www.fingal.ie)





**Comhairle Contae Fhine Gall** Fingal County Council



**Private & Confidential**

Mr. Brian McDonnell  
Sandyhill Environmental Services  
No. 6 Mulberry Crescent  
Castleknock  
Dublin 15

Date: 09/09/10

Our Ref: PW WPT112

**Re: Non-compliance with the Waste Management Act 1996, as amended.**

Dear Mr. McDonnell,

On the 08/09/2010, an authorised person observed the acceptance and storage of End of Life Vehicles (ELV's) at your facility, Sandyhills Environmental Services, Sandyhill, St. Margaret's, Co. Dublin. You are not permitted to accept or store ELV's. You are hereby directed pursuant to Section 14 of the Waste Management Act 1996, as amended, to;

- a) Cease accepting ELV's at this site immediately.
- b) Remove all ELV's to an Authorised Treatment Facility immediately.

Failure to comply with this direction will be considered a breach of Section 14 of the Waste Management Act 1996, as amended, and an offence for which you may be liable to prosecution. Non-compliance with this request may also result in further action being taken by Fingal County Council to rectify the situation.

Please take note that this letter is **without prejudice to any legal proceedings**, Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended, and the Regulations made thereunder.

Environment Department  
P.O. Box 174,  
County Hall,  
Swords,  
Fingal,  
Co. Dublin

An Roinn Seirbhísí Comshaoil  
Bosca 174,  
Áras an Chontae,  
Sord,  
Fine Gall,  
Contae Átha Cliath

Telephone  
01 890 5013  
Facsimile  
01 890 6270  
Email  
envserv@fingalcoco.ie  
[www.fingalcoco.ie](http://www.fingalcoco.ie)





Yours faithfully,

*Patsy Winters*

Patsy Winters,

Authorised Person,

Waste Enforcement Unit.





Environment Department,  
P.O. Box 174,  
County Hall,  
Swords,  
Fingal,  
Co. Dublin.

An Roinn Seirbhís Comshaoil,  
Bosca 174,  
Aras an Chontae,  
Sord,  
Contac Átha Cliath.

T. 086 8389920 F. 01 890 6270  
E. emer.whyte@fingalcoco.ie

Sent  
2/5/12

**Private & Confidential**

Mr. Brian McDonnell,  
St. Margarets Recycling & Transfer Centre Ltd.,  
6 Mulberry Crescent,  
Castleknock,  
Dublin 15.

Date: 2/5/12

Our Ref: EW WFP-FG-10-00012-01

**Re: Non-Compliance with your Waste Facility Permit WFP-FG-10-00012-01**

Dear Mr. McDonnell,

Your facility, St. Margaret's Recycling & Transfer Centre Limited, Sandyhill, St. Margaret's, Co. Dublin was audited on the 30/04/12 by authorised persons from the Waste Enforcement Unit of Fingal County Council. The following non-compliances were found in relation to your waste permit;

- The maximum amount of waste allowed to be accepted at the facility (17,150 tonnes) was exceeded in 2011, without the prior consent of Fingal County Council as per Condition 1.7.
- There is no absorbent material in storage at the facility to absorb any spillage as per Condition 4.15.
- There is no waste quarantine area provided and maintained at the facility as per Condition 4.33.
- Waste batteries and waste electrical and electronic equipment (WEEE) are being accepted at the facility; this type of waste is not listed within Condition 5.1 - Table 1, of your waste facility permit and is therefore not permitted to be accepted at the site.

Please submit the following in writing to Fingal County Council, within 15 days of receipt of this letter:

- an explanation for the exceedances in permissible tonnages accepted at the facility and an outline of the corrective action you intend to take to ensure that you remain within the maximum annual intake in the future.
- the corrective action you intend to take to rectify all other non-compliances listed above.

Failure to comply with any condition of your waste permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you may be liable for prosecution. Non-compliance with the above conditions may also result in further action being taken by Fingal County Council to rectify the situation.

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996 and the Regulations made thereunder.

Yours faithfully,

Emer Whyte

Emer Whyte,  
Authorised Person,  
Waste Enforcement Unit.

87  
St. Margarets  
Recycling  
& Transfer  
Centre Ltd



Sandyhills, St. Margarets, Co. Dublin

Ph/Fx: 01-856 9434

Email: st.margarets\_recycling@hotmail.com

Permit: WFP-FG-11-00012-01

Environment Department,  
PO Box 174,  
County Hall,  
Swords,  
Fingal,  
Co. Dublin.

18<sup>th</sup> May 2012

Re: Non-Compliance Ref: EW WFP-FG-10-00012-01

Dear Emer,

In reply to correspondence received on Tuesday 8<sup>th</sup> May 2012 from Fingal Co. Co.

Re: non-compliance during recent audit at St. Margarets Recycling Ltd, Sandyhill, St. Margaret's, Co. Dublin. Please find below;

**1.1 - Exceeded Tonnages** – We appear to have exceeded our tonnages in 2011, we would like to apologise for this. We did unexpectedly get busy late in the year with a demolition job, EWC170101 Concrete, which turned out to be greater than expected. Our previous permit at this site allowed for greater tonnages and the new one which was delayed, received late in quarter 2 of 2011, did not carry the same tonnage allowance. We will now under section 6.0 Accounts, of our proposed Waste Management System, create a monthly reports folder, to compile monthly data of waste accepted at the Facility. This will in turn give us accurate tonnages throughout the year and prevent us from exceeding our tonnages in 2012.

If we envisage we would require an increment in tonnages towards the end of quarter three then we will apply in writing to Fingal Co.Co. for this.

**1.2 - Absorbent Material** – We have now ordered 4 spill kits from Chemstore Ltd to place in different locations on site

**1.3 - Quarantine Area** – We now have two quarantine areas on site, both are sign posted with Yellow signs "CAUTION Quarantine Area"

**1.4 - Waste Batteries & WEEE**

**1.4.1 Waste Batteries** – These batteries are not being accepted at St. Margarets Recycling but merely stored overnight and collected and brought to a permitted facility that can accept batteries.

St. Margarets  
Recycling  
& Transfer  
Centre Ltd



Sandymli s, St. Margarets, Co. Dublin

Ph/Fx. 01-856 943 4

Email: stmargarets\_recycling@hotmail.com

Permit WFP-FG-11-00012-01

We have applied for both End of Life Vehicles and multi region waste collection permit, both of which will include batteries, we should hear a decision on both by next week.

**1.4.2 WEEE** – Unfortunately even though we would ask customers not to put such material in skips, the very odd time we would get some. We would put this aside and send it to an appropriate facility to be dealt with. We would like to add WEEE to our Facility Permit and would seek Fingal Co. Co.'s direction in how we will go about this process.

I hope all is in order and should you require any further information please do not hesitate to contact me

Kind Regards

A handwritten signature in black ink, appearing to read 'Brian McDonnell', written over a horizontal line.

Brian McDonnell  
St. Margarets Recycling Ltd.



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**Comhairle Contae Fhine Gall** Fingal County Council

St. Margarets Recycling and Transfer Centre Ltd.  
(trading as McDonnell Metals)  
6 Mulberry Crescent,  
Carpenterstown Road  
Dublin 15

7<sup>th</sup> January 2013

**Re: Non-Compliance with Waste Facility Permit WFP-FG-10-00012-02**

Dear Mr. McDonnell,

St. Margarets Recycling and Transfer Centre Ltd (trading as McDonnell Metals) which is authorised to store and process waste by Fingal County Council as per waste facility permit number WFP-FG-10-00012-02 was inspected on the 4th January 2013 by authorised officers under the Waste Management Act 1996 as amended and substituted (Yvonne Cannon and Eleanor Scally).

From the inspection of the site by the officers from Fingal County Council, it is evident that the operation of the site is not in compliance with a number of conditions of the waste facility permit **WFP-FG-10-00012-02** as detailed below:

**Condition 2.6**

All waste deposited in the facility shall be either placed;

- (i) into a skip
- (ii) into the hopper of a compactor for disposal
- (iii) into a receptacle for recovery;
- (iv) into a designated processing area;
- (v) into a designated inspection area in the case where inspection is required

**Condition 4.4**

There shall be no casual public access to the facility

**Condition 5.22**

The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority. The register shall detail the following – (b) Names of the carriers, including details of vehicle registrations and waste collection permits numbers.

Failure to comply with any condition of your waste permit is considered a breach of Section 39 of the Waste Management Act 1996, as amended and substituted and is an offence for which you may be liable for prosecution.

You are hereby directed to submit the corrective actions you intend to take to rectify all non-compliances listed above in writing to Fingal County Council, within **15 days** of the date of this letter.

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended and substituted, and the Regulations made thereunder.

Yours faithfully,

Yvonne Cannon

Yvonne Cannon  
Executive Scientist

Inspectorate Division, Fingal County Council









St. Margarets Recycling and Transfer Centre Ltd.  
(trading as McDonnell Metals)  
6 Mulberry Crescent,  
Carpenterstown Road  
Dublin 15

14<sup>th</sup> February 2013

**Re: Non-Compliance with Waste Facility Permit WFP-FG-10-00012-02**

Dear Mr. McDonnell,

St. Margarets Recycling and Transfer Centre Ltd (trading as McDonnell Metals) which is authorised to store and process waste by Fingal County Council as per waste facility permit number WFP-FG-10-00012-02 was inspected on the 4<sup>th</sup> February 2013 by authorised officers under the Waste Management Act 1996 as amended and substituted (Yvonne Cannon and Eleanor Scally). The purpose of the inspection was to follow up on the Section 39 Notice under the Waste Management Act issued by Fingal County Council on the 7<sup>th</sup> January 2013 following a site inspection on the 4<sup>th</sup> January 2013 and the subsequent response to the Section 39 Notice dated 7<sup>th</sup> January 2013 submitted to Fingal County Council by you.

From the inspection of the site by the officers from Fingal County Council, it is evident that the operation of the site is still not in compliance with two of the Conditions of the waste facility permit **WFP-FG-10-00012-02** (listed below) that were previously highlighted to you in the Section 39 Notice of 7<sup>th</sup> January 2013.

**Condition 4.4**

There shall be no casual public access to the facility

**Condition 5.22**

The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority. The register shall detail the following – (b) Names of the carriers, including details of vehicle registrations and waste collection permits numbers.

Additionally, it was apparent during the site inspection that a number of other conditions of the waste facility permit are not being complied with (as outlined below)

**Condition 3.1 Waste Acceptance and Handling procedure**

The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority. The register shall detail the following:

- a) The dates and time of waste delivered to and dispatched from the facility.
- b) Names of the carriers, including details of vehicle registrations and waste collection permits numbers.
- c) The origin of each delivery of waste.
- d) The quantities and composition of each waste consignment, (by European Waste Catalogue code(s) and description(s) pursuant to Commission Decision 2001/118/EC of 16th January, 2001 or subsequent amendments) received at the site.
- e) The quantities and composition of wastes rejected at the facility, and details of where they were diverted.





- f) The quantities composition and destination of waste consigned for onward transport from the facility together with documentary evidence of acceptance/treatment/disposal at the destination facility.
- g) Details of all facilities, including permit/licence numbers, which are being used to receive such waste.
- h) Details on end-of-life vehicles as follows:-
  - (i) vehicle registration number
  - (ii) vehicle identification number/chassis number
  - (iii) vehicle licensing certificate/vehicle registration certificate
  - (iv) name and nationality of registered owner/vehicle holder

### Condition 3.9

The permit holder shall not compile information which is false or misleading and will maintain all records and in particular copies of end-of-life vehicle registration documents for a period of 7 years. Records relating to off-site environmental effects and matters which affect the condition of land and groundwater shall be maintained indefinitely unless otherwise authorised by Fingal County Council in writing.

### Condition 3.11

The permit holder shall make all records maintained on the site available to authorised staff of Fingal County Council at all reasonable times, and shall provide any relevant information when so requested by an authorised person of the Council.

### Condition 5.1

The permit holder shall ensure that only wastes permitted at this facility are accepted. The type and quantities permissible wastes are presented in Table 1 of the permit. The listing is by European Waste Catalogue code(s) and description(s) pursuant to Commission Decision 2001/118/EC of 16 January 2001 or subsequent amendments.

### Condition 5.2

The permit holder shall only accept such wastes for temporary storage and transfer to a suitable disposal facility at this permitted facility provided for in this permit and which are listed in Table 1 of the permit. Wastes not listed within Table 1 of the permit are not permitted at this facility.

Failure to comply with any condition of your waste permit is considered a breach of Section 39 of the Waste Management Act 1996, as amended and substituted and is an offence for which you may be liable for prosecution. Please note that in accordance with Article 36 of the Waste Management (Facility Permit and Registration) Regulations 2007 as amended by S.I. No. 86 of 2008 Waste Management (Facility Permit and Regulation) (Amendment) Regulations 2008 a local authority may revoke a waste facility permit, if it appears to it that the activity being carried out is, or may be, in contravention of the waste facility permit conditions granted by the local authority.

You are hereby directed to submit the corrective actions you intend to take to rectify all non-compliances listed above in writing to Fingal County Council, within **15 days** of the date of this letter.

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended and substituted, and the Regulations made thereunder.

Yours faithfully,

Yvonne Cannon.


Yvonne Cannon

Executive Scientist

Inspectorate Division, Fingal County Council





patel tonra   
environmental solutions

For the Attention of  
Ms Yvonne Cannon  
Executive Scientist  
Inspectorate Division  
Fingal County Council  
County Hall  
Main Street  
Swords  
Co. Dublin

Our Ref.: SM0102  
Direct Dial: 01 8020523  
Direct Fax: 01 8020525  
e-mail: louise.odonnell@pateltonra.com  
Date: 1<sup>st</sup> March 2013

Dear Ms Cannon,

**Re: Non-compliance with Waste Facility Permit WFP-FG-10-00012-02**

We are writing to you on behalf of St. Margaret's Recycling & Transfer Centre Ltd. (hereinafter referred to as 'St. Margaret's Recycling'). We refer to your letter of 14<sup>th</sup> February 2013 (received by St. Margaret's Recycling on 20<sup>th</sup> February 2013) and respond to each item in turn below.

St. Margaret's Recycling has developed Waste Acceptance Procedures, which, we understand, have been agreed with Fingal County Council, and, in recent months, further development of waste records and management systems has been implemented, as described below. All incoming waste is weighed and logged. St. Margaret's Recycling currently uses a number of different forms and documentation as part of the Waste Acceptance Procedure and record-keeping, as detailed below – copies are attached for your perusal and demonstration purposes; some commercially sensitive information has been blanked out.

**Condition 4.4**

*There shall be no casual public access to the facility.*

We have been assured by St. Margaret's Recycling that the facility does not operate in a manner similar to a Civic Amenity Site or public recycling facility, where there is open access to the general public. Waste/materials are received by St. Margaret's Recycling on the basis of business transactions with its customers. All incoming waste/materials are recorded and logged on weighbridge records.

**Condition 5.22**

*The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority. The register shall detail the following – (b) Names of the carriers, including details of vehicle registrations and waste collection permit numbers.*

**Condition 3.1**

*The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority. The register shall detail the following:*

- (a) The dates and time of waste delivered to and dispatched from the facility.*
- (b) Names of the carriers, including details of vehicle registrations and waste collection permit numbers.*



(c) The origin of each delivery of waste.

(d) The quantities and composition of each waste consignment... received at the site.

(e) The quantities and composition of wastes rejected at the facility, and details of where they were diverted.

(f) The quantities, composition and destination of waste consigned for onward transport from the facility, together with documentary evidence of acceptance/treatment/disposal at the destination facility.

(g) Details of all facilities, including permit/licence numbers, which are being used to receive such waste.

(h) Details on ELVs:

- (i) vehicle registration number
- (ii) vehicle identification number/chassis number
- (iii) vehicle licensing certificate/vehicle registration certificate
- (iv) name and nationality of registered owner/vehicle holder

#### **Waste records**

All incoming waste is recorded, weighed and logged at the weighbridge.

All incoming waste/materials are recorded on the **Daily Weighbridge Sheet (Ref. Appendix 1)**. This is the key central database to record incoming waste/materials (types and tonnages).

Weighbridge dockets are issued to all customers (copies retained on site as detailed below). Customers are required to sign the docket and complete their address details.

St. Margaret's Recycling has the following weighbridge software program installed on-site: 'Enterprise - Advanced Weighbridge Software'. The functionality of the program is limited in that only one EWC code can be recorded against an individual waste load. In many cases, mixed loads are delivered to site (mixed metals, in the main) and individual EWC codes are required to be recorded. It is for this reason that both **printed weighbridge dockets (Ref. Appendix 2)** (from the Enterprise weighbridge software system) and **hand-written dockets (Ref. Appendix 3)** are used: printed weighbridge dockets are used for single-stream incoming loads, and hand-written dockets are used for mixed-stream loads. Regardless of the docket type issued, all loads are entered on the **Daily Weighbridge Sheet**.

In conjunction with the **Daily Weighbridge Sheet**, an electronic register is maintained of incoming waste/materials, categorised by EWC code. Data are totalled and summarised on a weekly and monthly basis, in the form of the **weekly weighbridge summary (Ref. Appendix 4)** and **monthly weighbridge summary (Ref. Appendix 5)**.

#### **Weighbridge dockets**

Weighbridge dockets are issued to all customers; the duplicate docket is filed (by day) and retained as part of the site's document management system. The triplicate docket is left in the docket book. **Docket books** are dated, logged and retained as part of the site's document management system.

For those customers/accounts recorded on the Enterprise weighbridge software system, it is possible to collate/print a register of customers (**Account Listing - Ref. Appendix 6**), to include the customer account code, customer account name and address. For those customers/accounts which are not recorded on the Enterprise weighbridge software system, their details are retained in the docket books only.



### **Waste Collection Permits**

Waste Collection Permit (WCP) details are logged on the Enterprise weighbridge software system in the form of *Haulier Listing (Ref. Appendix 7)*, which records the customer account code, the customer account name and the WCP number.

Some customers will be exempt from the requirement to hold a Waste Collection Permit, in accordance with the Waste Management (Collection Permit) Regulation 2007, as amended. Article 30(1) states the following:

*".....section 34(1)(a) of the Act shall not apply in respect of—.....(b) the collection and transport of non-hazardous waste, other than under the conditions described in paragraph (k)(i) by a person where—*

*(i) such transport is incidental to the main business activity of the person concerned, and*

*(ii) the quantity of waste transported by the person concerned is equal to or less than 2 tonnes other than waste which is transported in, or on, a vehicle designed for the carriage of a skip or other demountable container".*

St. Margaret's Recycling inform us that they have been in contact with their customers by phone in relation to the requirement to hold a Waste Collection Permit.

### **Condition 3.9**

*The permit holder shall not compile information which is false or misleading and will maintain all records and in particular copies of end-of-life vehicle registration documents for a period of 7 years. Records relating to off-site environmental effects and matters which affect the condition of land and groundwater shall be maintained indefinitely unless otherwise authorized by Fingal County Council in writing.*

St. Margaret's Recycling retains information, as described above; we have had assurances from St. Margaret's Recycling and Mr. Brian McDonnell that no information has been withheld or is of a false or misleading nature. All records are held for the requisite time period.

### **Condition 3.11**

*The permit holder shall make all records maintained on the site available to authorized staff of FCC at all reasonable times, and shall provide any relevant information when so requested by an authorized person of the Council.*

All records retained at St. Margaret's Recycling will be made available for inspection by Fingal County Council at any time or date.

### **Condition 5.1**

*The permit holder shall ensure that only wastes permitted at this facility are accepted.....*

The Waste Acceptance Procedure ensures that only wastes/materials compatible with the Waste Facility Permit are accepted. Any non-conforming waste, which may be inadvertently accepted, is separated and stored in a designated skip pending off-site removal.

### **Condition 5.2**

*The permit holder shall only accept such wastes for temporary storage and transfer to a suitable disposal facility at this permitted facility provided for in this permit.....*



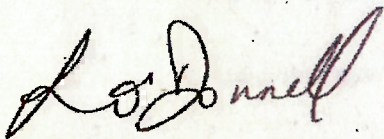
The Waste Acceptance Procedure ensures that only wastes/materials is compatible with the Waste Facility Permit are accepted. Any non-conforming waste, which may be inadvertently accepted, is separated and stored in a designated skip pending off-site removal.

St. Margaret's Recycling has invested heavily in the business and capital expenditure in recent years, in an effort to diversify its recovery & recycling services and promote local employment.

We confirm that the contents of this letter have been reviewed and confirmed as correct by Mr. Brian McDonnell of St. Margaret's Recycling.

Should you have any additional queries, please do not hesitate to contact us

Yours Sincerely  
for Patel Tonra Limited

A handwritten signature in dark ink, appearing to read 'L O'Donnell', written in a cursive style.

Louise O'Donnell  
Environmental Consultant

**Comhairle Contae Fhine Gall**  
Fingal County Council

**An Roinn Selrbhísfí**  
**Comhshaoil agus Uisce**  
Environment and Water  
Services Department



Private and Confidential

Mr. Brian McDonnell

St. Margaret's Recycling and Transfer Centre Ltd

Sandyhill

St. Margaret's

Co. Dublin

Date: 26/6/2019

Re: Non-Compliance with your Waste Facility Permit reference WFP-FG-13-0002-02

Dear Brian,

I refer to waste facility permit WFP-FG-13-0002-02 held by St. Margaret's Recycling and Transfer Centre Ltd. for a waste facility at Sandyhill, St. Margaret's, Co. Dublin.

On 21<sup>st</sup> June, 2019 the Waste Enforcement Section of Fingal County Council carried out an audit of records at the facility relating to your Annual Return 2018.

The audit highlighted that a figure of 36391.18 tonnes of waste was accepted at the facility in 2018. This is non-compliant with Condition 1.10 of your waste facility permit 'The maximum amount of waste to be accepted at the facility per annum is 21,900 tonnes. This tonnage may be exceeded by a further specified amount only with the prior consent of Fingal County Council after satisfactory documentary evidence has been provided to the Council showing the achieved recycling rate'.

Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you may be liable for prosecution. Non-compliance with the above condition may result in further action being taken by Fingal County Council to rectify the situation.

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended and the Regulations made thereunder.



Within 2 weeks of the date of this notice, please confirm wa stein tonna ges for 2019 to date and outline how you intend to ensure compliance with Co ndition 1.10 of WFP-FG-13-0002-02 for 2019 to [Janice.butler@fingal.co.ie](mailto:Janice.butler@fingal.co.ie)

Yoursfaithfu lly

Janice Butler

Janice Butler  
E xecutive Scientist  
En viron mentDivision

**Comhairle Contae Fhine Gall**  
Fingal County Council

**An Roinn Seirbhísí**  
**Comhshaoil agus Uisce**  
Environment and Water  
Services Department



Private and Confidential

Mr. Brian McDonnell

St. Margaret's Recycling and Transfer Centre Ltd

Sandyhill

St. Margaret's

Co. Dublin

Date: 30/8/19

Re: Non-Compliance with your Waste Facility Permit reference WFP-FG-13-0002-02

Dear Mr McDonnell,

I refer to waste facility permit WFP-FG-13-0002-02 held by St. Margaret's Recycling and Transfer Centre Ltd. for a waste facility at Sandyhill, St. Margaret's, Co. Dublin.

Fingal County Council was not made aware that the tonnage limit of 21,900 tonnes would be exceeded in 2018 which is a breach of Condition 1.11 of WFP-FG-13-0002-02: - *'Any proposed changes in the activity as outlined in the information furnished with this application shall be submitted in writing to Fingal County Council for written agreement prior to that change taking effect. Should the submission identify a material or significant change in: (a) the nature, extent or focus of the waste activities; or (b) the nature or extent of any emission; a facility permit review or new application may be required before the proposed change can be assessed'.*

Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you may be liable for prosecution. Non-compliance with the above condition may result in further action being taken by Fingal County Council to rectify the situation.

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended and the Regulations made thereunder.

Yours faithfully,

*Janice Butler*

Janice Butler  
Executive Scientist

Bosca 174, Áras an Chontae, Sord, Fine Gall, Co. Bhaile Átha Cliath  
P.O. Box 174, County Hall, Main Street, Swords, Co. Dublin  
t: (01) 890 6783 m: 087 6791591 e: info@fingal.ie fingal.ie









Private and Confidential

Mr. Brian McDonnell

St. Margaret's Recycling and Transfer Centre Ltd

Sandyhill

St. Margaret's

Co. Dublin

Date: 30/8/19

Re: Non-compliance with waste facility permit reference WFP-FG-13-0002-02

Dear Mr McDonnell,

On 22<sup>nd</sup> August, 2019 the Waste Enforcement Section of Fingal County Council carried out an audit of records at the facility relating to your Annual Return 2018.

The audit highlighted non-compliance with Condition 3.4 of your waste facility permit: -

*'The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority (refer to Appendix 1 (Table 1 example). The register shall detail the following:*

- (a) The dates and time of all waste delivered to and dispatched from the facility (including sales).*
- (b) Names of the carriers, including details of vehicle registrations and waste collection permit numbers.*
- (c) The origin of each delivery of waste.*
- (d) The quantities and composition of each waste consignment, (by European Waste Catalogue code(s) and description(s) pursuant to Commission Decision 2001/118/EC of 16th January, 2001 or subsequent amendments) received at the site.*
- (e) The quantities and composition of wastes rejected at the facility, and details of where they were diverted.*

*(f) The quantities, composition and destination of waste consigned for onward transport from the facility together with documentary evidence of acceptance/treatment/disposal at the destination facility.*

*(g) Details of all facilities, including permit/licence numbers, which are being used to receive such waste.*

*(h) Details of scrap metal purchased and amount paid.*

*(i) Details on end-of-life vehicles as follows:-*

*i. vehicle registration number*

*ii. vehicle identification number/chassis number*

*iii. vehicle licensing certificate/vehicle registration certificate*

*iv. name and nationality of registered owner/vehicle holder".*

Weighbridge dockets are not being adequately completed, in particular information on the name of the carrier of the waste and the origin/source of the waste is not being recorded.

The audit also highlighted non-compliance with Condition 3.5 of your waste facility permit: -

To ensure full traceability of all waste and in compliance with S.I No.320/2014, Waste Management (Facility Permit and Registration)(Amendment) Regulations 2014, the permit holder shall;

*(a) Require the production of proof of identity of the person supplying the material, such proof being:*

*(i) a valid passport, or*

*(ii) a current Irish driving licence or learner driver permit or*

*(iii) a Public Services Card issued by the Department of Social Protection,*

*(b) Require the production of proof of current address of the person supplying the material such proof being:*

*(i) a current utility bill addressed to that person at their stated address,*

- (ii) a document issued by a Government Department addressed to that person at their stated address within the previous three months,*
- (iii) a current car or home insurance policy addressed to that person at their stated address, or*
- (iv) a current Tax Credit Certificate or Tax Clearance Certificate issued by the Office of the Revenue Commissioners to that person at their stated address,*
- (c) Maintain records of the name, identity, registration number and where appropriate, Waste Collection Permit of the delivery vehicle.*
- (d) Maintain a description of the weight of the materials, time and date of sale and amount paid.*
- (e) Require a statement signed by the person supplying the material that they are the lawful owner of the material or have the consent of the lawful owner to sell the material.*
- (f) Maintain records of transfer declarations from Authorised Treatment Facilities if end-of-life-vehicle transferred.*
- (g) Maintain records of Certificate of Destruction counterfoils and surrendered vehicle registration documents for end-of-life vehicles.*

In particular, proof of identity, proof of address, proof of ownership records are not being maintained. In addition, records of transfer declarations from Authorised Treatment Facilities if end-of-life-vehicle transferred and Certificate of Destruction counterfoils and surrendered vehicle registration documents for end-of-life vehicles records are not being maintained.

Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you may be liable for prosecution. Non-compliance with the above condition may result in further action being taken by Fingal County Council to rectify the situation.

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended and the Regulations made thereunder.

Yours faithfully,

*Janice Butler*

Janice Butler

Executive Scientist



Private and Confidential

Mr. Brian McDonnell

St. Margaret's Recycling and Transfer Centre Ltd

Sandyhill

St. Margaret's

Co. Dublin

Date: 21/11/19

Re: Non-compliance with waste facility permit reference WFP-FG-13-0002-03

Dear Mr McDonnell,

On 15<sup>th</sup> November, 2019 the Waste Enforcement Section of Fingal County Council carried out a site inspection at the facility and completed an audit of waste facility permit WFP-FG-13-0002-03.

The audit highlighted a waste intake of 27,475 tonnes to the end of October 2019. This is in breach of the annual tonnage limit of 21,900 tonnes and is non-compliant with Condition 1.9 of the waste facility permit WFP-FG-13-0002-03 "The maximum amount of waste to be accepted at the facility per annum is 21,900 tonnes".

Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you may be liable for prosecution. Non-compliance with the above condition may result in further action being taken by Fingal County Council to rectify the situation.

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996, as amended and the Regulations made thereunder.

Yours faithfully,

*Janice Butler*

Janice Butler

Executive Scientist

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**Private & Confidential.**

Mr. Brian McDonnell

St. Margaret's Recycling and Transfer Centre Ltd

Sandyhill

St. Margaret's

Co. Dublin

Date: 4/12/2019

Ref: WFP-FG-13-0002-03

**Re: Non-compliance with the Waste Management Act 1996, as amended**

Dear Mr. McDonnell,

An audit of waste-in records undertaken at St. Margaret's Recycling and Transfer Centre Ltd, Sandyhill, St. Margaret's, Co. Dublin on 15<sup>th</sup> November, 2019 indicated a breach of the annual tonnage limit of 21,900 tonnes as set out in Condition 1.9 of waste facility permit WFP-FG-13-0002-03.

This constitutes an offence under Section 39 of the Waste Management Act 1996, as amended, for which you may be prosecuted. You are hereby directed pursuant to Section 14 of the Waste Management Act 1996, as amended, to;

- (a) Cease the intake of waste to the facility with immediate effect up to the end of 2019.

**Failure to comply with this direction will be considered a breach of Section 14 of the Waste Management Act 1996, as amended and an offence for which you may be liable to prosecution. Non-compliance with this direction may also result in further action being taken by Fingal County Council to rectify the situation.**

Please take note that this letter is without prejudice to any legal proceedings Fingal County Council may take against you in respect of any contravention of the Waste Management Act 1996 and the Regulations made thereunder.



If you have any queries in relation to this direction please contact the undersigned on 01-8906783.

Yours Sincerely

Janice Butler

Janice Butler  
Authorised Person  
Waste Enforcement Unit

Comhairle Contae Fhine Gall  
Fingal County Council

An Roinn Seirbhísí  
Comhshaoil agus Uisce  
Environment and Water  
Services Department



**Private & Confidential.**

Mr. Brian McDonnell

St. Margaret's Recycling and Transfer Centre Ltd

Sandyhill

St. Margaret's

Co. Dublin

Date: 12/12/2019

Ref: WFP-FG-13-0002-03

**Re: Non-compliance with the Waste Management Act 1996, as amended**

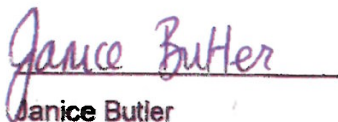
Dear Mr. McDonnell,

I refer to the Section 14 Notice (attached) under the Waste Management Act, 1996 as amended, which was issued to you by post and by email on the 4<sup>th</sup> December, 2019.

I did not receive any acknowledgement of receipt of this notice. Therefore, I am re-issuing the original letter by registered post today.

If you have any queries in relation to this notice please contact me on 01-8906783.

Yours Sincerely,



Janice Butler  
Executive Scientist  
Environment Division



"copy"

## COMHAIRLE CONTAE FHINE GALL



### NOTICE UNDER SECTION 18(1)(d) OF THE WASTE MANAGEMENT ACT 1996 AS AMENDED AND SUBSTITUTED

TAKE NOTICE that pursuant to its functions under the Waste Management Act 1996, as amended and substituted, FINGAL COUNTY COUNCIL being the local authority for the Administrative County of Fingal in pursuance of its functions under the Waste Management Act, 1996 as amended and substituted, hereby requires you, **Mr. Brian McDonnell, St. Margaret's Recycling and Transfer Centre Ltd., Sandyhill, St. Margaret's, Co. Dublin** within 14 days from the date of service of this Notice to: -

Furnish in writing to the Environment and Climate Action Department, Fingal County Council, County Hall, Swords, Co. Dublin:

- (1) Details of how a register will be maintained in accordance with Condition 3.4(c) of WFP-FG-13-0002-03 *"The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates; which shall be available for inspection by the local authority. An electronic copy of the register shall be forwarded to Fingal County Council quarterly. The register shall detail the following...Where a customer is exempt from the requirement to hold a waste collection permit, details of the nature of the business to which the waste is incidental, a company registration or VAT number and details/proof of why the exemption applies under Article 30 of S.I No 820/2007 the Waste Management (Collection Permit) Regulations 2007"*
- (2) Details of why the following entries on the waste-in records are exempt from holding a waste collection permit -
  - (i) [REDACTED] docket number 152271
  - (ii) [REDACTED] docket number 152749
  - (iii) [REDACTED] docket number 145260
  - (iv) [REDACTED] docket number 152207
  - (v) [REDACTED]
  - (vi) [REDACTED] docket number 152433
  - (vii) [REDACTED] docket number 152264.
- (3) Details of how proof of ownership records will be maintained in accordance with Condition 3.6(e) *"To ensure full traceability of all waste and in compliance with S.I*

*No. 320/2014, Waste Management (Facility Permit and Registration) Amendment Regulations 2014, the permit holder shall. Require a statement signed by the person supplying the material that they are the lawful owner of the material or have the consent of the lawful owner to sell the material".*

- (4) The tonnage of material stored in the large stockpile in the waste intake area.
- (5) The nature of the material stored in the large stockpile in the waste intake area including whether it has been processed or is awaiting processing.
- (6) A contingency plan for management of the large stockpile in the waste intake area given the current downturn in the market.
- (7) An updated Facility Layout drawing reflecting current waste operations at the site.
- (8) For waste-in recorded as "shell" – which was explained as being a car shell brought to the facility (already de-polluted), confirmation that full records for the following entries in the waste-in register for October 2019 are available for inspection by Fingal County Council incl. (1) docket for waste in, (2) details of customer delivering depolluted ELV to the facility, (3) waste collection permit number if no exemption to hold a waste collection permit applies, (4) if an exemption to hold a waste collection permit applies, details of why the exemption applies, (5) confirmation of whether a COD was issued for this vehicle by St Margaret's Recycling or another Authorised Treatment Facility.

Date	Docket	Registration
2/10/2019	152286	
4/10/2019	152489	
10/10/2019	152594	
11/10/2019	152677	
15/10/2019	152930	
18/10/2019	153212	
19/10/2019	153286	
19/10/2019	153321	
21/10/2019	153342	
21/10/2019	153350	
21/10/2019	153354	
23/10/2019	153478	

- (9) A dust monitoring programme in accordance with Condition 6.21 of waste facility permit WFP-FG-13-0002-03 'The permit holder shall carry out dust monitoring at dust monitoring stations D1 and D2 indicated on Drawing No: DR07, titled 'Emission Plan' and dated 28th May, 2019 (See Appendix 3) to demonstrate compliance with the maximum limit for total dust deposition of 350mg/m<sup>2</sup>/day. The dust monitoring programme shall be submitted to Fingal County Council for approval within 2 months of the date of grant of this permit.'

(10) Monthly surface water monitoring results in accordance with Condition 6.31 of waste facility permit WFP-FG-13-0002-03 granted on 7<sup>th</sup> September, 2019 'The permit holder shall carry out monthly surface water drainage monitoring at SW1 located directly downstream of the oil separator/interceptor as outlined on Drawing No. DR07 titled 'Emission Plan' and dated 28th May, 2019 (See Appendix 3). The following parameters shall be analysed for: pH, conductivity, suspended solids, ammonia, Diesel Range Organics, Petrol Range Organics, Mineral Oil, PAH's, BTEX, VOC's, Zinc, Copper, Chromium and Lead. Monitoring should be carried out at the beginning of the month/monitoring period to allow for a repeat sample to be obtained if the initial sample is missed due to dry weather conditions'.

(11) A fire risk assessment in accordance with Condition 2.14(w) and Condition 7.7 of waste facility permit WFP-FG-13-0002-03.

Condition 2.14(w) 'Within 1 month of the date of grant of this permit, the permit holder shall develop and maintain documented procedures for the following... fire prevention procedure and associated fire risk assessment for both building and operational/permitted activities'.

and Condition 7.7 'Within 2 months of the date of grant of this permit, the permit holder shall prepare and submit for the approval of Fingal County Council, a fire risk assessment of the facility. The fire risk assessment shall contain the following information:

- a. the risk of fire relating to de-pollution activities and storage of oils/fluids;
- b. the risk of fire relating to storage of tyres, gas cylinders, batteries and other flammable materials;
- c. the risk of fire directly relating to the tonnage of end-of-life tyres to be stored at the facility;
- d. installations and equipment necessary to prevent fire spreading at the facility.

**YOU ARE HEREBY WARNED** that in accordance with Section 18(2) of the Waste Management Acts, 1996 a person who fails to comply with a Notice under Section 18 of the Waste Management Act 1996 or who furnishes any information in reply to such Notice which he or she knows to be false or misleading in a material respect, shall be guilty of an offence. Proceedings pursuant to Section 18 of the Waste Management Act, 1996 may be brought against you in the event that you contravene the terms of this Notice or furnish any information which you know to be false or misleading in a material respect.

**YOUR ATTENTION IS DRAWN** to the provisions of Section 18 of the Waste Management Act, 1996 in relation to the bringing of proceedings and to the provisions of Section 10 of the Waste Management Act, 1996 with regard to the penalties upon conviction for offences under the said 1996 Act and to the provisions of Section 12 of the Waste Management Act, 1996 with regard to the costs of prosecutions upon conviction for an offence under the said 1996 Act.

**SECTION 10 OF THE WASTE MANAGEMENT ACT, 1996 PROVIDES THAT A PERSON GUILTY OF AN OFFENCE UNDER THE ACT ON SUMMARY**

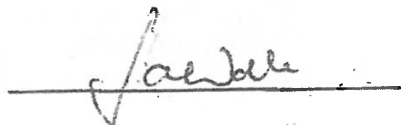
**CONVICTION SHALL BE LIABLE TO A FINE NOT EXCEEDING 3000 EURO OR TO IMPRISONMENT FOR A TERM NOT EXCEEDING 12 MONTHS, OR TO BOTH SUCH FINE AND SUCH IMPRISONMENT**

**IF SUCH CONTRAVENTION IS CONTINUED AFTER CONVICTION, A FURTHER OFFENCE IS COMMITTED ON EVERY DAY WHICH THE CONTRAVENTION CONTINUES AND FOR EACH SUCH OFFENCE ON SUMMARY CONVICTION SECTION 10 PROVIDES FOR A FINE NOT EXCEEDING 1000 EURO.**

Information pursuant to this Notice shall be submitted to:- Fingal County Council, Fingal County Hall, Swords, Co. Dublin.

Dated this <sup>12</sup> / 8 day of Dec<sup>r</sup> 2019

Signed



James Walls,  
Acting Senior Engineer,  
Environment & Climate Action Department.



**Comhairle Contae Fhine Gall**  
Fingal County Council

**An Roinn Seirbhíse**  
**Comhshaoil agus Uisce**  
Environment and Water  
Services Department



Private and Confidential

Mr. Brian McDonnell  
St. Margaret's Recycling and Transfer Centre Ltd  
Sandyhill  
St. Margaret's  
Co. Dublin

Date: 18/12/19

**Re: Non-compliance with Waste Facility Permit Conditions reference WFP-FG-13-0002-03**

Dear Mr McDonnell,

The following information is outstanding in accordance with conditions set out in waste facility permit WFP-FG-13-0002-03 and represents a breach of Section 39 of the Waste Management Act 1996, as amended:

**Condition 2.6** Within 1 month from the date of grant of this permit the permit holder shall submit written details of the management and staffing structure of the facility and maintain a copy at the site. Any subsequent changes to the management or staffing structure shall be notified to Fingal County Council in writing as required.

**Condition 2.7** Within 1 month from the date of grant of this permit the permit holder shall establish and maintain an Awareness and Training Procedure for identifying training needs and for providing appropriate training to personnel whose work is related to the permitted facility and associated activities.

**Condition 2.14** Within 1 month of the date of grant of this permit, the permit holder shall develop and maintain documented procedures for the following;

- (a) waste inspection procedures;
- (b) waste acceptance and handling procedures (identify the requirements for the pre-treatment of wastes);
- (c) waste quarantine procedures;
- (d) waste rejection and notification procedures;
- (e) other appropriate procedures and arrangements relating to the acceptance of waste e.g. method statements, risk assessments, standard operating procedures;
- (f) vehicle re-fuelling procedure;
- (g) weighbridge maintenance procedure (including procedure for breakdown and service);
- (h) pallet scales maintenance procedure (including procedure for breakdown and service);

- (i) waste sampling, analysis and characterisation procedures;
- (j) water monitoring and sampling procedure;
- (k) hazardous waste management and maintenance procedure;
- (l) vehicle storage procedure;
- (m) battery management and storage procedure;
- (n) tyre management and storage procedure;
- (o) gas cylinder management and storage procedure;
- (p) waste oil, waste fuel, waste fluid management and storage procedure;
- (q) bund management and maintenance procedure;
- (r) drain management and maintenance procedure;
- (s) interceptor management and maintenance procedure;
- (t) maintenance of all plant and machinery at the facility.
- (u) depollution procedure for end-of-life vehicles in accordance with European Union (End-of-Life Vehicle) Regulations, S.I. No. 281 of 2014;
- (v) accident prevention procedure;
- (w) emergency response procedure;

**Condition 4.12** Within 2 weeks of the date of grant of this permit, the permit holder shall submit an updated facility layout drawing to Fingal County Council indicating the location of all universal spill kits at the facility. The contents of the spill kit must be replaced once used and the absorbent material shall be disposed of at an appropriate facility.

**Condition 5.6** The permit holder shall assess the storage capacity of the site giving full regard to designated waste storage areas, bays, skips and furnish a report to Fingal County Council outlining the full capacity of the site within 1 month of the date of grant of this permit.

**Condition 5.7** Within 1 month of the date of grant of this permit, detailed written procedures for the acceptance, storage and handling of all waste types listed under Table 1 shall be submitted to Fingal County Council. The permit holder shall review and update the procedures annually and retain the documentation at the site for inspection by Fingal County Council.

**Condition 5.13** Waste accepted at the site shall be transported only by an authorised waste collector in accordance with the Waste Management (Collection Permit) Regulations, 2001 (where the permit holder has a valid permit granted under such Regulations) or the Waste Management (Collection Permit) Regulations, 2007 (where a valid permit was granted since 31st March 2008) or under an ongoing contract by a trades person exempt from the requirements to hold a waste collection permit. The facility permit holder shall keep a up to date register of exempted persons at the facility and forward an electronic copy of the register to Fingal County Council on a quarterly basis for review purposes.

**Condition 5.22** The permit holder shall submit to Fingal County Council within 1 month of the date of grant of this permit a copy of all Waste Licences or Waste Facility Permits as appropriate, for all facilities destined to receive material removed offsite. The Waste Licences or Waste Facility Permits shall be permitted to accept waste types by LoW Codes.

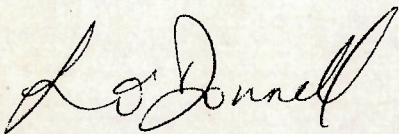


**4. Clarify traffic management plan per individual waste stream in particular the management of landscapers into and out of the proposed green waste storage building.**

- 4.1 Please see the attached Figures 1 and 2 in Appendix 1 showing the traffic management proposal of the entrance and exit points into the site and the green waste storage building. Figure 1 shows the proposed one-way traffic system for green waste. This will ensure that there is no cross-over for traffic entering and exiting the site. Figure 2 shows in detail the area immediately adjacent to the green waste storage building and the weighbridge, marked in orange. This identifies the lay-by area, if required, for green waste vehicle management prior to entry, discharge and exiting the green waste building and site. The one-way traffic system is also separated and identified with traffic cones, which will visually distinguish the entrance and exit points to all traffic entering the site, ensuring no cross-over.

I trust this information meets with your requirements.

Yours Sincerely  
for Patel Tonra Limited



Louise O'Donnell  
Director

( )

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( )



**Lillian Nannery**

**From:** Martin Daly  
**Sent:** 23 December 2010 15:46  
**To:** Lillian Nannery  
**Subject:** FW: St Margaret's Recycling and Transfer Centre Ltd. (formerly Sandyhill Environmental Services Ltd.)

**Follow Up Flag:** Follow up

**Flag Status:** Red

**Attachments:** Waste Facility app\_FCC\_REVISED\_17.12.10.pdf; Appendix 7.0 Planning Permissions Map\_REVISED\_17.12.10.pdf; Appendix 7.1 Planning Permissions\_REVISED 17.12.10.pdf; Appendix 8 EWCs and Estimated Tonnages\_REVISED 17.12.10.pdf; Appendix 8 EWCs and Estimated Tonnages\_Sheet 2\_REVISED 17.12.10.pdf

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**From:** Ger Byrne  
**Sent:** 23 December 2010 15:45  
**To:** Martin Daly  
**Subject:** FW: St Margaret's Recycling and Transfer Centre Ltd. (formerly Sandyhill Environmental Services Ltd.)

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**From:** Louise O' Donnell [mailto:LouiseOD@pateltonra.com]  
**Sent:** 22 December 2010 16:41  
**To:** Ger Byrne  
**Subject:** St Margaret's Recycling and Transfer Centre Ltd. (formerly Sandyhill Environmental Services Ltd.)

**St Margaret's Recycling and Transfer Centre Ltd. (formerly Sandyhill Environmental Services Ltd.)**

Dear Ger,

I was dealing with Yvonne on this application. A brief history: the site holds a Waste Permit and we re-applied last Dec. The planning status was unclear but has now been sorted all out and new planning permission has issued. Your Environment Section could not really process the WP application until planning was addressed. Yvonne contacted me to ask me to update a few items as the application had aged somewhat. I have done that, namely:

- a) Change of co. name
- b) Tonnages are down
- c) Planning details updated
- d) More specifics given for EWCs and tonnages
- e) Opening hours amended as per planning permission.

Yvonne said all the documents I sent previously would be ok and just to replace the application form itself.

It's all a bit complex! Please give me a ring if you would like to discuss, either before or after the Christmas break.

Regards,  
 Louise O'Donnell.





**Section B: About the Applicant**

This section relates to the applicant(s) who will be operating the waste facility.

**B.1 Full name of applicant(s) [Article 10 (1) (a)]**

Applicant(s) must be a legal entity (individual, sole trader, partnership or body corporate).

Name(s):	ST. MARGARETS RECYCLING & TRANSFER CENTRE LIMITED (formerly Sandyhill Environmental Services Limited)
Name(s):	
Name(s):	

**B.2 All trade name(s) used or proposed to be used by the applicant(s) [Article 10 (1) (b)]**

Trade Name:	Not applicable
Trade Name:	

If the applicant(s) is a sole trader, section B3 and B4 do not need to be completed.

**B.3 Is the applicant(s) a body corporate? [Article 10 (1) (h)]**

Yes ☒

No ☐

(i) If **yes** please give the company number and supply a copy of the appropriate certificate issued by the Companies Registration Office

(ii) If **yes** please give the specified Company Registration or Trade Name if trading under a name. [Article 10 (1) (i)]

Company Number:	402645
Document(s) Reference:	Please see Appendix 2.

**B.4 Is the applicant(s) a partnership? [Article 10 (1) (e)]**

Yes ☐

No ☒





**Comhairle Contae Fhine Gall**  
Fingal County Council

**WASTE FACILITY PERMIT  
GRANTED BY:**

**FINGAL COUNTY COUNCIL**

**ON**

**23<sup>RD</sup> MAY 2011**

**GRANTED TO:**



**St. Margarets Recycling & Transfer Centre  
Limited**  
*(formerly Sandyhill Environmental Services Limited)*



**AT**

**Sandyhill, St. Margaret's, Co. Dublin**

**WASTE FACILITY PERMIT NO.  
WFP-FG-11-00012-01**

<b>GENERAL</b>	<b>2</b>
Part 1 Activities Permitted	3
Part 2 Activities Refused	4
Interpretation	4
<b>CONDITION 1 SCOPE</b>	<b>5</b>
<b>CONDITION 2 MANAGEMENT OF THE ACTIVITY</b>	<b>7</b>
<b>CONDITION 3 RECORD KEEPING AND REPORTING</b>	<b>9</b>
<b>CONDITION 4 SITE INFRASTRUCTURE</b>	<b>14</b>
<b>CONDITION 5 WASTE HANDLING</b>	<b>18</b>
<b>CONDITION 6 ENVIRONMENTAL PROTECTION AND EMISSIONS</b>	<b>22</b>
<b>CONDITION 7 ACCIDENT PREVENTION AND EMERGENCY RESPONSE</b>	<b>25</b>
<b>CONDITION 8 CHARGES AND FINANCIAL PROVISIONS</b>	<b>26</b>
<b>CONDITION 9 RESTORATION AND AFTERCARE</b>	<b>27</b>



## GENERAL

Fingal County Council has granted a waste facility permit to *St. Margarets Recycling & Transfer Centre Limited* formerly Sandyhill Environmental Services Limited herein after called the permit holder.

Address:	6 Mulberry Crescent
	Carpenterstown Road,
	Dublin 15.

Operating a facility at:

Address:	Sandyhill,
	St. Margaret's,
	Co. Dublin.

Issued on:

Date:	xth May 2011
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Expires on:

Date:	16 <sup>th</sup> December, 2013
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with reference to Planning Permission F10A/0177 granted on 16<sup>th</sup> December, 2010 and subject to the attached schedule of conditions.

This waste facility permit and attached conditions supercedes the previous waste facility permit WPT 112.

Fingal County Council may at any time review, and subsequently amend conditions of, or revoke this permit.

Signed:



Senior Executive Officer  
Environment, Business and Enterprise Department  
Fingal County Council

Date: 27<sup>th</sup> May 2011



**WASTE FACILITY PERMIT & CERTIFICATE OF REGISTRATION APPLICATION FORM**

If the applicant is a partnership, give the names and addresses of all partners:

<b>Name:</b>	
<b>Address:</b>	
<b>Name:</b>	
<b>Address:</b>	
<b>Name:</b>	
<b>Address:</b>	

**B.5 Full address of applicant(s) [Article 10 (1) (d)]**

The address of the principal place of business, or in the case of a body corporate the registered or principal office, of the applicant(s) and, where applicable, the telephone number, telefax number and e-mail address of the applicant(s), and, if different, any address to which correspondence relating to the application should be sent:

**Registered address of Applicant**

<b>Address:</b>	6 Mulberry Crescent
	Carpenterstown Road, Castleknock
	Dublin 15
<b>Tel:</b>	086 2654884
<b>Fax:</b>	01 8204622
<b>e-mail:</b>	sandyhills@o2.ie
<b>Contact Name:</b>	Brian McDonnell

If the applicant(s) is a body corporate please give the name and address of any person who is a director, manager, company secretary or other similar officer of each body corporate: [Article 10 (1) (f)]

<b>Name, address and position:</b>	Brian McDonnell, Director 6 Mulberry Crescent, Carpenterstown Road, Castleknock, Dublin 15
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## Brendan O'Halloran

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**From:** Rita McGrath  
**Sent:** Friday 7 November 2014 14:30  
**To:** 'louise.odonnell@pateltonra.com'  
**Cc:** Brendan Fleming; Janice Butler  
**Subject:** St. Margaret's Recycling and Transfer Centre Ltd. - waste facility permit application

Hi Louise,

Following the consultation with the Environment Department yesterday ( 6<sup>th</sup> November, 2014) we wish to draw your attention to the following:

- It is suggested that the applicant submit updated information with regard to the waste facility permit application to reflect updated information submitted in the planning application. In this regard, it is suggested that you examine the original waste facility permit application in detail and revise all relevant details of that application so that the Council is in a position to consider the waste facility permit application in a manner that reflects the planning permission that has recently been granted.
- It is further suggested that you revise and update the compliance submissions in respect of your planning permission to meet the specific conditions outlined in conditions 3, 6 and 8.

It is suggested that you carefully consider and respond in detail to each specific item in those conditions. You should also note any alteration to previous compliance submissions submitted to the planning authority and as a courtesy we would request that you also copy the Environment Department on any such compliance submissions.

If you have any queries/questions please do not hesitate to contact me.

Regards,

Rita McGrath | Senior Executive Scientist |

Fingal County Council, Environment Division, Environment and Water Services Department, County Hall, Swords, Co. Dublin | Tel: 01 8906266|  
Fax: 01 8906270|



**For the Attention of**  
Environment Section  
c/o Ms. Rita McGrath  
Fingal County Council  
County Hall  
Main St.  
Swords  
Co. Dublin

Our Ref.: SM0104/201114  
Tel: 01 8020520  
Fax: 01 8020525  
e-mail: louise.odonnell@pateltonra.com  
Date: 20<sup>th</sup> November 2014

Dear Fingal County Council,

**Re: St. Margaret's Recycling & Transfer Centre Ltd. - Application for a Waste Facility Permit  
Ref. WFP-FG-13-0002-01**

As requested at the meeting with Fingal County Council, our client, Mr. Brian McDonnell of St. Margaret's Recycling & Transfer Centre Ltd. (St. Margaret's Recycling) and Louise O'Donnell, Director, Patel Tonra Ltd. on 6<sup>th</sup> November 2014, we detail herein any changes arising since the making of a Waste Facility Permit application on behalf of St. Margaret's Recycling on 31<sup>st</sup> October 2013.

We further note that it was highlighted to Fingal County Council in correspondence dated 4<sup>th</sup> Sept. 2014 from Patel Tonra Ltd., Environmental Solutions, on behalf of the Applicant, that changes had arisen in relation to waste types and a reduced site area within which waste activities are to be carried out, in line with Planning Permission F13A/0409. The correspondence of 4<sup>th</sup> Sept. 2014 also appended planning compliance detail pertinent to the Waste Facility Permit (WFP) application contained in the 'Agricultural Land Restoration Plan and Operational Management Plan', including drawings indicating the reduced area for waste activities.

The following table assesses each of the questions in the WFP application, with respect to changes which may have arisen since the making of the application in October 2013.

WFP Application Question/ Section No. (Oct. 2013)	Status as at Nov. 2014
1	No change
2	No change
3	No change
4	No change
5	No change
6	No change
7	No change
8	No change
9	No change
10	No change
11	No change
12	No change
13	No change







Director of Services,  
Planning Department,  
Fingal County Council,  
P.O. Box 174-County Hall,  
Main Street, Swords,  
Co. Dublin.

4<sup>th</sup> May 2010.

Re: PLANNING APPLICATION FOR RETENTION PERMISSION FOR ONSITE PREFABRICATED BUILDINGS COMPRISING, WEIGHBRIDGE CONTROL ROOM, OFFICE, CANTEEN AND TOILETS, **RETENTION** OF 1500m<sup>2</sup> SKIP STORAGE AREA TO THE SOUTH OF THE EXISTING PROCESS BUILDING, CHANGE OF USE OF EXISTING 6458m<sup>2</sup> AGRICULTURAL STORAGE AREA TO THE SOUTH OF THE SITE AS GRANTED UNDER F03A/1682, TO STORAGE AREA FOR STORAGE OF CONSTRUCTION DEMOLITION WASTE, RETENTION OF 10172m<sup>2</sup> AREA TO THE EAST OF THE SITE FOR PROCESSING OF CONSTRUCTION DEMOLITION AND OTHER INERT NON HAZARDOUS WASTE, RETENTION OF EXISTING BOUNDARY TREATMENTS AND RETENTION OF BULKING AND TRANSFER OF GREEN GARDEN WASTE WITHIN THE FACILITY AT SANDYHILL, ST. MARGARETS, CO. DUBLIN.

Dear Sir/ Madam,

We have been instructed by our client *Sandyhill Environment Services Ltd.* to submit a planning application for the development referred to above.

The drawings submitted with the application were prepared on their behalf by DR Consultants, Consulting Engineers, Tullyallen, Drogheda, Co. Louth.

In support of the application, we are enclosing a detailed planning report with drawings, site notice, newspaper advertisement, completed application form and planning application fee.

We respectfully request the Planning Authority to look favourably on this application at your earliest convenience.

Yours Faithfully,

  
JG Consulting.

---

Church Road, Malahide, Co. Dublin      Vat. No. 6411239G  
tel: (01) 8168713 fax: (01) 8168713 email: joegormanconsulting@yahoo.ie

#### 1.6 Environmental Department.

The application has been in constant contact with Ms. Yvonne Cannon and Ms Rita McGrath the Environment Department of Fingal County Council to ascertain their requirements in order to obtain a waste permit under the Waste Management Act, 1996, and Waste Management (permits) Regulations, 1998. The requirements of that department were ascertained and are incorporated in this application. In addition to the above comprehensive report is attached from Patel Torna environmental consultants, dealing with all environmental requirements on site.

#### 1.7. Transportation Department

The consulting engineers, DR Consultants have consulted with Naomi Rooney area engineer with the Transportation in relation to traffic movements figures to and from the site and were deemed to be satisfactory to them.

#### 1.8 Planning Department.

Pre planning consultations took place on 19<sup>th</sup> March 2010 Ref. No. 19085 with Ms Patricia Cadogan S.E.P. in relation to the subject site. It was explained on that occasion the reason for the making of the application was that development was operating outside the parameters of the permissions granted and that the application intended to regularise the situation on site. The situation arose through a contract being awarded to Sandyhill Environment Ltd. to store and crush waste concrete slabs for reuse from the demolition of the Ballymun flat complex. This resulted in additional land being required which extended beyond the permitted area. Once crushed the stone would be transported by Sandyhill's own lorries on site to be used elsewhere as hardcore.

It was further explained that some skip waste from construction sites would include glass and used plasterboard. The glass would be selected and delivered by the companies own trucks to Northern Ireland for recycling. The used plasterboard would also be separated and delivered to Co. Cavan and Northern Ireland. As stated above, all materials are delivered offsite by our own trucks attached to the business.

The proposal to take in green waste was also discussed with the area planner in order to ascertain her requirements. It was explained that green waste would include only landscaping waste (ie. grass, pruned trees, etc.) This waste would come from landscapers contractors working on local motorways in Fingal area. The green waste would be stored inside the existing agricultural shed on site and would simply be a transfer station. The waste would be held for approximately for three days before being transported by the company's own truck to Bord Na Mona at Kilberry and a letter of contract to this effect is attached.

It should be explained at this time that operating outside the parameters of the permissions granted was not a deliberate act of unauthorised development by Sandyhill Environment Ltd. Due to the serious downturn in their business which has more than halved in the last two years they were reluctant to turn down the Ballymun contract to stay in business.

Corrymeela Church Road Malahide Co. Dublin

Tel: (01) 816 8713 Fax: (01) 816 8713 Email: [joegormanconsulting@yahoo.ie](mailto:joegormanconsulting@yahoo.ie)

VAT No. 6411239G



Planning / Property  
& Economic Development  
Department  
P.O. Box 174  
County Hall  
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Fingal, Co. Dublin

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Fingal County Council  
Comhairle Contae Fhine Gall

## Record of Pre-application Consultation

OFFICE USE ONLY

Reference No:

19085

Date of Consultation:

19/3/2010

Address of Site: Sandyluffs Environmental Services Ltd.  
8. Maypole

Planning Officer:

Applicant/Person requesting the Consultation: Joe Goeman Bria McDonnell

The interest of the person requesting the Consultation in the site and/or in the development of the site:

- ☐ Freehold Interest  
☐ Lessor (must confirm consent of Owner / Lessee to the development proposed)  
☐ Other interest (outline nature of interest)

### Development Plan

Land Use Zoning is: DA.

Proposed Use is:

- ☐ Permitted in Principle  
☐ Not Permitted  
☐ Neither of the above, and being assessed in terms of the proposed use contribution towards the achievement of the Zoning Objective and Vision is:  
☐ An Acceptable Use  
☐ Not an Acceptable Use in that Zoning context
- Non conforming use*

Other matters arising from the Development Plan that pertain to this site and/or existing buildings, including guidance in the Plan indicating general policy stance of the Authority on the Use(s) in question, etc:

### Site specific issues, including relevant planning history

Matters concerning adjoining properties, neighbouring context and environment:

Terms of permission : F03A/1682, F03A/1561, F97A/0109.

Other Council Departments that require to be consulted:

Water Services, Transportation, Environment. IAA.

Planning/Property  
& Economic Development  
Department  
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Fingal, Co. Dublin

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## Record of Pre-application Consultation

CONTINUATION SHEET

OF FEE US ONLY

Reference No:

19085

Date of Consultation:

19/3/2010

Address of Site: Sancylulls Environmental Services Ltd.  
St Marys

Planning Officer: P. Cadogan

### Relevant Planning comments on the Proposal

- Previous work not to exceed 10,000 tonnes. IS this work being complied with. Also, impact of green waste on tonnage.

2 fold ① Greenwaste - full details required - TIA on cars the bird-life.

① Rectify existing permissions where conditions not complied with - full details of all uses on site.

② ~~Remove~~ Site boundaries have been altered. How will this be addressed

③ Transportation Requirements - TIA? Speak to Seamus

④ Waste water - seek views of Water Services

⑤ No. of persons working on site.

⑥ Hours of operation.

⑦ Full details of site boundary treatments / landscaping

⑧ Details of beams / stockpiles - sections through.

⑨ Appropriate Assessment - Investigate if required

→ Planning Application to lodge shortly.

### NOTE:

"Consultants shall not prejudice the performance by a planning authority of any other of its functions under this Act, or any regulations made under this Act and cannot be relied upon in the formal planning process"

Planning and Development Act 2000, Section 247



PPC 101742

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Comhairle Contae Fhine Gall

F10A/0172

(87-10)

# Record of Pre-application Consultation CONTINUATION SHEET

Meeting sought 16<sup>th</sup> March 2010.

OFFICE USE ONLY

Reference No:

19085

Date of Consultation:

19/3/2010

Address of Site: Sandyhills Environmental Services Ltd.  
Br. Margaret

Planning Officer: P. Eadogan

## Relevant Planning comments on the Proposal

- Development operating outside of parameters of planning permission currently. How will this be rectified?
- Contract for Ballymun flats - crushing on site. Resulted in need for additional lands. Extended beyond permitted area. Construction waste takes in, sorted, on site.
- Green waste stream now proposed - taken in from landscapers - green waste - (grass, pruned trees, etc). Transfer station. Held on site for couple of days + transferred to Bne Mona Killybeggy. Letter of contract available. Proposes to use existing agricultural shed.
- Taking in ship waste also from construction sites.
- Haulage use - lorries stored on site - related to business, used to haul glass + stone off site - (glass to WRI Ire). Plasticboard cement goes to Cavan + WRI Ire - Both materials delivered by own trucks.
- Existing shed on site to be used for green waste - chd of use required.

## NOTE:

"Consultants shall not prejudice the performance by a planning authority of any other of its functions under this Act, or any regulations made under this Act and cannot be relied upon in the formal planning process"

Planning and Development Act 2000, Section 247



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Comhairle Contae Fhine Gall  
Fingal County Council

DR Consultants  
108 Gleann Alainn  
Tullyallen  
Co. Louth

Notification of Grant of Permission and Retention  
PLANNING AND DEVELOPMENT ACTS 2000-2007 AND REGULATIONS MADE  
THEREUNDER

Final Grant Order No.	PF/1571/10	Date of Final Grant	16-Dec-2010
Decision Order No.	PF/1410/10	Date of Decision	10-Nov-2010
Register Reference	F10A/0177	Registration Date	18-Oct-2010

Applicant **Sandyhill Environmental Services Ltd**

Development **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. Significant information received on 6th September 2010.

Location Sandyhill, St Margarets, Co Dublin

Floor Area 268 sq.m.

Time extension(s) up to and including

Additional Information Requested / Received 30-Jun-2010, 27-Sep-2010 / , 18-Oct-2010

A **Permission and Retention** has been granted for the development described above, subject to the (18) condition(s) on the attached pages.

Signed on behalf of the Fingal County Council

S. Hearnthy 16<sup>th</sup> December, 2010

**REG. REF. F10A/0177**

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**Comhairle Contae Fhine Gall**  
**Fingal County Council**

for Senior Executive Officer



REG. REF. F10A/0177  
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### Conditions and Reasons

1. The development shall be retained and carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, as amended by Additional Information submitted 6th September 2010 and Clarification of Additional Information submitted 18th October 2010, save as may be required by the other conditions attached hereto.

REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained.

2. The retention on site of:

(i) the 1,500 square metres skip storage area to the south of the existing process building.

(ii) the change of use of existing 6,458 square metres agricultural storage area to the south of the site to storage area for construction demolition waste.

(iii) the 10,172 square metres area to the east of the site for processing of construction demolition waste and

(iv) the weighbridge control room, office, canteen and toilets:

Shall be permitted for a period of three years only from the date of grant of permission. On expiry of this period, the site shall be reinstated to the satisfaction of the Planning Authority.

REASON: In the interest of orderly development and to allow for sufficient monitoring of the site.

3. Within three months of this grant of permission, a detailed reinstatement plan for the site shall be submitted for the written agreement of the Planning Authority.

REASON: In the interests of orderly development and to ensure a satisfactory standard of site reinstatement.

4. The annual throughput for all waste streams on site shall not exceed 25,000 tonnes.

REASON: In the interests of clarity.

REG. REF10A/0177

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Fingal County Council

5. Only inert non-domestic waste shall be delivered to the site. No fruit vegetables or food wastes shall be delivered to the site.

REASON: In the interests of clarity.

6. The water supply and drainage arrangements, including the disposal of surface water shall be in accordance with the requirements of the County Council. In particular, the following shall be complied with:

(a) No foul drainage shall discharge into the surface water system under any circumstances.

(b) The foul drainage shall be in compliance with the 'Regional Code of Practice for Drainage Works Version 6.0' FCC April 2006.

(c) No surface water / rainwater shall discharge into the foul sewer system under any circumstances.

(d) The surface water drainage shall be in compliance with the 'Regional Code of Practice for Drainage Works Version 6.0' FCC April 2006.

(e) All water fittings and installations shall incorporate best current practices in water conservation.

(f) All commercial units shall have individual metered supplies with 24 hour storage.

(g) The water supply for the development shall comply with the 'Guidelines for Drinking Water Supply'. FCC February 2009 Revision 1.

REASON: In the interests of public health.

7. Any intensification in the number of traffic movements onto the R122 from that detailed under the submission dated 6th September 2010 shall require a separate grant of permission from the Planning Authority.

REASON: In the interests of orderly development and road traffic safety.

8. All mitigation measures detailed in the submissions dated 6th September 2010 and 18th October 2010 in order to deter scavenging birds shall be implemented in full as part of this development. No organic waste shall be left exposed or unattended on site.

REASON: In the interests of air safety.



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Fingal County Council

9. All site boundaries shall be screened by a planted bund. A detailed landscape plan providing for a planting belt comprising a mix of native species of various heights and sizes shall be submitted to and agreed in writing with the Planning Authority within three months of the final grant of permission being received. The Developer shall liaise with the Parks Department prior to any submission.

REASON: In the interests of visual amenity.

10. Sanitary accommodation including hot and cold water supply with sink and wash hand basin shall be provided in the canteen building.

REASON: In order to ensure a satisfactory standard of development.

11. No scavenging shall be permitted on site.

REASON: In the interests of orderly development.

12. This permission relates solely to that detailed in the statutory notices and does not refer to any other aspects of the development that may shown in the lodged plans.

REASON: In the interest of the proper planning and sustainable development of the area.

13. All requirements of the Chief Fire Officer of Fingal County Council shall be ascertained in writing and complied with in full as part of this development.

REASON: In the interests of proper planning and development.

14. That all necessary measures including the provision of wheel wash facilities be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

REASON: To protect the amenities of the area.

15. That the requirements of the Principal Environmental Health Officer be ascertained and strictly adhered to in the development.

REASON: In the interest of health.

16. No advertising sign or structure other than those indicated on the submitted drawings, shall be erected except those which are exempted development, without the prior approval of the planning authority or An Bord Pleanala.

REASON: In the interests of visual amenity.

REG. REF. F10A/0177

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FingalCounty Council

17. The facility shall operate only between the hours 0830hrs and 1800hrs Monday to Friday and between 0830hrs to 1700hrs on Saturdays. The facility shall not operate on Sundays or on public/bank holidays.

REASON: Having regard to the land use zoning and in the interests of residential amenity.

18. The developer shall pay the sum of €30,788.00 updated at date of commencement of development, in accordance with changes in the Wholesale Price Index (Building and Construction Materials) to the planning authority as a contribution towards expenditure that was or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the council. The placing of payments and the giving of security to ensure payment shall be agreed in writing with the planning authority prior to the commencement of development.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

#### NOTE:

All buildings must now be designed and constructed in accordance with the Building Regulations. The Building Control (Amendment) Regulations, 2009 came into effect on 1st October 2009.

With the exception of houses and certain agricultural buildings, a Fire Safety Certificate/Revised FSC (please refer to Regs) is required for all buildings (including apartments and flats), extensions and alterations and changes of use which are covered by the Building Regulations.

A Commencement Notice (Building Control Regulations 1997 to 2009) must be submitted to the Building Control Authority (not less than 14 days and not more than 28 days before development commences) in respect of all buildings other than

- Buildings which require a Fire Safety Certificate under the Regulations and where a person intends to commence work on the construction of a building before grant of the relevant Fire Safety Certificate. (See 7 Day Notice below)
- Disability Access Certificates/Revised Disability Access Certificates:- from the 1st of January 2010, a certificate of compliance with respect to Part M of the Second Schedule of the Building Regulations (Disability Access Certificate) shall be required in respect of all works on a building to which Part II (Fire Safety Certificates) refers.



**REG. REF. F10A/0177**

**AN RANNAN PLEANÁLA**

**Rannóg Rialú Forbartha**

Bosca 174

Áras an Chontae

Sord

Fine Gall,

Contae Átha Cliath

**PLANNING DIVISION**

**Development Control Section**

P.O. Box 174

County Hall

Swords

Fingal,

Co. Dublin

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www.fingalccco.ie



**Comhairle Contae Fhine Gall**  
**Fingal County Council**

- Exempted development for the purposes of the Planning and Development Act 2000 and the Regulations made thereunder.

A **7 Day Notice** is required where a person intends to commence work on the construction of a building before grant of the relevant Fire Safety Certificate. The Notice must be submitted not less than 7 days in advance of commencement of work and must be in accordance with the requirements of Article 20A(2) of the Regulations.

A number of the conditions attached to the planning permission may need compliance submissions to be lodged and agreed prior to commencement of development. Please submit 5 copies of all documentation in relation to compliance submissions. Failure to comply with a condition of the planning permission is an offence under Section 151 of the Planning and Development Act 2000.







patel tonra  
environmental solutions

Received  
9/12/13

**For the Attention of**  
Environment Department  
c/o Ms. Janice Butler, Executive Scientist  
Fingal County Council  
PO Box 174  
County Hall  
Swords  
Co. Dublin

Our Ref.: SM0104  
Direct Dial: 01 8020523  
Direct Fax: 01 8020525  
e-mail: louise.odonnell@pateltonra.com  
Date: 9<sup>th</sup> December 2013

Dear Ms. Butler,

**Re: Waste Management Permit No: WFP-FG-10-00012-02  
St. Margaret's Recycling and Transfer Centre Limited**

I refer to your correspondence to our client, St. Margaret's Recycling and Transfer Centre Ltd., dated 18<sup>th</sup> November 2013 (received by St. Margaret's Recycling and Transfer Centre Ltd. on 21<sup>st</sup> November 2013), recent telecons, and our meeting of 5<sup>th</sup> December 2013.

We make reference to the following requirement:

*In accordance with Condition 9.3 of the permit, you are hereby required to submit a Decommissioning, Restoration and Aftercare Plan for the waste facility to Fingal County Council within 15 working days of the date of this letter.*

We attach herewith a Decommissioning, Restoration and Aftercare Plan for the St. Margaret's Recycling and Transfer Centre Ltd. facility.

Please do not hesitate to contact us, should you require any further information or clarification.

Yours Sincerely  
for Patel Tonra Limited

Louise O'Donnell  
Environmental Consultant

*Hand delivered 09/12/2013.*





**COPY**

**St. Margaret's Recycling and Transfer Centre  
Ltd.**

**Decommissioning, Restoration and Aftercare  
Management Plan (WFP-FG-10-00012-02)**

**December 2013**



a | patel tonra ltd, 3f fingal bay business park, balbriggan, co. dublin, ireland  
t | 01 802 0520 | f | 01 802 0525 | w. | [www.pateltonra.com](http://www.pateltonra.com)

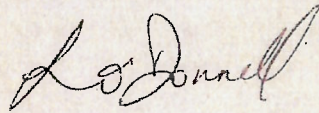


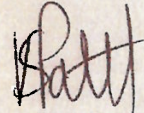
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<b>Client Name:</b>	St. Margaret's Recycling and Transfer Centre Ltd.
<b>Client Address:</b>	Sandyhill, St. Margaret's, Co. Dublin
<b>Report Title:</b>	Decommissioning, Restoration and Aftercare Management Plan (WFP-FG-10-00012-02)
<b>Project Code:</b>	SM0104

<b>Project Manager (Name):</b>	Louise O'Donnell
<b>Project Manager (Sign):</b>	
<b>Project Manager (Date):</b>	9 <sup>th</sup> December 2013

<b>Approved by Project Director (Name):</b>	Vip Patel
<b>Approved by Project Director (Sign):</b>	
<b>Approved by Project Director (Date):</b>	9 <sup>th</sup> December 2013

Issue No.	Date	Status
01	09/12/2013	Final version. Issue to Client and Fingal County Council.

<b>Notes/Comments:</b>
------------------------



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## 1.0 Introduction

The St. Margaret's Recycling and Transfer Centre Ltd.<sup>1</sup> site is a long-established waste facility and currently operates under Waste Facility Permit (WFP) from Fingal County Council (Ref. WFP-FG-10-00012-02). Facility operations include the bulking, transfer and recycling of metals, Construction & Demolition waste, bulky/skip waste, other non-hazardous wastes, and the treatment of End-of-Life vehicles (ELVs).

Condition 9.3 of WFP-FG-10-00012-02 states the following:

*In the event of closure of the facility, the permit holder shall submit a Restoration and Aftercare Plan for the facility to Fingal County Council, three months in advance of closure unless otherwise agreed with Fingal County Council. The content of this plan shall be agreed with the Council before any closure occurs and comply with the conditions imposed under Planning Permissions F10A/0177 and F11A/0443 as well as other required measures, as notified by the Council.*

An application for a Waste Facility Permit for the St. Margaret's Recycling and Transfer Centre Ltd. facility at Sandyhill, St. Margaret's, Co. Dublin was lodged with Fingal County Council on 31st October 2013<sup>2</sup>.

### Objectives of Decommissioning, Restoration and Aftercare

Proposed measures for the decommissioning, restoration and aftercare of the St. Margaret's Recycling facility aim to minimise the impact on the environment after the activity or part of the activity ceases operation, including provision for post-closure care of any potentially-polluting residuals.

### Cessation of Activity

Following the cessation for a period greater than 6 months, of use or involvement of all or part of the operation at the facility any soil, subsoil, buildings, plant/equipment or any waste, materials or substances that may result in environmental pollution will be decommissioned, rendered safe or removed for disposal/recovery.

<sup>1</sup> Referred to as 'St. Margaret's Recycling' hereinafter.

<sup>2</sup> The application (Fingal County Council ref. WFP-FG-13-0002-01) was deemed valid by Fingal County Council, as per correspondence from Fingal County Council to our client dated 14<sup>th</sup> November 2013.



## **Contents**

1.0	Introduction .....	1
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3.0	Closure Considerations .....	8
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5.0	Closure Plan Costing.....	11
6.0	Closure Plan Update, Implementation and Validation .....	12

## **Appendices**

Appendix 1: C bsure Costs





## Closure Plan Requirements

In the absence of specific instruction in WFP-FG-10-00012-02 in relation to the contents of the Decommissioning, Restoration and Aftercare Plan, EPA guidance<sup>3</sup> for the contents of closure plans is hereby referenced. EPA guidance states that a closure plan should contain all of the following elements:

Closure Plan Section	Section Contents
<b>Introduction</b>	<ul style="list-style-type: none"> <li>Facility and Licence Details</li> <li>Facility Closure Scenarios Covered in the Plan</li> </ul>
<b>Site Evaluation</b>	<ul style="list-style-type: none"> <li>Facility Description &amp; History</li> <li>Facility Compliance Status</li> <li>Facility Processes and Activities</li> <li>Inventory of Site Buildings, Plant, Raw Materials and Wastes</li> </ul>
<b>Closure Considerations</b>	<ul style="list-style-type: none"> <li>Clean or Non Clean Closure Declaration</li> <li>Plant or Equipment Decontamination Requirements</li> <li>Plant Disposal or Recovery</li> <li>Waste Disposal or Recovery</li> <li>Soil or Spoil Removal</li> </ul>
<b>Criteria for Successful Closure</b>	<ul style="list-style-type: none"> <li>Addressing of Site Environmental Liabilities at Closure</li> </ul>
<b>Closure Plan Costing</b>	<ul style="list-style-type: none"> <li>Decontamination Costs</li> <li>Plant &amp; Waste Disposal Costs</li> <li>On-going monitoring</li> <li>Facility Security and Staffing</li> <li>Other Costs</li> </ul>
<b>Closure Plan Update &amp; Review</b>	<ul style="list-style-type: none"> <li>Proposed Frequency of Review</li> <li>Proposed Scope of Review</li> </ul>
<b>Closure Plan Implementation</b>	<ul style="list-style-type: none"> <li>EPA Notification</li> <li>Local or other Statutory Authority notifications</li> <li>Test Programme (If Applicable)</li> <li>Full or Partial Closure considerations</li> </ul>
<b>Closure Plan Validation</b>	<ul style="list-style-type: none"> <li>Closure Validation Audit</li> <li>Closure Validation Audit Report</li> <li>Closure Validation Certificate</li> </ul>

Due regard was also given to the requirements of Planning Permissions F10A/0177 and F11A/0443.

<sup>3</sup> EPA (2006) *Guidance on Environmental Liability Risk Assessment, Residuals Management Plans and Financial Provision*



## Facility and Licence Details

The report has been prepared on behalf of St. Margaret's Recycling for its recycling facility at Sandyhill, St. Margaret's, Co. Dublin.

The St. Margaret's Recycling site is a long-established waste facility and currently operates under Waste Facility Permit (WFP) from Fingal County Council (Ref. WFP-FG-10-00012-02). Facility operations include the bulking, transfer and recycling of metals, Construction & Demolition waste, bulky/skip waste, other non-hazardous wastes, and the treatment of End-of-Life vehicles (ELVs).

## Scope Statement

This Closure Plan considers all requirements relating to the closure and decommissioning of the St. Margaret's Recycling facility at Sandyhill, St. Margaret's, Co. Dublin.

It is proposed that on-site buildings, hard-standing areas, surface water and wastewater drainage arrangements will remain *in-situ* post closure, trusting that there are no residual contamination issues arising.<sup>4</sup>

Due to the nature of the facility, there is no anticipated requirement for long-term management/aftercare.

## Facility Closure Scenarios Covered in the Plan

The Plan makes provision for the following closure scenarios:

- Planned closure enacted by the Operator in accordance with a phased and timely closure programme.
- Unplanned closure, which could necessitate a fast-response closure programme by the Operator or another party.

Closure of this facility will attain 'clean closure' status, as discussed in **Chapter 3**.

<sup>4</sup> This is considered to be compatible with condition 3 of planning permission F11 A/0443 "...the site shall be reinstated to the satisfaction of the Planning Authority and all temporary structures/equipment shall be removed".



## 2.0 Site Evaluation

### Facility Description and History

The St. Margaret's Recycling site is a long-established waste facility and currently operates under Waste Facility Permit (WFP) from Fingal County Council (Ref. WFP-FG-10-00012-02). Facility operations include the bulking, transfer and recycling of metals, Construction & Demolition waste, bulky/skip waste, other non-hazardous wastes, and the treatment of End-of-Life vehicles (ELVs).

It is noted that the waste facility previously operated under EPA licence (Licence No. W0134-01). The licence, issued by the EPA in December 2001 provided for the operation of a Waste Transfer Facility for up to 60,000 tonnes per annum input. The licensee was N. Murphy Waste Disposal Limited/Greenstar Ltd. The licence was surrendered in January 2007.

### Facility Compliance Status

No complaints have been received by the facility.

One incident is recorded for the facility, i.e. a fire incident on 23/08/2011. Full incident records are retained on site.

Fingal County Council has issued three non-conformances to St. Margaret's Recycling; summarised as follows:

Date of FCC correspondence	Nature of non-conformance	St. Margaret's Recycling response
14/02/2013	<p><b>Condition 4.4</b></p> <p>There shall be no casual public access to the facility.</p> <p><b>Condition 5.22</b></p> <p>The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority. The register shall detail the following – (b) Names of the carriers, including details of vehicle registrations and waste collection permits numbers.</p> <p>Additionally, it was apparent during the site inspection that a number of other conditions of the waste facility permit are not being complied with...</p>	<p><u>01/03/2013 (PTL)</u></p> <p><b>Condition 4.4</b></p> <p>The facility does not operate in a manner similar to a Civic Amenity Site or public recycling facility, where there is open access to the general public.</p> <p><b>Condition 5.22</b></p> <p>.... All incoming waste/materials are recorded on the <i>Daily Weighbridge Sheet</i>. This is the key central database to record incoming waste/materials (types and tonnages)....</p>



Date of FCC correspondence	Nature of non-conformance	St. Margaret's Recycling response
07/01/2013	<p><b>Condition 2.6</b></p> <p>All waste deposited in the facility shall be either placed;</p> <p>(i) into a skip</p> <p>(ii) compactor</p> <p>(iii) into a receptacle for recovery;</p> <p>(iv) into a designated processing area;</p> <p>(v) into a designated inspection area in the case where inspection is Required</p> <p><b>Condition 4.4</b></p> <p>There shall be no casual public access to the facility</p> <p><b>Condition 5.22</b></p> <p>The permit holder shall maintain a register in relation to the activity to which the waste facility permit relates, which shall be available for inspection by the local authority...</p>	<p><u>21/01/2013</u></p> <p><b>Condition 2.6</b> – all wastes in designated areas, bays, skip or processing areas</p> <p><b>Condition 4.4</b> – restrictive planning condition</p> <p><b>Condition 5.22</b> – register in use for the majority of regular customer and suppliers; weighbridge dockets provide relevant information as per condition 5.22 of WFP</p>
02/05/2012	<p>The maximum amount of waste allowed to be accepted at the facility (17,150 tonnes) was exceeded in 2011, without the prior consent of Fingal County Council as per Condition 1.7.</p> <p>There is no absorbent material in storage at the facility to absorb any spillage as per Condition 4.15.</p> <p>There is no waste quarantine area provided and maintained at the facility as per Condition 4.33.</p> <p>Waste batteries and waste electrical and electronic equipment (WEEE) are being accepted at the facility; this type of waste is not listed within Condition 5.1 - Table 1, of your waste facility permit and is therefore not permitted to be accepted at the site.</p>	<p><u>18/05/2012</u></p> <p>Exceeded Tonnages – unanticipated concrete input volumes in late 2011. Monthly weighbridge reports are now maintained to monitor cumulative input.</p> <p>Absorbent Material – spill kits from Chemstore Ltd in place</p> <p>Quarantine Area – quarantine areas established and labelled</p> <p>Waste Batteries &amp; WEEE – application for changes to WFP acceptable waste types.</p>



## **Facility Processes and Activities**

The classes of activity permitted under WFP-FG-10-00012-02 are as follows (in accordance with the Third and Fourth schedules of the Waste Management Act 1996, as amended by the EC (Waste Directive) Regulations 2011):

- D 15: Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage (being preliminary storage according to the definition of 'collection' in section 5(1)), pending collection, on the site where the waste is produced).
- R 3: Recycling /reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes), which includes gasification and pyrolysis using the components as chemicals.
- R 4: Recycling/reclamation of metals and metal compounds.
- R 5: Recycling/reclamation of other inorganic materials, which includes soil cleaning resulting in recovery of the soil and recycling of inorganic construction materials.
- R 12: Exchange of waste for submission to any of the operations numbered R 1 to R 11 (if there is no other R code appropriate, this can include preliminary operations prior to recovery including pre-processing such as, amongst others, dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to submission to any of the operations numbered R1 to R11).
- R 13: Storage of waste pending any of the operations numbered R 1 to R 12 (excluding temporary storage (being preliminary storage according to the definition of 'collection' in section 5(1)), pending collection, on the site where the waste is produced).

## **Inventory of Site Buildings, Plant, Raw Materials and Wastes**

Waste Management buildings:

- Building #1: End-of-Life Vehicle Building, including non-ferrous metals and batteries
- Building #2: ELV Storage Building
- Building #3: Recyclables Building

Portacabins:

- Canteen
- Weighbridge control room
- Offices
- WC



Plant

- Metal crusher/baler
- ELV depollution technology
- Trommel
- Picking station
- Concrete crusher/screen (mobile and on site only intermittently)
- Wood chipper
- Conveyors
- Dedicated and specialist storage areas (e.g. for batteries)
- Liebherr LH24 'grab' vehicle

Wastes/Materials

- Metals
- C&D (concrete/ other inert)
- Bulky/skip waste (incl. packaging, dry recyclables, textiles)
- Wood waste
- Glass
- ELVs (air related)
- Batteries



## **3.0 Closure Considerations**

### **Clean or Non Clean Closure Declaration**

The EPA defines 'clean' and 'non-clean' closure as follows:

- Clean Closure – upon cessation of operations and subsequent decommissioning at the facility, there are no remaining environmental liabilities
- Non-Clean Closure – upon cessation of operations and subsequent decommissioning – there are remaining liabilities, which require a restoration and aftercare management plan

The closure of the St. Margaret's Recycling facility will result in 'clean closure'.

### **Plant or Equipment Decontamination Requirements**

It is anticipated that the following plant/equipment will require decontamination:

- ELV depollution technology
- Dedicated and specialist storage areas (e.g. for batteries)

### **Plant or Equipment Decommissioning Requirements**

It is anticipated that the following plant/equipment will require decommissioning and or dismantling:

- Metal crusher/baler
- ELV depollution technology
- Trommel
- Picking station
- Wood chipper
- Conveyors
- Dedicated and specialist storage areas (e.g. for batteries)



## **Waste Disposal or Recovery**

All remaining wastes/materials will be removed off-site to appropriately authorised facilities/uses.

Existing Construction & Demolition (C&D) stockpiles will be processed and removed offsite. St. Margaret's Recycling is actively engaged with C&D processing contractors currently and C&D crushing will re-commence in January 2014. It is estimated that it will take approximately 4 months (i.e. until the end of April 2014) to complete processing activities and removal of material off-site. This timeline relates to market opportunities for recovered materials.

All materials removed off-site will be appropriately weighed and recorded.

## **Soil or Spoil Removal, Contaminated Land**

It is not anticipated that soil/spoil will be generated at part of site closure activities. No contaminated ground or spoil that requires specialist treatment on cessation of activities at the facility is anticipated. No residual materials will remain.



## **4.0 Criteria for Successful Closure**

### **Addressing of Site Environmental Liabilities at Closure**

The following criteria will apply for the successful closure of the St. Margaret's Recycling facility:

- All input and output material and wastes have been appropriately removed off-site.
- All plant and equipment have been safely decommissioned and removed off-site, as appropriate.
- The waste management buildings have been emptied of all contents and left in a safe and secure fashion.
- Appropriate site security measures are in place.
- Hard-standing areas, surface water drainage and surface water management infrastructure (including interceptor) has been appropriately cleaned and in good working order.
- Requirements of the regulator have been addressed.



## **5.0 Closure Plan Costing**

As per Fingal County Council requirements, closure costs associated with the removal of all materials off-site were estimated for the purposes of Waste Facility Permit application WFP-FG-13-0002-01. Data is duplicated in **Appendix 1**.

A bond to address potential environmental liabilities has been put in place by St. Margaret's Recycling. The bond was due to expire in December 2013 but has been extended to include the closure period. Documentation will be made available to Fingal Council as available.



## 6.0 Closure Plan Update, Implementation and Validation

### Closure Plan Update and Review

#### *Proposed Scope and Frequency of Review*

It is proposed that the Closure Plan will be reviewed in line with WFP/Fingal County Council requirements, or in the event of a significant amendment to site activities.

### Closure Plan Implementation

#### *EPA Notification*

Immediate notice will be given to the regulator pending any decision to close the facility or any part of the operation.

#### *Local or other Statutory Authority notifications*

Other interested parties, as appropriate, will be notified of St. Margaret's Recycling's intention to close the facility.

#### *Test Programme (If Applicable)*

A test programme is not anticipated as being required as part of the implementation of the St. Margaret's Recycling Closure Plan.

#### *Full or Partial Closure considerations*

Individual closure tasks/items could be implemented independently, if the need arises, e.g. closure/decommissioning of non-core operations/infrastructure.

### Closure Plan Validation

#### *Closure Validation Audit*

An examination of the site will be undertaken and will devise an accurate inventory of all plant, equipment and wastes on site. This inventory will be used as a benchmark against which successful decommissioning will be assessed. The audit will include planned requirements for environmental monitoring in relation to dust and emissions to surface water (as a minimum).

#### *Closure Validation Audit Report/Certificate*

St. Margaret's Recycling will supervise and record decommissioning and closure plan implementation activities. St. Margaret's Recycling will liaise with Fingal County Council in terms of surrender of its Waste Facility Permit, as appropriate, and ensure that Fingal County Council is satisfied with final closure arrangements.



## **Appendix 1: Closure Costs**

Please note that this appendix was included with Waste Facility Permit application WFP-FG-13-0002-01.





St. Margaret's Recycling & Transfer Centre Ltd.

SITE CLOSURE COSTS

WASTE TYPE	Estimated weight on site at any one time (tonnes)		Estimated Unit Rates for Off-site Waste Management (incl. transportation and gate fee)
	Unprocessed waste	Processed waste (recovered material)	
Metals	40	40	-€15,200.00
C&D (concrete/ other inert)	10,000	5,000	-€80,000.00
Bulky/skip waste (incl. packaging, dry recyclables, textiles)	20	20	€2,000.00
Wood waste	100	250	-€8,000.00
Glass	90	0	-€900.00
ELVs (and related)	25	15	-€4,600.00
Batteries	10	0	-€4,000.00
WEEE	10	0	€0.00
<b>TOTAL:</b>	<b>10,295</b>	<b>5,325</b>	<b>-€110,700.00</b>

RECOMMENDED FINANCIAL PROVISION FOR REMOVAL OF MATERIALS OFF-SITE UPON SITE CLOSURE:	€0.00
--	-------

NOTES

a: Based on unit costs for processed and unprocessed material provided by St. Margaret's Recycling (valid as at time of writing). Further details are commercially-sensitive and available on request.

b: A negative cost indicates a net revenue item, i.e. there is a value associated with the material.









**Conditions and Reasons**

1. The development shall be carried out in its entirety in accordance with the plans, particulars and specifications lodged with the application, as amended by Additional Information submitted 6th March 2012 and Clarification of Additional Information submitted 1st May 2012, save as may be required by the other conditions attached hereto.

REASON: To ensure that the development shall be in accordance with the permission and that effective control be maintained. ON: In the interests of safety.

2. All works and operations associated with the authorised treatment facility for the de-pollution/recovery of end-of-life vehicles shall be contained within the application site boundaries of the waste recycling and transfer depot permitted under F97A/0109. This shall include all dismantling, de-pollution activities, crushing/baling, storage of vehicles and all associated works. No activities associated with the treatment facility shall be carried on outside the application site boundaries. Prior to the commencement of development, the location of the baler/crusher shall be relocated within the site boundaries associated with F97A/0109.

REASON: In the interests of clarity.

3. The development hereby permitted shall be for a period of three years only. On expiry of this period, the site shall be reinstated to the satisfaction of the Planning Authority and all temporary structures/equipment shall be removed.

REASON: In the interests of orderly development and to allow for sufficient monitoring of the site in question.

4. Prior to the commencement of Development, the Developer shall ascertain in writing the technical requirements of the Chief Fire Officer with regard to this development. All requirements shall be complied with in full as part of this development.

REASON: In the interest of fire safety.

5. No goods or materials of any description shall be accepted from or sold to visiting members of the public and all deliveries to and collections from the site shall be carried out by the operators of the facility or by persons or entities with whom the operators have entered into ongoing contracts for such services.







## COMHAIRLE CONTAE FHINE GALL

### RECORD OF EXECUTIVE BUSINESS AND CHIEF EXECUTIVE'S ORDER

Reg. Ref.: F13A/0409

#### Item No. 2

In responding to Item No. 2, the Applicant is reliant on extant planning permissions F97A/0109 and F03A/1682. As discussed under Item No. 1 above, under F03A/1682 permission was granted by Fingal Co. Co for:

*'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'.*

As noted in the response to Item No. 1 above, this application was subject to Additional Information which curtailed the use of certain sections of the site to non-waste recycling uses. In particular Drawing G3077-100 which was lodged on the 23<sup>rd</sup> of December 2003 and which formed part of F03A/1682 excluded an area B to the south of the site for agricultural storage purposes only. A further area of hardstanding to the north of the site which coincides with Area A on the Applicants Additional Information Drawing 2013-PL63-03B, was to be used for parking ancillary to waste transfer depot use.

As indicated previously, the Applicant has submitted Drawing No. 2013-PL63-03B as part of their Additional Information response. It is important to note that reference is made throughout the Applicant's written documentation to Drawing Ref 2013-PL63-03A which does not form part of this response. In a telephone call to Downey Planning Consultants on the 17<sup>th</sup> of July 2014 and in a subsequent e-mail of the same date, it is confirmed that reference to Drawing 2013-PL63-03A is incorrect and all reference in the submitted documentation should instead refer to Drawing 2013-PL63-03B. (A copy of this e-mail has been appended to the file)

Furthermore, Drawing 2013-PL63-03B does not comprise a complete red line boundary and a corrected layout plan will be required clearly defining the boundaries of the site. This may be conditioned should be permission be granted.

The layout plan defines three separate hatched areas identified as A, B and C. Area A is located to the eastern boundary of the facility and currently contains an area for the storage and sorting of construction and demolition waste (c&d). This area is hatched blue on the submitted drawing and denotes a given area of 7,622sq.m. The Applicant indicates that this area will be restored to agricultural land and will be fenced off from the remainder of the site. A further area hatched orange is located to the central/southern boundary of the facility and again is in proximity to the stock piles of c&d waste. This area is detailed as Area B extending to 2391sq.m. and will also be restored to agricultural land and will be fenced off with timber and wire fencing.

A further plot, Area C is hatched black on Drawing Ref 2013-PL63-03B and comprises an area of 4257sq.m to the southern and western boundary of the site. The area currently facilitates skips and container storage. The Applicant indicates that again, this area will be restored to agricultural land and will be fenced off from the recycling facility.

## COMHAIRLE CONTAE FHINE GALL

### RECORD OF EXECUTIVE BUSINESS AND CHIEF EXECUTIVE'S ORDER

Reg. Ref.: F13A/0409

In total therefore, a total area of 14,270sq.m. will be returned to agricultural use and will no longer facilitate a waste recycling transfer centre use. The Applicant further states that he is willing to accept a condition on grant of permission that a Restoration Plan for the lands be prepared and submitted within a specific time frame following grant of permission.

The available remaining area of the site, excluding hatched areas A, B and C is therefore significantly reduced from that proposed as part of the initial site layout plans submitted.

The remaining site within which the Applicant is proposing to accommodate all recycling related activities is thus significantly reduced in extent. The layout appears to substantially align with extant permission F97A/0109 and F03A/1682 neither of which were subject to conditions limiting the life of the permissions.

The resultant development comprising the continued use of the facility for the bulking, transfer and recycling of materials construction and demolition waste, batteries and other non-bio-degradable non-hazardous wastes and a facility for end of life vehicles would therefore be acceptable within the new restricted area for a further temporary period. Furthermore, permission may be considered for the new 5 bay metal clad portal frame storage building for the storage and shredding of wood/timber products provided it is also located within the restricted site area and subject to the provisions of Objective Z05 of the Fingal Development Plan.

A difficulty however, arises in relation to the level of detail submitted by the Applicants with regard to the capability of the proposed restricted site to accommodate the waste streams concerned. Notwithstanding the proposal to exclude WEEE waste, there is a significantly reduced area available to the Applicant in which to accommodate, process and store the waste streams. While it is not available to the Planning Authority to request Clarification of Additional Information given the timeframes concerns, it is considered in consultation with the Environment Department that conditions may be applied should permission be granted, requiring a strict demarcation of uses / waste streams on site within the available area.

#### **Item No. 3**

The Applicant has undertaken an Appropriate Assessment; Stage 1 Screening report which was compiled by Patel Tonra Ltd. The report concludes that there are no Natura 2000 sites within or adjacent to the St. Margaret's facility although 6 no. Special Protection Areas (SPA's) and 6 no. Special Areas of Conservation (SAC's) are located within 15km of the site. The closest site is detailed as being Malahide Estuary SAC Ref 000205 SPA Ref 004025. Located 7.6km to the north east of the facility.

The report concludes that given the distance between the facility and the designated sites as well as the low level of risk associated with surface water emissions from the site, there is no likely effect resulting on the Natura 2000 sites.

Accordingly, further more detailed Appropriate Assessment stages are not required.

The Heritage Officer has reviewed the submission and reports agreement with the findings of the Applicant's assessment.

#### **Item No. 4**



## COMHAIRLE CONTAE FHINE GALL

### *RECORD OF EXECUTIVE BUSINESS AND CHIEF EXECUTIVE'S ORDER*

Reg. Ref.: F13A/0409

X In response to Item No. 4, Patel Tonra Ltd has prepared and submitted an Environmental Impact Assessment Screening Report. The report concludes that the development is considered to be sub-threshold for the purposes of the EIA and the Applicant confirms that the waste input at the facility is 22,250 tonnes per annum. There will be no intensification of input tonnages versus extant activities and the Applicant no longer seeks to accept WEEE. In summary the waste streams on site will continue to comprise:

- Metals
- Construction and demolition waste
- Bulky skip waste
- Glass
- End of life vehicles (ELV's)
- Batteries

The development does not fall into the mandatory project listing as provided for in Annex I or Annex II of the EU Directive 97/11/EC and is considered sub-threshold for the purposes of EIS. The Applicant under Section 3.2 of the EIA Screening has assessed the development against Directive (97/11/EC) transposed into Irish Legislation in the third schedule of the European Communities Environmental Impact Assessment (Amendments) Regulations 1999 (SI No. 93 of 1999) and in Schedule 7 of the Planning and Development Regulations 2001. The Applicant has assessed the development in the context of (i) Characteristics of the Development (ii) Location of the proposed development (iii) Characteristics of Potential Impacts.

The development has also been assessed by way of an Appropriate Assessment: Stage 1 Screening report which found that due to the distance of the facility from Natura 2000 sites, the nature and scale of the activities, no direct or indirect impacts on Natura 2000 sites will arise. The Heritage Officer concurs with the findings of the report.

Furthermore, it must be noted that the scale of operations on site will be significantly reduced from that existing, as per revised layout Drawing Ref 2013-PL63-03B. This details a significant reduction in the area of the site to the south and east, with areas totally 14,270sq.m to be fenced off and restored to agricultural use.

#### **Item No. 5 and Item No. 6**

The Applicant responds to Item No's. 5 and 6 by the submission of a report compiled by DR Consultants. The report states that the existing treatment system has been confirmed as being a Titan Biotec P6 unit. The discharge capacity for 22 full time staff at 40 litres per person/day is 880 litres per day which is less than the tanks capacity. A report from Water Services Planning states that the percolation area is undersized by at least 56m<sup>2</sup>. The existing (remodelled) percolation area is sized for a full time staff of 15 people, whereas the current application is based on a full time staff of 22 people. As such, revisions are required to the percolation area and the Applicant will be required to submit a revised foul drainage layout drawing to reflect this accordingly. Furthermore, the percolation area is required to be fenced off.





## ORDER

## DUBLIN METROPOLITAN DISTRICT

CASE NO S:2021/209457 CHARGE NO 1

PROSECUTOR: FINGAL COUNTY COUNCIL

Accused: ST. MARGARET'S RECYCLING AND TRANSFER CENTRE LIMITED  
SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

At the sitting of the Court at Court No. 8, Four Courts, Morgan Place, Dublin 7 in the Dublin Metropolitan District on the 15-Mar-2022, the above entitled proceedings having appeared in the Court's list in respect of a complaint that the above-named accused of SANDYHILLS, ST MARGARET'S, COUNTY DUBLIN

That on or before the 15th of June 2021 at Sandyhills, St Margaret's, County Dublin, in the court area and district aforesaid, you did dispose or undertake the recovery of waste in excess of the permitted 21,900 tonnes as per Condition 5.3 of Waste Facility Permit WFP-FG-13-0002-03 granted to you on the 5th of September 2019 at Sandyhills, St Margaret's, County Dublin, contrary Section 39 (4) and Section 39(9) of the Waste Management Act 1996 as amended pursuant to Section 9(1) of the Waste Management Act 1996 as amended.

and the said defendant having pleaded guilty

It was adjudged that the said complaint be adjourned to DUBLIN METROPOLITAN DISTRICT District Court sitting at Court No. 8 on the 12-Apr-2022 at 10:30.

DPA01 DONATION 500 EURO LFPD TO BE PAID

Dated this: 15th MARCH 2022

Signed

Judge of the District Court

I certify that the above is a true copy of the original which is held in my custody.

Signed: Glenn Cooper  
Clerk of the District CourtDated: 04/12/23





conditions to be carried out to Sandhills Environmental Services Limited and there **was NO appeal** to An Bord Pleanála in respect of the permissions granted.

St. Margaret's Recycling & Transfer Centre Limited applied for the establishment of ELV facility under F11A/0443 and were granted a three year permission only and the facility returned ???

There was NO appeal to An Bord Pleanála in respect of the time limits.

It should be noted that St. Margaret's Recycling & Transfer Centre Limited **applied for a Five-year permission** for continuation of use of the facility under F13A/0409, and there was NO appeal to An Bord Pleanála in respect of the time limits.

St Margaret's Recycling & Transfer Centre Limited applied for planning & retention permission under FW19A/0135 on 19<sup>th</sup> August 2019 for tonnages of 49,500 tonnes to be accepted. This application included an EIS. The application was withdrawn by the applicant by letter dated 02<sup>nd</sup> October 2019.

St Margaret's Recycling & Transfer Centre Limited applied for planning and retention planning under FW20A/0029 and as part of the planning application asserted on Page 3 of the Downey submission

*"that the facility has been continually been compliant with planning and regulatory guidelines"*

This is NOT the case from the fact that conditions of planning in F10A/0177, F11A/0443 and F13A/0409 and the number of breaches of Waste Permit issued by Fingal County Council

The CWPA report refers to an inadequacy of information on environmental issues to allow it carry out an assessment. However, on a review of the ABP Inspector's report, it is clear that there were a number of issues of concern as noted in section 3 of the report

*"Although the description of the materials currently accepted at the facility and the nature of the processes carried on are not detailed, it can be taken from the information available that a major operation at the facility is the intake and processing of end-of-life-vehicles. Some of the processes carried out are depolluting the vehicles, that is draining the various fluids; shredding the vehicles, in which operation the hammermill is involved; and shredding car tyres which are made into pellets. All these processes are likely to involve significant emissions.*

*The information available on these activities is deficient.*

*Details of other operations, including the intake and treatment of C&D waste, is also deficient.*

*No information is provided in relation to onward flow of waste.*

*It is stated that the site intends to continue to accept members of the general public as customers, (as may be envisaged by the end-of-life-vehicles directive), but no details of the likely numbers of customers or the marketing of the facility for customers, is provided.*

*The scale of the proposed development, as currently proposed, is only marginally below the threshold, at which EIA is required. According to documentation on the file it is currently operating well above the threshold at which EIA is required.*

*a) Description of the aspects of the environment likely to be significantly affected by the proposed development:*

*Having regard to the level of detail available it is difficult to comprehensively assess the aspects of the environment likely to be significantly affected. It is to be expected that the general operations at the site would generate dust (including processing of C&D waste), no data on dust measurement or monitoring is provided.*

*There is potential for air to be affected from the volatilization of hydrocarbons, arising from the de-pollution operations. No information is provided in this regard.*

*There is potential for air to be affected arising from tiny particles of metal, rubber and other materials becoming airborne, when the shredding of car bodies and tyres is taking place. No information is provided in this regard.*

*Fire, is a significant risk, and in the context of the site location, the potential impact on the functioning of Dublin Airport is a particular concern which needs to be addressed. Insufficient information is provided in this regard.*

*The potential for soil to be significantly affected cannot be discounted.*

*The nature and particle size of emissions from the hammermill processing area, the air dispersion and landfall of airborne particles, needs to be considered. No information is provided in this regard.*

*There are likely to be significant effects on surface water arising from surface run-off from the site.*

*The drainage system currently in place is inadequate and this matter is being addressed in part in the additional drainage measures currently proposed. The information submitted is not detailed and does not include in sufficient detail the volume and composition of runoff from the site during normal operations, its collection, containment, treatment and disposal; or the likely volume and composition*

*of runoff of fire water (i.e. water used for firefighting) from the site, its collection, containment, treatment and disposal.*

*Information on existing conditions, including the flows in the streams into which the drainage will discharge, and the likely impact of the discharges on these natural waters, is required in order to assess the impact of the proposed development. No information is provided in this regard.*

*c) the likely significant effects of the proposed development on the environment are:*

- deterioration in air quality,*
- deterioration in surface water quality,*
- risk of fire.*

*b) d) features or measures envisaged to avoid or prevent a significant adverse effect on the environment, which may be taken into account when determining whether an EIAR is required:*

- proposals to improve surface water runoff collection and treatment,*
- proposals, not yet developed, to address fire risk,*
- the requirement, stated in the planning authority reports, for the waste licence to be reviewed.*

#### **7.7.2. Conclusion of Screening**

*Having regard to: the characteristics of proposed development: the size, which as presented is marginally below the threshold at which EIA is mandatory; the production of waste, and the likelihood of discharge of pollution and nuisances to air and water; the sensitivity of the location and its proximity to Dublin Airport, an existing and approved land use; and the types and characteristics of potential impacts, including fire risk; it is considered that the proposed development should be subject to an environmental impact assessment.*

Fingal County Council also had issues with getting environmental information as part of FW20A/0029

On page 55 of 55 in the CWPA planning report, it infers that “ *There is no other centre that can cater and process the metal waste as per St. Margarets* “ It should be noted that there are a number other facilities permitted within Fingal County Council and carry out similar activities.

Under substitute consent provisions.

The applicant’s consultants CWPA stop try and make a distinction between the previous planning applications on site, that they regarded as retentions of an authorised or previously but temporary permitted development and where temporary permissions had not lapsed. The point of making such a statement is to attempt to convince the Board that their client or the site had unauthorised extensions permitted which is in fact “misleading”



The applicant in their operations were conforming to their existing planning permissions and scheduling their planning applications to the Waste permit applications. CWPA have failed to highlight the direct inputs and influence that the planning authority of Fingal County Council had allowed their agents execute the terms of waste facility permits. Note that there was NO licence activities on site since the involvement of the EPA in 2006/2007. Licensing of Waste is a matter for the EPA, whereas Waste Facility Permits are a matter for the Local Authority.

CWPA again under the substitute consent provisions paragraph six of their planning statement, undermine the Board's inspectors and ultimate the Board by claiming the Board did not carry out an AA or EIA and that their notification about the inadequate information regarding the applicant submission in terms of AA and EIA and that the rationale and reasons and considerations further decisions were not provided. CWPA themselves had not been properly briefed by their clients in regard to reasons for inadequate information to the Board. The information was concealed by the applicant and all their planning applications and those submitted by the applicant had information deliberately withheld in those AA & EIA submitted. The examples and information submitted inadequate. If CWPA considers the planning applications FW19A/0135 where the applicant had originally applied for planning of 49,500 tonnes per annum.

The applicant submits an environmental impact assessment in order to legitimise their applications. The notes from the pre planning meeting were not provided or no reference was made to these and in all instances like the authors of the submitted reports CWPA endorse the "bona fides" of the applicant, the full picture has not been evidenced. The planning application number F19A/0135 was withdrawn following an objection by Mr Jerry Beades an additional meetings with the planners, the minutes or file of the discussions had not been provided. The applicant subsequently reapplied for planning under reference number FW20A/ 0029 well for 24,900 tonnes. The applicant noted in the planning notice that the above development require a review of the existing waste facility permit for the site and as such a separate application will be made to Environmental section of Fingal County Council upon receipt of planning permission. (CWPA planning history page 9 of 55 planning statement) There was no accompanying EIA with this application despite an EIA being provided in F19A/0135. The applicant subsequently in request for further information by FCC submitted that the tonnage would be reduced from 24,900 tonnes to 24,000 tonnes. Yet the intake for 2020 was record as per page 18 of 55 in CWPA planning statement as being 26,223 tonnes and the following year 42,263 tonnes in 2021 was under the review of a Board problem and in 2022 while under a Judicial Review was 42,522 tonnes. The CWPA planning statement does not highlight the designed understatements in the planning notice subsequent bona fides of processing only 21,900 tonnes. There's been and has not bothered to highlight that the applicant and its directors were not making this information available to the authorities and that there were prosecuted by the courts.

The applicants have engaged with the planning authority on a number of planning applications that were considered bona fides applications by Fingal County Council. The owner of the lands Mr B McDonnell( senior) had given permission to Sandyhills Environmental Services limited and St Margaret Recycling & Transfer Centre Limited to apply for planning permission on his land. Temporary permissions were given for particular timeframes. There were no appeal on Bord Pleanála in relation to these plannings and the applicants accepted the terms of the planning and implemented the planning by continuing their business operation on site.

There was a first party appeal by the facility operators to an Bord Pleanála in respect of FW20A/0029 and a subsequent Judicial Review motion by the first party in early 2022, which demonstrates their compliance with the various types of planning permissions granted by Fingal County Council, and additionally by engaging with other planning routes shows that the operators were fully engaged with the protocols associated with planning legislation and therefore should not now have the benefit of circumventing those processes which have now been extinguished by trying to obtain substitute consent.

The applicants also used the planning received , as as a condition of receiving a waste facility permit which are also subject to reviews and conditions.

The applicant subsequently sourced waste for their facility on these criteria.

A competent person is a requirement for management of such a facility and Mr Brian MacDonnell was listed as this person. A specific statutory declaration was also made to An Garda Siochana that the facility was Bona fides and that the operations adhere to the rules. And it should be noted there is a specific warning on this declaration and I quote

“ warning any person who gives false or misleading information for the purpose of obtaining a waste facility certificate/ registration renders themselves liable to severe penalties “

The applicants now choose to apply for both permissions and permits but are declaring that the planning is unauthorised yet the involvement of Fingal County Council planning environment sections and these correspondents have not been submitted with the files. This correspondence will show the ongoing engagement by Fingal County Council in regularising activities on the site and the commitments made by the applicants, which were accepted as bona fide commitments by Fingal County Council and demonstrates the applicant's engagement with the relevant authority in the planning and environmental requirements.

Also the applicants had also referred planning of FW20A/0029 to ABP and subsequently to the High Court for

a Judicial Review. Therefore, there is substantial involvement with the authorities and the authorities have facilitated the applicants with every opportunity to obtain planning and the applicants have also used their waste facility permit to accept waste at the facility despite making claims now of exceptional circumstances to apply for substitute consent and retained planning. This makes a farce of the planning process and the Fingal planning and environmental operations and input.

In relations to the EIAR , the information provided it is only a new edition of regurgitated information provided for previous applications, it is not fit for purpose in view of the extent of material being delivered and the processes on site and what is on paper bears no relevant comparison to the actual activities on the site.

There is no mention of the following activities, proper monitoring of emissions.

The operations have exceeded the permissible intake level for the site and no documentation on the control measures for the exceedance levels has been submitted.

The applicants have see-sawed over the periods of their application on the amount of waste that they planned on accepting. CWPA have now pointed fingers at the Board for not carrying out an AA or EIS on waste effects on the environment. Yet the application for 21,900 tonnes facility has now transpired to be used at doubled this tonnage at 40,000 tonnes plus and bears no resemblance to the environmental impact details submitted.

There is no information provided on the handling of the contaminated soils which was reported to Fingal County Council under FW20A/0029 but NOT highlighted in the EIAR submitted with this application.

The operators have provided no proper submissions about the dust emissions containing metals depositing on soil outside the facility. The use of a net on an un covered or unclosed facility would not contain contaminated dust.

The use of outdoor Hammermill should not be allowed and was never permitted

The collective submissions do not cover best available techniques for waste treatment facilities and metal shredders and no detail relationship to the Commission Implementing Decision EU2018/1147 of 10th of August 2018 establishing best available (BAT)

Nor BAT industrial emissions directive 2010/75/ EU integrated pollution prevention and control.

The production of after shredder waste which is highly toxic waste have not been covered in submissions.

The East Midland Waste authority wants to provide and promote waste facilities to help with the proximity theory of dealing with waste, the facility at St Margarets |Recycling & Transfer Centre Limited is actively seeking waste from all areas and not necessary providing a service for Fingal County Council and competing with smaller facilities Country wide to create an unorthodox non- compliant facility which I'm sure was not the intention of that authority. I respectfully suggest that this facility should not receive planning as applied for and be returned to 10,000 tonnes till such time that all elements of this facility are compliant and operate within the correlated regimes of Fingal County Council planning & environmental sections. This facility planning runs in conjunction with waste permit and one cannot operate with the other and must be regarded as such and all



relevant information of this should be submitted in the EIAR

There is no similarity between this facility and the Planree judgement.

I have also enclosed a copy of my appeal to ABP in respect of ABP -310169 and all the other correspondence on the file should be read as part of my objection to this application at **appendix 2**

Accordingly, I request that the application be refused.

Your Faithfully



J Beades PC

Appendix 1

Exhibits

Appendix 2

Copy of appeal letter to ABP on ABP 310169

Appendix 3

Copy of Inspectors Report on ABP 310169

Appendix 4

Copy of High Court Case No 2022/58JR Judicial Review



Uimhir 484135  
Number 484135

*DEIMHNIÚ CORPRAITHE UM CHOMHSHÓ GO CUIDEACHTA  
PHRÍOBHÁIDEACH FAOI THEORAINN SCAIREANNA*

---

**Certificate of Incorporation  
On Conversion To A  
Private Company Limited By Shares**

---

*Deimhním leis seo go bhfuil an chuideachta*

**I hereby certify that**

**ST. MARGARETS RECYCLING & TRANSFER CENTRE LIMITED**

a bhí cláraithe roimhe seo mar Chuideachta Teoranta, tar éis a comhshó inniu cláraithe  
faoi Cuid 2 Acht na gCuideachtaí 2014 ina Cuideachta Phríobháideach faoi Theorainn Scaireanna.

**formerly registered as a Limited Company has this day been converted to a  
Private Company Limited By Shares, registered under Part 2, Companies Act 2014.**

*Arna thabhairt faoi mo láimh,*

**Given under my hand,**

*Déardaoín, an 1ú lá de Nollaig, 2016*

**Thursday, the 1st day of December, 2016**

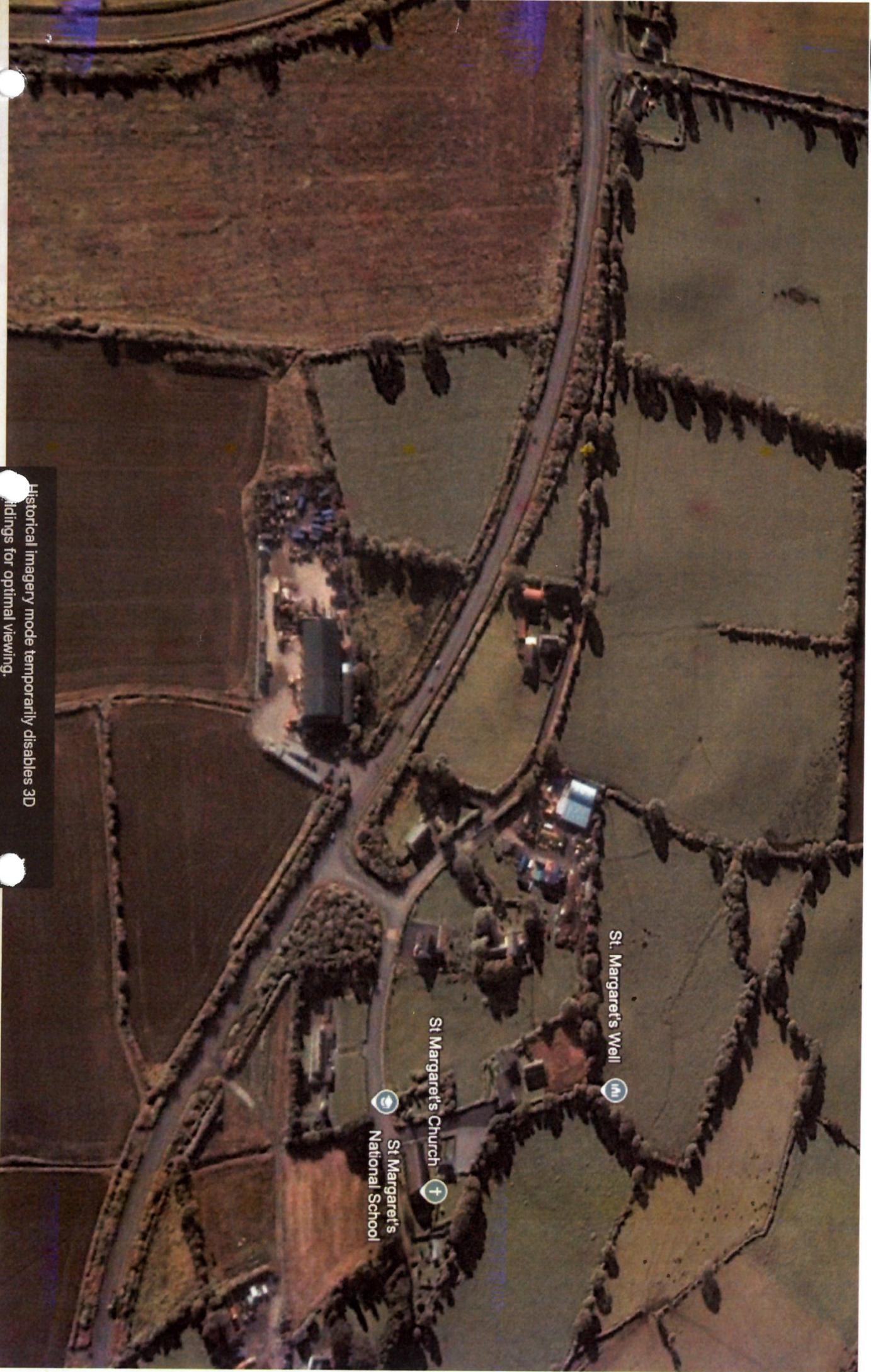
*Chláraitheoir na gCuideachtaí*

**Registrar of Companies**









Historical Imagery mode temporarily disables 3D buildings for optimal viewing.







4 Sept 2003

>1

1985 2002 2003 2004 2005 2008 2009 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021

St. Margaret's Well

St Margaret's Church

St Margaret's  
National School

Historical Imagery mode temporarily disables 3D  
sidings for optimal viewing.

10/9/2003

100 m





20 Feb 2004

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1985

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2017

2018

2019

2020

2021

St. Margaret's Well



St Margaret's Church



St Margaret's  
National School



Historical imagery mode temporarily disables 3D  
buildings for optimal viewing.

2/02/2004

100 m





4257693/1

Number 402645

DUPLICATE FOR THE FILE

## Certificate of Incorporation

I hereby certify that

**SANDYHILL ENVIRONMENTAL SERVICES LIMITED**

is this day incorporated under  
the Companies Acts 1963 to 2003,  
and that the company is limited.

Given under my hand at Dublin, this  
Tuesday, the 24th day of May, 2005

for Registrar of Companies

Certificate handed to/posted to\*:

Private Research Limited  
Colliemore House  
Colliemore Road  
Dalkey  
Co Dublin

Signed: \_\_\_\_\_

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

\*Delete as appropriate

RP





## AGREEMENT FOR LEASE

THIS AGREEMENT made the 2<sup>nd</sup> day of June 2006 BETWEEN BRIAN MCDONNELL of 1, Violet Hill Drive, Glasnevin in the County of Dublin [hereinafter called "THE LANDLORD" which expression shall where the context so admits or requires include their executors, administrators, successors and assigns] of the one part AND

SANDYHILL ENVIRONMENTAL SERVICES LIMITED having its registered office at 6 Mulberry Crescent, Carpenterstown Road, Dublin 15 [hereinafter called "THE TENANT" which expression shall where the context so admits or requires include it's executors, administrators, successors and permitted assigns] of the other part.

NOW IT IS HEREBY AGREED as follows:

1. In this Agreement, unless the context otherwise requires
- 1.1 the following expressions have the meanings assigned to them in the Lease: "Adjoining Property", "Initial Rent", "Prescribed Rate", "Landlord", "Rent", "Rent Commencement Date" and "Term".
- 1.2 "Completion Date" means a date not later than 4 weeks from the grant of the Permit referred to in clause 3 hereof
- 1.3 "Insurance Rent" means the sums referred to in the Lease and payable by the Tenant to the Landlord for the insurance of the premises.
- 1.4 "Landlord's Solicitors" means Hamilton Turner Solicitors, 66 Dame Street, Dublin 2.
- 1.5 "Lease" means the lease in the form annexed hereto.
- 1.6 "Permit" means a waste permit granted under the provisions of the Waste Management (Permit) Regulations, 1998.
- 1.7 "Premises" means the Demised Premises as defined in the Lease.
- 1.8 "Tenant" means the person referred to herein.
2. Subject to the provisions of clause 3 herein the Landlord shall on the Completion Date grant and the Tenant shall accept a demise of the Premises in all respects in the form of the Lease for the Term at the Rent and subject to the conditions restrictions covenants and stipulations more particularly contained in the Lease.
3. It shall be a precondition to the grant and acceptance of the Lease that the Tenant shall obtain the Permit from the Local Authority to carry on the business at the Demised Premises of waste removal management and recycling.
4. The Landlord shall furnish the Tenant with prima facie evidence of the Landlord's title to grant the Lease and the Landlord shall on or before the Completion Date comply with its replies to the Tenant's pre-lease enquiries. Subject to the foregoing the Tenant shall assume the right of the Landlord to grant the Lease and is not entitled to require the deduction of or to make any requisitions or objections in respect of the title of the Landlord to the Premises.

*Sandyhill Environ*

5. The following provision apply in relation to the completion of the Lease:
  - 5.1. The Lease and counterpart shall be prepared and engrossed by the Landlord's Solicitors with this Agreement and counterpart;
  - 5.2. On execution of the Lease as aforesaid the Landlord shall stamp and register the Lease and deliver the Lease to the Tenant and upon such delivery, the same shall be deemed to have been granted with effect from the Completion Date whether or not the Tenant accepts such delivery;
- 6.2 If at any time prior to the grant of the Lease:
  - 6.2.1 any of the events specified in clause 19.1.3 of the Lease occurs in relation to the Tenant then and in any of the said cases and at any time thereafter the Landlord may by notice in writing served on the Tenant rescind this Agreement (without prejudice to any pre-existing right of action of the Landlord in respect of any breach in any other party of that party's obligations under this Agreement) immediately determines and ceases to have effect.
7. Until the grant of the Lease to the Tenant it is hereby agreed by the parties hereto that this Agreement is not intended nor shall it operate or be deemed to operate either at law or in equity as a demise of the Premises notwithstanding that either the Landlord or the Tenant or either of them could specifically enforce the grant of the Lease nor shall the Tenant have or be entitled to any estate right or interest in the Premises or any part thereof nor shall the relationship of landlord and tenant be deemed to exist between the parties hereto.
8. The Tenant admits that it has inspected the Premise and that it has entered into this Agreement solely on the basis of that inspection and the terms hereof and not in reliance upon any representations whether written or implied made by or on behalf of the Landlord other than any written representation made by the Landlord's Solicitors to the Tenant's Solicitors prior to the date hereof in reply to written enquiries raised by the Tenant's Solicitors.
- 9.1 The benefit of this Agreement is personal to the Tenant and the Tenant shall not assign underlet share or part with or otherwise dispose of or deal with its interest in any way whatsoever under this Agreement or any part thereof or any share therein.
- 9.2 The Landlord may assign the benefit of this Agreement subject to the Landlord's obligations hereunder.
10. If any dispute or difference arises between the parties hereto relating to the provisions of this Agreement such dispute or difference shall be referred to the determination of a single arbitrator appointed by the parties hereto and in default of agreement by the President for the time being of the Law Society of Ireland in accordance with the Arbitration Acts 1954 and 1980 or any statutory modification or re-enactment thereof for the time being in force.

11. Notwithstanding the grant of the Lease this Agreement remains in full force and effect and shall not be deemed to be merged or discharged by the grant of the Lease with regard to anything remaining to be done performed or observed hereunder and not provided for in the Lease.
12. In this agreement where the context so admits words importing the neuter gender only include the masculine the feminine and common genders (as the case may be) and words importing the singular number only include the plural number and vice versa and where a party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and server obligations and liabilities of those persons.
13. Unless otherwise expressly provided, any notice to be given on foot this Agreement shall be in writing and may (in addition to any other prescribed mode of service) be given: -
- 13.1 by handing same to the intended recipient and shall be deemed to have been delivered when so handed.
- 13.2 by directing it to the intended recipient and delivering it by hand sending same by prepaid post to: -
- 13.2.1 such address as shall have been advised by it to he parting serving the notice as being that required by the intended recipient for the service of notices, or
- 13.2.2 (failing such last mentioned advice) to the address of the intended recipient as specified at the head of this Agreement, or
- 13.2.3 (in the event of the intended recipient being a Company) to a Registered office for the time being, or
- 13.2.4 to the office of the Solicitor representing the intended recipient in relation to this Agreement
- and any such notice shall be deemed to have been given when delivered at the time of delivery and when posted at the expiration of two working days after the envelope containing the same and properly addressed was put in the post.

IN WITNESS whereof the parties have duly executed this Agreement the day and year first above WRITTEN.

**SIGNED DEALED AND DELIVERED  
BY THE LANDLORD**

In the presence of:

*Siallhan Durkan*  
Solr.

66 Dame St.

D.2.

**PRESENT when the Common Seal  
of the TENANT**  
was affixed hereto:

*Brian M'Donnell*



*Brian M'Donnell*

*Brian Devaney*  
Solicitor  
Dublin







Office of  
Environmental  
Enforcement

Environmental Protection Agency  
Regional Office (Environ. Enforcement Section)  
National Centre for Waste & Emissions  
Management, 20th Floor, 100, St. James's Street,  
Dublin 2, D02 XN12  
Tel: 01 454 7000  
Fax: 01 454 7001  
E-mail: [ee@epa.ie](mailto:ee@epa.ie)  
Web: [www.epa.ie](http://www.epa.ie)

The County Secretary  
Fingal County Council  
P.O. Box 174  
County Hall  
Main Street  
Swords  
Fingal  
Co. Dublin

30/01/2002

Our Ref: W0134-01-GEN10PK

Re: Section 48(7) of the Waste Management Acts, 1996 to 2001

Dear County Secretary

The Agency wishes to give notice that Waste Licence Reg. No. W0134-01 held by Glenstar Limited, Sandymount, St. Margaret's, Co. Dublin has ceased to have effect from 30/01/2002.

The Agency is satisfied that waste activities have ceased at the facility and that the condition of the facility is not causing or likely to cause environmental pollution and has therefore accepted the surrender of the licence.

All correspondence in relation to the waste licence for this site is available for public viewing at the Agency's Dublin office at the above address. Please contact Mr. Patrick Kavanagh at 01-2680190 if you require any additional information. Please quote the above reference in future correspondence in relation to this matter.

Yours sincerely

  
Mr. Patrick Kavanagh  
Inspector  
Office of Environmental Enforcement

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# Licence Audit Report



Environmental Protection Agency  
Regional Inspectorate, McCullough House  
Kilmore, Donagh Road, Dublin 14, Ireland  
An Gníomhaireacht oifige (Rannsóirí) Lámhainne  
Cúrsaíocht, Kilmore, Róad Dónagh, Dubhaicé 14, Éire

Tel: +353 1 288 5100  
F: +353 1 288 5100  
E: info@epa.ie  
W: www.epa.ie

or call 1800 27 16 16

Mr. Michael Geary  
Greenstar Ltd  
Ballyogan Business Park  
Ballyogan Road  
Sandyford  
Dublin 18.

Date of Issue of  
Audit Report: 31/10/2006

Lead Auditor: Jennifer Cape

Licence Register No: W0134-01

Audit Reference No: W0134-01/06/AB013C

Audit Criteria: Licence Reg. No. W0134-01

Scheduled: 27/07/2006

Audit No: 2

Date of Audit: 27/07/2006

F.A.O: Michael Geary.

This Licence Audit Report details the Agency's findings following an audit at Greenstar Ltd on 27/07/2006.

## NOTIFICATION OF NON-COMPLIANCE

Greenstar Ltd have been found to be in non-compliance with the conditions of the Waste Licence set out in this Audit Report. You are required to undertake the corrective actions specified to clear out the Non-Compliance and Observations raised in this Report or further enforcement action may be taken by the Agency.

In view of the above you are required to submit a schedule to the Agency within 14 working days of receipt of this Report detailing how the non-compliance and observations specified therein are to be rectified. Please quote the above Audit Reference Number in any future correspondence in relation to this Report. If you have any further queries please contact Ms. Jennifer Cape at 01-2680190.

## 1. OPENING MEETING

The opening meeting commenced at 09:50 and the following were in attendance:

Representing Greenstar Ltd

Mr Jimmy White

Site Operations Manager

Mr Michael Geary

Greenstar

Representing the Environmental Protection Agency:

Ms Jennifer Cape

Lead Auditor





Ms. Jennifer Cope gave a brief introduction to the objectives and scope of the audit and the procedure to be followed for the remainder of the audit.

## 2. ON-SITE ASSESSMENT

### 2.1 Site Inspection and Assessment

A tour of the whole site was conducted to confirm that all plant, equipment and machinery had been decommissioned and that there were no materials/waste remaining on-site which may give rise to the risk of environmental pollution. The site appeared clean and the decommissioning has largely been completed. The final water tank unit had not been emptied and three skips with sweepings remained on-site awaiting removal. The diesel and oil bund and the battery and cylinder bund have been emptied. The Agency notes that the six foot deep hole where the boiler was located has been filled with stone.

### 2.2 Interview

The following representatives were interviewed during the audit:

Name	Position	Level
Mr Jimmy White	Site Operations Manager	General
Mr Michael Geary	Greenstar	General

### 2.3 Documentation

The following documentation was requested for review:

Record	Condition No.	Comment
Waste records	10.2	Satisfactory, Unsatisfactory, Available or See Audit Findings
Calor cylinders collection records	10.2	Satisfactory
Disposal records of Titan foul water	10.2	See Audit Findings
Plant equipment/machinery removal records	N/A	See Audit Findings
Bund Integrity Test	11.2.5 & 10.3 (c)	See Audit Findings
Landfill details	N/A	See Audit Findings

## 3. GENERAL COMMENT

The licensee Greenstar Limited, indicated that it had ceased waste activities at their premises in Sandyhill, St. Margaret's, Co. Dublin on 17th June, 2006. The licensee shall close out the non-compliance and observations in this report and the independent exit audit report shall be submitted to the Agency to enable the Agency to satisfy itself that the site has been decommissioned to a satisfactory extent and that there are no materials remaining on site which may pose a risk to the environment. The contact person is Michael Geary, Unit 6, Ballyogan Business Park, Ballyogan Road, Sandyhill, Dublin 11.



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Comhairle Contae Fhine Gall  
Fingal County Council

An Roinn Comhaoil, Gníomhaíochta  
ar son na hAeráide agus Taisteal  
Gníomhach

Environment, Climate Action  
and Active Travel Department



Mrs Ann McDonnell  
Director  
St Margarets Recycling and Transfer Centre Ltd  
Sandyhills,  
St Margaret's  
Co. Dublin

24<sup>th</sup> July 2023

**Re: Non-compliance with waste facility permit reference WFP-FG-13-0002-03**

Dear Mrs McDonnell,

Please see attached a copy of letter issued to Brian McDonnell, Director, in response to a letter issued by CMPA Planning & Architecture on 5<sup>th</sup> May 2023, on behalf of Mr McDonnell, in response to Fingal County Council's letter dated 17<sup>th</sup> April 2023 regarding waste acceptance and tonnage concerns at St Margarets Recycling and Transfer Centre Ltd.

Yours Sincerely,

Alain Kerveillant  
Executive Scientist  
Mobile: 087-9915832  
Email: [alain.kerveillant@fingal.ie](mailto:alain.kerveillant@fingal.ie)  
Waste Enforcement & Regulation





Comhairle Contae Fhine Gall  
Fingal County Council

An Roinn Comhaoil, Gníomhaíochta  
ar son na hAeráide agus Taisteal  
Gníomhach

Environment, Climate Action  
and Active Travel Department



Mr. Brian McDonnell,  
Director  
St Margarets Recycling and Transfer Centre Ltd  
Sandyhills,  
St Margaret's  
Co. Dublin

24<sup>th</sup> July 2023

Cc:

- ✓ St Margarets Recycling and Transfer Centre Ltd
- ✓ Joseph Corr, CWPA Planning & Architecture
- ✓ Anne McDonnell, Director

Re: Non-compliance with waste facility permit reference WFP-FG-13-0002-03

Dear Mr. McDonnell,

I refer to a letter issued by CWPA Planning & Architecture on 5<sup>th</sup> May 2023, on your behalf, in response to Fingal County Council's letter dated 17<sup>th</sup> April 2023 regarding waste acceptance and tonnage concerns at St Margarets Recycling and Transfer Centre Ltd.

We indicated in our April letter that the measures implemented so far had not been sufficient to reduce waste intake to the permitted limit under WFP-FG-13-0002-03 and that further measures were required as a matter of urgency. Monthly tonnage intake for the months of May and June continue to show significant waste intake well above the average monthly tonnage limit when the annual limit is broken down monthly. Waste acceptance for the first 6 months of 2023 is detailed below and shows a total of 16,934 tonnes of waste accepted on site against a permitted annual tonnage limit of 21,900 tonnes:

Month	Monthly Tonnage Intake	Average Monthly Tonnage Limit	Monthly Tonnage Exceedances
January	2,545	1,825	720
February	3,230	1,825	1,405
March	3,035	1,825	1,210
April	3,136	1,825	1,311
May	2,653	1,825	828
June	2,333	1,825	508
Totals	16,934	10,950	5984

At the current rate of intake, the facility will have reached its permitted tonnage limit by August 2023.

In the response of 5<sup>th</sup> May 2023, Mr. Joe Corroff CWPA Planning & Architecture indicated your intention to apply for Planning to obtain a permission to increase the annual tonnage at the site. We would like to point out that in a case where a facility obtains such planning, it would then need to apply for a review of its permit to also increase the tonnage limit. On receipt of such an application Fingal County Council would have to make a decision whether the application can be processed as a review or if it warrants a new permit application.

Aside from the timeframe required to secure the appropriate planning permission to increase the annual tonnage, the timeframe to process a permit review application (or application for a new permit) is a lengthy one which is unlikely to be processed and issued this year (depending on when an application is submitted). If an application were to be submitted and processed this year, the tonnage of the newly granted permit would be calculated on a pro-rata basis.

For example if a new permit were granted on 1<sup>st</sup> December 2023 for a tonnage of 50,000T, the actual permitted tonnage for 2023 would be as follows:

$1/12$  of 21,900 x 11 = 1825 x 11 = 20,075 (under the current permit)  
Plus  $1/12$  of 50,000 = 4,167 (under the new permit)  
Total permitted tonnage for 2023 would be 20,075 + 4,167 = 24,242.

Accordingly relying on an application for increased tonnage which may or may not be received and processed this year cannot justify the ongoing acceptance of waste in excess of the current permitted tonnage. As such you are hereby directed to implement measures as a matter of urgency to reduce the intake of waste to ensure compliance with the permitted limit of 21,900 tonnes/annum and to confirm to Fingal County Council by 28<sup>th</sup> July 2023 what specific measures will be implemented to achieve this.

Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you will be liable for prosecution. Non-compliance with the above condition will result in further enforcement action being taken by Fingal County Council to bring your facility back into compliance.

Yours Sincerely,



Alain Kerveillant  
Executive Scientist  
Mobile: 087-9915832  
Email: [alain.kerveillant@fingal.ie](mailto:alain.kerveillant@fingal.ie)  
Waste Enforcement & Regulation

**Comhairle Contae Fhine Gall**  
Fingal County Council

**An Roinn Comhaoil, Gníomhaíochta  
ar son na hAeráide agus Talsteal  
Gníomhach**

Environment, Climate Action  
and Active Travel Department



St Margarets Recycling and Transfer Centre Ltd  
Sandyhills,  
St Margaret's  
Co. Dublin

21<sup>st</sup> September 2023

Cc by email: [manager@smmr.ie](mailto:manager@smmr.ie) ; [brian@smmr.ie](mailto:brian@smmr.ie)

**Re: Non-compliances with waste facility permit reference WFP-FG-13-0002-03**

Dear sir, Madam,

I refer to previous correspondence issued throughout 2023 notifying non-compliances at your facility and seeking appropriate corrective actions with agreed timeframes.

A number of items are currently open for investigation and/or are overdue for responses. We are seeking an update on the items specified below, to be provided by close of business on **Friday 29<sup>th</sup> September 2023**:

**1/ Tonnage** accepted on site – in our NC letter dated 20<sup>th</sup> February 2023, we sought a monthly report of tonnage accepted the previous month to be issued with 10 days of a month end. We have yet to receive reports on tonnages accepted on site in July and August 2023 – please submit these by 29/09/2023.

**2/ Hammermill** – we are still awaiting a report setting out what emissions are created by the hammer mill and its processing line, along with a technical drawing of the equipment in place – please submit these by 29/09/2023.

**3/ Site Boundary** – through the Non-Compliance letter dated 21st June 2023, we sought an explanation of boundary extensions, drawings and reports showing how the extended area was constructed and how its drainage is tied-in to the existing site drainage and information on the capacity for the existing interceptor to cater for the extra area. Drawings were also to include a calculation of area used outside of the permitted red line boundary area.

A response was received on 7<sup>th</sup> July 2023 to notify FCC that the permit holder had engaged a third party to survey the site boundary and to establish if Condition 1.8 of the permit had been breached. No further correspondence was received to date. The outstanding drawings and reports requested on 21<sup>st</sup> June 2023 should be submitted by 29/09/2023.



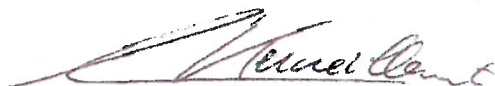
4/ Dust emissions – The latest dust Non-Compliance letter dated 23<sup>rd</sup> June 2023 sought the implementation of 8 bullet points, including the provision of monitoring reports and an associated report detailing what equipment was operational during the period when the dust sample was collected. The last report received covered April - May period therefore each report should have been issued for monitoring undertaken during June & July.

Please provide the latest monitoring reports by 29/9/2023, along with an update for each of the 8 bullet points listed in the Non-Compliance letter issued on 23<sup>rd</sup> June 2023.

Specific details regarding the required actions / reports to be provided are as notified in the original non-compliance letters referred to above.

Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you will be liable for prosecution. Non-compliance with the above condition will result in further enforcement action being taken by Fingal County Council to bring your facility back into compliance.

Yours Sincerely



Alain Kerveillant  
Executive Scientist  
Mobile 087-991582  
E mail: [alain.kerveillant@fingal.ie](mailto:alain.kerveillant@fingal.ie)  
Waste Enforcement & Regulation

Comhairle Contae Fhine Gall  
Fingal County Council

An Roinn Comhaoil, Gníomhaíochta  
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Gníomhach  
Environment, Climate Action  
and Active Travel Department



St Margarets Recycling and Transfer Centre Ltd  
Sandyhills,  
St Margaret's  
Co. Dublin

27<sup>th</sup> November 2023

Cc by email: [manager@smmr.ie](mailto:manager@smmr.ie); [brian@smmr.ie](mailto:brian@smmr.ie)

Re: Non-Compliance with WFP-FG-13-0002-03

Fire Prevention Plan for WFP-FG-13-0002-03

Dear Sir, Madam,

Fingal County Council carried out an inspection at your facility on the 24<sup>th</sup> November 2023. You will find attached the inspection report.

### Non-Compliances

The following **non-Compliances** was noted during the inspection:

Conditions 1.8 – 5.4 and 5.5

1.8 For the purposes of this facility permit, the facility boundary is the area outlined in red on Drawing No.1522-DR09, titled 'Site Layout' and dated 28<sup>th</sup> May, 2019 (See Appendix 1). No waste activity is permitted outside of the red line boundary.

5.4 All waste streams contained in Table 1 'Types and quantities of permissible wastes to be handled at the facility' shall be accommodated within the red line boundary shown on Drawing No.1522-DR09, titled 'Site Layout' and dated 28<sup>th</sup> May, 2019.

5.5 All reception, storage, treatment, processing and removal areas for each waste type contained in Table 1 shall be designated as outlined on Drawing No.1522-DR09, titled 'Site Layout' and dated 28<sup>th</sup> May, 2019 unless otherwise agreed with Fingal County Council.

A non-compliance notice for expanding the site beyond the permitted facility boundary was issued on 21<sup>st</sup> June 2023. The Non-Compliance notification sought for a number of remedies

to be implemented as a matter of urgency to prevent further environmental pollution and ground contamination. It was noted that five months later none of the requested reports, topographical surveys and associated drawings had been provided – only correspondence notifying delays. A letter dated 17th November 2023 was received by Fingal County Council stating that "it has become apparent that St Margarets Recycling had very entirely exceeded the site boundary in a certain area" with no further information provided. The requirement to submit reports, surveys and drawings detailing the size of the area extended outside the permitted red line boundary, details of its construction and where the area drains to, the suitability of the existing site attenuation and interceptors etc, has not been provided.

Corrective Action. Immediately move any waste not currently stored on a concrete hardstanding (or stored on a hardstanding not draining to the site's drainage system) to a storage area where a concrete hardstanding connected to the site's surface water drainage (and interceptors) is provided. All the outstanding information requested in the June Non-Compliance notification should be provided to Fingal County Council before any civil works to reinstate the boundary can proceed.

For clarity, the information required is as follows:

1. An explanation as to why the permit holder expanded the site without seeking prior authorization from Fingal County Council.
2. A civil engineering report and associated scaled drawings confirming how the extended areas were constructed.
3. A civil engineering report and associated scaled drawings confirming how drainage from the extended areas is captured and connects into the existing drainage on site and whether the current oil interceptors are of a sufficient capacity to cater for the increase in surface area.
4. Amended scaled drawings clearly showing the original site boundary and the additional extended areas beyond the permitted site boundary, to include a calculation of how many square meters were added to the site compared to the original site area.

The proposed reinstatement works for the boundary, discussed on Friday, should be submitted in writing for FCC's approval, and no works shall take place until the approval in writing is granted. The only works approved are the removal of waste from the area not covered by the site's drainage system.

#### Conditions 19 and 5.3

- 1.9 The maximum amount of waste to be accepted at the facility per annum is 21,900 tonnes.



**5.3 Maximum tonnages are provided in Table 1 up to a maximum of 21,900 tonnes per annum.**

The maximum amount of waste to be accepted at the facility per annum is 21,900 tonnes. It was confirmed during the inspection and in correspondence received on 17/11/2023 that the current tonnage accepted on site to date for the period January – October 2023 was over 28,500 tonnes. The monthly tonnage intake for September and also for October was in excess of 3,100 tonnes/month. The average permitted tonnage/month would be 1,825 tonnes if averaged out over a 12 month period ( $21,900/12 = 1,825$  tonnes/month).

**Condition 1.15 – Compliance with Notice Requirements**

**1.15** Where Fingal County Council considers that a non-compliance with the conditions of this permit has occurred, it may serve notice on the Permit Holder. The permit holder should comply with the requirements of such notice within the time-scale specified in the notice. Written confirmation should be furnished to Fingal County Council when the requirements of the notice have been complied with.

The permit holder has failed to submit details on the new baler used for aluminium swarf and how the drainage and subsequent management of the lubricant is carried out – where this was requested in Non-Compliance notification dated 6<sup>th</sup> July 2023. During the 24/11/2023 inspection, the lubricant was observed to discharge / drain onto concrete hardstanding from where it was then sucked up manually with a pump into an IBC.

**Corrective Action:** Submit a procedure for the operation of the baler and the collection and treatment of the lubricant draining from the aluminium swarf – by 8<sup>th</sup> December 2023. The permit holder should also put in place a more effective collection system than sucking the lubricant from the concrete hardstanding (i.e. drainage platform from which all the lubricant drains into a sump).

**Condition 4.30 – Impermeable Concrete Surfaces**

**4.30** The permit holder shall provide and maintain an impermeable concrete surface throughout the facility. All concrete surfaces for waste handling and storage at the facility shall be concreted and constructed to British Standard BS 8110. Concrete surfaces should be managed and maintained to ensure safe access and to prevent environmental pollution as a result of spillages and associated leaks through hardstanding surfaces. Spill kits shall be used to manage and contain spills/leaks as appropriate.

The permit holder shall provide and maintain an impermeable concrete surface throughout the facility. The south/southwestern edge of the site, as observed during the inspection, did not have an impermeable concrete surface present, i.e. where the site boundary has been extended beyond the permitted red line boundary without authorisation and where waste material are being stored directly on the soil.

Corrective Action: immediately remove all waste from the area and store that waste on a concrete hardstanding connected to the site drainage system and oil interceptors.

### Fire Prevention Plan

I refer to our letter dated 6<sup>th</sup> October 2022 requesting a Fire Prevention Plan to be submitted by 1<sup>st</sup> December 2023 following a fire incident at your facility. You submitted a plan via email on 27<sup>th</sup> February 2023 which was deemed unacceptable as it did not include all of the information required under the UK Environment Agency's Guidance on Fire Prevention Plans for Environmental Permits as detailed in our letter dated 9<sup>th</sup> March 2023.

You were subsequently requested to submit a detailed Fire Prevention Plan by 5<sup>th</sup> May 2023 (with clear guidance provided as to the content of the requested plan), a deadline which was further extended by an additional 4 weeks upon your request to 02<sup>nd</sup> June 2023.

You submitted by email on 14<sup>th</sup> July 2023 a document titled "Preliminary Fire Strategy & Risk Assessment Report for the Recycling Centreat St Margaret's Recycling & Transfer Centre Ltd, Sandyhill, St Margaret's Co Dublin."

The Preliminary Fire Strategy & Risk Assessment Report has been reviewed and deemed unacceptable by Fingal County Council as all the required information has not been provided.

The Preliminary Fire Strategy & Risk Assessment Report does not comply with Fingal County Council's requirements as detailed in the letters dated 6<sup>th</sup> October 2022 and 9<sup>th</sup> March 2023 as the report does not include all of the information required under the UK Environment Agency's Guidance on Fire Prevention Plans: Environmental Permits.

A review of the document submitted on 14<sup>th</sup> July 2023 is attached.

The failure to submit a detailed Fire Prevention Plan as requested on a number of occasions is considered a breach of the following conditions of the permit

Condition 2.11 – the permit holder has failed to follow good practice / guidance on assessing waste storage capacity in the form of a detailed Fire Prevention Plan as requested by Fingal County Council.

2.11 The permit holder shall identify all hazards associated with the waste and will make himself/herself aware of good practices regarding its safe handling, removal and storage of these waste streams to prevent environmental pollution and shall adopt all necessary reasonable and practicable safety measures accordingly, to the satisfaction of Fingal County Council.

Condition 3.8 (b) – The permit holder has submitted reports to Fingal County Council which did not include the information specified in writing by Fingal County Council i.e. all of the information required under the UK Environment Agency's Guidance on Fire Prevention Plans for Environmental Permits and review comments previously submitted by FCC.

3.8 All written communication, reports etc. shall:

(a) Be formatted in accordance with any written instruction or guidance issued by Fingal County Council;

(b) Include whatever information as is specified in writing by Fingal County Council;

Condition 6.39 – Following a fire incident at the facility Fingal County Council requested the production of a detailed Fire Prevention Plan, which the permit holder has failed to do to the satisfaction of Fingal County Council's requirements.

6.39 In the event that monitoring, sampling or observations indicate that an incident of pollution has taken place or may have taken place, the permit holder shall notify Fingal County Council immediately and remedial measures shall be carried out as directed by Fingal County Council.

You are required to submit a detailed Fire Prevention Plan to Fingal County Council by Friday 22<sup>nd</sup> December 2023. The detailed Fire Prevention Plan must:

- ✓ Contain all of the information required by the UK Environment Agency's Guidance on Fire Prevention Plans: Environmental Permits which is available at <https://www.gov.uk/government/publications/fire-prevention-plans-environmental-permits/fire-prevention-plans-environmental-permits> and follow the template provided within.

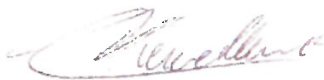


- ✓ Take into account comments included within Appendix 1 (attached) - a review of your submitted Preliminary Fire Strategy and Risk Assessment Report July 2023
- ✓ The plan must be site specific and detail the current situation on site in terms of handling, processing and storage of waste.

Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you will be liable for prosecution. Non-compliance with the above condition will result in further enforcement action being taken by Fingal County Council to bring your facility back into compliance.

If you have any queries or require further clarification, please contact the undersigned at 087-9915832 or [alain.kerveillant@fingal.ie](mailto:alain.kerveillant@fingal.ie).

Yours Sincerely,




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Alain Kerveillant  
Executive Scientist  
Mobile: 087-9915832  
Email: [alain.kerveillant@fingal.ie](mailto:alain.kerveillant@fingal.ie)  
Waste Enforcement & Regulation

**Comhairle Contae Fhine Gall**  
Fingal County Council

**An Róinn Comhshaoll,  
Gníomhaíochta ar son na hAeráide,  
Taistil Gníomhaigh & Spóirt**  
Environment, Climate Action,  
Active Travel and Sports Department



St. Margaret's Recycling and Transfer Centre Ltd  
Sandyhill  
St. Margaret's  
Co. Dublin

15<sup>th</sup> April 2024

**Re: Non-compliance with waste facility permit reference WFP-FG-13-0002-03**

Dear sir, Madam,

As of 15<sup>th</sup> April 2024, the status of your online Annual Return (AR) through the National Waste Collection Permit Office portal is noted as "In Progress". The deadline for submission of the Annual Return was 28<sup>th</sup> February as set out in your permit.

This is a non-compliance with Condition 3.10 of your permit, requiring the submission of the online return on or before 28<sup>th</sup> February each year – in respect of waste activities in the preceding calendar year.

You are requested to submit the Annual Return on the NWCPD portal within 2 weeks of the date of this letter, i.e. **by Monday 29<sup>th</sup> April 2024**.

**Failure to comply with any condition of your waste facility permit is considered a breach of Section 39 of the Waste Management Act 1996 and an offence for which you may be liable for prosecution. Non-compliance with the above condition may result in further action being taken by Fingal County Council to rectify the situation.**

Yours Sincerely,

Alain Kerveillant  
Executive Scientist  
Mobile: 087-9915832  
Waste Enforcement & Regulation





23 Richmond Avenue,  
Fairview,  
Dublin 3  
17<sup>th</sup> July 2021

An Bord Pleanala,  
64 Marlborough St.  
Rotunda,  
Dublin 1,  
D01 V902.

**Re: FW20A/0029 St. Margaret's Recycling and Transfer Centre Ltd, Sandyhill, Co. Dublin.**

**ABP Ref: ABP-310169-21**

Dear Sirs,

I refer to my letter of 07<sup>th</sup> June 2021 and yours of 30<sup>th</sup> June 2021 with a copy of the First Party Response to my appeal to the decision by FCC to grant planning.

I totally refute the suggestions being made by the applicant that my appeals/submissions to both FCC or An Bord Pleanala are vexatious, frivolous or without substance. It is very clear from the subsequent correspondence between the applicant and FCC that the Council did not consider my submissions to be without substance or foundation. As a consequence of my submissions, there have been a number of adjustments made to the plans/drawings of the applicant in their attempts to try to get their planning approved.

I have always had an interest in development and construction and was a member of the National Executive of the Construction Industry Federation for well over ten years. I have raised issues both at the C.I.F. on Waste Management and have commented on a number of planning applications over the years in various local authority areas. I also have personal connections to families in the area.

The applicant puts a lot of store by the reference to a redacted letter submitted to FCC and infers that I somehow got the letter by surreptitious means. This could not be further from the truth. I got it off the web public file and clearly stamped as same. In fact, FCC confirmed that material was on the public file in error and had to be removed under GDPR requirements, highlighted in red. (Please see Tab A.)

The personal comments made against me by the applicant are a side show and clearly demonstrate that the matters I have raised have annoyed the applicant, however the application has to be assessed on its merits and whether it is appropriate to the proposed location and zoning.

While I will comment on the applicant's appeal to An Bord Pleanala, these comments should not be taken as an endorsement of the Fingal Planning Permission, which I believe is incorrect for this area wrong and should be revoked



I have previously raised a number of issues with the planning authority which I believe were not addressed and referenced in my appeal to ABP dated 07<sup>th</sup> May 2021 some of which will be repeated in this submission.

#### **Fire Safety,**

The applicant refers to the appointment of Mr Brian Bourke of Forward Fire Engineering to provide consultancy services in the practical application of the Fire Risk Assessment . This statement infers that a Fire Risk Assessment has been completed and just has to be implemented. Yet the supporting letter submitted with the Boylan Report dated 04<sup>th</sup> June 2021 states “ A fire risk assessment is currently in draft form and will be used as a basis for a new Fire Prevention and Mitigation Plan “ The Boylan report accepts that my comments on the FRA made by Mr Derek McDonnell were correct and yet the applicant admits that a suitable FRA will not be finalised until 28<sup>th</sup> June 2021 without the opportunity of review by external interested parties. All of these procedures/plans were requested by FCC as part of the planning process.

The Boylan report A0915-6-8-LT01 , dated 15<sup>th</sup> March 2021 , also refers to keeping waste piles and volumes of materials that can be stored. The plan referred to a max stockpile amount of 132m3, yet in a visit from Final County Council on 16<sup>th</sup> March 2021 , the Inspector estimated that there was a stockpile of 1000m3 of fragmentiser waste in one single pile .

#### **Waste Streams,**

The applicant infers that “ as the Council ( FCC) granted permission for the site, confirms that they are aware of all activities and are satisfied with same.” Again this is wishful thinking. When one reviews the planners report dated 12<sup>th</sup> April 2021, The response by the applicant “ *is not representative of waste activities on site . The procedure does not include the use of the hammermill in the waste process. It does not show further fragmentiser waste (fluff). Also, it does not show the processing of cables, batteries, etc on site “* ( See P 42) The response submitted by the applicant dated 08<sup>th</sup> June 2021 acknowledges that ELV's were subject to the shredder processes and refers to revised processes following a FCC site visit . It is very clear that despite requests by FCC , the information was not adequate and once again the Council are still looking for full and detailed description of all waste processing activities on site.

#### **EIA Requirements**

The applicant in his reply states that some of my comments are throw away comments to discredit the business. The facts of the matter are that

- a. A large industrial fire did occur on site in 2018.
- b. Eight Fire Tenders from both the Dublin Airport Authority and Dublin Fire Brigade had to attend the fire.
- c. The applicant did not refer to this incident in his initial application to the Council as required and ticked NO when asked if “ Major Accident Regulations Apply”
- d. The matter of airborne particles from the facility and impact on neighbouring lands have not been addressed in the applicant's correspondence and ASR are know to be carcinogenic. Please see at Tab B my comments on this matter in my initial objection .





- e. There have been exceedances highlighted in the planning reports of heavy metals and hydrocarbons in the watercourses which is documented in the public files and referenced in my previous correspondences.
- f. Also refer you to my comments in my appeal letter of 07<sup>th</sup> May 2021 to you.
- g. The applicant has an unauthorised hammermill in use on site with no records being submitted to the council as to the waste being processed from this machine. The planning report of 12<sup>th</sup> April 2021 raises concerns in respect of this item and its potential impacts reinforces my belief that a full EIA should have been carried out for this development. These items are also of concern in other jurisdictions and have been the subject of court actions due to impacts of ASR . Please See Tab C

### **Noise**

Again the planners report of 12<sup>th</sup> April 2021 refers to the fact that the applicant did not address the request to deal with future noise impacts and did not carry out the requested assessment. The applicants now state that if granted permission they will comply and produce the appropriate assessment

### **Land Restoration.**

As previously advised in my letter of 07<sup>th</sup> June 2021, the applicants, despite receiving planning permission under F 10A/0177 and F13A/0409 , to date the applicant has failed to comply with planning conditions previously granted by the planning authority in respect of restoration of some of the lands back to agricultural use and has continuously increased the areas of lands away from agricultural use to unauthorised industrial activities and NOT in compliance with grants. In addition when one compares the aerial photograph in the applicants appeal ( Page 5 ) showing storage of end of life vehicles outside of the permitted area as against the approval granted under F11A/0443 , it is clear that the applicant is admitting to further creep of land from agricultural use to industrial use , is intent on ignoring planning grant conditions if they do not align with his desires.

It appears that that the lands will not be returned to agricultural use until the settlement of a High Court dispute. The applicants cannot claim that they have been compliant. The matter of the legal action is not relevant to the planning process and should not even be considered. As mentioned earlier, I only became aware of this matter in 2020 when it was referred to in a report by Boylan Engineering and from the correspondence supplied it is not clear when the alleged issues arose as I did not see any mention of same in the files recorded under F10A/0177, F11A/0443, F13A/0409 nor FW19A/0135. As can be seen from the Google Earth record dated 22<sup>nd</sup> Feb 2021 , at Tab D , the applicant still has material outside permitted areas, as well as trucks, machinery, etc

In addition, I would like to add that the statutory planning notice did not apply for retention of the hammermill nor for is the matter of airborne fluff addressed. These are issues I raised a number of times in my representations to Fingal Planning and their potential impacts on the ground water which serves the neighbouring agricultural lands which have not been addressed.





Accordingly, I request that An Bord Pleanala , grant my appeal and revoke the permission granted by Fingal County Council

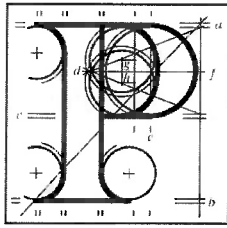
For your consideration.

Jerry Beades PC

#### Appendices

- Tab A. Email from FCC iro Redacted material.
- Tab B ASR
- Tab C. Reports of Court Actions on shredders/hammermills
- Tab D Google Earth Photo dated 22th Feb 2021





An  
Bord  
Pleanála

## Inspector's Report

### ABP-310169-21

#### Development

Retention for permanent continuation of use of the existing waste processing and transfer facility & the continued use of the existing buildings on site associated. Planning permission is sought for new proposed stormwater attenuation storage tanks and associated stormwater treatment infrastructure.

#### Location

St Margaret's Recycling & Transfer Centre Ltd, Sandyhill, St Margarets, Co Dublin

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

FW20A/0029

#### Applicant(s)

St Margaret's Recycling & Transfer Centre Ltd

#### Type of Application

Retention

#### Planning Authority Decision

Grant Retention

#### Type of Appeals

First & Third Party



**Appellants**

Jerry Beades PC  
St Margaret's Recycling & Transfer  
Centre Ltd

**Observers**

J Griffin  
John F Lynch  
DAA

**Date of Site Inspection**

23<sup>rd</sup> September 2021

**Inspector**

Dolores McCague

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## **1.0 Site Location and Description**

- 1.1.1. The site is located at Sandyhill, St Margarets, Co Dublin adjoining St Margarets by-pass, R122. Dublin Airport is to the east with the southern run-way to the south east. Dublin airport lands extend to within 240m of the south of the subject site. Lands bounding to the north, south and west are currently in agricultural use. Those to the north and east are shown to be within the ownership of the applicant.
- 1.1.2. The site is located south of the village of St Margarets, across the regional road from the primary school. The R108 is located to the south.
- 1.1.3. The site is currently occupied by a Recycling & Transfer Centre which includes a facility for end of life vehicles. On the date of inspection there was a lot of waste sorted and stored, or processed and stored or awaiting processing, on the site and a lot of dust in the air. A number of machines were in use, including two grab / handlers and the hammermill.
- 1.1.4. The site is given as 2.93ha.

## **2.0 Proposed Development**

- 2.1.1. Retention planning permission and planning permission is sought by St. Margaret's Recycling & Transfer Centre Ltd. at St. Margaret's Metal Recycling, Sandyhill, St. Margaret's, Co. Dublin. 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, F 11A/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.

2.1.2. The application was accompanied by:

Planning Statement by Downey Planning,

EIA Screening Report by Downey Planning,

Services Report by Boylan Engineering,

Screening Report for Appropriate Assessment of application for the continuation of use of St. Margaret's Recycling Centre, Sandyhill, Co Dublin, by Openfield Ecological Services,

2.1.3. The Planning Statement accompanying the application includes: -

The site has been in operation since 1997 and operates as an authorised treatment facility for members of the public under waste facility permit from Fingal Co. Co. (WFP-FG-13-0002-02.

The existing facility comprises:

- Concrete hardstanding entrance laneway and public parking area in the northwestern corner,
- Concrete hardstanding area for storage of cars awaiting depollution and storage of parts,
- Large covered waste processing shed including depollution area in the western portion of the site,
- Site offices, welfare facilities and a weighbridge located in close proximity to the entrance,
- Concrete hardstanding area for storage of depollution cars,
- Secure perimeter fencing.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The planning authority decided to grant permission subject to 17 conditions including, Condition 2:

Permission and retention permission as outlined in the development description hereby permitted shall be for a period of three years only from the date of the final grant of permission, unless permission is granted for continued use either by the Planning Authority or An Bord Pleanála on appeal.

Reason: To prevent unauthorised development and in the interests of the proper planning and development of the area.

Condition 5:

No goods or materials of any description shall be accepted from or sold to visiting members of the public and all deliveries to and collections from the site shall be carried out by the operators of the facility or by persons or entities with whom the operators have entered into ongoing contracts for such services.

Reason: In the interests of maintaining an acceptable level of traffic generation at this location.

Condition 11:

The facility shall not operate outside the hours of 0900hrs to 1800hrs Monday to Saturday or as agreed in writing with the Planning Authority. No activity shall take place outside these hours or on Sundays or public holidays.

Reason: To protect the residential amenities of property in the vicinity.

### **3.2. Planning Authority Reports**

### **3.3. Planning Reports**

There are three planning reports on the file. The first (28<sup>th</sup> February 2020) recommending further information includes:

- The layout of the facility is such that the main processing buildings and structures are predominantly located to the north and north-west and clustered around the site entrance. This includes a large extended shed to the south of the entrance referred to as the Main Processing Shed and a number of portacabins, welfare facilities and site offices located to the northern site boundary. A septic tank and percolation area are located to the rear of these units. A weigh-bridge is positioned immediately south of the portacabins. Compartmentalised storage areas /bunkers to the northern and eastern boundary of the site. These contain materials such as stainless steel, aluminium, wheel alloys, cables and non-ferrous materials. The majority of the operations and storage/sorting of materials appear to take place in the open, centrally within the site, and to the east and south of the main processing shed. The area to the south contains an electrical plant room, and is shown as accommodating baled cars, de-polluted end of life vehicles awaiting processing, and ferrous materials for processing and post processing. This area also contains a hammer mill and a movable grab, feeding materials for processing. To the east of the main site is a gated area which is separated from the main site by concrete panels and containers. This is intended to be restored to agricultural use. The area is capable of separate and independent access via a driveway and entrance to the R122, 95m north of the junction of the R122 and the L7231 Newtown Cottages access road. The area is not subject to retention for waste operations but is located within the red line boundary.
- Zoning and vision of the zoning – it is considered that the development does not comply with the objective and vision.
- Section 11.5 concerning non-conforming uses.
- Z05 objective
- Dublin Airport – noise zones; objective DA07, LAP The boundary of the Dublin Airport LAP reflects the DA zoning. The application site is not specifically referenced in the Plan. Site is located in the outer public safety zone. Objectives DA13, DA14 and DA15 are referenced.



- Waste Management Objectives WM01, WM02, WM03, WM04, WM05, WM07, WM08, WM09 and WM18 are referenced.
- Given the established nature of the facility on site which remains a waste transfer and recycling facility, its continued operation over a period in excess of 22 years, and the objectives in section 11.5 and Z05 of the Development plan, it is considered that the current application seeking retention and continuation of use of the development is acceptable in principle subject to assessment.
- EIA Screening – the planning authority has engaged Brady Shipman Martin Environmental and Planning Consultants to review the requirement for Environmental Impact Assessment. Their review includes:
  - The proposed development does not meet the requirements for mandatory EIA under part 1 of schedule 5 of the Planning and Development Regulations 2001. Class 11 (b) of part 2 of schedule 5 of the Regulations lists ‘installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule’. The proposed development is for acceptance of 24,900 tonnes per annum. 99.6% of the threshold. Class 11 (e) of part 2 of schedule 5 of the Regulations lists ‘storage of scrap metal, including scrap vehicles where the site area would be greater than 5 hectares’. The site of 2.93ha is significantly below the threshold.
  - The proposed development must be subject to screening.
  - Any project listed in this Part which does not exceed a quantity, area or other limits specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.
  - The EIS screening report submitted with the application provides for:
    - A description of the proposed development;
    - A description of the aspects of the environment likely to be significantly affected by the proposed development;

- A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment; and
- The compilation of the information at paragraphs 1-3 has taken into account where relevant, the criteria set out in Schedule 7; sets out detailed consideration of the requirement for a sub-threshold EIA and concludes that EIA is not required. Given the nature of the development and its location close to Dublin Airport, minimal information is provided under Risk of Accidents (section 4.1.6 of report) and Risks to Human Health (section 4.1.7 of report). It is noted that no mention is made of a previous major fire incident in January 2018.
- Additional information required.
- AA screening - the planning authority has engaged Brady Shipman Martin Environmental and Planning Consultants to review the AA screening report submitted.
- The screening report states in Section 2.3 that the proposed development is located in the Ward River catchment and is within c460m of a tributary, the Huntstown Stream. The Engineering report that accompanies the application, prepared by Boylan Engineering, states that treated storm water leaving the site is connected to the Huntstown Stream approximately 500m downstream of the site. There is therefore a potential surface water pathway between the proposed development site and the Malahide Estuary SAC and SPA. The conclusion is concurred with, that there is no surface water pathway between the site and any other European site.
- The Engineering report describes surface water treatment on the site, however the AA screening report does not contain any detail about either the current or proposed surface water management at the site. Section 3 states that the construction phase is limited to the installation of new storm water attenuation measures; and that surface water falling on hard surfaces drains to an attenuation tank and then overflows to the drainage ditch via a grease/silt trap and flow control device. This system complies with the Greater Dublin Drainage System. No impacts to surface water are

likely to occur. The report does not assess whether the SuDS measures existing or proposed are intended to avoid or reduce the harmful effects of the proposed development on a European site. This will require further examination. The report refers to foul drainage to Ringsend but does not provide any information on volumes. The Engineering report refers to a septic tank. This will require further examination.

- The report refers to pollution during construction and notes that deposition of silt is a natural feature of estuaries, however it does not attempt to quantify the likely or potential volumes of silt that might arise, or the potential scale of deposition in the context of the receiving estuarine environment. Re. pollution during normal operation, it states that the use of accepted SuDS techniques and overall compliance with GDSDS in the design of the project will ensure that negative effects to water quality do not arise from surface water run-off. Without detailed and clear explanation this may be regarded as mitigation. No detailed assessment is presented as to whether or not these elements will have a significant effect on any European site, that would be mitigated by the use of SuDS. Additional information required.
- Recommending additional information on 16 points, which issued.

### 3.4. Other Technical Reports

- 3.4.1. Transportation Planning Section – undated - sightlines – to the north, the required 145m sightlines are achievable. To the south sightlines are below standard as a result of the maturing growth along the western boundary. Sightlines to the centreline of the road, as shown in the drawing, can be used only to the left of the entrance and only if there is a continuous white line along the centreline of the road for the required distance. The line is a broken line along this stretch of road; overtaking is not prohibited for vehicles approaching from the south. The current maintenance of the boundary does not resolve the issue as it only trims back to a boundary that already impedes sightlines. With work to this boundary it is possible to increase the sightline provision to the required 145m. Where works are required to the property of a third party, written evidence of legal consent is required.



Traffic – a previous EIAR provided for this development under reg. ref. FW 19A/0135 highlighted that the existing development has handled volumes of 36,391 tonnes. The existing development had a temporary permission to operate up to 21,900 tonnes. An increase of 3,000 tonnes would not be considered to have any significant impact on the existing road network subject to only operating up to 24,900 tonnes. It should be noted that the maximum limit of 24,900 tonnes would be a de-intensification. Additional information recommended.

- 3.4.2. Parks and Green Infrastructure Division – 02/04/2020 – conditions in the event of permission being granted.
- 3.4.3. Water Services Department – 26/03/2020 – further information re. wastewater, and re. surface water – catchment drawings, calculations for the required 1:100 year attenuation are incorrect and appear to be based on a 25% uplift of the 1: year volumes. The overflow from the rainwater harvesting system ( 3x 35m<sup>3</sup>, stored for firefighting purposes only) discharges untreated and flows un-attenuated into the north to south open drain on the western boundary. Applicant to submit detailed drainage layouts, including pipe sizes, gradients and levels, in order to demonstrate that the proposal is hydraulically possible to implement. The location of the flow control devices should also be included.
- 3.4.4. Executive Scientist, 12 June 2020 - if permission is granted a review of the current waste permit (WFP-FG-13-0002-03) is required. A revised drawing in respect of proposed site plan (drg no 1522-DR02) is required – only the proposed surface water system referred to as proposed storm pipe on the current drawing, should be indicated in blue and arrows indicating length/distance coloured differently. As additional information the applicant shall submit a fire prevention plan including an assessment of the fire risk from all waste activities carried out at the site, prepared in accordance with the guidance provided by the UK Environment Agency (at - web address given).
- 3.4.5. Environmental Health Air & Noise Unit – undated - conditions – no heavy construction equipment/machinery to be operated before 8am, or after 7pm Monday to Friday, and before 8 am and after 13.00pm Saturday. Dust control during construction. A dust management plan during both the construction phase and operational phase. Due consideration to B.S. 5228 2009+A1 2014 'Noise Control on

Construction and Open Sites Part – Code of practice for basic information and procedures for noise control. In particular construction noise levels shall be monitored continuously and a threshold value of 65dB LAeq,1hr free field at residential noise sensitive locations in the vicinity of the development shall be adopted. Noise due to the normal operation of the proposed development shall not cause a noise nuisance to nearby noise sensitive location, shall not exceed the background level by 10dB(A) or more or exceed NG4 limits whichever is lesser. The site shall be so operated that there will be no emissions of malodours, gas, dust, fumes or other deleterious materials. There shall be no noise from that site that would give reasonable cause for annoyance to any person in any residence, adjoining unit or public place in the vicinity.

### 3.5. Prescribed Bodies

3.5.1. Irish Aviation Authority 31/03/2020 – no observations.

3.5.2. DAA 26/03/2020 – information re noise.

3.5.3. IW – 03/05/2020 – conditions.

### 3.6. Further Information

3.7. A request for additional information on 16 points, issued 19 June 2020:

- 1 Risk of accidents – review EIS screening report.
- 2 Submit revised proposals for reduced intake, having regard to the threshold for EIA of 25,000 and to ensure an adequate buffer is maintained in the protection of the environment.
- 3 Sightlines.
- 4 Occupancy re. waste water treatment.
- 5 Surface water disposal – drawing of catchments A, B and C, calculations for 1:100 year attenuation, those submitted are incorrect. The overflow from the rainwater harvesting system discharges untreated and unattenuated. This is not appropriate. Submit detailed drainage layout.
- 6 Red line – landscaping plan does not correlate.

- 7 Restoration of part of the site to agricultural use – provide detailed timeline for the removal of all vehicles, equipment and materials from the lands and indicate where the foregoing will be relocated.
- 8 Information to enable an assessment re AA screening – re. surface water and foul water.
- 9 Employment density – public safety zone.
- 10 Noise zone A – applicant to detail the predicted noise environment.
- 11 Provide details of the planning permission which authorised the existing Hammermill on site.
- 12 Provide a full and detailed description of all waste processing activities on site to include: all waste streams currently accepted and processed and the percentage of each waste stream as a percentage of total waste throughput; volumes of all waste streams processed on a monthly and yearly basis; all waste processing activities conducted on site from acceptance on site to transfer off site to recovery.
- 13 Confirm that all lands outlined in red are within their ownership or submit consent from landowners.
- 14 Submit revised site layout wherein the proposed surface water system referred to as proposed storm pipe should be indicated in blue and arrows indicating length/distance hatched in an alternative colour.
- 15 Submit fire prevention plan and an assessment of fire risk from all waste activities.
- 16 Storm water attenuation areas (A, B and C) do not appear to correlate with the area of the site on the proposed site plan, address discrepancy.

### 3.8. Response to further information request:

- 3.8.1. Downey Planning responded, 1 Oct 2020, to the request for further information including proposing a reduction in intake from 24,900 tonnes per annum to 24,000 tonnes per annum (item 2); updated EIA screening report. The long established nature of recycling on the lands indicates that the development is not likely to have significant effects on the environment and this is confirmed in the enclosed AA



screening report and EIA screening report which have both been updated to reflect the 24,000 tonnes proposed intake, and all of the items of the additional information requests. Therefore, noting that the proposed development is subthreshold and that there is not likely to be any significant effects on the environment as a result of the proposed development, it is submitted to the Planning Authority that an EIAR is not required for the proposed development set out within this Additional Information Response.

- 3.8.2. Sightline (item 3) - the recycling centre has been in existence for numerous years, in the most recent permission the Transport Department had no issues with the existing sightlines, the entrance has not been amended, and should be permitted as is. Re. surface water, item 5, a revised drawing and calculations have been submitted. Revised landscaping proposals, per item 6, from Jane McCorkell Landscape Architects is submitted. A revised AA screening report from Openfield Ecological Services is submitted in response to item 8(a); response to 8(b) is that wastewater does not discharge to Ringsend. The maximum number of employees working at the site will be considerably below the 110 persons under the ERM public safety report, re. Dublin Airport safety zone, item 9; re item 10, Noise Zone A, the use is not a noise sensitive use. The hammermill, (item 11), is located within the curtilage of planning permission Reg. Ref. F13A/0409 and therefore is ancillary to the overall operations of lands as a recycling centre and is a process and equipment associated with the facility. The Waste Facility Permit for St. Margaret's did not require that a separate planning permission was to be sought for this ancillary piece of equipment and they consider the hammermill to be part of the overall recycling centre. The hammermill forms part of the current application as set out in the planning application pack, including drawing no. 1522-DR03 titled 'existing shelter building over hammermill', and thus will be regularised as part of this current application which is seeking retention permission for the recycling centre and all associated existing buildings on site. A Fire Prevention Plan is provided and corresponds to the current Emergency Response Plan (ERP), (item15).
- 3.8.3. Documents attached:
- Surface Water Management by Boylan Engineering.
  - Fire Risk Assessment by Boylan Engineering.

- EIA Screening Report by Downey Planning, including Surface Water Sampling Report 2018 by Boylan Engineering. This states that the site is an established waste facility and has been in operation for the past 22 years (c1997) and operates as an authorised treatment for end-of-life vehicles (ELVs) under a Waste Facility Permit from Fingal County Council. The buildings associated with the operation of the facility are all in existence on site, with recycling activity as an appropriate use well established on the lands. All input material is weighed and recorded at the facility weighbridge. Input tonnages are monitored on a monthly and quarterly basis by the applicant. The applicant also restricts and controls customer tonnage in accordance with the Waste Facility Permit. The waste types accepted on site comprise the following:

- Metals,
- Construction and demolition waste,
- Bulky/Skip waste,
- Wood waste,
- Batteries,
- Non-biodegradable non-hazardous wastes,
- Glass,
- End-of-Life Vehicles (ELVs).

- Volume of waste to be accepted at the facility, item 1, response from Boylan Engineering.
- Restoration to agricultural lands, item 7, response from Boylan Engineering.
- Foul wastewater, items 4 and 6, response from Hydrocare Environmental Ltd. including a replacement wastewater treatment system.
- Noise sensitivity, item 10, response from RPS Group Limited.
- Land ownership, item 13, letter of consent and map.
- Screening Report for Appropriate Assessment of application for the continuation of use of St. Margaret's Recycling Centre, Sandyhill, Co Dublin, by Openfield Ecological Services.

3.8.4. The Screening Report for Appropriate Assessment of application for the continuation of use of St. Margaret's Recycling Centre, Sandyhill, Co Dublin, includes:

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 or SPA.

The construction phase is limited to the installation of new storm water attenuation measures. 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.

The proposed improvements will involve:

- 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 head-discharge 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.

### **3.9. Further Reports**

- 3.9.1. Parks and Green Infrastructure Division – 21/10/2020 – conditions in the event of permission being granted.
- 3.9.2. Transportation Planning Section – 21/10/2020 - sightlines – as previously stated the current maintenance of the boundary does not resolve the issue of sightlines as it only trims back to a boundary line that already impedes sightlines. The existing boundary hedgerow is robust and would appear to have thickened over time. Visibility could be improved to meet the standard of 145m (it is currently circa 125m) by trimming back behind the existing roadside barrier. However, the Transportation

Planning Section accepts that the entrance is an existing entrance in operation for a number of years and the lands to the south east, between the road and the site, is not in the ownership of the applicant. Improvements can be achieved by trimming back the hedgerow directly adjacent to the entrance. Recommending conditions.

3.9.3. Water Services Department – 27/10/2020 – further information re. wastewater, a new wastewater system is proposed – conditions recommended; re. surface water – the site is split into 5 separate catchments with individual flow controls. The use of underground attenuation and multiple flow control devices is not desirable as the performance generally relies on regular and costly maintenance. The use of SuDs systems is preferable. It is noted the surface water systems on site will be managed privately, and the nature of the use is acknowledged. In this instance the surface water proposal is acceptable; conditions recommended.

3.9.4. Executive Scientist – 05/11/2020 – the Environment Division highlights that the facility breached the waste-in limit of 21,900 tonnes set out in the waste facility permit WFP-FG-13-0002-02 in 2018 (36,391.18 tonnes) and also breached the waste-in limit of 21,900 tonnes set out in the current waste facility permit WFP-FG-13-0002-03 in 2019 (30,736.67 tonnes). Waste-in figures to date indicate that the facility has accepted 17,631.88 tonnes. Re. item 7 of the FI, inadequate information has been provided in respect of the process of restoring the lands in question to agricultural use. In the first instance the applicant shall engage the services of an independent consultant to carry out a site characterisation and assessment on a priority basis to determine if there is risk of environmental pollution from the lands. The response to item 11; the intention to regularise the hammermill is noted. The applicant shall liaise with the EPA as to whether a waste facility permit is appropriate for current waste activities. The response to item 12 relates to the proposed waste processing activities and not current waste processing on the site as requested. The Fire Risk Assessment and Fire Prevention and Mitigation Plan, in response to item 15 is noted. The indicative Fire Water Calculations is based on the water available on site, and an indicative max. waste pile size of 132m<sup>3</sup>. The Fire Prevention and Mitigation Plan did not indicate what maximum size waste piles should be. It made reference to areas having storage capacities of up to 3,000m<sup>3</sup>. Nor did it indicate the location of waste piles and spacing between them, required in order to ensure a fire would not spread and would be extinguished within 4 hours, as per objectives of a

Fire Prevention Plan, as described by the UK Environment Agency Guidance. Achieving these objectives will impact on the layout of the facility. The provision of adequate water storage for the purpose of fire-fighting is also an element that needs to be considered. The applicant shall review and update the documents outlined above and submit the revised documents to the Council for agreement with the Environment Division. An updated site layout drawing to be submitted. If permitted, a new waste licence or Industrial Emissions Licence may be required.

### 3.10. Prescribed Bodies

3.10.1. TII – 13 Oct 2020 – to be carried out in accordance with the recommendations of the Transport (Traffic) Assessment and Road Safety Audit submitted.

3.10.2. Aircraft Noise Competent Authority (ANCA) – 19 Oct 2020 - not of the opinion that the proposed development contains a proposal requiring the assessment for the need for a noise-related action, or indicates that a new operating restriction may be required.

3.10.3. DAA – 27/10/2020 – under DAA safeguarding policy, office space is considered a noise sensitive use. They refer to their previous request for the existing and predicted noise environment on site to be fully assessed. They note the inclusions of existing noise levels on site but do not see the inclusion of future noise levels, with consideration of future airport growth. Further clarification required.

3.10.4. The Second Planning Report (9<sup>th</sup> Nov 2020) recommending clarification of further information includes:

Reference to each item of FI and reports from sections, clarification of further information to be requested on 5 points, which issued.

### 3.11. Clarification of Additional Information

3.11.1. A request for clarification of additional information issued 13/10/2020, which includes:

1 Noise zone A – applicant to detail the predicted noise environment and if noise mitigation measures are required.

2 The description of the current application is for continued use of the buildings and not the structures themselves; no reference has been made to the hammermill in the notices, which would be appropriate; regularise. Applicant to liaise with the EPA as



to whether a waste facility permit or Industrial Emissions Licence is appropriate for current waste activities including the hammermill.

3 The indicative Fire Water Calculations are based on the water available on site, and an indicative max. waste pile size of 132m<sup>3</sup>. The Fire Prevention and Mitigation Plan did not indicate what maximum size waste piles should be. It made reference to areas having storage capacities of up to 3,000m<sup>3</sup>. Nor did it indicate the location of waste piles and spacing between them required in order to ensure a fire would not spread and would be extinguished within 4 hours, as per objectives of a Fire Prevention Plan as described by the UK Environment Agency Guidance. Achieving these objectives will impact on the layout of the facility. The provision of adequate water storage for the purpose of fire-fighting is also an element that needs to be considered. Review and update the documents.

4 Provide a full and detailed description of all waste processing activities on site. The response provided relates to the proposed waste processing activities and not current waste processing on the site as requested.

5 Inadequate information has been provided in respect of restoring a section of the land, (1.19ha), back to agricultural use.

- a) Detail a specific timeframe, including a completion date for the restoration of lands, clarifying the reference made to legal proceedings mentioned in the response to the request for additional information and detailing where the existing materials on the lands will be relocated.
- b) Provide full details of the measures required to restore the lands in question including soil importation (if required), land drainage, landscaping etc. Such information to be provided by a competent individual with experience in land restoration.
- c) Provide a detailed topographical survey of the lands to be restored, referencing the current position including ground levels and the completed restoration works, showing expected finished levels, landscaping works etc.
- d) The applicant shall engage the services of an independent consultant to carry out a site characterisation and assessment on a priority basis to determine if there is risk of environmental pollution from the lands.

### **3.12. Further Clarification Response**

3.12.1. A response to the request for clarification of additional information was received 16/03/2021 including:

- Letter from Downey Planning.
- Opinion by Senior Counsel, Dr Yvonne Scannell, Arthur Cox Sols.
- Letter from EPA in relation to Article 11, application no. 2155.
- Response to item 3 by Boylan Consulting Engineers and a letter of engagement from the Fire Safety Officer, and a Fire Prevention and Mitigation Plan.
- Response to item 4 by St Margaret's Recycling, including a breakdown of current and proposed waste volumes, waste acceptance, and waste handling and processing operations.
- Response to item 5 by Boylan Consulting Engineers and a letter from Hamilton Turner Solicitors (to be redacted and not made available to the public) which appears to refer to legal proceedings related to the lands to be restored.

3.12.2. Letter from Downey Planning:

- Response to CAI item 1 - Not noise sensitive.
- Response to CAI item 2 – a hammermill is a mill whose purpose is to shred or crush material into smaller pieces by the repeated blow of hammers. These machines have numerous industrial applications, including crushing and shredding metals and materials in waste management. A Senior Counsel letter is attached re. the status of the hammer mill. Applicant has made a request to the EPA in accordance with Article 11 and the agency made a declaration that a waste permit is appropriate for current activities including the hammermill.
- Response to CAI item 5, the Boyle Engineering document, concludes that materials can continue to be stored onsite until conclusion of legal proceedings.

3.12.3. Opinion by Senior Counsel, includes:

Planning and Development Regulations, articles 1 and 2 definitions: industrial process; height limit on exemption – plant or machinery greater than 15m: the height of the machinery is 10.97m. Other limitation – ‘would seriously alter the external

appearance of the premises'; is screened from the public road. The erection of this plant and machinery initially was exempted development and it continues to be so.

3.12.4. Copy of e-mail from the EPA (to an earlier query) stating that a waste facility permit is appropriate.

3.12.5. Boyle Engineering Response to CAI item 5:

The Fire Safety Report and Risk Assessment provides a calculation for max. combustible waste pile sizes based on available firefighting water on site of 158m<sup>3</sup>. The limiting factor for the stockpile storage is based on the available water for fighting purposes. It is noted that the available firefighting water is contained on site in static storage tanks amounting to 158m<sup>3</sup>. St Margaret's Recycling are in the process of applying for a connection agreement with IW to supply a connection to support two 90mm hydrants on the site. A pre-connection application is currently being processed by IW and at time of writing, still being processed.

The Fire Safety Report and Risk Assessment refers to a calculation for max. combustible stockpile size based on the available firefighting water. For example, notwithstanding the subsequent limitations set by the available firefighting water, table 1 of the report refers to maximum stockpile sizes for rubber (i.e. tyres) and Fragmentiser Waste from depolluted ELVs of 450m<sup>3</sup>. Non-combustible stockpiles, e.g. stockpiles of materials that are not combustible should not be limited in size by the amount of firefighting water available. The storage capacities of up to 3,000m<sup>3</sup> referred to in the Fire Prevention and Mitigation Plan refer to the capacity of the area to store materials, not necessarily total stockpile size (eg. an area could have a number of stockpiles of varying sizes segregated by precast concrete walls and /or appropriate separation distances). The Fire Prevention and Mitigation Plan has been updated to clearly reflect this, and is appended. Furthermore, an arrangement of multiple stockpiles separated by a non-combustible wall system (eg. precast Kelly block system or other similar) can be used to segregate and manage stockpiles.

'Forward Fire Engineering', Mr Brian Burke, has been engaged to manage fire risk at the site.

In liaison with Fingal Co Co Fire Department, it has been determined that a system of two number hydrants would be required to fight a fire for approx. 4 hours. It is the



intention to provide a fire ring main to the site with four or more hydrants, subject to IW confirmation of connection availability.

Fire water retention will be provided in the form of a combination of available storm water storage systems (difference between 1 in 10 and 1 in 100 yr storm system). The proposed attenuation system has storage for 1 in 100 yr storm with allowance for 20% increase due to climate change of in excess of 1,050m<sup>3</sup>. EPA guidance on fire water retention generally requires a site to account for a 1 in 10yr storm event in the fire water retention calculations. For this site a 1 in 10yr storm accounts for less than 450m<sup>3</sup> storage, thus providing available capacity of 550m<sup>3</sup> of storage in the surface water system once the discharge is isolated in event of fire, the remainder of fire water retention will be provided in the form of yard bunding. As the site is generally graded towards gullies located centrally in the yard, the provision of low level kerbing around the site will easily provide any required capacity to store the remainder of fire water run-off. Discussions between Forward Fire Engineering and Fingal Co. Co. Fire Department assessed circa 1,000m<sup>3</sup> of firefighting water could be generated on the site. The exact volume of fire water retention is to be determined subject to the ongoing measures being implemented in accordance with Forward Fire Engineering, per points above.

Should a connection to the IW network not be feasible to provide capacity for two hydrants on the site, combustible stockpiles will be limited by size by the volume of available firefighting water. Ongoing Fire Risk Assessments will review the nature and volume of material stored, and any changes to available firefighting water (static storage or otherwise) to inform on suitable stockpile sizes.

A revised Fire Prevention and Mitigation Plan is attached.

### **3.13. Reports**

- 3.14. Senior Executive Scientist – 01/04/2021 – the EPA Article 11 response, dating to 2016, is noted however details of the application for Article 11 were not included. It is noted from data on file that the Article 11 request was submitted on the basis of the shredder output being less than 75 tonnes per day. This could be interpreted to mean that under a Waste Facility Permit the maximum input of waste to the site is 75 tonnes per day. Tonnage threshold will have to be addressed by the Environment

Section when a Waste Facility Permit Review is sought; possibly through a fresh Article 11. Fire Prevention – it is noted that the combustible wastes listed are not exhaustive and do not include hazardous liquids from the depollution of ELVs (waste oil, mixed fuels) or gas cylinders from the quarantine area which needs to be addressed. Depollution of ELVs are classified as non-combustible which is questionable as they still contain combustible elements – car seats, plastic components. The fire prevention plan does not include a drawing showing the storage areas for combustible materials with their size limitations and separation distances between combustible piles. Piles of combustible waste, well in excess of 132m<sup>3</sup> were observed by Waste Enforcement Officers during a site inspection on 16/3/2021 with an estimated 1,000m<sup>3</sup> of fragmentiser waste in 1 single pile.

Description of Waste Processing activities – this is incomplete – it does not include use of hammermill, or show further processing to the fragmentiser waste (fluff); or show processing of cables, batteries etc on site. The hammermill operating procedure submitted is not detailed enough regarding inputs and outputs. It contains contradictory information as to whether depolluted ELVs go through the hammer mill or not (they do go through the hammermill but not all do). Re. restoration to agricultural use – the risk is based on spot samples from undisturbed locations on bunds and not from trial pitting across the entire site. The site is not suited to return to agricultural use until the entire site is subjected to categorisation, assessment and where necessary agreed mitigation and aftercare, using the EPA Guidance on the management of contaminated land at EPA licensed sites, or the Code of Practice for Environmental Risk Assessment for Unregulated Waste Disposal Sites. The report does not represent an application of the methodology described in the guidance. Re. details of all decontamination measures required to bring the site back to agricultural use – the response is that limited records from historical site investigation and drilling works are available. Fingal Co Co records indicate there may have been historical tipping in this area. The site is therefore not suited for return to agricultural use until it is subjected to categorisation, assessment and where necessary agreed mitigation and aftercare.

3.14.1. The Third Planning Report, (12/04/2021), recommending permission, includes:

- Reference to each item of FI and reports from sections,

- In the clarification, reference is made to an ongoing legal case regarding the part of the land for restoration, however an explanation has not been provided as to how that matter impedes the applicant carrying out the necessary site investigation works and the restoration works. Considering that Fingal Co. Co. records indicate there may have been historical tipping in this area, it cannot be said that the site is suited for return to agricultural use until subjected to categorisation, assessment and, where necessary, agreed mitigation and aftercare. Categorisation and assessment reports will be required before corrective action proposals can be agreed and this will be conditioned.

- It is considered that due to the deficiencies in the information submitted as part of the clarification of additional information, a permanent permission could not be considered appropriate in this instance. A temporary three year permission will be conditioned. The response to the item in respect of the hammermill is not considered satisfactory. Given the scale of this element and potential impacts, it is considered that it is warranted to include specific reference to it in the development description. However taking into account that it has been referenced on the drawings submitted with the application, and that only a temporary permission is being considered, its authorisation on this basis is deemed to be acceptable.

3.15. Prescribed Bodies

3.16. DAA– 26/03/2021 - Condition re. noise insulation.

### 3.17. Third Party Observations

3.17.1. Third party observations on the file have been read and noted. The issues raised in the third party appeal and observations on the appeal are similar to those raised in third party observations to the planning authority and are detailed in section 6 of this report.

## 4.0 Planning History

**FW19A/0135** – Application for planning permission withdrawn - 03 Oct 2019 - for; (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 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).

**F13A/0409** permission granted 25 Aug 2014 (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<sup>2</sup>) 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. Significant additional information received 25/06/2014. Expired 24<sup>th</sup> Aug 2019.

**F11A/0443** permission granted 25 May 2012 – 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, with the crushed bales stored on an adjacent mobile flat bed trailer (on concrete hardstanding), and all necessary site development works.

### Condition no 3

The development hereby permitted shall be for a period of three years only. On expiry of this period, the site shall be reinstated to the satisfaction of the Planning Authority and all temporary structures / equipment shall be removed.

Reason: In the interests of orderly development and to allow for sufficient monitoring of the site in question. Expired June 2015.

**F11A/0272** permission refused 05 Sep 2011, for 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).

#### Reasons:

1 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 change of use from a green waste storage building (as permitted on a temporary basis under F10A/0177) to use as a de-pollution / recovery building for end of life vehicles would therefore materially contravene the land use zoning objective for this site and as such would be contrary to the proper planning and sustainable development of the area.

2 Having regard to the nature and extent of existing development onsite (and the temporary planning permission granted under Reg. Ref: F10A/0177), the nature and extent of surrounding uses/development and the associated operations of Dublin Airport, it is considered that the proposed vehicle recovery facility with associated vehicle storage hard standing area, de-pollution kit and hydraulic ramp would represent a substantial deviation from the existing permitted operations on site and would result in a significant intensification of recycling operations and industry at this location. It is considered therefore, that the proposal would seriously injure the amenities of the area by way of noise, fumes, visual impact, additional traffic generation and general activity. The proposed development would 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 proposal would therefore seriously injure the amenities of the area and would be contrary to proper planning and sustainable development.

3 Insufficient information has been submitted regarding the foul sewer and surface water arrangements for the proposed development. In the absence of same, the proposed development is considered to be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

**F10A/0177** Permission & Retention granted 16 December 2010. Proposed development - retention 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. Significant information received on 6th September 2010. (Noted on file the development is currently operating outside the parameters of the permissions granted. The application is intended to regularise. The breach has arisen through a contract being awarded to Sandyhill Environmental Ltd to store and crush waste concrete slabs for re-use from the demolition of the Ballymun flats complex).

Condition no 2 retention & permission for three years. Expired 15 Dec 2013

**F05A/0233** refusal of permission, 19 Apr 2005, for the 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.

**F03A/1561** permission granted for permanent retention of 5 no. existing prefabricated single storey buildings, comprising office accommodation, canteens, toilets and weighbridge 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 F97A/0109. The site possesses a current EPA waste licence (EPA Licence No 134-1).



**F03A/1682** permission granted 17 Aug 2004 – proposed development - 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.

**F97A/0109** (third party appeal withdrawn, 06F.104750, file attached ) permission granted for retention of existing use with extension and alteration of existing buildings, alterations and widening of existing entrance and septic tank – waste recycling and transfer depot.

Conditions:

2 - Only inert non-domestic waste shall be delivered to the site. No fruit, vegetables or food waste whatsoever shall be delivered to the site. The facility shall be continuously monitored by the applicants to ensure that no bird-attracting waste shall be delivered to the site.

Reason: To ensure that birds (which could pose a hazard to air navigation) are not attracted to the site and to facilitate the safe operation of Dublin Airport.

3 - No scavenging shall be permitted on site.

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

8 - The annual throughput of waste authorised by this permission shall not exceed 10,000 tonnes.

Reason: To enable the Planning Authority to maintain effective control over the land use.

### **Waste Permit**

WFP-FG-13-0002-03 granted 5th September 2019

Third schedule disposal	
Class D15	Storage pending any of the operations numbered D1 to D14
Fourth schedule disposal	
R3	Recycling / reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes), which includes gasification and pyrolysis using the compounds as chemicals.
R4 (principal activity)	Recycling or reclamation of metals and metal compounds

R5	Recycling / reclamation of other inorganic materials, which includes soil cleaning resulting in recovery of soil and recycling of inorganic construction materials
R12	Exchange of waste for submission to any of the operations numbered R1 to R11
R13	Storage of waste pending any of the operations numbered R1 to R12
Third schedule part 1 permitted activity	
4 (principal class)	The reception, storage and recovery of scrap metal, including scrap metal arising from end-of-life vehicles and waste vehicles (other than end-of-life vehicles) excluding WEEE
7	Recovery of inert waste arising from construction and demolition activity, including concrete, bricks, tiles, or other such similar material at a facility (excluding land improvement or development).
9	The reception, temporary storage and recovery of used batteries and accumulators where: (a) From 26 <sup>th</sup> September 2008, the treatment and recycling of used batteries and accumulators meets the requirements of Article 12 of Directive 2006/66/EC on batteries and accumulators, and (b) The annual intake shall not exceed 1,000 tonnes.
10	The recovery of waste (not mentioned elsewhere in this part of the third schedule) other than hazardous waste or any activity where there is a scheduled requirement to hold an IPPC licence or a waste licence, where the annual intake does not exceed 50,000 tonnes
12	The collection and storage (including temporary storage) and the appropriate treatment and recovery of end-of-life vehicles in accordance with the provisions of articles 14 and 15 of the Waste Management (End-of Life Vehicles) Regulations 2006 (SI No 282 of 2006)

## 5.0 Policy Context

### 5.1. Development Plan

5.2. Fingal County Development Plan 2017-2023 is the operative plan. Relevant provisions include:

Zoning 'DA' Ensure efficient and effective operation and development of the airport in accordance with an approved Local Area Plan. Not permitted – waste disposal and recovery facility.

One of the strategic aims of the plan is to 'Safeguard the current and future operational, safety, and technical requirements of Dublin Airport and provide for its ongoing development within a sustainable development framework of a Local Area Plan. The plan shall take account of any potential impact on local communities and shall have regard to any wider environmental issues.'

The Dublin Airport (DA) zoning is a unique economic development zoning within Fingal, comprising an extensive area of some 1,024 ha. The DA zoning covers all the operational buildings and lands associated with the airport and runways. Within the lifetime of the Development Plan, the Council will prepare a LAP for Dublin Airport that will outline the future vision for the airport, examine its operational requirements and the associated environmental effects.

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

Justification for non-conforming use – planning history and quarry and recycling facility adjacent to Heathrow Airport under flight paths, and quarry and landfill adjacent to Belfast International Airport under flight paths.

### 5.3. Local Area Plan.

Dublin Airport Local Area Plan was adopted by the Council on 9<sup>th</sup> December 2019.

It notes that the Airport is of vital importance to the Irish economy and acts as the principal international gateway for trade, inward investment and tourism. In addition, the Airport facilitates Ireland's integration with Europe and aids in attracting foreign



direct investment. In the future, the Airport will facilitate Dublin in becoming an economic bridge between North America and Europe. Government Strategy set out in the National Planning Framework and the National Aviation Policy recognises the importance of growth at the Airport to future national prosperity. The Dublin Airport Economic Impact Study (DAA, April 2017) set out that Dublin Airport remains a major employment cluster and a nationally important strategic business location. The Airport is also the most important economic entity in Fingal and the wider Dublin City region.

Vision – ‘to facilitate and manage the sustainable growth of Dublin airport in a manner that reflects its status as Ireland’s premier aviation gateway whilst safeguarding the core operational function of the airport and supporting neighbouring communities, the economy and the environment’.

It is essential that the LAP safeguards the current and future operational, safety, technical and developmental requirements of Dublin Airport and provides for its on-going development within a sustainable development framework, having regard to both the environmental impact on local communities and the economic impact on businesses within the area.

Key Strategic Objective - Safeguarding - Safeguard the current and future operational, safety, technical and development requirements of Dublin Airport and provide for its ongoing development within a sustainable development framework, having regard to both the environmental impact on local communities and the economic impact on businesses within the area. Promote appropriate land use patterns in the vicinity of the flight paths serving the Airport, having regard to the precautionary principle, based on existing and anticipated environmental and safety impacts of aircraft movements.

#### **5.4. Directive 2000/53/EC on end-of life vehicles.**

EU rules which aim to make the dismantling and recycling of end-of-life vehicles more environmentally friendly.

Item (7) Member States should ensure that the last holder and/or owner can deliver the end-of life vehicle to an authorised treatment facility without any cost as a result of the vehicle having no or a negative, market value. Member States should ensure

that producers meet all, or a significant part of, the costs of the implementation of these measures; the normal functioning of market forces should not be hindered.

## **5.5. Natural Heritage Designations**

- 5.5.1. The nearest designated site is: Malahide Estuary SPA (site code 004025) & Malahide Estuary SAC (site code 000205), approx. 7km from the site, and Baldoyle Bay SPA (site code 004016) and SAC (site code 000199), approx. 400m north of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Third Party Appeal**

- 6.1.1. A 3rd party appeal has been submitted by Jerry Beades PC, 7<sup>th</sup> May 2020. The issues raised in the grounds include:
- Water for fire fighting – the incident was not notified.
  - Petrol filling station application FW20A/0120 not notified.
  - Containment of fire water – low level kerbing – even though all the surface water run off containing contaminants needs to be treated in what is an inadequate system at present on site before being released into the nearby ditches that lead into the water courses.
  - Use of well.
  - Location of percolation areas in adjoining lands.
  - The suggestion that the site team will reduce the amount of combustible material storage on site to an amount equivalent to the available water stored from rainwater runoff is totally inconceivable and that such a complete reduction would be implemented is totally unimaginable based on previous historical events.
  - Other combustible fluids were not included- petrol, diesel, brake fluids, gas cylinders, used engine oil and hydraulic oils as well as batteries that are known as being explosive by combusting from sparking.
  - Cars were stowed on racks outside approved boundaries.

- A serious fire incident occurred at this facility in 2018 and it is astounding that still almost three years after the event that an appropriate fire plan is not in place and that the planning authority are satisfied to again give temporary three year planning approval.
- FCC waste enforcement raise concerns as to what actual waste processing operations are taking place.
- The planning authority recognises that appropriate information was not submitted on the use of the hammermill, despite being requested as part of the additional information, and raises concerns over fragmentiser waste (fluff); particularly the after shredder residues (ASR) which is extremely toxic material and as it is light weight can be displaced easily by air. Appellant has submitted that other facilities that have these types of operations have an Industrial Emissions Licence.

## **6.2. Grounds of First Party Appeal**

6.3. An appeal against conditions has been submitted on behalf of the 1<sup>st</sup> party by Downey Planning. The issues raised in the grounds include:

6.3.1. Condition 2 – permission for temporary period:

- The application submitted was for permanent permission. The permission granted was for 3 years.
- The facility has been operating for over 20 years and has extended and evolved over time as a result of increased business demands.
- The continuation is sought for up to 24,900 tonnes per annum, up from 21,900 tonnes per annum. The infrastructure is in place that can easily accept the tonnage and that up to 60,000 tonnes of waste per annum was historically accepted on the subject lands.
- The facility does not and will not accept food waste (putrescible wastes) or green waste. The only organic / biodegradable waste stream accepted is wood/timber which is not a food source and therefore not deemed to be an attraction to scavenging birds. Wood chipping operations is carried out indoors and the handling and processing of all minor C&D waste skips is carried out undercover and indoors. There is no record of complaints/non-



compliance associated with bird nuisance. Continued implementation of waste acceptance procedure will safeguard against any unlikely bird nuisance.

- Planning permission for the continuation of waste processing and transfer has been granted on several occasions since 1997 and which were compliant with the policies and objectives of the Fingal Development Plan at those times.
- Objective Z05 of the Fingal Development Plan allows reasonable intensification of non-conforming uses.
- The DAA had no objection in principle to the application.
- Permanent permission will put an end to the costly reoccurrence and administrative burden of repeat applications, will provide job security to 20-25 employees and waste facility owners, safeguard an existing waste transfer and recycling centre and ensure it is available to the Fingal Area as part of national and regional policy guidance.
- It is one of only 3 authorised treatment facilities for ELVs in Fingal. Objective WM01 of the Fingal Development Plan seeks to facilitate sustainable expansion of existing authorised treatment facilities for ELVs in compliance with EU (End of Life Vehicles) Regulations 2014, other relevant legislation and the Eastern Midlands Regional Waste Management Plan 2015-2021.

6.3.2. Condition 5 – not for members of the public.

- Condition no 5 – it is essential for members of the public to have ease of access in order to ensure that the legally binding EU targets for reducing waste reaching landfill are met.
- Waste Facility Permit WFP-FG-13-0002-03 allows for members of the public to access the facility in order to deliver their end-of-life vehicles. It is anticipated that only a small portion of the public will use the facility on a regular basis and high levels of traffic are not anticipated. Members of the public will not proceed past the existing weighbridge/reception area and this is safe and appropriate. The site has ample temporary parking space.

6.3.3. Condition 11 – restricting hours of operation.

- A starting time of 9am is very restrictive. Refuse collection services operate during early hours of the morning to facilitate a swift collection outside peak traffic times. These companies then travel to St. Margaret's Recycling facility who manage their recyclable waste. It is important that the centre is open at 8am so that these deliveries can be received prior to peak commuting and school going times. The starting time of 8am would be in line with other similar facilities operating in the greater Dublin area.
- They request amendment of this condition to a starting time of 8am Monday – Saturday.

#### 6.4. **Applicant Response**

6.5. A response to the third party appeal has been submitted on behalf of the 1<sup>st</sup> party by Downey Planning. The response includes:

- They consider that the appeal should be dismissed for reasons which they outline.
- They respond to the issues raised under the headings:
  - Fire Safety
  - Waste Streams
  - EIA requirements
  - Noise
  - Land Restoration.
- In relation to Fire Safety – the size and locations of stockpiles on site, surface water run-off, water storage capacity, connections to the IW network for fire hydrants, and the images from a fire which took place on site - these issues have been reviewed by Fingal County Council during the course of their assessment.

Boylan Engineering have been retained to respond to these issues and their response to the grounds is attached as an appendix to Downey Planning's submission. The applicants have appointed Mr Brian Burke of 'Forward Fire

Engineering', to ensure all fire procedures and systems on site are regularly checked, monitored and updated where deemed necessary.

The applicants have been working tirelessly to ensure the highest standards of fire safety measures are always in place.

- Re. Waste Streams – it is unclear where the appellant got his information regarding Fingal Council's Waste Enforcement Section site visits. There are regular sites, (unannounced and announced), which are facilitated.

Re. the waste streams requirement for an Industrial Waste Licence; an Industrial Waste Licence is not required.

- EIA requirements – Fingal County Council and their consultants came to the conclusion that the proposed development is sub-threshold and that EIA is not required. Other throw away comments are made by the appellant. The fire incident in 2018 was an unfortunate event that shocked the applicants, who have since worked tirelessly to ensure no such incident ever happens again.
- Noise – they are of the opinion that the small office and welfare facilities are not noise sensitive uses, however they accept condition no. 7.
- Land Restoration – as outlined in their clarification of additional information, the issue of restoration of lands is subject to a legal dispute at present and has delayed the restoration process, which they fully intend to complete. They attach details in that regard.

5.5.1. Boylan Engineering – their response to the third party grounds of appeal, includes:

- Fire safety – response to request for additional information (by Derek McDonnell) includes that max. combustible waste pile sizes, based on available firefighting water on site is 158m<sup>3</sup>. The intention to obtain a connection to the Irish Water network to facilitate the provision of hydrants on site was stated. In the intervening period confirmation of feasibility has been obtained from IW for connection to the IW water network and the applicants' engineers are in the process of preparing a connection application.

Re. the proposed drainage system outlined in response to a further information request, the entire site has been designed to cater for a 1:100 year storm event with an allowance of 20% for climate change. In excess of



1000m<sup>3</sup> storage is proposed. Detailed calculations of each catchment area and associated conveyance and storage has been provided. The Fire Prevention plans provided in response to request for additional information clearly state that 'Fire Warden shall isolate surface water valve to prevent contamination.'

Re. the suitability for purpose, of the Derek McDonnell report – the applicant has appointed Mr Brian Burke of 'Forward Fire Engineering', to provide consultancy services in the practical application of the Fire Risk Assessment and to address and manage fire risk associated with its operations. The applicant has implemented a number of recommendations made by Forward Fire Engineering.

Storage of fire contaminated water will be in the proposed surface water network with a capacity in excess of 1000m<sup>3</sup>. Additional storage will be provided above ground via kerbing of the site. As the surface water network will be isolated from discharging, the storage of water in the facility will surcharge onto the yard. Provision of above ground storage of fire water (and long term surface water storage) is an accepted industry standard for events with a low likelihood of occurring. The statement that surface water or contaminated fire water would be released untreated to nearby ditches or watercourses is inaccurate and untrue.

Re. reduction in the amount of combustible materials stored – the FRA notes that combustible materials must be limited to stockpile sizes of 132m<sup>3</sup>. This does not limit the number of stockpiles. Provided separation distances are adhered to. Forward Fire Engineering to provide practical guidance.

- Waste streams - waste streams were based on tables given to the Environment Section for the Waste Facility Permit review application; codes were per their form, the second table was the materials accepted, processing activity and fate or final output. The planner's report states that the waste handling procedure submitted as part of the CAI (P5.2.B/WHANDLING) is not representative of the waste activities on site. The procedure does not include the use of the hammermill in the waste process. It does not show further processing to the fragmentiser waste (fluff). Also, it does not show processing

of cables, batteries etc. on site. A hammermill operating procedure is also attached however it is not detailed enough regarding what the inputs and outputs of the hammermill are. The information submitted contains contradictory information as to whether depolluted End-of-Life vehicles (ELVs) go through the hammermill or not. From a recent site inspection carried out by the Environment Section on 16/03/2021 ELVs do go through the hammermill but not all the time.

- The procedure referenced P5.2.B/WHANDLING was developed prior to commissioning of the hammermill, it does contain general instructions for handling metals. Batteries are covered by procedure P5.2.H/BATT. The processing of waste through the hammermill does produce a lighter fraction residue waste, List of Waste Codes (LoW) classification 19 10 04 (fluff-light fraction and dust other than those mentioned in 19 10 03). This was referenced in P5.2L/HAM, there is no further processing of this material onsite. It is removed from site for further recovery.
- It is noted that the processing table did not refer to ELVs being subjected to the shredder process (this is the source of 'contradictory' reference in the Planner's report). Procedure P5.2L/HAM does not distinguish sourcing input materials and the point is acknowledged from the site visit that some ELV dismantled material may be subject to shredding.
- The procedure from the environmental management system are part of a process for managing the environmental issues associated with activities onsite to ensure impacts are appropriately managed. Procedures are subject to continual development through review and update (plan-do-check-act). Site Management are engaging with Fingal County Council Environment Section on the procedure for the hammermill as submitted P5.2L/HAM, per section 2 of the Waste Facility Permit (WFP-FG-0002-03). Procedure P5.2.B/WHANDLING has been updated in accordance with Permit requirements, version 7, it clarifies that ELV material will not go through the shredder, consistent with the Tables submitted 16<sup>th</sup> March (see appendix C).

- Article 11 – the Article 11 Ref No 2155 was based on input quantities. The move from 21,900 to 24,000 tonnes per annum would not require afresh Article 11 declaration as the activity remains sub IE threshold.
- Condition 5 is the subject of the first party appeal. The current waste facility permit (WFP-FG-0002-03) allows for delivery of ELVs by its owner under condition 4.2. This is an important service to the public.
- Land reverting to agricultural use – condition no. 4 – samples were taken from the stockpile bunds associated with historical tipping and analysis detailed in the response for clarification of additional information. The results indicate that the stockpiles do not pose a risk to human health or the environment; but indicates that 300mm of soil is required and may be imported to the site. The legal case relates to historical tipped material and the outcomes will determine liability on costs for removal of this tipped material and by extension timeframes on restoration. The applicant will comply in full with further categorisation and restoration detail required by the Council as detailed in condition 4.
- IW – pre-connection enquiry.
- Forward Fire Engineering – re. their engagement by St Margaret's Recycling to act as their Fire Safety advisor.
- Procedure P5.2.C / WASTEHAND -

## **6.6. Planning Authority Response**

- 6.6.1. The planning authority has submitted a response, 20 July 2021, stating that they have no further comments to make.

## **6.7. Further Responses**

- 6.7.1. Jerry Beades PC has responded, 20 July 2021, to the issues raised in the first party grounds of appeal, the response includes:
- Re. the applicant's statement that they have enjoyed the benefit of planning permissions for 20 years, the facility had permission for recycling for a fixed period of



time, for dry recycling and transferring of C&D waste. It has morphed into full extensive scrap yard and is seeking permanency.

- Re. the argument that they have been compliant:
  - There have been exceedances of heavy metals and hydrocarbons in the watercourses, highlighted in the planning reports.
  - There was a major industrial fire, which created pollution in the area.
  - The facility has advertised and sold car parts to the public in breach of their planning conditions.
  - They have intensified their activities by processing scrap metals through stockpiling, fragging and shredding scrap whilst only having permission to bale and remove ELV de-polluted cars. They have built unauthorised units to house an unapproved shredding unit. This also creates an unregulated production of after shredder residue that is airborne fluff and is classified as a hazardous material per EWC codes of wastes.
  - They have entered adjoining lands and deposited unauthorised materials, including tyres, metals, containers, oil tanks, on these lands – photos refer.
  - They have continued to use agricultural lands for industrial activities, in non-compliance with conditions. The aerial photographs show further creep.
  - They claim to have accepted 60,000 tonnes annually as justification for permission; requiring an EPA licence. The withdrawn application was for 49,500 tonnes per annum.
- Re. the claim that the DAA had no objection in principle, the zoning is Z05, the activity is non-conforming.
- There are many facilities serving the Fingal area, future capacity is not in jeopardy.
- They seek supplies from other counties, not complying with proximity principle.
- The application has not dealt with the issue of water.
- Condition no. 5 is similar to that attached to F13A/0409, not appealed, and ignored by the applicant.

- There is no mention in the notices that the applicant intended to open the facility to the public and no supporting traffic information. They have previously breached the condition expressly not to engage with buying and selling car parts to the public. ELVs are not allowed on public roads. The withdrawn application FW 19A/0135 stated 'permanent planning permission is now being sought for an essential waste management facility to serve the Fingal Area and members of the public. It is essential for members of the public to have ease of access to a waste facility such as St Margaret's facility.' The observer is of the opinion that the applicant has already invited the public to enter and leave the premises creating additional traffic. Items of information are supplied.

- Operating times – the nearest house is just 41m from the entrance and the school is only 100m from the entrance. They did not provide a traffic management plan highlighting the need for special opening hours. It does not deal with municipal waste and there is no refuse collection services delivering to the facility and they have so informed the DAA so that no scavenging birds would interfere with the flight path to the airport. The opening time of 9 is more conducive to local needs. Saturday pm working should not be allowed.

- Retention of the hammermill was not referred to in the notices. The matter of airborne fluff has not been addressed.

6.7.2. Jerry Beades PC has responded, 20<sup>th</sup> July 2021, to the first party response to the third party grounds of appeal, the response includes:

- Detailing his interest in development.
- The Fire Prevention Assessment of Mr Derek McDonnell has been superceded but the Fire Prevention and Mitigation is draft and will not be finalised until June 2021 without the opportunity for review by external interested parties. The Boylan report (15<sup>th</sup> March 2021) refers to keeping waste piles to a max 132m<sup>3</sup> yet a site visit on 16<sup>th</sup> March 2021 records a stockpile of 1000m<sup>3</sup> of fragmentiser waste.
- The applicant infers that the council are aware of all activities and are satisfied with same. The reports do not support this. Planning report of 12<sup>th</sup> April 2021: states that the response by the applicant is 'not representative of the waste activities on site. The procedure does not include the use of hammermill in the waste process. It

does not show further fragmentiser waste (fluff), Also, it does not show the processing of cables, batteries, etc on site'. The response submitted by the applicant acknowledges that ELVs were subject to the shredder processes and refers to revised processes following a FCC site visit. Despite requests from FCC, the information was not adequate and the Council are still looking for full and detailed description of all waste processing activities on site.

- EIA – Fire in 2018, 8 tenders, not referred to in application, no stated re Major Accidents Regulations, airborne particles have not been addressed, ASR are known to be carcinogenic; exceedances of heavy metals and hydrocarbons in watercourses; unauthorised hammermill. Noise not addressed.
- Land restoration – despite permissions F10A/0177 and F13A/0409 conditions requiring restoration of some lands to agricultural use have not been complied with. It appears that they will not be restored until settlement of High Court dispute. It is not clear when the dispute commenced and not relevant to planning.
- The statutory notice did not refer to retention of hammermill, airborne fluff, or potential impacts on ground water.

## **6.8. Observations**

- 6.8.1. Observations on the appeals have been submitted by: John Griffin, John F Lynch and the DAA.
- 6.8.2. The DAA observation, 4 June 2021, requests that Conditions 7 and 9 be retained.
- 6.8.3. John Griffin's observation, 8 June 2021, includes:
  - Concerned about lack of clarity on the fire fighting capacity/infrastructure required to the proposed activities which are currently in breach of all planning conditions. This facility does not have approval to store vehicles on racks in the open. All such activity was supposed to be carried out within the sheds per F11A/0043. The planning granted under F13A/0409 required the applicant to liaise with the County Fire Officer. The applicant did not mention the major fire that occurred on this site in 2018 which required 8 units from Dublin Fire Brigade and Dublin Airport Fire Brigade to attend. Irish Independent report attached to observation.



- Concerned about clarification of additional information which states that they will be applying to IW for fire hydrant supplies. These issues should have been addressed 5 years ago and not if they get planning approval.
- Most of the lands covered by this application are supposed to be for agricultural use. An extension to the C&D facility was granted for three years on the condition that it would be returned to agricultural use. This did not happen and an additional temporary permission for 5 years was granted (F13A/0409). It is astounding that FCC has not commenced enforcement proceedings for continuous breaches of planning permission. There is no incentive for them to comply.
- Concerned about the environmental impact this facility could be having on the local area. The curtailing of exceedances of the volume of material being handled must be firmly applied.
- Adjoining lands are ploughed for food produce, observer is concerned about that. Initially the applicant was involved in C&D waste but in 2011 applied for an ELV facility, and was granted for the use within sheds. Since then the site has turned into a massive scrap yard, with metals, plastics, the shredding of materials in the open and other recycling activities taking place and no apparent air/water monitoring. It is not clear what materials are coming from this site that could be impacting the surroundings, airborne or seepage. The facility handles tyres, batteries, hydrocarbon oils, coolants, brake linings which could contain asbestos, and no assessment of their impacts.
- The same land owners have planning application for a full scale petrol station beside this site. A full EIS should be carried out.
- The letters from IW and DAA are not relevant as they preceded further information requests.

6.8.4. John F Lynch's observation, 8 June 2021, includes:

- The applicant admits to not carrying out conditions and the council reward him by another grant of planning.
- This activity should be carried out in an industrial zoned area.

- It is not clear from the plans how waste water or surface water is being handled or how much of this contaminated water will find it's way into the groundwater or natural drains. Tanks, trailers and other vehicles are stored in the open and not on concrete.
- They were asked to check with the EPA as part of the application that their activity was suitable for a Waste Permit, but they did not do so in the current application period.

6.8.5. The DAA has responded, 16 July 2021, to the first party response to the third party grounds of appeal, noting particularly section 3.4 noise, and has no further response to make.

6.8.6. John Griffin has submitted, 20 July 2021, a second observation on the first party appeal, which includes:

Generally supporting the third party appeal.

Surface water even if it goes through an attenuation tank will be contaminated because of the material that is stored in the concrete yards and surface areas. The applicants have commenced further industrial processing within these areas of scrap, whether its cars, parts of cars, scrap, that can contain all kinds of either water-soluble contaminants or those transported by water. In case of a fire in any section of the yard or shed, then additional water from the hydrants will also need to be dealt with by the attenuation system. This water will need to be treated and not released to the local rivers and streams.

Supports Mr Beades in his submission re. the well and percolation area being in different land registry deeds, and that the well was also used for land irrigation.

Concern re. unregulated use of the hammermill / shredder and its residues.

Re. legal dispute, when did it start? There is no mention of it in F13A/0409. It should not be accepted as a reason for failure to comply with conditions.

Other issues raised reiterate those already made in the earlier observation on grounds of appeal.

A break-in may result in an arson attack to cover up the crime and may result in a major fire incident.

The zoning for the area is not suitable for the activities being performed and they are totally inappropriate, and the applicants are not forthcoming in dealing with queries or tonnages genuinely being processed and the methods used at this facility.

6.8.7. John F Lynch has submitted, 20 July 2021, a second observation on the first party appeal, which includes:

Generally supporting the third party appeal.

The applicants indicate that because of the passage of time they could not rely on retention.

The applicant has referred to intensification of activities rather than extensification of the site as a justification for change in processing procedures but this has not been the case.

Retention will have longer term implications for a major national infrastructural asset Dublin Airport.

Hours of operation should be regulated and reduced at weekend.

Any ELV should be delivered at a pre-arranged time, transported via a car carrying specialist.

The documentation falls short of any legitimate standard.

Outstanding planning conditions should first be complied with. The applicant should not use third party land issues or disputes as an excuse for not complying.

## **7.0 Assessment**

7.1.1. I have read the file and visited the site and I consider that the issues which arise in relation to this appeal are: appropriate assessment, the principle of the development, and environmental impact assessment and the following assessment is dealt with under those headings.



## **7.2. Appropriate Assessment**

### **7.2.1. The development as described in the public notices comprises:**

Retention planning permission and planning permission is sought by St Margarets Recycling & Transfer Centre Ltd at St Margarets Metal Recycling Sandyhill, St Margarets, Co Dublin. 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.

### **7.2.2. The application is accompanied by a Screening Report for Appropriate Assessment prepared by Openfield Ecological Services, dated February 2020, and, in response to a request for further information, a Screening Report for Appropriate Assessment prepared by Openfield Ecological Services, dated September 2020, which revises the earlier report. It includes:**

The Natura 2000 sites identified for examination by having a hydrological pathway from the subject site are Malahide Estuary SAC (site code 0205) and SPA (site code 4025). There are no direct or indirect pathways to any other Natura sites.

The report cites the published description of the development, and describes the construction phase of the development. It states that the surface water system complies with the Greater Dublin Strategic Drainage System (GDSDS) and that no

impacts to surface water are therefore likely to occur. The wastewater from the canteen and toilets will be treated on-site. Water for domestic purposes will be from the mains.

The proposed development will not result in direct impacts to habitats within any designated site. Site specific conservation objectives have been set for the Malahide Estuary SAC and SPA and none of these objectives relates to water quality. There is no evidence that poor water quality in the Malahide Estuary is negatively affecting habitat or bird populations.

Pollution during construction is considered. The Hartstown Stream runs 460m north of the site boundary and there is a pathway to this area from the subject lands via the drainage ditch which passes through a portion of the site. Any impact is likely to be temporary in nature and will not affect estuarine areas downstream. Deposition of silt is a natural feature of estuaries and high value intertidal habitats such as mudflats depend on vast quantities of sediment to maintain their structure and functioning. There will be no exposure of large quantities of soil as the development site is already of hard standing. There will be no significant effect to water quality arising from this source. During normal operation the use of SUDS techniques, and compliance with the Greater Dublin Strategic Drainage System in the design of the project, will ensure that negative effects to water quality do not arise from surface water run-off. These are not mitigation measures in the AA context.

### 7.3. Assessment

- 7.3.1. The development which involves acceptance, treatment and export off site of large amounts of waste materials, is not supported by sufficient detail on the materials accepted at the site, the processing which will be carried on, the emissions from these processes to air and water, to enable any meaningful assessment of potential impacts on protected sites. The potential for firewater to be discharged from the site, is not fully considered in the current design and cannot therefore be assessed in terms of its potential impact downstream, including on protected sites, via the identified hydrological pathway.
- 7.3.2. In my opinion the Board does not have before it sufficient information to carry out screening for appropriate assessment.

#### **7.4. Principle of the Development**

- 7.4.1. From the planning history of the site there is currently planning permission to Fingal Waste Recycling Ltd, dating from February 26<sup>th</sup> 1998 (97A/0109) for retention of existing use with extension and alteration of existing buildings and widening of existing entrance and septic tank, to waste recycling and transfer depot.

Condition no 2 states only inert non-domestic waste shall be delivered to the site. No fruit, vegetables or food waste whatsoever shall be delivered to the site. The facility shall be continuously monitored by the applicants to ensure that no bird-attracting waste shall be delivered to the site.

Reason: To ensure that birds (which could pose a hazard to air navigation) are not attracted to the site and to facilitate the safe operation of Dublin Airport.

Condition no 8 states that the annual throughput of waste authorised by this permission shall not exceed 10,000 tonnes.

Reason: To enable the Planning Authority to maintain effective control over the lane (land) use.

(Notice of withdrawal of appeal (ref 06F.104750) dated 13<sup>th</sup> February 1998).

- 7.4.2. The successive planning permissions for use at this site, granted since that time, have been temporary permissions and have now expired. Accordingly the use of the site for recycling or operations related to processing, storage etc of materials other than inert non-domestic waste to a maximum of 10,000 tonnes per annum, falls to be considered against the background of current policies and standards including the Fingal County Development Plan 2017-2023.

- 7.4.3. It is worth noting that the planning authority's decision was to grant a further temporary permission. The application was for permanent permission. Conditions attached to the decision to grant permission, including its temporary duration, have been appealed by the applicant.

- 7.4.4. The zoning of the area in the current Fingal County Development Plan is 'DA' 'to ensure efficient and effective operation and development of the airport in accordance with an approved Local Area Plan'.

The Vision is: 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 hangers, meteorology, retail – airside/duty free, runways, taxiways, terminals and piers.

Not permitted Waste Disposal and Recovery Facility (Excluding High Impact), Waste Disposal and Recovery Facility (High Impact).

Footnotes:

Uses which are neither 'Permitted in Principle' nor 'Not Permitted' will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision and their compliance and consistency with the policies and objectives of the Development Plan.

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

7.5. A Local Area Plan has been adopted for the area.

Key Strategic Objectives set out under heading of safeguarding:

Support for airport safeguarding.

Support the continued sustainable growth of Dublin Airport and connectivity as a hub airport whilst ensuring protection of the environment.

Support the timely delivery of required infrastructure to facilitate airport growth.

Support the growth of the Airport as a major economic driver for the region.



Support continued communication between the Airport and neighbouring communities to protect community amenity and mitigate potential impact from airport growth in the interests of long term sustainability.

It is clearly established within national policy documents that the managed growth of Dublin Airport is critical to the economic well-being of the state. It is further demonstrated that the success of the Dublin region is intrinsically linked to the accessibility provided by the Airport. In addition, the Airport itself is a significant economic generator of income and employment. The Airport is the largest employer in Fingal and the economic status of the County is enhanced through the significant accessibility provided to the Airport in addition to the spin-off benefits accrued in the form of employment, housing demand, salary distribution which result in increased economic activity. Protection of the core function of the Airport is a key objective of the LAP in order to ensure that the significant investment required to ensure sustainable growth is utilised equitably for the benefit of the nation, region and County.

Objective ED01 Ensure an appropriate balance is achieved between developing the unique potential of Dublin Airport as an economic generator and major employer in the County and protecting the core operational function as the Country's main international airport.

Objective ED03 Engage with and support aviation uses associated with Dublin Airport to create quality and easily accessible employment opportunities for Fingal residents.

Environmental Resources Management [ERM] Report 2005. Specifically, this ERM Report provides guidance on the potential use and scale of development that may be considered appropriate within these zones.

Objective DA10 Restrict development which would give rise to conflicts with aircraft movements on environmental or safety grounds on lands in the vicinity of the Airport and on the main flight paths serving the Airport, and in particular restrict residential development in areas likely to be affected by levels of noise inappropriate to residential use.

Objective DA13 Promote appropriate land use patterns in the vicinity of the flight paths serving the Airport, having regard to the precautionary principle, based on existing and anticipated environmental and safety impacts of aircraft movements.

Not permitted – waste disposal and recovery facility.

- 7.5.1. In relation to objective Z05 and Non-Conforming Uses - the proposed development is not a reasonable intensification or a reasonable extension. The proposed development is not a minor extension or alteration to an existing property. It is a very significant use and is not compatible with aviation activities. It is also a material intensification of use. The volume along of 24,900 tonnes per annum when compared with the permitted annual throughput of waste not exceeding 10,000 tonnes, is a multiple of 2.5 times the permitted use. The nature of the proposed waste intake and the processing carried out on site is also a material intensification of the permitted use and would be likely to have a material impact on Dublin Airport.
- 7.5.2. In my opinion the proposed development is not acceptable in principle and this is a reason to refuse permission.

## **7.6. Environmental Impact Assessment**

- 7.6.1. The application was accompanied by an EIA screening report which considered the:
- Characteristics of proposed development,
- Location of proposed development, and
- Types and characteristics of potential impacts,
- largely in terms of the proposed construction works only.
- 7.6.2. The need for Environmental Impact Assessment and the preparation of an EIAR was considered by the planning authority. The first planning report notes that the proposed development does not meet the requirements for mandatory EIA under part 1 of schedule 5 of the Planning and Development Regulations 2001. Class 11 (b) of part 2 of schedule 5 of the Regulations lists 'installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule'. The proposed development is for acceptance of 24,900 tonnes per annum. 99.6% of the threshold. Class 11 (e) of part 2 of schedule 5 of the

Regulations lists 'storage of scrap metal, including scrap vehicles where the site area would be greater than 5 hectares'. The site of 2.93ha is below the threshold.

- 7.6.3. The further information request which issued, requested the applicant to submit revised proposals for reduced intake, having regard to the threshold for EIA of 25,000, and to ensure an adequate buffer is maintained in the protection of the environment.
- 7.6.4. The revised proposal was for 24,000 tonnes. The further information requested information on waste currently accepted and processed on site, including volumes. This information was not provided for the current waste but was provided for the proposed situation. A recent application for planning permission which was withdrawn ref. FW19A/0135 for the permanent continuation of use of the existing and permitted waste processing and transfer facility at St. Margaret's, and an increase in waste throughput at the facility (to accept up to 49,500 tonnes per annum), highlighted that the existing development has handled volumes of 36,391 tonnes.
- 7.6.5. The report of the Executive Scientist – 05/11/2020 – states that *'the Environment Division highlights that the facility breached the waste-in limit of 21,900 tonnes set out in the waste facility permit WFP-FG-13-0002-02 in 2018 (36,391.18 tonnes) and also breached the waste-in limit of 21,900 tonnes set out in the current waste facility permit WFP-FG-13-0002-03 in 2019 (30,736.67 tonnes)'* and also noted the waste-in figures to the date of the report (17,631.88 tonnes).
- 7.6.6. In the first party appeal it is stated that the infrastructure is in place that can easily accept the tonnage and that up to 60,000 tonnes of waste per annum was historically accepted on the subject lands.
- 7.6.7. 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.

7.6.8. As presented, the proposed development falls within a class of development under Schedule 5, and therefore requires screening to determine whether it is likely to have significant effects on the environment.

## 7.7. EIA Screening

7.7.1. Based on the information presented with the application and appeal, the following screening for EIA is set out.

### a) Description of the proposed development:

Although the description of the materials currently accepted at the facility and the nature of the processes carried on are not detailed, it can be taken from the information available that a major operation at the facility is the intake and processing of end-of-life-vehicles. Some of the processes carried out are: de-polluting the vehicles, that is draining the various fluids; shredding the vehicles, in which operation the hammermill is involved; and shredding car tyres which are made into pellets. All these processes are likely to involve significant emissions. The information available on these activities is deficient.

Details of other operations, including the intake and treatment of C&D waste, is also deficient.

No information is provided in relation to onward flow of waste.

It is stated that the site intends to continue to accept members of the general public as customers, (as may be envisaged by the end-of-life-vehicles directive), but no details of the likely numbers of customers or the marketing of the facility for customers, is provided.

The scale of the proposed development, as currently proposed, is only marginally below the threshold, at which EIA is required. According to documentation on the file it is currently operating well above the threshold at which EIA is required.

### b) Description of the aspects of the environment likely to be significantly affected by the proposed development:

Having regard to the level of detail available it is difficult to comprehensively assess the aspects of the environment likely to be significantly affected. It is to be expected that the general operations at the site would generate dust (including processing of C&D waste), no data on dust measurement or monitoring is provided.



There is potential for air to be affected from the volatilization of hydrocarbons, arising from the de-pollution operations. No information is provided in this regard.

There is potential for air to be affected arising from tiny particles of metal, rubber and other materials becoming airborne, when the shredding of car bodies and tyres is taking place. No information is provided in this regard.

Fire, is a significant risk, and in the context of the site location, the potential impact on the functioning of Dublin Airport is a particular concern which needs to be addressed. Insufficient information is provided in this regard.

The potential for soil to be significantly affected cannot be discounted.

The nature and particle size of emissions from the hammermill processing area, the air dispersion and landfall of airborne particles, needs to be considered. No information is provided in this regard.

There are likely to be significant affects on surface water arising from surface run-off from the site. The drainage system currently in place is inadequate and this matter is being addressed in part in the additional drainage measures currently proposed. The information submitted is not detailed and does not include in sufficient detail the volume and composition of runoff from the site during normal operations, its collection, containment, treatment and disposal; or the likely volume and composition of runoff of fire water (i.e. water used for fire fighting) from the site, its collection, containment, treatment and disposal.

Information on existing conditions, including the flows in the streams into which the drainage will discharge, and the likely impact of the discharges on these natural waters, is required in order to assess the impact of the proposed development. No information is provided in this regard.

c) the likely significant effects of the proposed development on the environment are:

- deterioration in air quality,
- deterioration in surface water quality,
- risk of fire.

d) features or measures envisaged to avoid or prevent a significant adverse effect on the environment, which may be taken into account when determining whether an EIAR is required:

- proposals to improve surface water runoff collection and treatment,
- proposals, not yet developed, to address fire risk,
- the requirement, stated in the planning authority reports, for the waste licence to be reviewed.

#### 7.7.2. Conclusion of Screening

Having regard to: the characteristics of proposed development: the size, which as presented is marginally below the threshold at which EIA is mandatory; the production of waste, and the likelihood of discharge of pollution and nuisances to air and water; the sensitivity of the location and its proximity to Dublin Airport, an existing and approved land use; and the types and characteristics of potential impacts, including fire risk; it is considered that the proposed development should be subject to an environmental impact assessment.

The Board should note that this application is for retention. In the case of retention requiring EIA it is necessary for the applicant to apply for leave to apply for substitute consent.

### 8.0 Recommendation

- 8.1. In the light of the foregoing assessment I recommend that planning permission be refused for the following reasons and considerations.

### 9.0 Reasons and Considerations

1 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 materially contravene the land use zoning objective for this site and as such would be contrary to the proper planning and sustainable development of the area.

2 It is considered that the proposed retention would seriously injure the amenities of the area by way of noise, fumes, additional traffic generation and general activity. The proposed development would 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)'; and would accordingly be contrary to proper planning and sustainable development of the area.

3 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, including impact on protected sites; accordingly the proposed development would be contrary to the proper planning and sustainable development of the area.

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Planning Inspector

23 September 2021

Appendices:

Appendix 1 Photographs

Appendix 2 Fingal Development Plan 2017-2023 extract.

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**THE HIGH COURT  
JUDICIAL REVIEW**

**[2024] IEHC 94**

**[RECORD NO: 2022/58JR]**

**IN THE MATTER OF SECTION 50 OF THE  
PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED**

**BETWEEN:**

**ST. MARGARET'S RECYCLING AND TRANSFER CENTRE LIMITED**

**APPLICANT**

**AND**

**AN BORD PLEANÁLA**

**RESPONDENT**

**JUDGMENT OF Ms. Justice Siobhán Phelan, delivered on the 20th day of  
February, 2024**

**INTRODUCTION**

1. The Applicant challenges the Board's decision pursuant to section 37 of the Planning and Development Act 2000, as amended ("the 2000 Act") to refuse permission, on appeal, to the Applicant for, *inter alia*, retention permission for the permanent continuation of the use of the existing waste processing and transfer facility and the continued use of the existing buildings on site associated with same; and planning permission for new proposed stormwater attenuation storage tanks and associated stormwater treatment infrastructure ("the development").

2. The waste processing and transfer facility has been in operation at its current location at Sandyhill, St. Margaret's, County Dublin, in proximity to Dublin Airport for more than 24 years. Since planning permission was originally granted, it has benefitted from a series of time-limited grants of planning permission and a waste licence issued by the Environmental Protection Agency. The zoning in the Fingal County Development Plan 2017-2023 (hereinafter "the CDP") for the site location is recorded as "DA" – Dublin Airport, the objective of which is to ensure the efficient and effective operation and development of the airport in

accordance with the adopted Dublin Airport Local Area Plan. The site extends to an area of in or about 2.93 Ha.

3. In the decision under appeal to the Respondent, the local authority granted retention permission subject to seventeen conditions including a condition restricting the grant of permission for a period of three years. Appeals were pursued by a third-party objector, who appealed against the grant of permission, and by the Applicant who appealed against three of the conditions imposed, including the condition restricting the duration of the permission to three years.

4. The Respondent's decision to refuse permission was based on the Inspector's Report in which it was found, *inter alia*, that the proposed use materially contravened land use zoning objectives for the site and that insufficient information had 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, including impact on protected sites.

5. The decision to refuse is challenged in these proceedings on the basis, *inter alia*, that the treatment of the zoning issue was "*seriously defective*" and the Respondent erred in law and fact in concluding that it had insufficient information to screen for Appropriate Assessment (hereinafter "AA") or Environmental Impact Assessment (hereinafter "EIA").

## **BACKGROUND AND CHRONOLOGY**

6. Planning permission for the facility was first granted in 1998 on foot of an application for retention (F97A/0109). This grant permitted 10,000 tonnes of annual waste to be processed at the Facility. It was a further condition of the permission granted that only inert no-domestic waste would be delivered to the site. This permission was not subject to a temporary period.

7. Since then, several planning permissions have been granted allowing for the expansion of the facility, except for a small number of grants in respect of an expanded site area and infrastructure, these have been time-limited grants of permission relating to use which have required successive applications.

8. Accordingly, in August, 2004, permission was granted for the retention of an existing stone road and stone area for use as agricultural storage, hard standing for use as parking of trucks ancillary to waste transfer depot on an adjacent site (F03A/1682). Permission was also given for retention of single storey buildings comprising office accommodation, canteens, toilets, weighbridge control room, securing fencing and skip storage on an enlarged site encompassing the site previously granted permission under (F97A/0109). Notably, permission granted in 2004 did not expand on the weight or nature of waste throughput permitted under the original permission.

9. Further development on site was refused in April, 2005 when permission was refused for the development of a concrete batching plant, bunded fuel oil tank, storage bays, water recycling unit and other associated works (F05A/0233).

10. In December, 2010, a 3-year permission and retention permission was granted to regularise onsite facilities then operating outside the permissions previously granted for the site (expired in December, 2013). This permission was conditioned on the basis that the annual throughput for all waste streams on site would not exceed 25,000 tonnes per annum. It also provided that only inert non-domestic waste be delivered to the site.

11. In September, 2011 permission was refused for change of use of existing green waste storage building to a de-pollution/recovery building for end-of-life vehicles (hereinafter "ELVs") (F10A/0177) on the basis, *inter alia*, that this would contravene land use zoning objectives for the site.

12. In May, 2012 a 3-year permission was granted for the establishment of an authorised treatment facility for the de-pollution /recovery of ELVs (F11A/0443). It was a condition of the permission that upon its expiry the site be reinstated to the satisfaction of the Planning Authority.

13. Most recently, in August, 2014, a 5-year permission was given (expiring in August, 2019) for the continuation of use of the waste facility (FA1A/0409). This permission authorised, *inter alia*, a throughput of waste not exceeding 21,900 tonnes per annum.

14. An application for permanent continuation of use of the existing waste processing and transfer facility with an increase in waste to accept up to 49,500 tonnes per annum was submitted under Reg. Ref. FW 191/0135 but subsequently withdrawn (in or about October, 2019). There is very little information on the Planning File in relation to this application but it is referred to. It appears that EIAR was submitted in support of this withdrawn application.

15. From the documentation on the Planning File it is clear that although the Environmental Protection Agency (EPA) granted a waste licence authorising reception of up to 60,000 tonnes of waste per annum in 2001, during the period 1998 to date the maximum annual throughput of waste permitted under planning permission has been 25,000 tonnes (pursuant to a temporary 3-year permission granted in 2010).

16. The current waste facility permit in place issued in July, 2019 for a 5-year period and it recites that the maximum amount of waste to be accepted at the facility per annum is 21,900 tonnes. As documented on file, however, it is accepted that waste in excess of limits fixed as conditions of planning have been handled on site. A previous EIAR provided for the development under Reg. Ref. FW 191/0135, referred to in the Inspector's Report, highlighted that the development had handled volumes of 36,391 tonnes.

17. On the 27<sup>th</sup> of February, 2020, after the expiry of the previous 5-year permission granted in August, 2014, and having withdrawn an application for waste processing at levels of up to 46,900, the Applicant made an application to the Planning Authority for retention and planning permission. The application sought permission for the permanent continuation of the use of the existing waste processing and transfer facility for the bulking, transfer and recycling of metals, construction and demolition waste, bulky/skip waste and an authorised treatment facility for ELVs, accepting 24,900 tonnes of waste per annum. Retention permission was 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, existing site services, boundary treatments and all ancillary site development works necessary to facilitate the development already erected. In addition, planning permission was sought for new proposed stormwater attenuation storage tanks and associated stormwater treatment infrastructure to serve existing development, with permission also sought to restore part of the lands to agricultural use.



18. A detailed planning statement was prepared by the Applicant's planning consultants in support of the application. In this statement reliance was placed on the nature of the permissions on site which over time "*essentially would equate to a permanent permission*". It was stated that the facility had been compliant with planning and regulatory guidelines since 1997. It was stated that while waste disposal and recovery is not permitted under the CDP 1917-2023, activity at the subject site represents a non-conforming land use under Objective Z05 and was permissible as:

*"...the principle of a recycling facility at St. Margaret's Recycling as a non-conforming use was established and permitted in the previous grant of permission on the lands in 2014 by Fingal County Council. It can be considered that the proposed continuation of use of the existing facility can be considered an appropriate and acceptable use on the subject lands in accordance with Objective Z05 of the Fingal County Development Plan 2017-2023. The existing recycling facility is an established use on the lands for nearly 23 years with all existing services including existing buildings, hardstanding, weighbridge etc. in place."*

19. In the Planning Statement repeated reference was made to the fact that waste material of up to 60,000 tonnes had been previously been accepted on the site whilst at the same time it was maintained that the use was in accordance with planning permission. The incongruity of an assertion of compliance with planning permission in accepting waste of up to 60,000 when the maximum waste throughout permitted under a planning permission over the life span of the site was 25,000 tonnes per annum was not addressed. The Planning Statement asserted that the use on site was "*currently operated under and in accordance with temporary planning permission Reg. Ref. F13A/0409*" and did not address the fact that as of the date of the submission of the Planning Statement in February, 2020, the said planning permission had expired.

20. The significance of a waste throughput of 24,900 tonnes per annum in the application is that it was just below the threshold for mandatory EIA. EIA is required for installations with an intake of 25,000 tonnes or more per annum (Class 11(b), Part 2, Schedule 5 of the Planning and Development Regulations 2001 (S.I. 600 of 2001)(as amended) (hereinafter "the PDR, 2001"). In response to the Planning Authority's request for further information in which reference was made to the fact that the quantity of the waste for which permission was sought

was at 99.6% of the threshold at which mandatory EIA is required and a request for a reduced intake of waste to ensure an adequate buffer, the Applicant confirmed by letter dated the 18<sup>th</sup> of September, 2020 that it was revising its application to seek permission to accept up to 24,000 tonnes of waste per annum at the Facility (reduced from 24,900 sought in the original application submitted). At levels of waste of less than 25,000 tonnes per annum the proposed development is a sub-threshold development for the purposes of mandatory EIA but an EIA may still be required where it is considered that the development is likely to have significant effects on the environment. Accordingly, the PDR, 2001 provides for screening of sub-threshold development for EIA. Schedules 7 and 7A of the PDR, 2001 identifies the information to be provided by the developer for the purposes of screening the sub-threshold development and the criteria for determining whether development should be subject to EIA.

21. In this case the application for permission was accompanied by, *inter alia*, screening reports for EIA and AA. The EIA and AA screening reports submitted with the application were updated in response to the request for further information from the Planning Authority and a subsequent request for clarification of the further information.

22. In the EIA screening report submitted in September, 2020 it was stated:

*“the proposed development is essentially the same development permitted under Reg. Ref. F13A/0409 which was granted for a temporary period of five years only which has now expired. The permitted development was previously screened for an Environmental Impact Assessment and was confirmed as sub-threshold for the purpose of EIA. The proposed development for a waste recycling facility accepting up to 24,000 tonnes remains sub-threshold for the purpose of EIA.”*

23. The EIA screening report concluded that the proposed development is not likely to have significant effects on the environment and a full EIAR is not required to be prepared as part of the planning application.

24. Similarly, the updated AA Screening Report submitted in September, 2020 following a request for further information from the Planning Authority, stated:

*“this development will not add to any pressure in the catchment area that could act in combination to result in significant effects to Natura 2000 sites.”*

25. It was noted:

*“This proposed development is not located within or directly adjacent to any SAC or SPA but pathways do exist to a number of these areas. An assessment of project has shown that significant negative effects are not likely to occur to these areas either alone or in combination with other plans or projects. No mitigation measures have been relied upon to arrive at this assessment.”*

26. In its consideration of the application the subject of these proceedings the Planning Authority engaged its own Environmental and Planning Consultants to review the AA and EIA screening reports submitted. Having assessed the information and noted the reduction to 24,000 tonnes waste, the Planning Authority concluded that a full EIAR was not required for the proposed development. It further found that a Stage II AA was not required. Notwithstanding these conclusions, the Planning Authority noted some deficiencies in the information provided specifically relating to fire safety and the restoration of parts of the land to agricultural use as recorded in the Planning Officer’s Report.

27. Separately, the Planning Authority also considered the question of non-conforming use under the CDP noting that the extent to which uses may reasonably be extended and improved is governed by Objective Z05 of the CDP 2017-2023. The Planning Authority accepted that the continued operation on the site over a period exceeding 22 years and the stated objectives of the CDP in terms of non-confirming use meant that the continuation of use of the development was acceptable in principle, subject to assessment.

28. On the 12<sup>th</sup> of April, 2021, the Planning Authority made a decision to grant permission, subject to 17 conditions. One of these, condition 2, restricted the grant of permission for a period of three years from the date of final grant. The reason given for not granting full permission as recorded in the Planning Report was:

*“it is considered that due to the deficiencies in the information submitted as part of the clarification of additional information, a permanent permission could not be*

*considered appropriate in this instance. A temporary three-year permission will be conditioned along with conditions for the submission of required information particularly in respect of land restoration, fire prevention, noise impact and waste streams with the additional information and assessments to be submitted and agreed with the Planning Authority within set timeframes...*

29. Appeals to the Respondent against the decision were lodged by both the Applicant and a Third Party. The Third-Party appeal was lodged by letter dated the 7<sup>th</sup> of May, 2021. In his detailed appeal the Third Party observed that:

*“the facility has transformed from dry recycling facility of construction demolition waste into a major scrap yard. The industrialisation and change of activities on the site have not been permitted through the normal planning process and the continuation of such activities that involves the [sic] industrial processing can not be deemed to be exempt from environmental risk assessment based on a tonnage figures.”*

30. In its Appeal submitted by letter dated the 10<sup>th</sup> of May, 2021 the Applicant sought a permanent grant of permission.

31. The Respondent appointed an inspector to prepare a report in respect of the appeal. In her detailed report dated the 23<sup>rd</sup> of September, 2021, the Inspector summarised in some detail the site location and description, the proposed development, the reports on the planning authority’s file including clarification responses and additional information provided leading to the decision of the planning authority to grant retention permission. She set out the planning history and the policy context including the relevant parts of the Development Plan. Under Policy Context she correctly identified the Fingal County Development Plan 2017-2023 as the operative plan. In assessing the appeal she focussed on AA, the principle of development (zoning) and EIA.

32. In relation to the AA Screening, the Inspector identified gaps in information available noting:

*“the development which involves acceptance, treatment and export off site of large amounts of waste materials, is not supported by sufficient detail on the materials*



*accepted at the site, the processing which will be carried on, the emissions from these processes to air and water, to enable any meaningful assessment of potential impacts on protected sites. The potential for firewater to be discharged from the site, is not fully considered in the current design and cannot therefore be assessed in terms of its potential impact downstream, including on protected sites, via the identified hydrological pathway. In my opinion the Board does not have before it sufficient information to carry out screening for appropriate assessment."*

33. On the EIA question, the Inspector observed that there had been a higher throughput of waste than permitted in previous years (exceeding EIA threshold figures). She said:

*"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 state 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."*

34. Considering the zoning question under the heading "*Principle of Development*", she identified the current permission as the 1998 permission permitting a throughput of waste not exceeding 10,000 tonnes, pointing out that successive planning permissions since then have been temporary permissions which had expired. She stated that this permitted use fell to be considered against the background of current policies and standards including the then current CDP identified as the Fingal County Development Plan 2017-2023. She noted that waste facility and recovery is not a permitted use under the CDP but considered Objective Z05 and the exception provided for non-conforming uses before stating:

*"The proposed development is not a reasonable intensification or a reasonable extension. The proposed development is not a minor extension or alteration to an existing property. It is a very significant use and is not compatible with aviation activities. It is also a material intensification of use. The volume along [sic] of 24,900 tonnes per annum when compared with the permitted annual throughput of waste not*

*exceeding 10,000 tonnes, is a multiple of 2.5 times the permitted use. The nature of the proposed waste intake and the processing carried out on site is also a material intensification of the permitted use and would be likely to have a material impact on Dublin Airport. In my opinion the proposed development is not acceptable in principle and this is a reason to refuse permission."*

35. By its Direction of the 6<sup>th</sup> of December, 2021, the Respondent recorded that it decided to refuse permission "*generally in accordance with the Inspector's recommendation*". The Decision of the 7<sup>th</sup> of December, 2021 challenged in these proceedings was made in consequence of the Direction. Three reasons were given by the Board for refusal, summarised as follows:

- A. Insufficient information to enable the Board to assess the likely impacts of the proposed development on protected European Sites precluded the grant of permission (AA ground);
- B. Insufficient information to enable the Board to assess the likely impacts on the proposed development on the environment precluded the grant of permission (EIA ground);
- C. The waste disposal and recovery development proposed for retention would contravene the land use zoning and objective for the site as set out in the County Development Plan and would therefore be contrary to the proper planning and sustainable development of the area (zoning ground).

36. All three reasons are challenged in these proceedings as being unsustainable. I propose to address the issues in reverse order to better reflect the manner in which they were argued before me. I will consider the information issues together given the obvious overlap in the case made in this regard.

## **DISCUSSION AND DECISION**

### **The Zoning Issue**

37. It is recalled that in the subject application the Applicant sought: (i) an increase from the current permitted (existing valid permission) "*use*" to 24,000 tonnes of waste per annum;

and (ii) an increase on a permanent basis as opposed to temporary. The relevant Zoning Objective for the site is “DA Dublin Airport”. The stated objective for the zoning is to:

*“[e]nsure the efficient and effective operation and development of the airport in accordance with an approved Local Area Plan.”*

38. Furthermore, the relevant Vision Statement provides:

*“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...”*

39. The “Note” to this part of the Development Plan provides:

*“Uses which are neither ‘Permitted in Principle’ nor ‘Not Permitted’ will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision and their compliance and consistency with the policies and objectives of the Development Plan.”*

40. As per the Development Plan, uses “Not Permitted” in this zoning include Waste Disposal and Recovery Facility viz. the proposed development. While the underlying land use zoning applicable to the site is “DA” and under this land use zoning waste disposal and recovery are not permitted uses for the area, Objective Z05 of the CPD permits “reasonable intensification of extensions to improvement of premises accommodating non-conforming uses subject to normal planning criteria.” Section 11.5 of the CDP sets out what is meant as “non-conforming uses” and states 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 1<sup>st</sup> of October 1964, or which have valid planning permissions, or which are unauthorised 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."*

41. Whilst the parties agreed during the hearing before me that use of the site as a waste facility constitutes a "*non-conforming use*", they disagree as to the nature and extent of the existing use against which intensification falls to be measured for the purpose of determining whether development may be permitted.

42. The Respondent contends that the said use is measured by reference to the terms of an existing permission. As the most recent temporary permission has expired, the only existing permission for this site which authorises waste handling dates to 1998 and is limited to 10,000 tonnes per annum. Furthermore, the parties agree that measured against an annual permitted throughput of 10,000 per annum is unarguable but that one may reasonably conclude that a throughput of either 24,000 or 24,900 does not constitute "*reasonable intensification*".

43. It is contended on behalf of the Applicant, however, that the Respondent has erred in its interpretation and application of the "*non-conforming use*" provision of the CDP and in consequence has improperly assessed the question of intensification by reference to a 10,000 tonnes per annum limit rather than the higher limit of 21,900 tonnes per annum provided for in the last temporary permission which expired in August, 2019. It is contended that were the question of intensification measured on the difference between 21,900 and either 24,000 or 24,900, it would be open to a decision-maker to conclude that this constitutes "*reasonable intensification*" with the result that permission could be granted.

44. The Applicant further contends that the Inspector and the Respondent erred in their treatment of the zoning issue based on a number of further grounds which I will now consider in turn before returning to the question of the proper interpretation of the CDP and Objective Z05, which has emerged as the primary substantive issue in these proceedings.

45. Firstly, insofar as reliance was placed on the 2011-2017 Plan instead of the 2017-2023 Plan in the treatment of Objective Z05 of the CDP including her interpretation of "*non-conforming use*" in the Inspector's Report and the Respondent's decision, reliance was placed on the incorrect development plan. It was accepted in argument before me, however, that in



all material respects the two development plans are the same. It was also accepted that the correct development plan is referenced and quoted from throughout the Inspector's Report and it is clear that the correct test was identified with reference to the current and applicable CDP. Indeed, the mistaken reference to the previous plan, characterised as a typographical error on behalf of the Respondent, appears only in the Inspector's conclusions and the subsequent Board direction and order and it is undoubtedly the case that the applicable and correct CDP was repeatedly referenced up to that point.

46. In *Barford Holdings Limited v Fingal County Council* [2022] IEHC 329 (para. 95 *et seq*) a challenge based on a reference to the incorrect version (years) of a Development Plan was rejected where the error did not mislead the applicant or undermine the substance of the decision at issue. In that case, when the reference to the incorrect plan in the decision was considered in context, it was clear that the decision was based on the correct Development Plan. The same is undoubtedly the case here. Furthermore, as pointed out on behalf of the Respondent, the error is one which is capable of correction under s.146A of the 2000 Act and, as such, does not warrant or justify a grant of relief (see *Waltham Abbey v. An Bord Pleanála*; *Pembroke Road Association v. An Bord Pleanála* [2022] IESC 30 (para. 53 *et seq*)).

47. I am quite satisfied that the erroneous reference to the years of the Plan in the circumstances is not a material error which in any way affects the substance of the decision. What is important is that the Inspector identified the correct test or considerations (see *Usk v. An Bord Pleanála* [2010] 4 I.R. 113, para. 170) deriving from the applicable CDP and assessed the application in the light of the requirements set down in the governing CDP. Given the manner in which the substantive provisions of the CDP are repeatedly and correctly referred to by the Inspector throughout her report, there is little doubt but that she considered the application and prepared her report on the basis of a correct understanding of what was provided under the then current CDP.

48. Secondly, issue is taken with reference by the Inspector to 24,900 tonnes of waste in assessing intensification referring to it as 2.5 times the permitted use when the application had been revised downwards to 24,000. Accordingly, in measuring intensification it is contended that not only was improper regard had to the baseline permitted waste throughput of 10,000 tonnes per annum (under the original permanent permission) rather than the higher level of throughput permitted under subsequent temporary permissions (most recently 21,900 under the

2014 permission) but it was also measured without regard to the reduced throughput of 24,000 tonnes per annum conceded by the Applicant in response to request from the Planning Authority.

49. Having carefully considered the terms of the Inspector's decision in which multiple references appear to the reduced tonnage of 24,000 tonnes per annum, I am quite satisfied that the Inspector was aware of the revised application for a reduced tonnage and was not led into error by treating the application as one for 24,900 tonnes per annum rather than 24,000 tonnes per annum in her substantive consideration of the application. Multiple references are made in the report to the reduction. The Inspector referred to the "*volume along [the lines] of 24,900 tonnes per annum*" (paragraph 7.5.1). These words in context clearly indicate that the Inspector was referring to same in a general manner. The Inspector also expressly refers to the "*reduction in intake from 24,900... to 24,000 tonnage per annum*" ( see, for example, paragraph 3.8.1) The Inspector refers to the reduction again (page 40) in summarising the Applicant's response to the third-party appeal. In the context of EIA (paragraph 7.6), the Inspector notes that the "*revised proposal was for 24,000 tonnes*" (paragraph 7.6.7).

50. When properly construed, the Inspector's Report clearly demonstrates that the correct proposed increase in tonnage was considered. I have no doubt that the Respondent was perfectly aware of the Applicant's offer to reduce the waste tonnage from the original application for 24,900 to 24,000 in deciding to refuse the application on the basis that it did not constitute reasonable intensification of a non-conforming use having regard to the applicable land use zoning. Furthermore, it seems to me (and I understand it to be effectively conceded before me) that if the Respondent was correct in treating 10,000 tonnes per annum as the permitted established use of the site for the purpose of measuring intensification, then it matters not whether the application was for 24,900 or 24,000. On either amount (be that 24,000 or 24,900) the increased tonnage from 10,000 tonnes per annum together with the nature of the use for which application was sought, would constitute an intensification of the permitted use which I am satisfied the Respondent would have been entitled to treat as unreasonable in refusing on the basis of applicable land use principles. In real terms it is unlikely that the difference between 24,900 and 24,000 could have a material impact on this decision.

51. Of the three bases advanced for challenging the decision on "*land use principle*" grounds, therefore, the interpretation of what constitutes "*non-conforming use*" for which

permission may be granted as provided for in the CPD is the one which has required the most deliberation on my part. It is also the issue upon which the Applicant placed primary focus. Weight was attached on behalf of the Applicant to the fact that in granting conditional permission the Planning Authority was satisfied, given the established nature of the facility on site, its continued operation on the subject lands over a period of more than 22 years and the stated objectives of the CDP as contained in section 11.5 and as outlined under Objective Z05, that the application seeking retention and continuation of use was acceptable in principle subject to assessment. Implicit in this was a finding by the Planning Authority that the existing use was properly characterised as a “*non-conforming use*”. The fact that the Planning Authority construed the CDP in this manner, it was submitted, was evidence that an informed interpretation of the language used in the CDP properly led to this conclusion.

52. There is no doubt that waste recycling has occurred on site for well in excess of two decades. It is true that planning permission has been granted for waste throughput of up to 25,000 during this period and there is some evidence that waste well in excess of permitted levels have in fact been processed (it being suggested in the statement accompanying the application for permission that waste of up to 60,000 tonnes per annum has been accepted on site). It was submitted in the Planning Statement accompanying the application for permanent permission that “*there has in essence been a permanent planning permission on the lands for recycling facility*”.

53. For completeness I should record that it was no part of the case before me on behalf of the Applicant that the Respondent erred in failing to have regard to the fact that the established use of the site meant that the Applicant was immune from enforcement action because of long-established use for which no planning permission had been granted. Indeed, in response to the Planning Authority’s request for further information on waste currently accepted and processed on site including volumes and as noted by the Inspector, information was provided for the proposed situation but not the current use (paragraph 7.6.4 of Inspector’s Report). On the contrary, the application was predicated on an intensification from 21,900 tonnes of waste permitted under a temporary 5-year planning permission granted in 2014. On this basis it is contended that the application under consideration does not represent an unreasonable intensification of use having regard to a most recently permitted level of 21,900, under which ELV processing was also permitted.

54. If one looks at the reality of what has occurred on site over many years, it would indeed appear that permission is now sought for waste recycling that is not, in fact, materially more intense than in previous years. In the subsequently withdrawn application for permission submitted in 2019 seeking permission to handle waste well in excess of threshold amounts (some 49,500 tonnes) reference had been made to the fact that the existing development had handled volumes of 36,391.18 tonnes. It was noted on the planning file that in both 2018 and 2019 the condition limiting waste tonnage to 21,900 under the 2014 temporary permission had been breached.

55. Whether the development is for a non-conforming use which is acceptable under the CDP turns on the proper interpretation of the CDP itself. The question which I must determine is whether in construing “*non-conforming use*” under the CDP one tied to existing permissions or uses for which no permission is required or which are immune from enforcement action, as the Respondent contends or entitled to have regard to the *de facto* use of the site in reliance (at least in part) on a series of temporary permissions, now expired, on the basis that such temporary permissions should be considered to be, in essence, the same as a permanent permission. This question, in my view, is the one at the very heart of these proceedings.

56. There is a temptation as a matter of so-called common sense or realism to treat the *de facto* position on site as being so established as to be analogous to the types of existing uses captured by the understanding of “*non-conforming use*” under the CDP. On one view such an interpretation may even appear the fairest or most just interpretation given that there has been a succession of temporary permissions. However, in interpreting the CDP regard must be had to its statutory purpose and context. I am bound to recall that a development plan, as McKechnie J. observed in *Byrne v Fingal County Council* [2001] 4 I.R. 565, is a representation in solemn form, binding on all affected or touched by it, that the planning authority will discharge its statutory functions strictly in accordance with the published plan. This implementation will be carried out openly and transparently. There is now a body of case-law guiding the proper approach to the interpretation of a development plan.

57. It is well established that one should avoid a “*legalistic over-analysis of decisions*” (*Sweetman v An Bord Pleanála* [2021] IEHC 390 (para. 28), *MR v International Protection Appeals Tribunal* [2020] IEHC 41 (paras. 6-7), *Ratheniska Timahoe and Spink (RTS) Substation Action Group and Another v An Bord Pleanála* [2015] IEHC 18) but decisions



should be read “*not solely from an applicant’s point of view (an impossible standard), but from the starting point of it being valid rather than invalid where possible. One has to stand back and ask what the decision is fundamentally saying*” (*O’Donnell & Ors v. An Bord Pleanála* [2023] IEHC 381 (para.54). Planning decisions, documents and policy “*should be construed not as complex legal documents drafted by lawyers but in a way in which members of the public, without legal training, might understand them*” (*Dublin Cycling Campaign CLG v. An Bord Pleanála* [2020] IEHC 587 (para. 29)). The exercise of interpreting planning decisions, documents and policy “*is not to be undertaken in the same way in which Acts of the Oireachtas or subordinate legislation would be construed*”. Such documents should not be “*read narrowly and restrictively*” (*Dublin Cycling* (para. 63); and *Ballyboden v. An Bord Pleanála* [2022] IEHC 7 (para. 120)) but rather in a holistic manner (*Sherwin v. An Bord Pleanála* [2023] IEHC 26 (para. 126)). As per Humphreys J. in *Clonres CLG v. an Bord Pleanála* [2021] IEHC 303 “*a statutory document like a development plan fits into a wider statutory framework*”. In *Redmond v. An Bord Pleanála* [2020] IEHC 151 Simons J. found that the interpretation of the development plan is a matter of law and the views of neither the planning authority nor An Bord Pleanála can be decisive (para. 84).

58. While the CDP is not a statute and should not be construed as such, it must be remembered that it is adopted by resolution of the elected members of the Planning Authority following public consultation in accordance with a statutory process. It words have an objective meaning which set the parameters for decision making on a case-by-case basis with due regard to the wider public interest in proper planning of the area. Accordingly, as Holland J. observed in *Ballyboden v An Bord Pleanála* [2022] IEHC 7 (para. 121) whether a planning permission has issued in material contravention of a development plan is a matter of law, not of planning judgment. This in turn impacts on the nature and/or standard of review applicable to alleged contraventions of a development plan and the question of its correct interpretation. In *Jennings & Anor v An Bord Pleanála* [2023] IEHC 14, the Court noted (para. 112), *inter alia*:

“...112. ...where a development plan, on a proper interpretation,

- *allows appreciable flexibility, discretion and/or planning judgement to the decision-maker, review is for irrationality rather than full-blooded.*
- *does not allow appreciable flexibility, discretion and/or planning judgement to the decision-maker, review is full-blooded as the issue is one of law.”*

59. As I read it, section 11.5 of the CDP operates as an exception to the zoning of the area and seeks to limit “*non-conforming use*” permission to a specified category of development which is closely related in scale to development for which either an existing planning permission exists, planning permission is not required because it is pre-’64 user or the development is immune from enforcement action. This is clearly a limited discretion. I am satisfied that the proper interpretation of the CDP as to the meaning of “*non-conforming use*” is one of law rather than planning judgment, whereas what constitutes intensification of such a use is one of planning judgment.

60. In terms of the interpretation of non-conforming use as a matter of law, it seems to me that the reference to “*land use*”/“*use*” in the CDP must be understood as referring to use in planning terms. What constitutes a permitted use falls to be determined with reference to a valid and existing permission rather than a temporary permission which has expired. Planning permission enures for the benefit of the land. It is not correct to interpret same by reference to the *de facto* land use (*which is not permitted*) or some form of previously permitted, but now expired, temporary use. In *The Board of Management of St Audoen’s National School v An Bord Pleanála* [2021] IEHC 453 wherein the Court (Simons J.) noted (para. 16):

*“The position in respect of temporary planning permissions is different. Here, the time-limit governs the length of time for which the development is permitted to remain in situ. In the case of a material change in use, this is the period of time for which the authorised use may be continued. Once the time-limit expires, then the use must cease...”*

61. Similarly, in *Clonres CLG/Conway v An Bord Pleanála* [2021] IEHC 303 (para. 37) Humphreys J. noted in a zoning context that reference to an existing use should be understood as referring to:

*“existing uses in the sense that Simons J. is referring to in Redmond v. An Bord Pleanála, namely a previously established use which enures for the benefit of the land until such time as a planning permission for a new use is granted. Even the non-expert reader could appreciate that point.”*

He added that the inspector in that case had erroneously had regard to the simple *de facto* situation on the ground which he considered to be incorrect as a matter of law. Similarly, even an extant temporary planning permission cannot be relied upon in seeking to authorise future non-conforming use after it has expired.

62. This being the case, it seems to me that the meaning and intent of section 11.5 of the CDP is clear. It allows for a reasonable intensification of a “*non-conforming use*” viz. a use which does not conform with the zoning objective. A temporary use is not envisaged as an existing use within the definition of a “*non-conforming use*” provided under the 2017-2023 CDP. The reality of what was happening on site in the years preceding this application is not the question framed by the language of section 11.5 of the CDP. When one considers the language of section 11.5, the baseline is measured not by reference to previous use but by reference to use which is either permitted or immune from enforcement by reason of long-user (whether pre '64 or established an immune). As a matter of law, a series of temporary permissions cannot be equated “*in essence*” with a permanent permission and the CDP does not include within the definition of “*non-conforming use*” such use as may have been authorised on foot of a series of temporary permissions. A temporary permission simply does not enure for the benefit of the land in the same way as a pre-64 user does. Likewise, it does not confer the benefit which flows from an unauthorised use which is immune from enforcement action.

63. In my view the Inspector (paragraph 7.4 *et seq*) and the Respondent in turn properly interpreted the CDP and correctly identified the “*non-conforming use*” as being the “*use.... which [had a] valid planning permission...*”, that being the throughput of 10,000 tonnes of waste per annum as per the only permanent permission addressed to throughput of waste annually. Any other permission authorising use more than this was temporary, had expired and did not enure for the benefit of the land. Insofar as the CDP in Objective Z05 proceeds to generally permit reasonable intensification of, extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria, this must, on the application made in this case, be related to the enduring permission attaching to the site or the established planning status of the site (where long user for which permission was not required or which is immune from enforcement action is concerned).

64. I am quite satisfied that section 11.5 of the CDP does not properly embrace a series of temporary permissions which “*in essence*” amount to a permanent permission. Accordingly, I consider that the decision to refuse on the basis that the permitted user was waste recycling of inert non-domestic waste not exceeding an annual throughput of 10,000 tonnes was correct in law and the Applicant’s challenge in this regard must fail.

*Insufficient Information to Screen for EIA and AA*

65. The Respondent’s first and second reasons for refusal as they appear on the Order concern insufficient and/or an absence of information before it for the purposes of EIA Screening (Part X of the 2000 Act and Art.109, Schedule 5 and Schedule 7 of the Planning and Development Regulations, 2001 (as amended) (“hereinafter “PDR 2001”) and AA Screening (s.177U of the 2000 Act).

66. To properly understand this reason for refusal and contextualise the grounds for challenge, it is recalled that EIA requirements apply to classes of development set out in Annex 1 or II of the EIA Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU. In Irish legislation Annex 1 and 11 have been broadly transposed in Schedule 5 Part 1 and Part 2 of the PDR, 2001. Classes of development listed in Parts I and II of Schedule 5 that meet or exceed the thresholds set out therein require mandatory EIA. Where EIA is mandatory a screening determination is not required and the EIA must be conducted as a matter of course. Class II(b) of Part 2 of Schedule 5 PDR 2001 lists “*installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part I of this Schedule.*”

67. Even where the threshold is not exceeded, however, any project which is likely to have significant effects on the environment having regard to the criteria set in Schedule 7, namely characteristics of the proposed development, location of the proposed development and types and characteristics of potential impacts, must also be subject to EIA (s. 172(1)(b) of the 2000 Act). To this end a screening exercise is conducted to determine whether a full EIAR is necessary.

68. Separately, Article 6(3) of the Habitats Directive requires that an appropriate assessment (AA) be carried out for those areas where projects, plans or proposals are likely to



have an effect on areas designated as important for certain listed habitats and birds known as Special Areas of Conservation (SAC) and Special Protection Areas (SPAs), together forming the Natura 2000 network of protected sites.

69. It is recalled that under s. 34 (12) of the 2000 Act a planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required one or more of the following (a) an EIA, (b) a determination as to whether an EIA was required or (c) an AA. Implicit in the conditioned grant of permission by the Planning Authority, must therefore be a finding that neither an EIA nor a determination as to whether an EIA was required nor an AA was required despite the fact that the application was for retention of a marginally sub-threshold waste recycling use. While the decision of the Planning Authority is not the subject of challenge in these proceedings, it is curious in this context that it concluded that neither an AA nor a full EIAR was required whilst also finding that a temporary rather than a permanent permission should issue in view of identified deficiencies in information relevant to matters of environmental concern (such as fire prevention, noise impact and waste streams).

70. The decision of the Respondent that insufficient information had been provided was challenged in the Statement of Grounds on foot of which leave was granted and in written submissions filed on behalf of the Applicant on the basis of the rationality of that decision in the light of the material put before the Respondent (in terms of screening reports and responses to further information requests) and the planning history of the site (on the asserted basis that it had operated for some time as a waste recycling facility without adverse environmental consequences) and inadequate reasons for this conclusion. During the course of oral argument, a new complaint emerged, for which leave had not been granted, to the effect that the Respondent ought to have determined an EIAR and an AA were necessary rather than refuse planning permission on the basis that there was insufficient information before it.

71. In terms of the reasonableness challenge to the decision that more information was required reliance has been placed on behalf of the Respondent on the dicta of Holland J. in *Heather Hill v An Bord Pleanála* [2022] IEHC 146 (para. 232) where he found:

*"The adequacy of information provided in a planning application must be assessed in context and, for planning, EIA and AA purposes, is primarily a matter for the Board".*

72. I have also been referred to *Coyne v An Bord Pleanála* [2023] IEHC 412, where the Court stated (para. 414):

*"The Board is entitled to curial deference to its view of the adequacy of the information before it and, as to such adequacy, is reviewable only for irrationality. Of the many and ample authorities to such effect, I cite only Browne, People Over Wind, M28 Steering Group, and Kemper."*

73. From the foregoing it is clear that a high threshold applies in the case of a challenge to a decision by the Respondent that insufficient information has been provided.

74. In this case, the Inspector's Report is detailed and demonstrates a careful consideration of all of the information on file, including the EIA and AA screening reports. At para. 7.6.8 of her report the Inspector concluded that as presented the proposed development falls within a class of development under Schedule 5, and therefore requires screening to determine whether it is likely to have significant effects on the environment. She continued under para. 7.7.1 of her report:

*"The scale of the proposed development, as currently proposed, is only marginally below threshold, at which EIA is required. According to documentation on file it is currently operating well above the threshold at which EIA is required."*

75. She added that it was difficult to comprehensively assess the aspects of the environment likely to be significantly affected by the proposed development instancing, *inter alia*, a lack of data in relation to matters such as dust measurement or monitoring, information pertaining to the impact on air and emissions as well as impact on surface run-off water from site. It is clear from reading her report that there was a thorough assessment by the Inspector of information which had not been provided. Having done so she concluded:

*"Having regard to: the characteristics of the proposed development: the size, which as presented is marginally below the threshold at which EIA is mandatory; the production*

*of waste, and the likelihood of discharge of pollution and nuisances to air and water; the sensitivity of the location and its proximity to Dublin Airport, an existing and approved land use; and the types and characteristics of potential impacts, including fire risk; it is considered that the proposed development should be subject to environmental impact assessment. The Board should note that this application is for retention. In the case of retention requiring EIA it is necessary for the applicant to apply for leave to apply for substitute consent."*

76. In the recommendation section of her report the Inspector stated:

*"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, including impact on protected sites; accordingly the proposed development would be contrary to the proper planning and sustainable development of the area."*

77. In argument before me no issue was taken with the factual correctness of the Inspector's observations with regard to information identified as required, albeit that the Applicant sought to protest that sufficient information had been provided and an evidential basis for environmental concern did not exist. Of course, it may seem trite to observe that a vicious circle is perpetuated by a failure to provide data on relevant matters. As noted in *Weston Limited v. An Bord Pleanála* [2010] IEHC 255 (Charleton J.) the role of the inspector is to bring objectivity in circumstances where in the planning context persons seeking permission rarely make errors against interest. If relevant information or data is not provided, then evidence of adverse impact will similarly not be available. It is therefore no answer to the Inspector's observations that her concerns were not supported by evidence on the file. Her observations were based on the absence of data or information which might either justify or dispel those concerns and reflected the type of appropriate rigour endorsed by the High Court in *Weston* (see para. 25).

78. In the event, the Respondent accepted the Inspector's recommendation in refusing the application on appeal on the basis that it had insufficient information. In arriving at this

decision, it is clear from the record of the decision that the Inspector and the Respondent expressly considered the procedural history of the application (*including further information*) and the entirety of the evidence presented, including on behalf of the Applicant; and having assessed same, considered that there were numerous identified deficiencies in the information presented for the purposes of EIA (para. 7.6 *et seq*) and AA Screening (para. 7.2).

79. The Applicant's contention that the Board's decision was flawed because it should have accepted the conclusions of its EIA Screening and AA Screening Report fails to recognise that it is the Respondent, not the Applicant, who is vested with jurisdiction to carry out such environmental "*assessments*". I agree with the submission made on behalf of the Respondent that the same logic applies to the Applicant's reliance on the Planning Authority's position on EIA Screening and AA Screening. It is noteworthy in this regard that the Planning Authority for its part decided against a grant of *permanent* permission due to, *inter alia*, an absence of information/adequate information on land restoration, fire prevention, noise impact, waste stream, and the operation of the hammermill. Accordingly, while the Planning Authority did not require a full EIAR or AA on the basis of the screening conducted, it was not fully satisfied with the information it had received. The Respondent brings a separate and independent judgment to the assessment and is entitled to reach a different decision on the basis of the same information. There was material before the Respondent capable of supporting its view as to the inadequacy of the information provided. I am satisfied that there was nothing irrational about the Respondent's approach and that the decision was properly reasoned.

*Whether Decision Tainted by Assumed Future Non-Compliance*

80. An overarching objection was taken to the refusal of planning permission in this case on the basis that the decision was infected by an improper assumption of future non-compliance referable to previous failure to comply with planning conditions as to waste tonnage. It was submitted with reference to s. 35 of the PDA, 2000 that the application ought not properly be approached on the basis that past non-compliance will recur. It was submitted that the Respondent must assume future compliance noting that it has no function in relation to enforcement. The offending paragraph in the Inspector's Report states (para. 7.6.7):

*"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."*

**81.** It seems to me that the Applicant misconstrues both the import and effect of s. 35 of the 2000 Act and of the Inspector's reliance on compliance issues in her report. Section 35 provides that a planning authority may form the opinion based on information available to it in accordance with s. 35(1) that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with such permission if granted or with a condition to which such permission if granted would be subject, and that accordingly planning permission should not be granted to the applicant concerned in respect of that development. Where such an opinion is formed, s. 35(4) prescribes the procedure to be followed and provides for a right of appeal to the High Court under s. 35(6) against any subsequent decision to refuse planning permission based on this opinion. This provision was not invoked in this case and the Planning Authority did not refuse permission pursuant to s. 35(5) of the 2000 Act.

**82.** The fact that no similar provision exists whereby the Respondent may refuse permission based on its opinion that there is a real and substantial risk of future non-compliance does not mean that the Respondent is precluded from considering the planning history on site as part of its assessment of an application. Nor for that matter did the Inspector recommend refusing permission because of a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with such permission or with a condition of such permission if granted. The Inspector did, however, have regard to information available on the planning file in relation to throughputs per annum in exceedance of limits fixed to conclude in her assessment of the development that the scale of same, presented as a sub-threshold development, was such as to require EIA.

**83.** While I am satisfied that there was nothing improper in the Inspector considering this in her assessment of whether the proposed development falls within a class of development under Schedule 5 and therefore requires screening to determine whether it is likely to have

significant effects on the environment, it is plain from the terms of the Respondent's decision that an assumption as to future non-compliance was not relied upon to refuse permission. The reasons for refusal were clearly stated and concerned an absence of information and/or inadequate information for the purposes of AA Screening and EIA Screening.

84. Accordingly, I consider the Applicant to be simply incorrect in asserting that the Respondent refused permission due to anticipated future breaches. The Inspector's comments do not, in any way, invalidate the Respondent's decision or the reasons given for refusal. The Respondent's reasons are not invalid because of the view expressed by the Inspector which was immaterial to the actual reasons adopted by the Respondent. The Inspector prepares a report which makes recommendations but the Respondent makes the ultimate decision, having considered the Inspector's Report. As O'Neill J. observed in *M & F Quirke & Sons and Others v. An Bord Pleanála and Others* [2009] IEHC 426 (para. 9.9)

*"In my judgement, any error on the part of the inspector in this regard, could not vitiate the entirely separate exercise by the respondent of its self contained statutory jurisdiction to make the decision required from it. The status of the error in question was no more than that of any other piece of mistaken information which the respondent was free to consider and reject in the overall discharge of its statutory function. The decision of the respondent, on its face, contains no such error..."*

*Whether decision Tainted by Failure to Determine whether EIA / AA Required*

85. As for the case urged for the first time in oral argument to the effect that the Respondent should have proceeded to determine that an EIA and AA was required rather than refuse the application, it seems to me that this argument falls outside the parameters of the case for which leave has been granted. The argument was urged having regard to the terms of s. 177U(4) of the 2000 Act and XX of the PDR 2001. Section 177U(4) provides:

*"(4) The competent authority shall determine that an appropriate assessment of a draft Land use plan or a proposed development, as the case may be, is required if it cannot be excluded, on the basis of objective information, that the draft Land use plan or proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site."*

86. Similar provision is made for EIA. Regulation 109(2) of PDR 2001 provides that in sub-threshold cases the Respondent shall consider whether there is a significant and realistic doubt in regard to the likelihood of significant effects on the environment in screening for EIA and shall make a determination either that an EIA is or is not required.

87. It is argued on behalf of the Applicant that as the Respondent claims it did not have enough information, it ought to have determined that an AA and an EIA was necessary instead of simply refusing planning permission on the basis that the Respondent had insufficient information to enable it to assess the likely impacts of the proposed development on the environment as this is the outcome mandated by the language of the applicable statutory provisions.

88. It seems to me that this issue is not properly before me having regard to the terms of the leave granted. As the matter was argued on behalf of the Applicant without objection on behalf of the Respondent, I agree that it is undoubtedly the case that an AA and EIA are required unless significant effect on a European site or on the environment can be excluded. I would further observe, however, that there is nothing in s. 177(U)(4) of the 2000 Act or in equivalent provisions of the PDR 2001 regarding EIA which precludes the Respondent from first concluding that further objective information is required before it can properly determine this question.

89. I note that where retention is sought in respect of a development carried out in breach of the requirements of the EIA Directive and the Habitats Directive, it cannot benefit from a retention planning permission. The planning status of the development can only be regulated by way of an application for "*substitute consent*" pursuant to Part XA of the 2000 Act. Given that a requirement to conduct an EIA means that the Applicant would be precluded from seeking retention permission but would instead be required to seek substituted consent, the approach of the Respondent in refusing permission not on the basis that an EIA was required but on the basis that more information was needed before a decision could be made on whether to exclude such requirement may even have been in ease of the Applicant. In consequence of the terms in which the decision has been couched, the question of whether full EIA and AA is required remains an open question. Leaving the zoning issue to one side, it is still open to the Applicant to address the information deficit identified by the Inspector (and indeed the

Planning Authority before that) and acknowledged by the Respondent in seeking to satisfy the competent authorities that a significant effect on a European site or on the environment can be excluded as the Respondent has not yet determined this question.

90. I am satisfied that no proper basis for interfering with the decision of the Respondent to refuse planning permission has been made out based on the Respondent's conclusion that more information was required as regards the necessity for both AA and EIA. In its expert capacity the Respondent assessed all the information presented and identified in some detail why this information was considered inadequate. The Applicant fully understands this reason for refusal, namely, an absence of information and/or inadequate information on identified issues to assess the likely impacts of the proposed development on the environment and on a European site.

#### Severability

91. The decision to refuse planning permission by the Respondent was attacked on several fronts in circumstances where three distinct reasons were given for the decision. As found by Owens J. in *Murtagh v An Bord Pleanála* [2023] IEHC 345 a decision may be made for a number of reasons. Some of the reasons may be valid and some may be invalid. Some reasons for a decision may be more important than others. Accordingly, it does not follow that an invalid reason will automatically result in an invalid decision. Therefore, even if there were a frailty inhering in the Respondent's decision arising from a failure to determine one way or the other whether an AA or EIA is required given the effects of the development on a European site or the environment (a question which was touched on in argument before me but did not feature in terms in the written submissions and does not arise from the grounds upon which leave was granted), where separate and distinct reasons for refusal of planning permission were given by the Respondent, as here, any such a frailty, if established, does not render the decision itself invalid.

92. It is my view that in this case that the zoning issue, on its own and without reference to the information deficit also identified, warranted refusal of planning permission. It follows that to successfully impugn the decision to refuse on the basis of some frailty in the treatment of the EIA or AA question, it would be necessary for the Applicant to also establish that the Respondent erred in its assessment of the non-conforming use issue because this is a stand-



alone determination on a decisive issue. Where this standalone decision on a determinative issue is sound, as I have found, then it is in fact irrelevant whether a different conclusion might have been reached on some other element which also led to a decision to refuse as it would not affect the outcome which would remain a refusal of planning permission.

## CONCLUSION

93. As set out above, I have approached this application for relief by way of judicial review by addressing the grounds of challenge advanced. I have not relied on discretionary factors in refusing the application for relief. It seems to me, however, that it would be remiss where the application for retention is predicated on an existing use, as it was in this case, were I not to clearly signal a concern about reliance on a previous use which involved above threshold levels of waste in seeking retention permission for a lesser level of use, without a full EIA having been conducted in respect of the said above threshold use for planning purposes.

94. There is no doubt that had permission been sought for use at the level which actually occurred on the site in 2018 and 2019, as documented on the planning file, then an EIA would have been mandatory as prescribed threshold levels were exceeded. Had permission been granted in this case based on an application for prospective use at a sub-threshold level against this background of above threshold use occurring in breach of planning conditions, the result would have been that the Applicant would have avoided the EIA completely in respect of development consent for its previous above threshold activity. It seems to me that such an outcome would not be compatible with the spirit, if not the letter, of the State's obligations under EU law.

95. It is established that a strict approach is warranted in discouraging avoidance of EIA requirements through the system in place in the State for the regularisation of unauthorised development. The rationale for the strict approach as explained by Simons J. in his judgment in *Mount Juliet Estates Residents Group v. Kilkenny County Council* [2020] IEHC 128, referring to the criticisms made by the CJEU in its judgment in Case C-215/06, *Commission v. Ireland*, is to serve a deterrent purpose. As explained by Simons J. in his judgment in *Mount Juliet Estates Residents Group v. Kilkenny County Council* a lenient approach serves to encourage circumvention of the requirement to submit to screening for EIA and full EIA.

96. In view of the requirement to deter circumvention of a requirement to submit to environmental assessment in accordance with the requirements of EU law, I am bound to observe that had the Applicant been successful in establishing some frailty in the decision-making process, which it has not been, I would nonetheless have required some persuasion to quash the Respondent's decision to refuse retention permission where the effect of that decision was to ensure proper screening for EIA before development consent could be granted against a background where above threshold user has taken place without appropriate development consent first being obtained following due and proper assessment of environmental impacts. As succinctly stated by McMenamin J. in *Usk v. An Bord Pleanala* [2010] 4. I.R. 113 at p. 179, the obligation on the State is unequivocal. All measures must be adopted to ensure there is a fully compliant environmental assessment as the basis for development consent.

97. For the reasons given, I refuse this application.