



09 August 2021

Project No. 21461062.L02.V0

Section 5 Referrals

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

**AN BORD PLEANÁLA**

LDG- 042420-21

ABP- \_\_\_\_\_

10 AUG 2021

Fee: € 220 Type: cheque

Time: \_\_\_\_\_ By: Reg Post

**REFERRAL OF LOCAL AUTHORITY DECISION IN RESPECT OF DECLARATION OF EXEMPT DEVELOPMENT UNDER SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 – GILL SKIP HIRE LTD.**

Dear Sir/Madam,

Golder Associates Ireland Ltd (Golder) have been retained by Gill Skip Hire Ltd (GSH) to act as an authorised agent on their behalf. GSH wish to refer a Section 5 Declaration by Kildare County Council in accordance with Section 5(3)(a) of the Planning and Development Act, 2000. The referral is in respect of a declaration by Kildare County Council that the use of existing industrial building and yard as Material Recovery and Waste Transfer station is considered development and not exempted development. An excerpt from the determination is provided below:

**AND WHEREAS** Kildare County Council has concluded that the proposed development does not come within the scope of Classes 21 & 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended), for the following reasons:

- a) The proposed development due to its processing of and temporary storage of construction waste does not fall within the scope of Class 21 or Class 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

The declaration by Kildare County Council and planners report are attached (reference number ED/000867).

A Section 5 referral is sought as to whether the use of an existing industrial building and yard as a Waste Recovery & Transfer Facility and ancillary storage falls within Class 21 & 22 of Part 1, Schedule 2 of the regulations and whether the use is or is not development and is or is not exempted development.

**Site Location & Historical Use**

The site is located with the former Minch Malting facility in Athy now referred to as the Maltings Business Park. The site referred to consists of an industrial building and storage yard within the business Park. Drawing 03 – Site Layout Plan is attached. The site is bounded by industrial buildings and activities to the north, south, east and west such as Boortmait, Tegral, monument works among other activities. A site location plan is appended to this application.

This site has historically been used for industrial processing since 1921 for the production and storage of malt and other ancillary processes. Malting barley was taken into the site for the production of malt including storage

of grain and spent grain wastes at the site. The malting business expanded across the road in the late 1990's however malting activities remained active on the application site. The former malting site was purchased by Hibernian Cellular Networks in recent years and industrial activities continue at the site.

The site and buildings claim pre 1963 status as industrial and industrial activities continue at the Site to the present time.

### Proposed Use

The proposed industrial use constitutes the processing, recovery and temporary storage of waste materials into recovered articles such as concrete based aggregates, metals, timber for onward reuse, recovery, and recycling consistent with the national circular economy plan. Residual waste (<15%) will be sent off site for further treatment or disposal. It is proposed that an annual tonnage of 5,000 tonnes of waste materials are accepted to the site for processing into recovered articles for future sale, reuse and recovery. The source of waste will be skip waste mainly containing construction demolition waste from construction sites and also from domestic house renovations and clearance. The processed materials will be transported offsite for final recovery at authorised facilities and the open market.

There will be no permanent deposition or long term storage of waste at the proposed facility. All storage will be temporary in line with the production of recycled materials and contained within the building. It is proposed to store empty skips only in the rear yard. Waste will be processed and separated both manually and by the use of small mobile plant to move materials in to designated bays prior to onward transport offsite. Mobile plant will be used to screen heavier objects out of the incoming waste. All activities will be carried out in accordance with the requirements of the Waste Management Act 1996 as required.

### Definitions of Industrial Building and Industrial Process

The definitions of Industrial Building and Industrial Process are provided for in Article 5(1) Part 2 of the Planning and Development Regulations, 2001 (as amended) are presented below:

*In this Part - ...*

*"industrial building" means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;*

*"light industrial building" means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;*

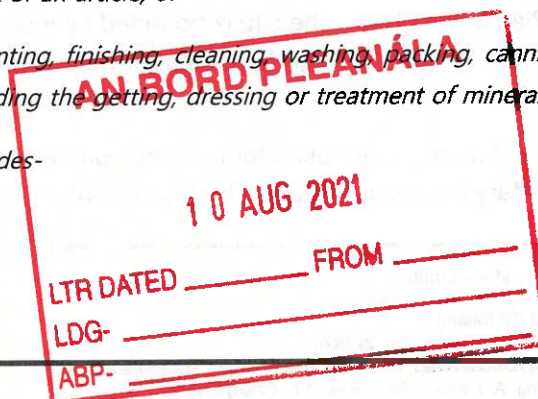
*"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-*

*(a) for or incidental to the making of any article or part of an article, or*

*(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,*

*and for the purposes of this paragraph, "article" includes-*

*(i) a vehicle, aircraft, ship or vessel, or*



(ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;

## Exemption Class

Exemption is sought under Classes 21 and 22, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (S.I. No. 600 of 2001), as amended by Article 3 of the Planning and Development (Amendment) Regulations 2013, S.I. 219 of 2013.

### Development for industrial Purposes

#### "CLASS 21

(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—

- (i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,
- (ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,
- (iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building."

Subject to:

- "1. Any such development shall not materially alter the external appearance of the premises of the undertaking.
- 2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater."

#### "CLASS 22

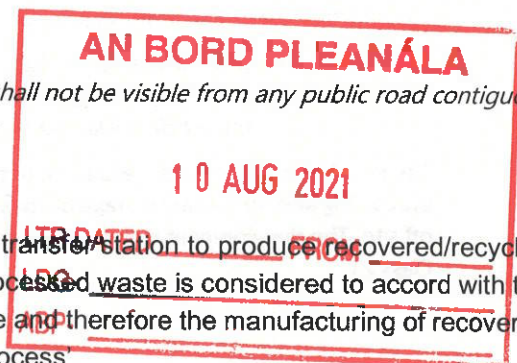
Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process."

Subject to:

"The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building."

## Application Buildings and Use

The proposed industrial use as a materials recovery and waste transfer station to produce recovered/recycled concrete aggregates, recycled metal, timber and plastic from processed waste is considered to accord with the definition of an industrial process in Article 5(1) (a) and (b) above and therefore the manufacturing of recovered articles and materials fall within the definition of an 'Industrial Process'.



It is considered that the building located at the Maltings Business Park proposed for use as material recovery & waste transfer station accord with the definition of an 'Industrial Building'.

The historical and existing use of the site is industrial and it is considered the use of the existing industrial building and yard for a materials recovery and waste transfer facility and ancillary storage is industrial and would not constitute a material change of use.

It is considered that the development is in compliance with Article 9 of the regulations. An appropriate assessment screening is appended to this referral.

### **Kildare County Council Determination – ED/000867**

Kildare County Council determined that the proposed development does not come within the scope of Classes 21&22 of Part 1, Schedule 2 of the planning and development Regulations 2001. The conclusion of the determination is provided below.

**AND WHEREAS** Kildare County Council has concluded that the proposed development does not come within the scope of Classes 21 & 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended), for the following reasons:

- a) The proposed development due to its processing of and temporary storage of construction waste does not fall within the scope of Class 21 or Class 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

**NOW THEREFORE** Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed development is development and is not exempted development.

### **Planners Report**

In respect to Class 21 and 22, The planners report further states:

#### **Class 21**

##### **Assessment**

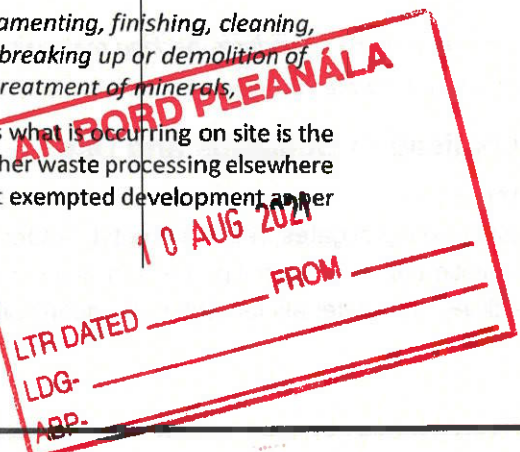
In relation to Class 21 and the industrial process. The definition of the industrial process is as for the purposes of any industrial undertaking to carry out the following:

- (a) for or incidental to the making of any article or part of an article, or

The development does not result in the creation of an articles but the processing of construction waste for further waste processing elsewhere off site.

- (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals.

The development does not result any of the aforementioned as what is occurring on site is the processing and temporary storage of construction waste for further waste processing elsewhere off site. The development being carried out on site annum is not exempted development under Class 21.



## Class 22

It is considered that Class 22 does not apply as the waste materials being processed must be generated at the subject site in connection with the industrial process being carried out within the curtilage of the industrial site. In this instance, as set out in the application form the construction waste arises off-site and is transported to the subject site for waste processing and temporary storage for further processing elsewhere off site. Class 22 does not allow for such an arrangement and therefore it is considered that the processing and temporary storage of construction waste at the facility, comprising less than 5,000 tonnes per annum is not exempted development as per Class 22.

## Referrer's Submission

### Class 21

Gill Skip Hire does not agree with the planners assessment above that the process does not result in the creation of articles. GSH does consider that the process proposed accords with definition of an 'industrial process' in that the processing and segregation of articles is as per (5(1)a – *for or incidental to the making of articles and part of articles*. Furthermore that 5(1) b specifically provides for:

**"...altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article including the getting or treatment of minerals".** [Emphasis added]

Emphasis has been added for activities and processes to be undertaken at the proposed development which is consistent with the definition of an industrial process as set out in Article 5(1)(a) and (b).

In accordance with the Planning and Development Regulations, "industrial building" means:

*'a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process'.*

Thus, an industrial building is inherently associated with an 'industrial process'.

The planners report also recognises the building to be 'industrial' in the Site location section of the planners report.

GSH considers that the processes proposed accord with the definition of "industrial process" within an "industrial building" therefore fall within the requirements of Class 21 below:

*21(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building."*

### Class 22

KCC states *'that Class 22 does not apply as the waste materials being processed must be generated at the subject site in connection with the industrial process being carried out within the curtilage of the industrial site.'*

GSH does not agree with this assessment and considers that KCC have misinterpreted the provisions of Class 22 below:

"CLASS 22

*Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process."*

Subject to:

*"The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building."*

Class 22 provides for storage of all materials in connection to the industrial process not solely the waste materials generated as a result of the industrial process. It is irrelevant if the input materials are a waste or virgin input.

GSH does not agree with KCC assessment that the *'the waste materials being processed must be generated at the subject site in connection with the industrial process being carried out within the curtilage of the industrial site.'*

It is highly unusual for an industry to manufacture their own inputs prior to the manufacture of an article. Most industrial processes require inputs sourced and delivered from external locations with the exception of mines and other natural resource industries.

KCC states that construction waste arises off-site and is transported to the subject site for waste processing and temporary storage for further processing elsewhere off-site and class 22 does not allow for such an arrangement.

GSH consider that this statement in the assessment by KCC is not relevant to Class 22 as Class 22 only relates to the storage of materials and wastes connected to an industrial process and it is inappropriate to make a determination as not exempt development on the basis of this statement under Class 22.

GSH disagrees with the assessment carried out under Class 21 & 22 informing the determination as not exempt development by KCC and refer the determination to the Board for determination.

Sincerely

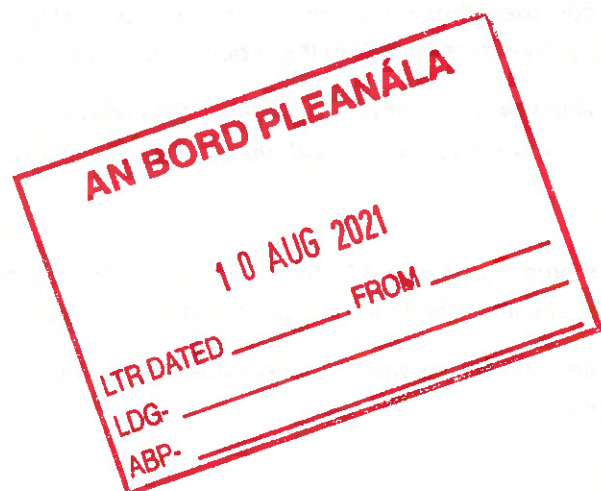
**Golder Associates Ireland Limited**

*Ruth Treacy*

Ruth Treacy  
Technical Director

CC: Gill Skip Hire Ltd

Attachments: Site Drawings,  
KCC Section 5 Determination,  
Planners Report ,  
Appropriate Assessment Screening



Comhairle Contae Chill Dara  
Kildare County Council



RECEIVED  
16 JUL 2021

Date: 14/07/2021  
Our Ref: ED/00867

**REGISTERED POST**

John Gill, t/a Gill Skip Hire Ltd.,  
c/o Ruth Treacy,  
Golder Associates Ireland Ltd.,  
Town Centre House,  
Naas,  
Co. Kildare.

**RE: Application for a Declaration of Exempted Development under Section 5  
Address: The Maltings Business Park, Athy, Co. Kildare.**

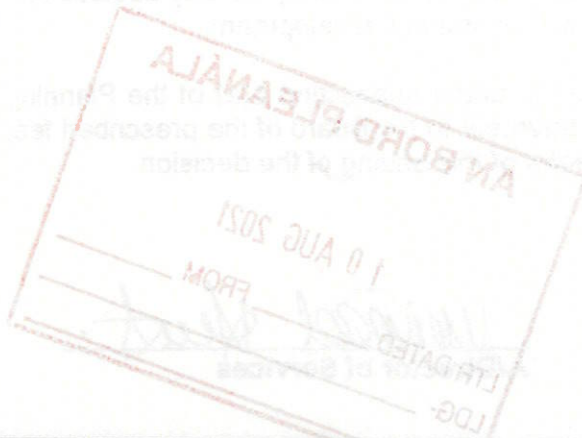
Dear Sir/Madam,

I refer to your correspondence received 17<sup>th</sup> June 2021 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 as amended in this regard.

Yours sincerely,

Senior Executive Officer  
Planning Department



<b>AN BORD PLEANÁLA</b>	
10 AUG 2021	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	



**Declaration of Development & Exempted Development under  
Section 5 of the  
Planning and Development Act 2000 (as amended)**

ED/00867

**WHEREAS** a question has arisen regarding a processing and recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling at The Maltings Business Park, Athy, Co. Kildare, is or is not development and is or is not exempted development,

**AS INDICATED** on the plans and particulars received by the Planning Authority on 17/06/2021,

**AND WHEREAS** John Gill (Gill Skip Hire Ltd.), requested a declaration on the said question from Kildare County Council;

**AND WHEREAS** Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Planning and Development Act 2000(amended),
- (b) Class 21 and Class 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)

**AND WHEREAS** Kildare County Council has concluded that the proposed development does not come within the scope of Classes 21 & 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended), for the following reasons:

- a) The proposed development due to its processing of and temporary storage of construction waste does not fall within the scope of Class 21 or Class 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

**NOW THEREFORE** Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed development is development and is not exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

14<sup>th</sup> July 2021

*Unnival Heest*  
A/Director of Services



## KILDARE COUNTY COUNCIL



## PLANNING &amp; STRATEGIC DEVELOPMENT DEPARTMENT

**Section 5 referral & declaration on development & exempted development  
 Planning & Development Act 2000 (as amended)**

## Reference No. ED/00867

<b>Name of Applicant(s):</b>	John Gill (Gill Skip Hire Ltd.)
<b>Address of Development:</b>	The Maltings Business Park, Athy, Co. Kildare
<b>Is Fee paid (€ 80)</b>	Yes
<b>Development Description:</b>	Processing and recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling.
<b>Is Building Listed</b>	N/A
<b>Due Date:</b>	14/07/2021

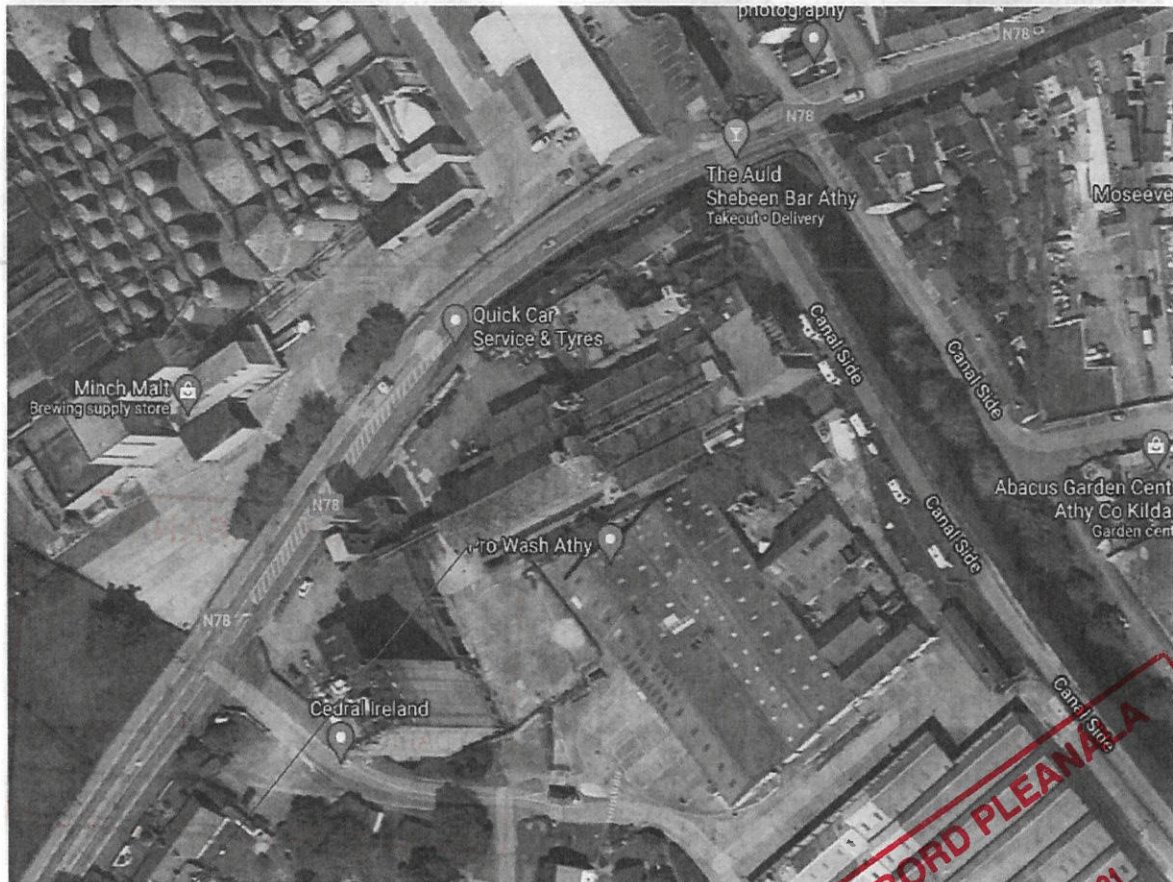
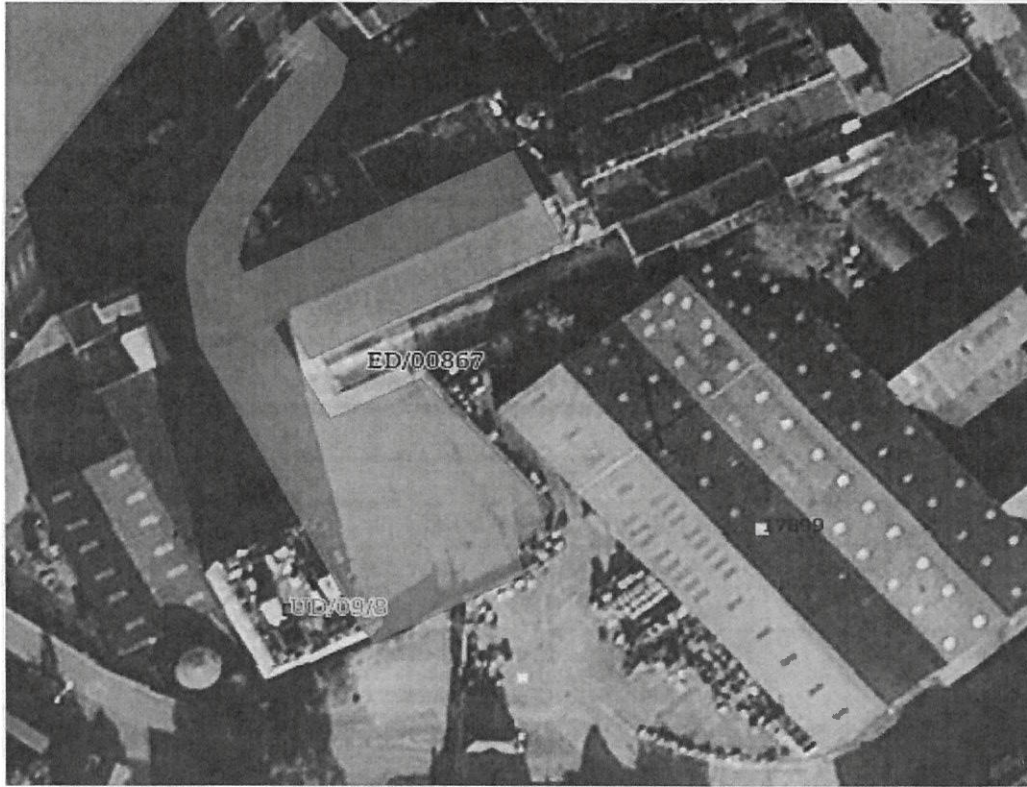
**Site Location**

The site is located within the Maltings Business Park in Athy in the western part of Athy, to the west of the canal. The site is surrounded by industrial development and is accessed off the N78. The site comprises of an access route, an old industrial building and an outdoor area with hardstanding.

**AN BORD PLEANÁLA**

10 AUG 2021

 LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
 LDG- \_\_\_\_\_  
 ABP- \_\_\_\_\_



Site area

**AN BORD PLEANALA**  
10 AUG 2021  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

**Relevant Planning History**

None indicated on the application form and none indicated the GIS.

**Description of the Development**

A Section 5 declaration is being sought in respect of, "The proposed industrial use constitutes the processing and recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling. Residual waste will be sent off site for further treatment or disposal. It is proposed that annual tonnage of 5,000 tonnes of waste materials are accepted to the site for processing. The source of waste will be skip waste mainly containing construction demolition waste from construction sites and also from house renovations and clearance. The processed material will be transported offsite for final recovery at authorised facilities. There will be no permanent deposition or long term storage of waste at the proposed facility. All storage will be temporary on line with the production of recycled materials and contained within the building. It is proposed to store empty skips only in the rear yard. Waste will be processed and separated both annually and by use of small mobile plant to move materials into designated bays prior to onward transport offsite. Mobile plant will be used to screen heavier objects out of incoming waste. All activities will be carried out in accordance with the Waste Permit as required."

Having regard to the description outlined within the application form the site is being used as a construction waste processing facility.

**Statutory Provisions**

**Planning and Development Act 2000 (as amended)**

**Section 2(1)**

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

**AN BORD PLEANÁLA**  
**10 AUG 2021**  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
~~LDG-~~  
~~APP~~

**Section 3**

3.—(1) In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.'

Planning and Development Regulations 2001 (as amended)

Part 2, Section (1)

"industrial building", means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-

- (a) for or incidental to the making of any article or part of an article, or
- (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,

and for the purposes of this paragraph, "article" includes-

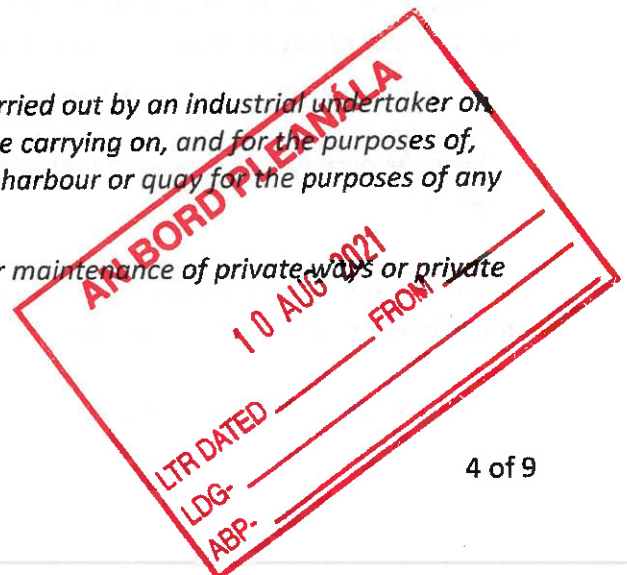
- (i) a vehicle, aircraft, ship or vessel, or
- (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;

Class 21 & Class 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)

CLASS 21

(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—

- (i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,



- (ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,
  - (iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.
- (b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

Conditions and limitations:

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.
2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

CLASS 22

Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process.

Conditions and limitations:

The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.

Assessment

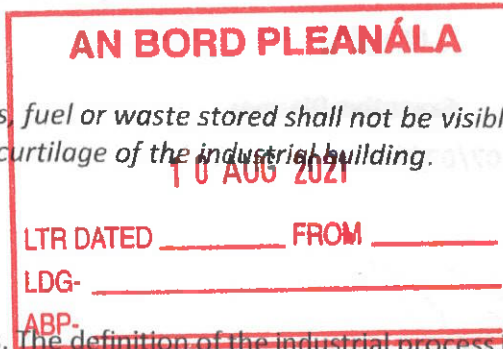
In relation to Class 21 and the industrial process. The definition of the industrial process is as for the purposes of any industrial undertaking to carry out the following:

- (a) for or incidental to the making of any article or part of an article, or

The development does not result in the creation of an articles but the processing of construction waste for further waste processing elsewhere off site.

- (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,

The development does not result any of the aforementioned as what is occurring on site is the processing and temporary storage of construction waste for further waste processing elsewhere off site. The development being carried out on site annum is not exempted development as per Class 21.




It is considered that Class 22 does not apply as the waste materials being processed must be generated at the subject site in connection with the industrial process being carried out within the curtilage of the industrial site. In this instance, as set out in the application form the construction waste arises off-site and is transported to the subject site for waste processing and temporary storage for further processing elsewhere off site. Class 22 does not allow for such an arrangement and therefore it is considered that the processing and temporary storage of construction waste, at the facility, comprising less than 5,000 tonnes per annum is not exempted development as per Class 22.

**Recommendation**

It is recommended that the applicants be advised that the proposal is development and is not exempted development.

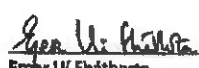
(See draft declaration included overleaf)

Signed:

  
**L. Murphy**  
**Executive Planner**  
Date: 07/07/2021  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

  
Eoghan Lynch  
Senior Executive Planner

Date: 14<sup>th</sup> July 2021

  
Emer Uí Fhátharta  
Senior Planner

July 14<sup>th</sup> 2021

**AN BORD PLEANÁLA**  
10 AUG 2021  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

**AN BORD PLEANÁLA**

10 AUG 2021

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

**Declaration of Development & Exempted Development under  
Section 5 of the  
Planning and Development Act 2000 (as amended)**

**WHEREAS** a question has arisen regarding a Processing and recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling at The Maltings Business Park, Athy, Co. Kildare.

**AS INDICATED** on the plans and particulars received by the Planning Authority on 17/06/2021, is or is not exempted development,

**AND WHEREAS** John Gill (Gill Skip Hire Ltd.), requested a declaration on the said question from Kildare County Council;

**AND WHEREAS** Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Planning and Development Act 2000(amended),
- (b) Class 21 and Class 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)

**AND WHEREAS** Kildare County Council has concluded that the proposed development does not come within the scope of Classes 21 & 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended), for the following reasons:

- a) The proposed development due to its processing of and temporary storage of construction waste does not fall within the scope of Class 21 or Class 22 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

**NOW THEREFORE** Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed development is development and is not exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanala within 4 weeks of the issuing of the decision.

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

ED/00867 AN BORD PLEANÁLA

10 AUG 2021

LTR DATED FROM

LDG-

ARP-



## APPROPRIATE ASSESSMENT SCREENING REPORT AND CONCLUSION STATEMENT

### (A) Project Details

Planning File Ref	ED000854
Applicant name	Ballinagappa Farm Ltd/Copper Beech Farm
Development Location	Ballynagappagh, Clane, Co. Kildare.
Site size	2.acres
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	The Ballynafagh Bog SAC is located 3.9km southwest of the site.
Description of the project/proposed development	
Country Market ( 2 acre site)	

### (B) Identification of Natura 2000 sites which may be impacted by the proposed development

		Yes/No
		If answer is yes, identify list name of Natura 2000 site likely to be impacted.
1	<b>Impacts on sites designated for freshwater habitats or species.</b> <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include freshwater habitats and/or species, or in the</i>

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		<i>catchment (upstream or downstream) of same?</i>	
2	<b>Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath.</b> <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Cartron Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats (bog, marsh, fen or heath), or within 1 km of same?</i>	NO
3	<b>Impacts on designated terrestrial habitats.</b> <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Cartron Valley, Pollardstown Fen, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	NO
4	<b>Impacts on birds in SPAs</b> <u>Sites to consider:</u> Poulaphouca Reservoir	<i>Is the development within a Special Protection Area, or within 5 km of same?</i>	NO

**Conclusion:**

If the answer to all of the above is **No**, significant impacts can be ruled out on habitats and bird species.

No further assessment in relation to habitats or birds is required.

If the answer is **Yes** refer to the relevant sections of C.

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<b>(G) SCREENING CONCLUSION STATEMENT</b>		
Selected relevant category for project assessed by ticking box.		
1	AA is not required because the project is directly connected with/necessary to the conservation management of the site	
2	No potential significant affects/AA is not required	X
3	Significant effects are certain, likely or uncertain. Seek a Natura Impact Statement Reject proposal. (Reject if potentially damaging/inappropriate)	
<b>Justify why it falls into relevant category above (based on information in above tables)</b>		
Having regard to the proximity of the nearest Natura 2000 sites and the nature and scale of the development, it is considered there is no potential for significant effects on the Natura 2000 network.		
<b>Name:</b>	L. Murphy	

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<b>Position:</b>	Executive Planner
<b>Date:</b>	26/04/2021

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**GOLDER**

REPORT

## Stage 1 Screening for Appropriate Assessment

Waste Facility- Maltings Business Park, Athy, Co. Kildare

### Gill Skip Hire Ltd

Killina  
Carbury  
Co. Kildare

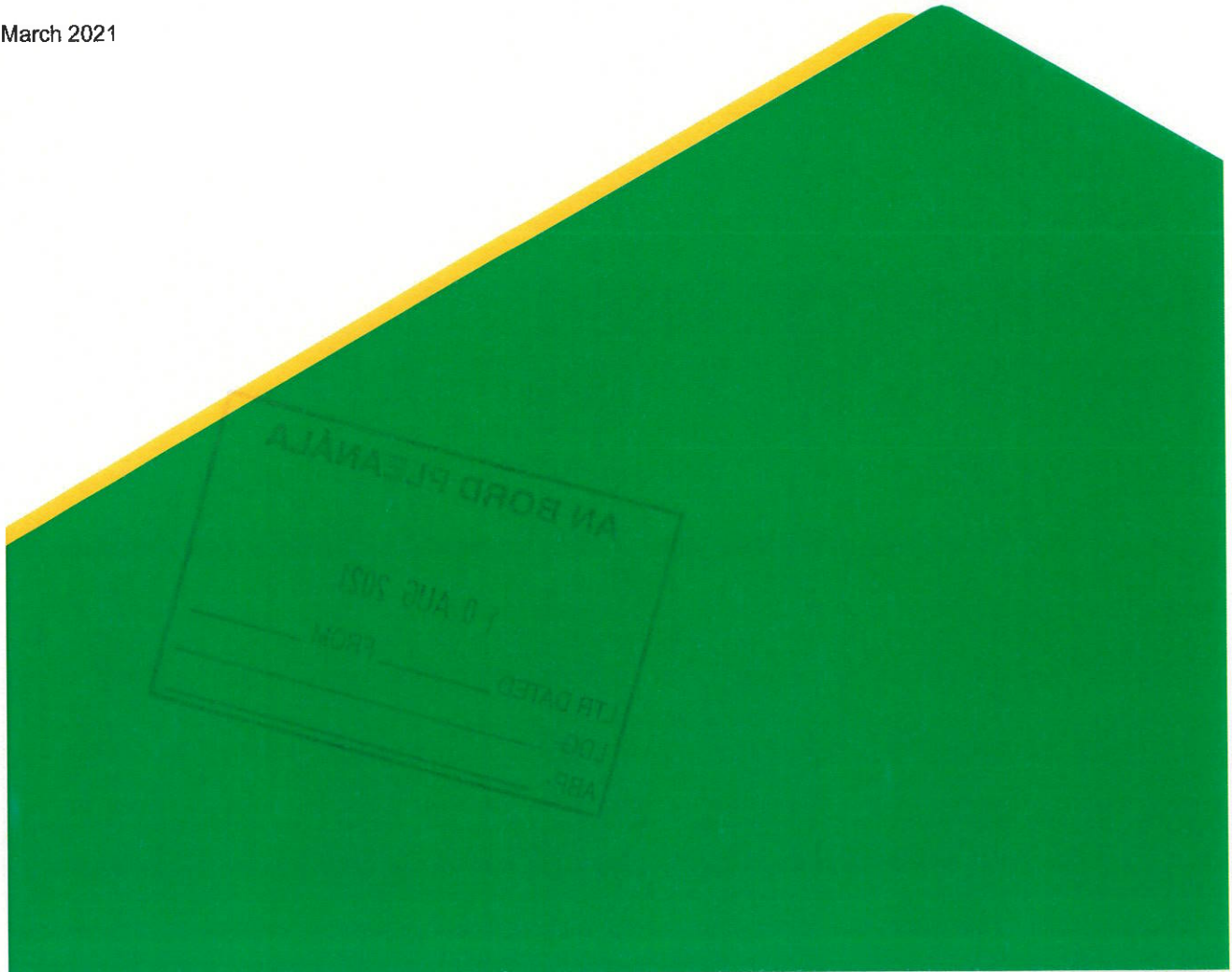
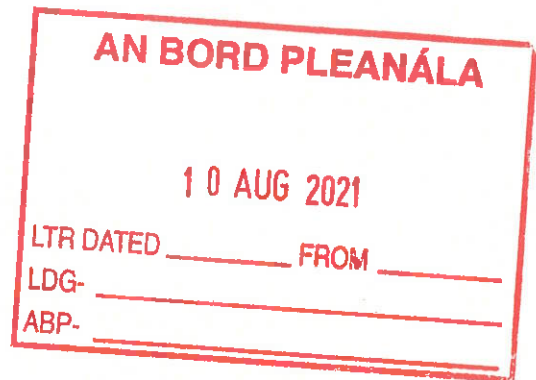
### Golder Associates Ireland Limited

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+353 45 810 200

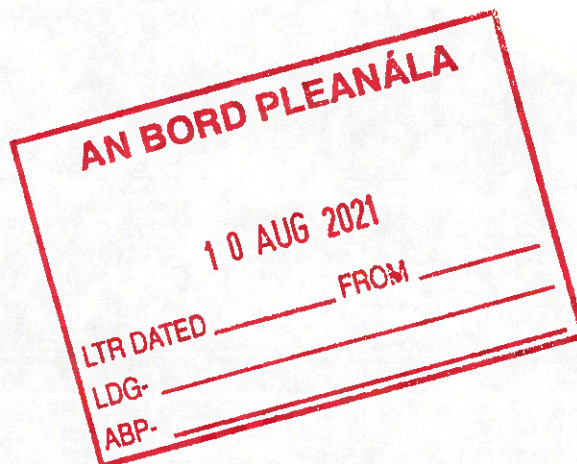
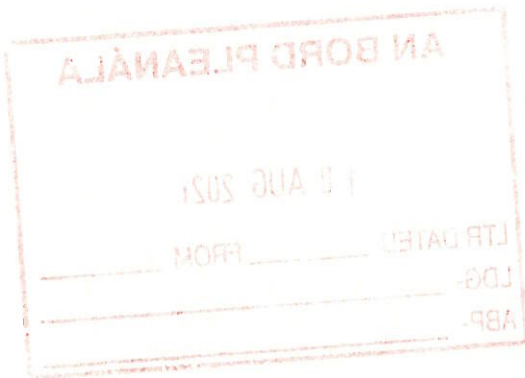
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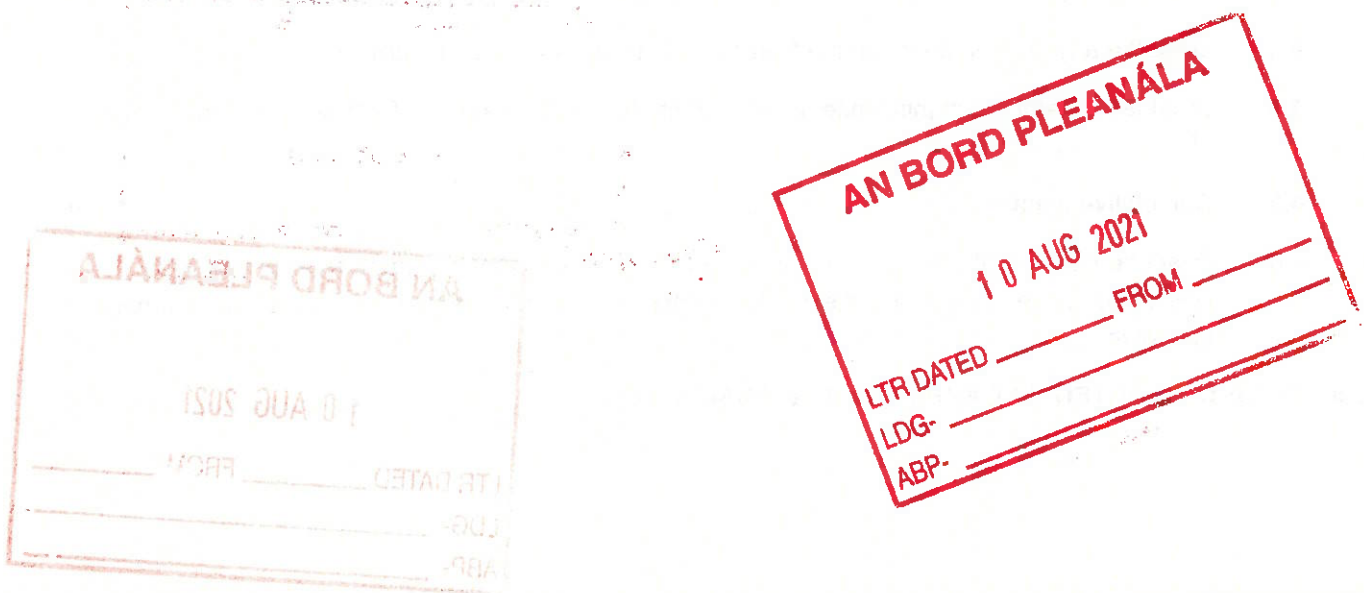
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## 1.0 INTRODUCTION

This evaluation presents a Stage 1 Screening for Appropriate Assessment (AA) to address an assessment of the potential effects that may occur on Natura 2000 sites and associated qualifying species as a result of activities at the proposed Waste Facility Site (the Project) at the Maltings Business Park, Athy, Co. Kildare (the Site). This Screening for Appropriate Assessment comprises an appraisal of potential impacts on European designated conservation sites within a 15 km radius of the Site. This AA Screening has been prepared by **Ruth Treacy – Principal Environmental Consultant**, Golder Associates (Golder).

The terms of reference of this report are set out below.

### 1.1 Terms of Reference

This screening has been undertaken in accordance with the requirements of the EU Habitats Directive (Directive 92/43/EEC). Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora – the ‘Habitats Directive’ - provides legal protection for habitats and species of European importance. Article 2 of the Directive requires the maintenance or restoration of habitats and species of European Community interest, at a favourable conservation status. Articles 3 - 9 provide the legislative means to protect habitats and species of Community interest through the establishment and conservation of an EU-wide network of sites known as *Natura 2000*. *Natura 2000* sites are Special Areas of Conservation (SACs) designated under the Habitats Directive and Special Protection Areas (SPAs) designated under the Conservation of Wild Birds Directive (79/409/EEC).

Articles 6(3) and 6(4) of the Habitats Directive set out the decision-making tests for plans or projects affecting *Natura 2000* sites. Article 6(3) establishes the requirement for Appropriate Assessment:

*“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”*

Article 6(4) deals with the steps that should be taken when it is determined, as a result of Appropriate Assessment, that a plan/project will adversely affect a European site. Issues dealing with alternative solutions, imperative reasons of overriding public interest and compensatory measures need to be addressed in this case.

Article 6(4) states:

*“If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member States shall take all compensatory measures necessary to ensure that the overall coherence of *Natura 2000* is protected. It shall inform the Commission of the compensatory measures adopted.*

*Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”*

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The requirements of Articles 6(3) and 6(4) of the Habitats Directive have been transposed into Irish legislation by means of the Habitats Regulations, 1997 (S.I. No. 94 of 1997) and the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477/2011).

## 1.2 Approach and Planning Precedent

This stage 1 screening is presented with embedded design parameters detailed in section 1.3 below. These measures are not intended to be interpreted as mitigations to address a likely significant effect to a Natura 2000 site. Planning precedent<sup>1</sup> dictates that mitigation should only be presented as part of stage two in the appropriate assessment (AA) process if required to minimise likely significant effect.

## 1.3 Project Scope, Description and Embedded Design Parameters

It is understood that the Project will receive mixed skip waste for processing within the Unit E warehouse and empty skips will be stored in Yard G indicated on drawing 03- Site Layout Plan. The waste will largely consist of bulky waste and construction and demolition materials and will be stored within concrete and steel framed industrial buildings.

The waste will be managed exclusively indoors stored on concrete pads or other non-permeable surfaces and no rainwater will not interact with waste as storage will be exclusively within buildings. This will be a dry operation and the waste management system will not require water from any source. Foul water from the toilet facilities will discharge into the Athy sewerage system that is treated by the Srowland Water Treatment Plant 3km from the town. No wastewater will discharge into the River Barrow from the Site. It is worth reiterating that waste stored on Site will not produce contact water run off as waste will be stored undercover of buildings. All plant and machinery used at the Site will be regularly serviced and maintained. Regular servicing and inspection of machinery will reduce the risk of leakages from plant and machinery.

## 2.0 METHODS

### 2.1 Desktop Review and Data Collation

A desktop review was conducted of available published and unpublished information, including data available on the NPWS <http://www.npws.ie>, Geological Survey Ireland (GSI), and Environment Protection Agency (EPA) web-based databases.

### 2.2 Screening for Appropriate Assessment

This report has been prepared with reference to the following documents:

- European Communities (2001) Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC;
- European Communities (2000) Managing Natura 2000 sites: the provisions of Article 6 of the 'Habitats Directive' 92/43/EC;
- Department of Environment Heritage and Local Government (2009, Revision Notes 2010). Appropriate Assessment of Plans and Projects in Ireland. Guidance for Planning Authorities; and
- European Communities (2007) Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC.

<sup>1</sup> Court of Justice of the European Union (CJEU) in the matter of People Over Wind and Sweetman v Coillte Teoranta (C-323/17)



Appropriate Assessment is carried out in stages, as recommended by the above-referenced Guidance Documents. There are four stages as follows:

**2.2.1 Stage 1: Screening**

This initial stage aims to identify the likely impacts of the project on a Natura 2000 site, either alone or in combination with other projects or plans. The impacts are examined to establish whether these impacts are likely to be significant. Assessment of the significance of effects is carried out in consultation with the relevant nature agencies.

**2.2.2 Stage 2: Appropriate Assessment**

The aim of this stage is to identify the conservation objectives of the site and to assess whether or not the project, either alone or in combination with other projects or plans will result in adverse effects on the integrity of the site, as defined by the conservation objectives and status of the site. Stage 2 is carried out in consultation with the relevant nature agencies. Where it cannot be demonstrated that there will be no adverse effects on the site, it is necessary to devise mitigation measures to avoid, where possible, any adverse effects.

**2.2.3 Stage 3: Assessment of Alternative Solutions**

This stage examines alternative ways of implementing the project that, where possible, avoid any adverse impacts on the integrity of the Natura 2000 site. If alternative solutions have been identified that will either avoid any adverse impacts or result in less severe impacts on the site, it will be necessary to assess their potential impact by recommending the assessment at Stage One or Stage Two as appropriate. However, if it can be reasonably and objectively concluded that there is an absence of alternatives, it will be necessary to proceed to Stage Four of this assessment methodology.

**2.2.4 Stage 4: Assessment where Adverse Impacts Remain**

For sites that host priority habitats and species, it is necessary to consider whether or not there are human health or safety considerations or environmental benefits flowing from the project. If such considerations do exist, then it will be necessary to carry out the Stage Four assessments of compensatory measures. If no such considerations exist, then establish whether there are other imperative reasons of overriding public interest (IROPI) before carrying out the Stage Four assessments. Where IROPI exist, an assessment to consider whether compensatory measures will or will not effectively offset the damage to the site will be necessary before the project or plan can proceed.

This report is for Screening (stage 1) for Appropriate Assessment only.

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**3.0 BASELINE AND HISTORIC SITE CONDITIONS**

**3.1 Site Conditions**

The Site has historically evolved into a light industrial context by the creation of a small number of buildings used for a variety of industrial purposes to add diversity to the Athy and broader South Kildare rural economy (Figure 1 below). There are no natural or semi-natural habitats on Site (the Site is exclusively made up of Fossitt Code BL3 (Buildings and Artificial Surfaces). Beyond the Site footprint a mix of residential and business properties (including Athy town), agricultural fields, roads and the Grand Canal which is a proposed Natural Heritage Area (pNHA) are noted. The River Barrow (part of the River Barrow And River Nore SAC) is situated ca. 500m to the East of the Site.



Figure 1: Site Conditions and landscape setting. (EPA Maps, accessed 12 Mar 2021)

### 3.2 Natura 2000 Sites

Sites of international importance, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), are collectively known as Natura 2000 sites. These sites contain examples of some of the most important natural and semi-natural ecosystems in Europe. The designated search area was 15 km from the Site for Natura 2000 sites (Table 1 and Figure 2).

Table 1: Natura 2000 Sites within 15 km

Natura 2000 Site	SAC/SPA (Key qualifying features)	Approximate distance from Site (KM)
River Barrow And River Nore SAC	<p>The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes):</p> <ul style="list-style-type: none"> <li>Estuaries [1130]</li> <li>Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>Reefs [1170]</li> <li>Salicornia and other annuals colonising mud and sand [1310]</li> <li>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</li> <li>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> <li>Water courses of plain to montane levels with the <i>Ranunculon fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation [3260]</li> <li>European dry heaths [4030]</li> <li>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</li> <li>Petrifying springs with tufa formation (Cratoneurion) [7220]</li> </ul>	0.5km East

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Natura 2000 Site	SAC/SPA (Key qualifying features)	Approximate distance from Site (KM)
	<p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaité Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p> <p>Margaritifera durrovensis (Nore Pearl Mussel) [1990]</p>	
Ballyprior Grassland SAC	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]	9.1km West

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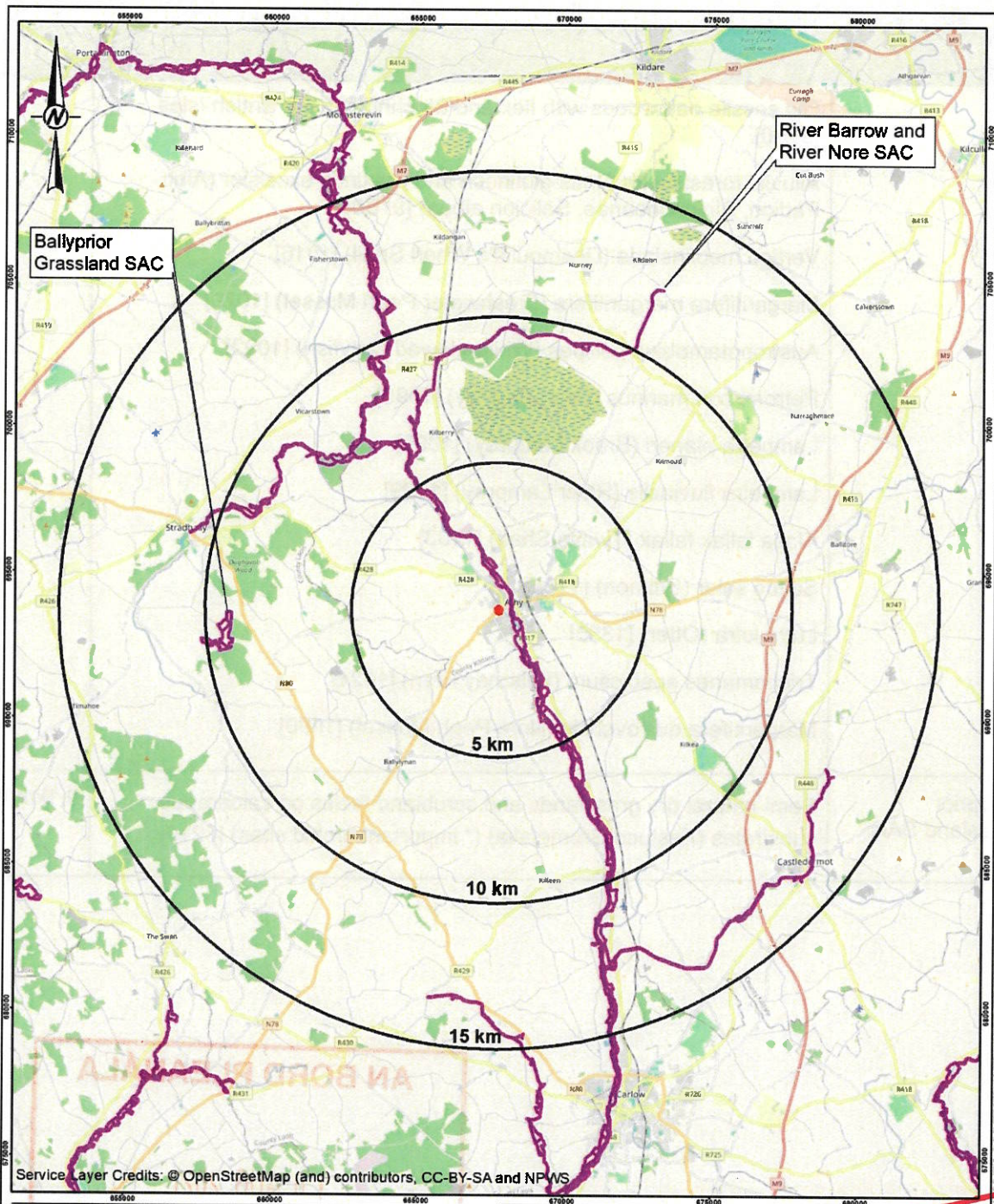
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**LEGEND**

- Site
- Study Area
- Special Area of Conservation (SAC)

0 5 10  
Kilometres

**REFERENCE(S)**  
1. COORDINATE SYSTEM IRENET95 IRISH TRANSVERSE MERCATOR

CLIENT	GILL SKIP HIRE
PROJECT	GILL SKIP HIRE WFP APPLICATION - ATHY
TITLE	STATUTORY DESIGNATED SITES
CONSULTANT	YYR-AM-D-INT 2021 MARCH 25
	DESIGNED HMC
	PREPARED HMC
	REVIEWED FB
	APPROVED FB
PROJECT NO.	21461062
REV	B0
DATE	01

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**Figure 2: Natura 2000 Sites within 15KM**

### 3.3 Screening Assessment

Throughout this stage 1 screening assessment it is important to reiterate the key focus points required.

Will the Project create the potential or indeed actual degradation (likely significant effect) of Natura 2000 sites and associated qualifying species. The key embedded design parameters are reiterated here:

- The waste is likely to consist of bulky skip waste and construction and demolition materials and will be sorted only within concrete and steel framed industrial building (Unit E);
- The waste will be stored on concrete pads or other non-permeable surfaces and no rainwater will interact with waste as storage will be exclusively within buildings;
- Water will not be utilised in the sorting and processing of the waste, therefore, waste will be dry at all times;
- Surface water and wastewater will not be discharged into the River Barrow. All foul water discharge will flow into the Athy sewerage system that is treated at the Srowland Water Treatment Plant; and
- All plant and machinery used at the Site will be regularly serviced and maintained. Regular servicing and inspection of machinery will reduce the risk of leakages from plant and machinery.

#### 3.3.1 Water

There are no direct discharges to surface water features from Site operations. Surface waters from site enter the municipal surface water management system. Surface water from the wider site currently passes through an onsite oil/water interceptor prior to discharge the municipal surface water system.

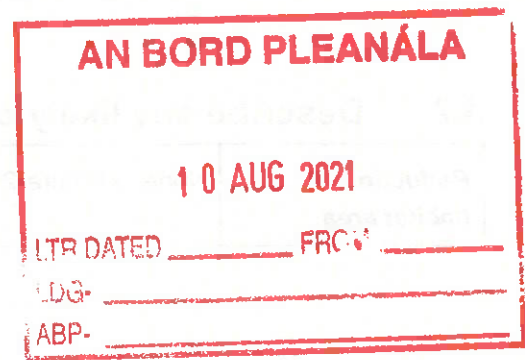
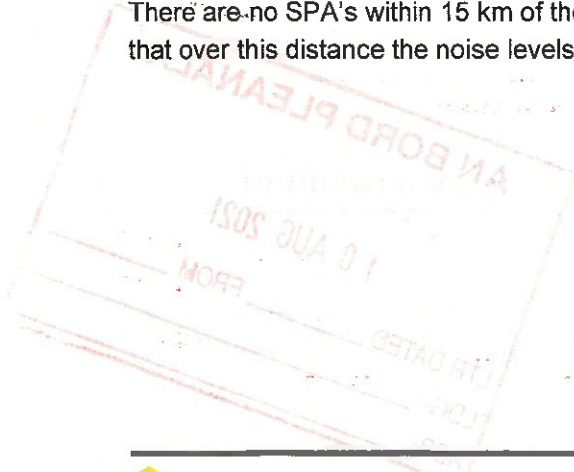
#### Air Quality – Dust

Dust deposition is a risk which may arise from Site activities arising from waste management. However, given the embedded design parameters (processing of waste only within the building) dust deposition and residual effects to Natura 2000 are considered highly unlikely. Accordingly, given the low risk of dust mobilisation on Site, embedded design parameters and distance to the nearest Natura 2000 site it is considered unlikely that dust deposition will have an impact on any nearby Natura 2000 designations.

#### Noise

Noise on Site would be relatively insignificant with the local setting of an area of light industrial use. Again, it is worth repeating that all the waste processing will occur inside the warehouse, therefore, noise will be contained as such. Of the Natura 2000 designations in the search area, it is considered that the SPAs would be sensitive to noise disturbance, given that they are designated on the basis of supporting bird species.

There are no SPA's within 15 km of the Site. Given the distance of the SPA's from the Site, it is considered that over this distance the noise levels within the Site will have a negligible impact on the SPA's.



## 4.0 STAGE 1 SCREENING ASSESSMENT CRITERIA

### 4.1 Describe any likely direct, indirect or secondary impacts of the Project (either alone or in combination with other plans or projects) on the Natura 2000 sites by virtue of:

<b>Size and Scale</b>	None – the size and scale of the Natura 2000 site will not be affected.
<b>Land-take</b>	None from Natura 2000 sites.
<b>Distance from Natura 2000 site or key features of the site</b>	River Barrow And River Nore SAC, ca. 500m East Ballyprior Grassland SAC, ca. 9.1km West
<b>Resource requirements (water abstraction etc.)</b>	No resources from a Natura Sites are required or have been required.
<b>Emissions (disposal to land, water or air)</b>	There are no emissions to water that could affect Natura 2000 sites. Air emissions from the Site (use of plant and machinery at the Site) are unlikely to cause impacts on the Natura 2000 sites due to the absence of ecological pathways and negligible emissions. The fact that the project waste operations will occur solely inside the building should also be taken into consideration.
<b>Excavation requirements</b>	There are no excavation requirements within the Natura 2000 sites or those that could affect Natura 2000 sites through source pathway modelling.
<b>Transportation requirements</b>	Transportation of goods to and from Site would not affect Natura 2000 sites in a way that would be measurable.
<b>Duration of construction, operation, decommissioning etc.</b>	The use of the Site as a waste management facility should be considered over the long term e.g. > 20 years. This does not contribute to any evidence of any likely significant or otherwise effect to Natura 2000 sites.
<b>Other</b>	None.

### 4.2 Describe any likely changes to the site arising as a result of:

<b>Reduction of habitat area</b>	None to Natura 2000 sites.
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<b>Disturbance to key species</b>	Disturbance to key species is not possible owing to the current ambient noise levels at the Site, distance between the Site and Natura 2000 sites including the absence of ecological pathways or synergies.
<b>Habitat or species fragmentation</b>	There will be no habitat or species fragmentation due to the operations at the Site. The Site is not part of the Natura 2000 sites in question and no resources are required from them. Designated habitats and species of the SACs will not be impacted given the absence of ecological pathways.
<b>Reduction in species density</b>	No reduction in species density is anticipated.
<b>Changes in key indicators of conservation value (water quality etc.</b>	None.
<b>Climate change</b>	No measurable contribution.

**4.3 Describe any likely impacts on the Natura 2000 sites as a whole in terms of:**

<b>Interference with the key relationships that define the structure of the site:</b>	No impacts are likely to be afforded.
<b>Interference with key relationships that define the function of the site</b>	No impacts are likely to be afforded.

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**4.4 Provide indicators of significance as a result of the identification of effects set out above in terms of:**

<b>Loss (Estimated percentage of lost area of habitat)</b>	There will be no habitat loss.
<b>Fragmentation</b>	There will be no habitat fragmentation.

<b>Loss (Estimated percentage of lost area of habitat)</b>	There will be no habitat loss.
<b>Disruption and disturbance</b>	Disturbance and disruption to species is considered highly unlikely. Species for which the Natura 2000 site has been designated for are highly unlikely to utilise the Site or be influenced by the Site due to lack of environmental connectivity between sites.
<b>Change to key elements of the site (e.g. water quality etc.)</b>	None. The Project the Site would be operated in a closed loop system with no discharges to water.

### 4.5 Cumulative Impact

Cumulative impacts are defined as impacts that result from incremental changes caused by other past, present or reasonably foreseeable actions together with the project (European Communities, 1999). A review of the relevant County Council planning website was undertaken for details of other developments in the area which may lead for the potential for cumulative impacts to arise. Proposed developments identified were mainly for light industrial infrastructure development. As such, it is considered that no cumulative impacts will be derived from this application and subsequent implementation.

### 4.6 Describe from the above those elements of the project or plan, or combination of elements, where the above impacts are likely to be significant or where the scale or magnitude of impacts is unknown

As described within this Stage 1 assessment, it is considered certain that the operation of the Site will not cause a likely significant effect on the Natura 2000 sites pertinent to this Stage 1 Screening Assessment. There is a high level of confidence in the likely degree of the magnitude of impacts in accordance with the Site and as such it is concluded objectively that significant effects would not be afforded.

The following key considerations contributed towards this conclusion:

- The Sites operation will occur as a dry closed loop system regarding discharges with no aquatic or terrestrial connectivity with Natura 2000 receptors as defined within this report; and
- Considering Waste processing will take place exclusively inside the Building; there is sufficient distance between the Site and all Natura sites that the Site will not cause disturbance / displacement of those species that form the part of the qualifying interests of the Natura 2000 designation.

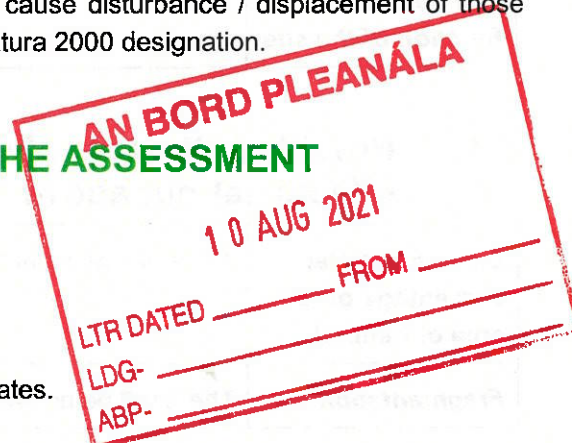
### 5.0 DATA COLLECTED TO CARRY OUT THE ASSESSMENT

**The assessment was carried out by:**

Ruth Treacy M. BSc. – Principal Environmental Consultant

**Reviewed by:**

Freddy Brookes MSc., MCIEEM – Senior Ecologist Golder Associates.





**Sources of Data:**

Existing information from NPWS, GSI, and EPA.

**Level of assessment completed:**

Desktop study and Screening report.

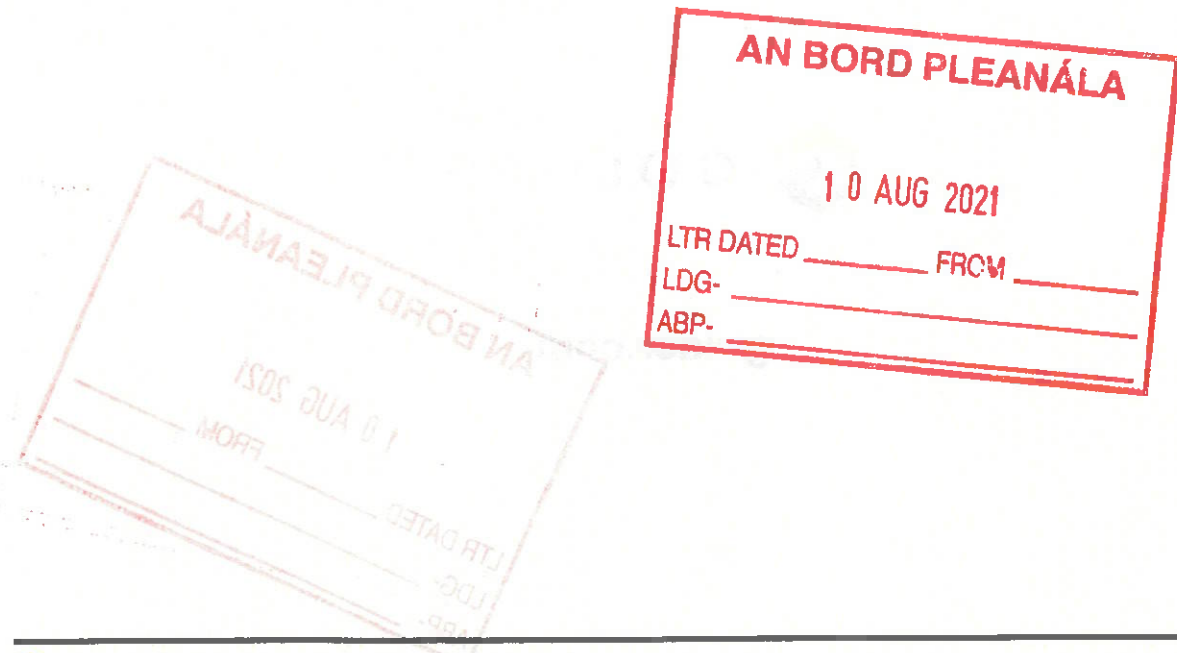


Ruth Treacy  
Principal Environmental Consultant  
Golder Associates Ireland Limited

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