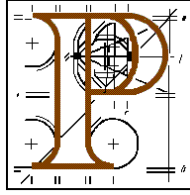


# An Bord Pleanála



## Inspector's Report

<b>An Bord Pleanála Ref. No.:</b>	PL17.125891.
<b>Reg. Ref.:</b>	01/5006.
<b>Planning Authority:</b>	Meath County Council.
<b>Proposed Development:</b>	<p>Development and operation of an engineered landfill (area 25 hectares, height 15 metres) to accept 180,000 tonnes/annum of non-hazardous waste for 14 years and ancillary facilities including:-</p> <ul style="list-style-type: none"><li>- Leachate lagoon, site drains, surface water pond;</li><li>- New entrance layout, new access road (900 metres long), road widening of National Road (N2), underpass at county road (CR384), site roads;</li><li>- Modular administration building (160 metres squared), maintenance garage (72 metres squared), portable sheds (2 in no., each 24 square metres squared), parking spaces (16 no. cars, 6 no. coaches), hardstanding area (625 metres squared);</li><li>- Bunded diesel tank (6,000 litres), waste quarantine area (120 metres squared), waste inspection area (120 metres squared), weighbridge office (24 metres squared), weighbridges (2 in no.);</li></ul>

- Gas flare, landscaped screen bunds, wheel wash, aviary, fencing, gates, barriers, perimeter and other landscaping;

At a 135.45 hectare site.

In the townlands of Knockharley, Flemingstown and Tuiterrath, Navan, County Meath, with access to the N2 at Tuiterrath.

**Type of Application:**

Permission.

**Planning Authority Decision:**

Permission with attached conditions.

**Type of Appeal:**

First Party against Condition Nos. 2, 3, 5, 6, 12, 13, 16, 17, 18, 21 and 22.

Third Parties against decision:

- (a) First Third Party - Fergal O'Byrne.
- (b) Second Third Party - Boyne Valley and Newgrange Environmental Protection League.
- (c) Third Third Party - Patrick Lawlor.
- (d) Fourth Third Party - The Curran Family.
- (e) Fifth Third Party - Cepta Timmons.

**Site Inspection:**

16<sup>th</sup> February, 2002.  
6<sup>th</sup> & 7<sup>th</sup> April, 2002.

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**1. A. PROPOSED DEVELOPMENT: PREAMBLE**

The developers, Celtic Waste Limited, have sought permission to develop and operate an engineered landfill which will accept 180,000 tonnes per annum of residual non-hazardous waste over a 14 year period at a site in the townlands of Knockharley, Flemingstown and Tuiterrath, south-east of Navan in County Meath. A number of ancillary facilities are proposed at the landfill, to facilitate access and the operation of the development.

Details of the nature and scale of the proposed development, its management, including methods of construction, operation and restoration, are set out in an accompanying Environmental Impact Statement and an addendum to that Statement submitted to the Planning Authority on 17.5.01.

A requirement that the planning application be accompanied by an Environmental Impact Statement derives from Part II, Class II of the First Schedule of the 1999 EC (EIA) (Amendment) Regulations, 1999.

In accordance with Article 9 of the Waste Management (Licensing) Regulations, 2000, the developer also submitted a waste licence application to the Environmental Protection Agency. The requirement for a waste licence is derived from the Third and Fourth Schedules of the 1996 Waste Management Act, which require activities specified and described in those schedules to obtain a waste licence.

The provisions of Section 5.4(3) of the 1996 Waste Management Act apply to the current appeal and accordingly “An Bord Pleanála shall not consider any appeal made to it against a decision of a Planning Authority in respect of such an application or any submissions or observations made to it in relation to any such appeal, so far as the appeal or the submissions or observations as the case may be, relates or relate to the risk of environmental pollution from the activity”.

**1. B. PROPOSED DEVELOPMENT: DESCRIPTION**

- (i) The waste disposal facility will be located on a 135.2 hectare greenfield site; the footprint of the waste disposal area will consist of a fully contained zone covering approximately 25 hectares, located in the centre of the landholding; the disposal area will consist of seven phases, with each phase lasting approximately two years; the first two phases will be constructed during the initial development programme and the remaining phases constructed at approximately two-year intervals.
- (ii) Each cell will be covered daily with either degradable pvc, reusable textile sheets or soil. On a weekly basis, a mineral clay cover layer will also be placed over the waste; after completion of landfilling within each phase, the landform will be sealed with an intermediate cap which will allow for initial settlement. After approximately two years, the intermediate cap will be covered with a final cap, which will be graded and grass seeded. The final capping level rises to a height of between 8 and 18 metres approximately above existing ground levels.
- (iii) The waste disposal area will be progressively developed from south to north to allow the tipping area to be located at a distance from the houses along the northern boundary of the site and to allow the screen planting in the buffer zone to the north of the waste disposal area to mature.
- (iv) The base and sides of the waste disposal area will be fully contained by means of a composite lining system incorporating a leachate collection system which will transfer the leachate to the leachate lagoon; the lagoons will be developed in phases with sufficient capacity for 72 hour storage of the maximum leachate flow. It is proposed to transport leachate by tanker from the site for treatment and disposal at the wastewater treatment plant at Drogheda. Post-closure, when the leachate quality has matured to a point where it would be adequately

attenuated by natural purification processes, it is proposed to discharge it to a reed bed system and from thence into the drainage network.

- (v) A passive gas venting network will be installed over the entire footprint of the landfill. It is proposed, if viable, to utilise the landfill gas to generate electricity.
- (vi) The proposed opening hours of the facility are 0800 to 1800 hours, Monday-Saturday inclusive.
- (vii) Wastes to be accepted at the site are household, commercial and industrial non-hazardous wastes, as well as construction and demolition wastes. Predicted waste sources are the North-East region (100,000 tonnes per annum) and the Dublin region (80,000 tonnes per annum) [c.f. EIS addendum]. Waste for disposal in the landfill site will be accepted via the main entrance gates where all vehicles will be weighed. After weighing, vehicles will proceed to the tipping area at the active working face. Only pre-authorised vehicles will be permitted entry to the site. Waste will be placed within the cells in layers not exceeding 0.5 metres in depth and will be compacted by mechanical vehicles.
- (viii) Litter control measures are coverage of the waste in both active and non-active areas, netting systems around active areas of the site, maintenance of a minimum 100 metre buffer zone between the boundary footprint and the site boundary and delivery of waste to the site in covered vehicles.

Vermin will be controlled by baiting and other standard humane methods; bird control will be maintained by ensuring waste is covered daily, ensuring that the surface area of exposed waste will be minimised, by installing a taut wire system over the surface water attenuation pond to discourage birds from landing there and, finally, by the use of falcons.

Dust emissions will be controlled by a wheel wash, a water bowser, capping of the landfill and seeding it with grass as soon as practicable.

- (ix) Access to the landfill will be from a new junction located on the western margin of the N2; the junction will take the form of an at-grade junction comprising a ghost island, right-turning facility for traffic from the north and an auxiliary left-turn lane for traffic from the south. Verges of 2.5 metres in width will be constructed on both sides of the road, as will 2.5 metre wide hardshoulders over that length of the N2 where the junction is to be sited. The access to the site from the N2 road will pass under the CR384. The developer states that in order to by-pass Kentstown Village, waste vehicles will be prohibited from accessing the facility via the R150, between Kentstown Village to the west and the N2 junction at Flemingstown Cross to the east.
- (x) Surface water will be directed towards the surface water lagoon at the southern boundary of the site from where it will discharge at a controlled rate into the Knockharley Stream and ultimately into the Nanny River via the intervening Kentstown Stream.
- (xi) Site facilities will include an administration centre comprising a plant store, maintenance building and information room; the site will also contain a waste control infrastructure comprising a double weighbridge, a weighbridge control building, waste quarantine and inspection areas.

The landfill will be accessed by an internal surface dressed road with a hardcore road providing access around the property. An asphalt road will access the administration area.



## 2. SITE LOCATION

The appeal site is located in the townland of Knockharley to the west of the N2, approximately 7 kilometres south of Slane, 17 kilometres north of Ashbourne, 14 kilometres south-west of Drogheda, 7 kilometres west of Duleek and 12.5 kilometres east of Navan. The site also lies approximately 14 kilometres north of the intersection between the Fingal and Meath County boundaries and the N2.

The heart of Kentstown Village (as defined by the R153/R150 and CR390 junction) lies less than 1.5 kilometres south of the southern boundary of the appeal site. The national school, community hall and Gaelic and soccer pitches, however, lie beyond the heart of the village to the north-east along the R150; the southern boundary of the site at its nearest point lies approximately 0.5 kilometres north-west of the community hall and soccer pitches and 0.75 kilometres approximately due north of the national school and Gaelic pitches; the landfill footprint itself will, at its nearest point, lie 900 metres from the community hall and AFC pitches and 1 kilometre from the national school.

The landfill site is adjoined on its northern and eastern boundaries by the CR384 road, apart from a spur of land along the eastern boundary of the site, which lies between the CR384 and the N2 to the east. It is through that spur that the access/exit road to the N2 will be constructed (confer Fig. 1.5.1 of EIS).

The CR384 is a rural road of approximate width 5 metres defined along its grass margins by drainage ditches and banks. It is characterised by high levels of ribbon development along both margins, consisting of mainly one-off bungalow developments and a lesser number of farmhouse related development. All dwellings are within easy vehicular and pedestrian access of Kentstown Village and could be considered as part of the broader rural community associated with Kentstown Village.

To the west and south-west of the site lies the CR383; it is separated from the landfill at its nearest point by a distance in excess of 800 metres and from the landfill footprint by a distance in excess of 1200 metres. The CR383, like the CR384, is fronted along its length by residential ribbon development.

Views of the site from the CR383 are obstructed for the most part by a low ridge; views into the site from the CR384 to the east are also obstructed due to hedgerow cover; from the CR384 to the north, however, views towards the site are open and exposed. From the R150 only intermittent views of the site are available; the clarity of the view, however, is limited by intervening field boundaries and by the separation distance involved.

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### 3. SITE DESCRIPTION

The appeal site comprises a 135.45 hectare block of arable lands and pasturage, divided into a number of field units by drainage ditches and for the most part, sturdy hedgerows reinforced by tree planting. These define the eastern, western and southern boundaries of the site; the CR384 defines its northern boundary. Views of the site from the CR384 to the east are obstructed by the tree and hedgerow planting which form the field boundaries; views of the site from the CR384 to the north of the site are unimpeded and show the land rising towards a central point just east of the now derelict farm buildings, which are centrally located within the site. From there, the land slopes downwards in a southerly and south-easterly direction towards the R150.

The EIS indicates a differential of some 20 metres approximately between ground levels at the south-eastern corner of the site and the western boundary.

The Knockharley Stream runs west to east across the northern portion of the site and is fed by a number of drainage ditches. It is proposed to re-route the stream slightly further to the north in order to accommodate the landfill footprint. The site is also characterised by a 220kV line which crosses the site in a north-south direction, and by a gas transmission main, which also crosses the southern portion of the site in an east-west direction.

The N2, from which it is proposed to access the site, is characterised at that location by a cluster of dwellings; the proposed access/exit point at the N2 lies to the south of those dwellings and sweeps behind them in a north-westerly direction to link with a large field unit lying on the eastern side of the CR384. From the proposed junction at the N2, the site is not visible, again due to separation distances and also due to strong intervening hedgerow planting. The point of the proposed access/exit junction on the N2 affords unrestricted visibility in both northerly and southerly directions.

The rural landscape in which the site is located is of pleasant but unremarkable visual quality; the site lies on the lower easterly slopes of a small elevation associated with Carn Hill and Realtogue Hill to the west; ground levels on site tend therefore generally to rise gradually towards the west.

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#### 4. ENVIRONMENTAL IMPACT STATEMENT

The Environmental Impact Statement accompanying the application was revised by way of an addendum submitted to the Planning Authority on 17.5.01. The addendum was submitted largely in response to requests for additional information by the Planning Authority on the original EIS. The EIS was compiled in the form of three separate sections:-

- (i) The existing environment, with reference in particular to climate, air quality, noise environment, soils and geology, surface water, groundwater, flora and fauna, human beings, roads and traffic, landscape, cultural heritage and material assets.
- (ii) The proposed development was described in terms of its operational and infrastructural characteristics, environmental nuisances and potential emissions which it was likely to generate, as well as the environmental monitoring procedures, which it was proposed to put in place at the site.
- (iii) The potential impacts and significant effects likely to arise from the interaction of (ii) on (i) above and the mitigation measures deemed necessary.

##### **Climate:**

The annual average rainfall for Knockharley and is in the order of 835 millimetres per year. The rainfall amounts are used to estimate the likely leachate production at the landfill site.

Potential Impacts may occur from the methane and carbon dioxide emissions from the degrading waste in the landfill.

Proposed Mitigation Measures include gas collection, short-term gas flaring and medium to long-term utilisation of gas.

Likely Significant Effects: None.

### **Air Quality:**

The survey identified slightly elevated dust and sulphur dioxide concentrations at a small number of locations; these may have been due to recent harvesting and decaying vegetation respectively. The concentrations of all other emissions were typical background concentrations.

Potential Impacts: Dust emissions may be generated by stockpiles of unvegetated soil and exposed pit faces. Landfill gas emissions may be generated by waste degradation. The EIS notes that significant quantities of methane may be generated any time after three months from operation of the landfill and continue for well in excess of 15 years following closure of the site. The EIS also notes that subsurface migration of landfill gas can occur, leading to carbon dioxide/methane build up in enclosed spaces around the site and creating the risk of an explosion. At Knockharley, however, natural ground conditions are not conducive to the migration of landfill gas due to subsoil characteristics and the design of the landfill. Gas emissions can also generate odours beyond the site boundary, as can leachate treatment systems.

Mitigation Measures: These include dust control measures such as wheel wash, daily coverage of waste, including moisturised covers during dry weather, mobile bowsers, construction of 3.5 metre high earthen berms around the active area and capping and seeding of completed cells with grass.

Landfill gas emissions will be collected at the central point and burned off using a flare; regular covering of waste and final capping will also reduce gas emissions and prevent them dispersing into the atmosphere. Flaring the gas itself will result in further emissions from the stack and generator unit. The flare, however, will have little impact on local air quality. Mitigation measures proposed to reduce odours from the putrescible waste include daily and weekly cover of waste and gas flaring. The EIS states that the 100 metre buffer zone between the waste footprint and the site boundary and an

additional buffer of 250 metres between the site boundary and the nearest residential property will provide for significant dilution of any odorous gases, thus pre-empting odours in the vicinity of residential properties. In the initial stages of landfilling, gas would be unsuitable for flaring and will, therefore, be vented; gas vents will be fitted with carbon filters to reduce odour emissions. Leachate will not give rise to odours, as it will be removed regularly from the site before it becomes anaerobic. Other mitigation measures include regular maintenance of plant and machinery.

*Likely Significant Effects:* The proposed dust mitigation measures will ensure that there is no significant increase in dust concentration. In relation to gas emissions, the maximum projected generation of methane at Knockharley, based on uncontrolled venting, is estimated at 5,200 tonnes at year 13 of operation. This equates to less than 1% of the 1998 national methane total and less than 7% of total methane from waste sources. The gas flare will, however, convert some of the methane to carbon dioxide, which although another greenhouse gas, causes 21 times less global warming than methane. The EIS also states that if viable the landfill gas captured at Knockharley will be routed into the National Grid or made available for local use.

#### **Noise:**

Measurements of existing ambient noise were undertaken at two locations to the north of the site and to the east, adjacent to the proposed underpass. The daytime and night-time  $L_{Aeq}$  to the north of the site were approximately 48dB(A) and 30dB(A) respectively and are typical of a rural location. Daytime and night-time  $L_{Aeq}$  readings for the eastern boundary of the site were 55dB(A) and 39dB(A) respectively.

*Potential Impacts:* Additional noise generated by the proposed development will include traffic noise from waste haulage trucks from construction traffic; from employee traffic movements, noise from site machinery and noise from gas flaring. When waste haulage traffic only is using the road, the  $L_{Aeq}$  is likely to be 53dB(A) approximately in the vicinity of the CR384 monitoring

station to the east: during the 10-week construction phase, predicted  $L_{Aeq}$  noise levels at properties in close proximity to the proposed access road will increase to 55dB(A). The  $L_{Aeq}$  experienced at the northern boundary of the site as a result of on-site plant and machinery will be between 52 and 56dB(A) and at the eastern boundary of the site will be between 47 and 52dB(A). The predicted noise emissions from the gas flare at the northern site boundary are likely to be less than 21dB(A) and less than 8dB(A) at the eastern boundary.

Mitigation Measures: These consist of a buffer zone of 100 metres between the waste disposal area and the site boundary and a 250 metre buffer zone between the waste disposal footprint and the nearest residential property. A 50 metre belt of woodland planting is also proposed around the entire site boundary, while a 3 metre high earthen berm will encircle the perimeter of the waste disposal cells.

Likely Significant Effects: A slight increase in ambient noise levels including an increase of between 3-5dB(A) in  $L_{Aeq}$  noise levels at properties adjacent to the N2/access road junction.

### **Soils and Geology:**

The geological structure of the Knockharley site was determined from the results of 22 boreholes and 20 trial pits and from an analysis of published information of the site itself and its immediate environs. The data shows the bedrock at Knockharley overlain by a continuous layer of unconsolidated overburden which varies in thickness from 12 metres to 21.5 metres across the site. The overburden consists of a thick and continuous till deposit which thins in all directions away from the Knockharley site as bedrock comes to the surface. The till at Knockharley consists of boulder clay made up of bedrock debris set in a silty clay matrix with a minor sand content. Samples of glacial till were tested for permeability, with results indicating that the till layer has a permeability in the range  $1 \times 10^{-9}$  metres/second to  $8.1 \times 10^{-11}$  metres/second - a lower range value for Irish tills. The borehole tests also show the bedrock surface falling from north to south, with an elevation range of 40-50 metres



OD. The bedrock consists of bright coloured sandstone and darker colour silt stone/mud stone.

Potential Impacts: Impact will result from excavations at the site, with the greatest level of impact being within the waste disposal footprint. There the overburden will be excavated to below formation level and replaced with a 1 metre thick clay layer with a permeability of  $1 \times 10^9$  metres/second.

Likely Significant Impacts: None.

### **Surface Water:**

The appeal site lies in the upper reaches of the Nanny catchment in an area characterised by a high water table and poor drainage conditions. These conditions are reflected in the depth and high density of field drains on the site. Analysis of the surface drainage shows that it is characterised by an elevated hardness level and iron concentrations, as well as elevated BOD, COD, nitrate and nitrite levels in the Knockharley Stream.

Potential Impacts: Diversion of the Knockharley Stream around the footprint of the waste disposal area.

Mitigation Measures: Connecting ditches will be redirected to maintain current drainage levels. To avoid potential contamination of the drainage exit from the property at the south-eastern corner of the site, a weir structure, which can divert site drainage to the stormwater lagoon in the event of contamination, will be provided. Stormwater will be discharged to the pond at the southern boundary of the site. The pond will have sufficient capacity to dampen storm peaks and to maintain current discharge characteristics from the landholding. On closure and following a period of monitoring, the pond will be converted into a wetland or reed bed system.

Significant Effects: No significant effects on surface water are predicted.

## **Groundwater/Hydrogeology:**

The area in which the site is located is underlain by an overburden aquifer and a bedrock aquifer. The overburden water table at Knockharley lies generally within 1.5 metres of the ground surface - a level which is consistent with the low permeability of the overburden and the recognised poor drainage conditions. The EIS notes the presence of poor bedrock aquifer conditions, evidence of slow groundwater movement and long residence time. The EIS also notes that the contamination observed in the surface waters is not reflected in the groundwater analyses.

Potential Impacts: The EIS notes that the Knockharley site “is unique in that it is underlain by a thick and continuous layer of low permeability clay... which protects the underlying bedrock aquifer from the possible contamination from an uncontrolled discharge of leachate from either the waste disposal area, the leachate lagoon or the interconnecting pipework. The low permeability of the overburden, combined with a groundwater flow rate of less than 1 metre per year, will prevent any significant groundwater contamination should a catastrophic failure of the lining system occur. The EIS notes that the overburden conditions at Knockharley, where the recommended geological barrier extends essentially down to the bedrock, affords the groundwater a substantially greater level of protection than that which is acceptable under the guidelines. As such, the landfill does not pose any risk to wells located downgradient of the landfill in the underlying bedrock aquifer.

Mitigation Measures: The developer proposes, with the permission of the well owners, to sample the private wells identified on a quarterly basis with the results of the analyses being reported to the EPA and to the well owners. Should the water quality in any of the wells deteriorate as a result of the landfill, the developer will fund connections to the public watermain for the affected properties.

Significant Effects: No predicted significant effects on the groundwater/hydrogeology from the proposed development are likely.

## **Flora:**

Four sites of nature conservation interests were identified within 5 kilometres of the proposed development. The closest of these is Balrath/Flemingstown Woods, a proposed Natural Heritage Area located approximately 0.7 kilometres south-east of the proposed site. The EIS notes that this is a mature semi-natural woodland rare in County Meath where the majority of trees are oak. Balrath Woods is the only site of the fern “*Polystichum aculeatum*” in the county.

Potential Impacts: The proposed development will not impact directly on the flora of Balrath Woods; the re-routing of the Knockharley Stream may impact on the wetlands adjoining the north-eastern boundary of the site due to increased siltation there; this impact may be mitigated by use of a silt trap. The removal of habitats will have a local ecological impact only, as the habitats contain no rare or protected species of plant.

Mitigation Measures proposed are retention as much of the existing hedgerows possible, prevention of damage during the construction and operational phases of the landfill, the construction of a silt attenuation pond and minimum inter-stream works are all proposed mitigation measures. With these in place, likely significant effect of the proposed development on flora will be minor.

## **Birds:**

The EIS notes that although the bird communities recorded in the survey area were typical of mixed agricultural land, skylarks, yellow hammers and golden plover were also observed either on or on the fields around the site. The EIS notes that although golden plover is listed in Annex 1 of the EU Birds Directive, it is widely distributed in winter on agricultural land and the significance of the occurrence of a relatively small flock in such a habitat is low. Yellow hammer is also noted as a species of high conservation concern, whilst skylarks are listed as of medium conservation concern. Both species

have declined in Ireland over the last 25 years. The EIS also notes that the site is visited at times by foraging buzzards, which have only become established in the area in recent times and are still relatively scarce birds of prey.

Potential Impacts: The EIS notes that although birds can be affected by loss of habitat, the habitats are frequently occurring and will not have any significant impact on bird population in the area. Species of conservation value, for example, skylark, yellow hammer and golden plover, will still occur in the immediate area, provided there are no marked changes in farming practice.

Mitigation Measures: The proposed planting scheme will compensate for the loss of hedgerow habitat and, therefore, there will overall be no significant impact on birds due to the construction phase of the development. During the operational phase an increase in scavenging bird species is likely; these will be discouraged by retaining the working area of the landfill to a minimum area and covering all previously worked areas; a system of taut wires may be installed at the surface attenuation pond if considered necessary to discourage birds from landing there. Further bird control techniques, such as nets and trained falcons, may also be employed. Falcons will not have any negative impact on non-scavenging birds in the area, including buzzard.

Likely Significant Impact: None during either the constructional or operational phases of the development.

An ecological assessment of the streams and rivers in the vicinity of the proposed landfill was also undertaken; no rare macro-invertebrate species or a species of conservation interest were found. The survey indicates that most of the Knockharley Stream would not be suitable as either a salmonid adult, nursery or spawning habitat.

#### **Fauna:**

The EIS notes the presence on site of a number of wildlife species - rat, rabbit, hare, badger, common bat and common frog.

Potential Impact: The total loss of habitat in the central landfill area will result in the elimination of a number of common faunal species; these, however, will persist in the buffer zone and in adjoining agricultural areas and the overall impact, therefore, may be considered as minor to negligible - the main and subsidiary badger setts being located outside the boundary of the proposed development. The EIS notes that the substantial woodland planting proposed will increase the numbers of vertebrate fauna in the area.

Re Potential Impacts on Surrounding Areas, it is considered that the proposed development will not affect the ecosystem, functioning or faunal diversity of adjoining agricultural areas, although an increase in scavenging birds may have some impact; this is likely to be small and the species affected common.

Mitigation Measures proposed include limiting season of disturbance to trees and vegetation, habitat replacement in the buffer zone and measures to reduce pollution and sedimentation of watercourses during all phases of the development. A major badger breeding sett and subsidiary sett located outside the site boundary will not be interfered with although in the main site, badger setts will be blocked off; any smooth newts found will be relocated to alternative ponds, rodents will be controlled by physical rather than chemical means, while scavenging birds will be discouraged by used of falconry.

Likely Significant Impacts: The overall impact will be low.

Re Impact on Aquatic Ecology, these could result from discharges of sediments and pollutants into the surrounding watercourses and accidental leakage of leachate into the surrounding surface waters.

Proposed Mitigation Measures include silt traps and distant location of storage areas and spoil disposal areas from watercourses, use of a pen stop to divert waters from the Knockharley Stream to the pond and the use of biological river engineering techniques as an alternative to culverting where stream diversion works are to be carried out.

Likely Significant Effects are not predicted, although the development may cause a slight change in the hydrological conditions on the site; this change, however, is unlikely to have a significant effect on the fauna in the Knockharley Stream.

### **Human Beings:**

The EIS refers to the Draft (now adopted) County Plan for Meath which has as an objective the promotion of Kentstown as a strong local centre with a population of about 600 persons - an increase of some 276 persons over existing population levels.

Potential Impacts: Increased noise and odours, reduction in air and water quality, as well as traffic, litter and vermin increase, health issues, visual intrusion.

Mitigation Measures Proposed are coverage of the waste, minimum exposed surface areas of waste, control of vermin and scavenging birds using a number of control techniques. For human health, the EIS notes that the proposed landfill will accept non-hazardous waste only; in the case of non-hazardous waste, the greatest risk to public health is from contamination of groundwater wells or surface water supplies and finally subsurface mitigation of landfill gas. The EIS notes that the development does not pose any risk to wells due to the low permeability and thickness of the overburden while, in the event of surface water pollution, the polluted water can be diverted to the stormwater lagoon until the contamination is investigated and remediated. Subsurface migration of landfill gas is also unlikely as natural ground conditions at the site are not conducive to same. The EIS also refers to the 250 metre buffer zone between the landfill and the nearest house. In the case of windblown litter, proposed mitigation measures include minimisation of the tipping area, coverage of all waste in both active and non-active areas, 6 metre high vertical netting around the perimeter of cells and portable nets or screens around the active disposal area; a 100 metre buffer zone between the landfill footprint and the site boundary, transportation of waste in covered haulage vehicles and

litter patrols of the N2 and adjoining regional roads. The EIS notes that fly tipping is unlikely to occur at Knockharley as the site will not be open to the public and waste hauliers would be registered with the EPA and be allowed access only under contract.

Likely Effects of the proposed development on the local population are therefore expected to be insignificant.

### **Roads and Traffic:**

The EIS notes that the capacity and operation of a road network is dependent on the junctions within that network and that it is the operation of the junctions which determine capacity and vehicular delay. Traffic and transportation surveys were, therefore, carried out at a number of junctions and a traffic impact assessment drawn up. Traffic turning count surveys were carried out at four junctions - the N2/CR384, the N2/R150, the N2/R153/CR322 (Balrath Cross), the R153/R150/CR390 (Kestown Crossroads). The surveys were carried out over the morning and evening peak hours. The survey noted that at all of the survey junctions a total of 3,873 vehicular movements were recorded during the PM peak period (1730-1830 hours respectively); the total throughput of vehicles at the same junctions in the AM peak period (0730-1000 hours) was 3,373 vehicles.

Potential Impact: Using the PICADY computer modelling programme, the capacity of the junctions was assessed for three separate periods during the operational life of the site - 2004, 2008 and 2016. The capacity assessments were based on volumes of network traffic growth, landfill generated traffic volumes and construction traffic volumes. Network traffic growth was estimated by applying a 3.5% growth rate to the peak hour periods for all roads in the vicinity of the site, including distributor routes which, under normal circumstances, would usually experience a lower growth rate than the National Primary Road network. The growth rate, however, did allow for a 27% reduction in N2 traffic due to the completion of the Ardee link road. Construction related traffic generated by Phase 1 where two cells are being

developed amounts to a total of 148 vehicle movements in and out of the site. In subsequent phases that drops to 84 vehicle movements per day. Landfill generated traffic calculations are based on a waste figure of 180,000 tonnes, a 300 a day working year, a 10-hour working day and an average vehicle loading of 8.5 tonnes for local waste and 14.5 tonnes for non-local waste.

**Capacity at N2/Access Road Junction:** Table 4.9.8 of the EIS showed a practical reserve capacity at the proposed junction of at least 94% at the end of 2016 - well within the acceptable limits of design capacity. The queuing delay information reveals that there would be an average queuing delay of 16 seconds for every vehicle accessing the site and less for those exiting; this results in a maximum average queue length of less than one vehicle during the peak period. The information also indicated that there would not be any additional delay to through traffic on the N2 as a result of the proposed access due to the incorporation of standard deceleration lanes in both directions. The EIS proposes, however, that the turning length at the end of the right-turn deceleration lane be increased from 10 metres to 30 metres in order to allow for the eventuality that two vehicles may arrive at the development at the same time.

*The EIS Addendum* notes that as a result of revised traffic distribution flows an additional seven vehicles per day will use the access; this will have an insignificant impact on the operation of the access junction which will still have a reserve capacity in excess of 90%.

**N2/CR384 Junction:** Table 4.9.9 of the EIS shows an average delay of 12 seconds for every vehicle exiting the county road onto the N2 is expected; this equates to a maximum average queue length of less than one vehicle during the peak period. Junction 1 will therefore experience no significant queuing during the peak hour periods at the end of 2016. A practical reserve capacity at the proposed junction at the end of 2016 of at least 90% is predicted.



The EIS Addendum notes there is no additional traffic generated at this junction as a result of the proposed development and, therefore, its reserve capacity in excess of 90% will remain unaltered.

**Re N2/R150:** Apart from some traffic from Duleek and Drogheda, traffic from the development is not forecast to use the R150 in order to avoid passing Kentstown School. Table 4.9.10 of the EIS a practical reserve capacity of at least 35% for the junction at the end of 2016. Queuing delay in 2016 is expected to average 24 seconds for every vehicle exiting the regional road onto the N2, giving a maximum average queue length of less than two vehicles during the peak period. There will not be any additional delay to through traffic on the N2 in 2016 with or without the proposed development.

In the EIS Addendum the operation of this junction was reanalysed with the results provided at Table 12.3; these show that the redistribution of traffic has little impact on the junction with maximum increases in traffic being in the region of 3.6% and the reserve capacity of 35% being maintained.

**Re N2/R153 Junction:** The EIS notes that save for local traffic from within Meath traffic to and from the site is not forecast to use the R153, using instead the mainline of the N2 to access the landfill. The analysis for 2016 shows, however, that the junction will be over capacity should a 3.5% traffic growth be sustained on the regional roads over the next 16 years. However, the EIS states that the forecast traffic growth on the R153 requires to be refined, having regard to the fact that most of the traffic on the R153 constitutes local commuter traffic and that population numbers in the area as a result of restrictive service provisions in the Kentstown Village Development Plan and the Meath County Development Plan rural housing policy criteria are unlikely to rise to such an extent that they would generate a level of commuter traffic which would adversely impact on the capacity of the junction. The EIS also notes that in the 2016 analysis the capacity of the N2/R153 junction is compromised, not by traffic generated by the landfill, but by the robust general traffic growth on the local roads network, noting however that such traffic levels are considered unlikely.

*In the EIS Addendum* Table 12.4 shows that the redistribution of traffic has little impact on the original EIS output results and that the original comments of the EIS are still valid re the 2016 scenario viz. that the junction will not be at over capacity in 2016.

**Re R150/R153 Junction:** Landfill related traffic at this junction will use the main line of the R153 to access the landfill site. A least value of practical reserve capacity at the junction in the order of 27% is predicted for the end of 2016. Additional delays of 0.6 seconds are forecast for 2016, resulting in a maximum average queue length of less than three vehicles during the peak period.

*The EIS Addendum* at Table 12.5 shows that redistribution of traffic has little impact on the original Traffic Impact Assessment.

#### **AADT Assessments:**

The EIS addendum as revised by a submission to the Planning Authority of 3.7.01 shows the average measures in total traffic on the N2 as a result of the proposed development are in the region of 1.8% during periods of construction with average increase in traffic in the region of 0.96-0.73% during normal landfill operations. HGV traffic is projected to increase by 8.6% + 4.6-3.5% during those respective periods.

Re the R153 (traffic from the north-eastern region), increases in overall traffic volumes during periods of construction and operation in 2008 and 2016 are likely to be in the region of 2.1% and 1.6% respectively. Average HGV content of traffic for 2008 and 2016 is likely to be in the region of 36% and 27% respectively...nevertheless considering the very low volumes of traffic and relatively low HGV content currently using this road the impact on the level of service is not likely to be significant.

## **Landscape and Visual Aspects:**

The EIS describes the landscape, noting that “the landscape of this site and its immediate surrounds, including Somerville to the south-east, is of typically rural, unremarkable agricultural land. Somerville, with its wooded parkland, is an area of high landscape quality set in the River Nanny Valley south of the site area...significant trees, groups of trees and woodland are restricted to Somerville Demesne to the south and Brownstown and Ashtown Houses to the west and north respectively...” Views of the site are limited to areas from immediately adjoining roads to the north and east and from immediate fields, except from the south and south-west where the landscape is more open but where views are still restricted along the Veldonstown Road due to a local topographical ridge. From the far distances of Tara and Skyrne, the site is an indistinct element in the middle ground of an expansive panoramic view.”

*Potential Impact:* The most adverse impacts are likely to be experienced during construction and will be derived from ground disturbance, tree and hedgerow removal, changes in ground level, commissioning of the initial phase of the landfill area, the administration buildings and general construction activity. Impacts likely to be experienced during operational activity are landfilling itself, including truck movements, raising of the landfill area and general site activity, including the lighting and netting system.

*Mitigation Measures:* The landfill is sited so as to maximise the screening value of internal and boundary hedgerows; strong hedgerows with screening potential are thus retained, while the south-north phasing of the landfill also will allow time for the screen planting to the north of the footprint to mature. Prior to the commencement of development, screening berms of minimum height 5 metres will be constructed along the southern and south-western boundaries of the landfill, while extensive woodland planting of minimum depth 50 metres will be carried out along all boundaries. The planting will cover an area in excess of 50 acres and will contain over 100,000 individual plants; the woodland will effectively screen all operations from external views within seven to ten years of planting and, in the shorter term, will filter out

views and accentuate existing screening derived from retained hedgerows. A large wetland type lagoon with surrounding planting appropriated to such a location will be provided near the southern boundary. Where existing hedgerows are disturbed, replacement hedgerows will be provided, particularly along the N2. Fencing will be erected on all boundaries behind the hedgerows. Buildings on site will, in terms of scale and height, be similar to agricultural buildings within the landscape.

After each phase of the landfill is completed, it will be sealed with an intermediate cap, which will be replaced after approximately two years by a final cap, which will be graded and seeded; shortly after, the lower slopes will be planted with small woodland copses; hedgerows will be reinstated to reflect the surrounding landscape. Planting on the top of the landfill will be restricted to avoid accentuation of its height.

In the long-term, the site will develop a strong wooded appearance which will block views of the development; in the short-term, the planted screen berm along the southern boundary will significantly screen both initial and early operational aspects of the development. During winter months, a low level of lighting will be provided around the administration and weighbridge area and the active landfill face. However, the lighting will only be used to facilitate working in late morning and during the evening period and will not be used during night-time. A mobile litter control system will also be used at the active face; it will be noticeable as each phase increases in height, but its mobile nature ensures that it will be increasingly screened as the development progresses.

#### Likely Significant Effect

The EIS notes that while moderate visual impact will arise from properties immediately adjoining the site to the east, north and the N2 entrance, no adverse visual impact will be established in the medium and long-term. Given therefore that all but the essential management infrastructure will be removed on closure of the facility, the proposed development is not likely to generate

any significant adverse visual impact, either initially or in the later phases of the development.

### **Cultural Heritage:**

Previous archaeological research was carried out in 1997, consisting of a preliminary site selection study and archaeological test trenching; a geophysical survey followed in 1998 and further test trenching was carried out to clarify the results of that survey; the overall results were then published in a report by Margaret Gowan & Co. The test trenches did not reveal any items of areas of archaeological significance; however, the holy well at the farmyard in the centre of the site was not conclusively examined. An aerial survey, however, revealed some features of potential archaeological interest at the south of the site in the location of the proposed stormwater lagoon. This may be the remains of a bivalate circular enclosure of prehistoric or early medieval provenance.

Potential Impact: The proposed development will lead to a complete transformation of the land use and fabric of the townland and potentially impacting on townland boundaries. As the development progresses, it is likely that some evidence of medieval and prehistoric activity within the site will emerge.

Mitigation: Mitigation measures should form part of an integrated plan which will quantify and resolve the areas of both known and undiscovered archaeology. The EIS identifies several areas of potential archaeology which should be tested further by a licensed archaeologist to establish their nature. If archaeological material is uncovered steps should be taken to resolve such material in an appropriate manner, including cessation of work and informing Dúchas.

Material Assets: These consist of agriculture, infrastructure, housing and tourism.

## **Housing:**

There are 21 houses within 500 metres of the landfill footprint, while the village of Kentstown is located approximately 1.5 kilometres south of the site. *Potential impacts* here relate to a fall in property prices; in this regard, the EIS refers to the experience of the Arthurstown landfill near Kill where a short to medium-term negative impact on property values is expected, but in the long-term after the landfill has ceased landfill property values are expected to revert to normal levels. Proposed *mitigation measures* take the form of good design and operation of the site and the provision of buffer zones to isolate the active area from neighbours. Financial reinvestment by the landfill operator in the local area to promote the visual, environmental and cultural assets will also mitigate against adverse impacts. *Negative impacts* on property are, therefore, likely to be minor and temporary, as are negative effects on property values in the wider surrounding area.

## **Tourism:**

The site of the proposed landfill lies in an area where a minimum distance of 5 kilometres obtains between the site and any tourist routes. For tourists accessing Newgrange from the N2, the *potential visual impact* of the proposed development will be insignificant. *Mitigation* against adverse impacts will take the form of good design and operation of the facility. Visual screening and control of litter, vermin, birds and odours will all assist in preventing *adverse impacts* on tourism.

## **Infrastructure:**

The proposed development may *impact* on the ESB transmission line and the gas pipeline adjacent to the disposal area. *Mitigation measures* include 15 metre buffer zones between the disposal area and the transmission lines; any work carried out to the ESB or gas pipelines will be in accordance with guidance from the relevant authorities.

## **Agriculture:**

*Potential impacts* may occur in relation to 4 landowners part of whose lands will be severed, , the general agriculture of the area directly bordering the site which may be affected by nuisances such as leachate, litter dust and on agriculture on a county basis. Mitigation measures: The landfill will be constructed and operated in accordance with the EU Landfill Directive and the Waste License issued by the EPA: potential nuisances to agriculture such as flies, rodents, etc will be dealt with within the site.

The *likely impact* of the proposed development on agriculture in the area will be very slight nor will it have a significant impact on land use and agriculture in Meath.

## **Interactions:**

Interactions mainly between human beings and fauna, water, air and the landscape are assessed. Interactions between water and flora and fauna and water and soil are also assessed.

Mitigation measures to counteract adverse interactions are identified.

## **EIS Assessment:**

Generally the information set out in the EIS is comprehensive, has a clear structure and makes a commitment to mitigation and monitoring. It is flawed in that:-

- (a) Alternative site locations are not listed or discussed;
- (b) Aids which would assist in describing the visual nature and impact of the proposed development are not provided and where provided are of poor quality.

With regard to (a) however, I note that a comprehensive site selection process for a landfill site in County Meath had already been undertaken by Meath County Council and was included in the EIS submission by Meath County Council to the EPA during the licence application process. That site selection process resulted in Knockharley forming the preferred location for a landfill site. With regard to (b), while assessment of the visual impact of the proposed development is possible as a result of a combination of information and site inspection, the provision of elevational drawings showing the scaled relationship of the landfill facility to surrounding development and also a 3-dimensional model would have assisted in this regard.

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## 5. PLANNING AUTHORITY DECISION

**7.3.01** - Additional information was requested by the Planning Authority with regard to a number of matters; these included restriction of waste for disposal at the site to that originating in the North-Eastern Region, re-examination of leachate volumes likely to be generated at the site, evidence of agreement by the operators of the proposed wastewater treatment plant to receive treated or untreated leachate, controls for noise and dust emissions at the site, including the provision of a 250 metre buffer zone between the disposal area and the nearest house, details of the proposed stormwater lagoon, impacts of the construction phase on surface water/groundwater supplies, inventory of well water supplies and proposals to connect properties dependent on private wells to the public mains. Details of the proposed borrow pit were also required, as was documentary evidence of sufficient interest to acquire lands necessary to facilitate the proposed works at the N2 and CR384. Additional information also required AADT counts for the regional and national roads serving the development, a revised TIA with a right-turning lane factored into the analysis for the R153/N2 junction; the Planning Authority also requested that the landfill development take place in a north-south direction, and revised proposals to provide for environmental continuity projects such as a community liaison committee.

**12.7.01** - Meath County Council granted permission for the proposed development subject to compliance by the applicant with a number of conditions. The conditions required, inter alia, a restriction on waste disposal to 88,000 tonnes per annum; a reduction in the size of the landfill footprint to provide for a minimum 250 metre separate distance between the northernmost edge of the landfill footprint and the residential property adjacent to the northern boundary of the site. Further conditions were also imposed regarding the composition of a community liaison committee (eight representatives), an annual contribution towards the cost of providing environmental and recreational projects in the vicinity of the site, road design details a traffic management plan, a road improvement contribution, restrictions on working hours and on noise and dust emissions during the construction phase of the

development. remedial works when necessary to private wells, and arrangements for the collection, storage and disposal of all foul sewage effluent.

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## 6. DEVELOPMENT PLAN

The Development Plan in force for the area is the Meath County Development Plan, 2001. Chapter 3.5.4 of Volume 1 of the Plan sets out County policy in relation to solid waste. The plan notes that:-

- The existing facility at Basketstown is being replaced by a new sanitary landfill at Knockharley off the N2 in the east of the county. This facility will be accompanied by greater recovery of recyclable materials and composting of organic waste fractions. In the longer term the regional waste management strategy being adopted by the regional authorities will set out a longer term vision.
- The plan states that waste management strategy in the county will be based on a number of core tenets, including the provision of residual landfill capacity for the short, medium and long-term and strategic suitable locations.
- The Development Plan Rural Detail Map for the Navan area shows:-
  - (i) the site located within a development pressure area;
  - (ii) the site located within a VQ11 Area of Visual Quality. The Plan notes that:-

such areas can absorb quite effectively appropriately designed and located developments in all categories, including masts and wind energy installations, afforestation and agricultural structures.

- The Kentstown Village Development Plan comprises a Written Statement and Detail Objectives; these include the development of Kentstown as a strong local centre with a population of about 600 persons. The Plan

notes, however, that while the sewer network “has been designed to extend out the Duleek Road to the National School, the in-depth development of land to this part is not feasible due to constraints in the capacity of wastewater disposal infrastructure”. The Plan has as an objective “to provide a new wastewater treatment plant with a design population of 600 persons”.

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## 7. WASTE MANAGEMENT PLAN FOR THE NORTH-EAST REGION 1999-20004

The local authorities of the North-East region - Meath, Cavan, Monaghan and Louth - prepared a Draft Waste Management Plan as required under Section 22 of the 1996 Waste Management Act, and in accordance with the Waste Management (Planning) Regulations, 1997. The plan was adopted in August 2001.

The purpose of the plan is to provide a framework for the management of non-hazardous wastes in the North-East region over at least the next five years in accordance with current national and EU waste legislation/policy.

The plan was based on a number of studies carried out in the North-East region, namely the **Meath Waste Management Strategy 1995-1997**, the **Feasibility Study of Thermal Options for Waste Treatment/Recovery in the North-East Region (January 1999)**, the **Waste Management Strategy for the North-East Region (April 1999)**.

The Plan Summary states that “in order to recommend a solution to the future management of the region’s waste a number (3) of integrated scenarios were modelled by computers. These scenarios represent a combination of different recycling targets, the possible introduction of thermal treatment with energy recovery leading to landfill disposal of residues only. Scenario 3, although not the most economical, in Net Present Value Terms, was recommended on its ability to meet the new national targets not involving excessive cost. The scenario works towards a 2014 target for recycling of 43% of all wastes generated (235,197 tonnes), 38.9% thermal treatment of wastes generated (211,877 tonnes) and 18.1% landfilling of all wastes generated (87,736 tonnes).

**The Plan Summary** recommends the construction of a medium to long-term landfill facility at Knockharley pending EPA Licence approval, the landfill to open in 2002. The Plan also recommends upgrading/extension to the

Corranure and Scotch Corner landfills in Cavan and Monaghan respectively in order to provide medium to long-term capacity there. It also recommends that the Whiteriver landfill in County Louth should provide interim capacity for County Louth. The Plan therefore recommends three medium to long-term regional landfill facilities to service the needs of the region.

**Chapter 10** of the Plan sets out the proposed implementation schedule for Waste Management over the Plan period in respect of Waste Collection Systems, Material Recovery-Recycling Facilities, Treatment-Energy Recovery Facilities, Bulk Transfer Systems including the construction of transfer stations, Residual Waste Disposal Facilities, Construction-Demolition Waste Recycling. Table 10.2 of the Plan sets out proposed construction/commissioning dates for each type of activity.

Chapter 10 Table 10.3 sets out Waste Stream Targets for 2014, with thermal treatment in place. It shows 87,736 tonnes of waste proposed for landfill disposal in 2014, representing 18.1% of the overall waste arisings in the region.

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## **8. PLANNING HISTORY**

**8.1** March 1999 an EIS prepared by M.C. O'Sullivan on behalf of Meath County Council was submitted to the EPA as part of a Waste Licence application under the Waste Management (Licensing) Regulations, 1998.

**8.2** The EIS was prepared for a new central landfill facility on the basis that such a facility would be required to fulfil Meath's requirements for disposal of residual waste over the next 20 years. Waste for acceptance at the site was limited to household and non-hazardous commercial and industrial wastes. The site proposed for disposal at Knockharley was selected from a preliminary list of 15 sites, shortlisted to 4 - Knockharley, Macetown, Redbog and Denailestown. Ultimately Knockharley became the preferred site for the following reasons:-

- (a) Cost of access works linking the site to the N2.
- (b) The local road network was not to be utilised by landfill traffic.
- (c) Number of dwellings within 1 kilometre of the centre of the landfill area.
- (d) Soil characteristics indicated marginally less agricultural potential than elsewhere.
- (e) Fewer archaeological or heritage features in the vicinity.

**8.3** The proposed landfill to be located in Knockharley covered an area of some 105 hectares; it comprised a waste disposal area of 19.6 hectares, a 70 hectare buffer zone, and a reception area of 15.4 hectares. The estimated lifespan of the facility was 20 years.

**8.4** In February 2001 a waste licence (Reg. No. 103-1) was granted by the EPA to Meath County Council for the site at Knockharley for the acceptance of

76,000 tonnes per annum, of which 13,500 tonnes comprised inert material for recovery. 11 conditions were attached to the grant of permission; as were a number of schedules detailing operational practices and arrangements including a number of restrictive and proactive requirements in that regard.

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## 9. THIRD PARTY APPELLANT SUBMISSIONS

### 9.1 First Third Party Appellant - Fergal O'Byrne

- (i) The appellant contends that Meath County Council's decision is flawed, as the decision to grant permission was based on waste volumes originating from the North-East region only, despite the fact that this was never proposed by the developer. Furthermore, the decision to grant permission for a development based on 100,000 tonnes of waste for disposal from the North-East region conflicts with the North-East Region Waste Management Plan which shows 87,736 tonnes of waste going to 3 landfill sites in 2014. The developer contends that the revisions to the EIS were in the nature of a new application rather than the submission of additional information and they should have been treated as such.
- (ii) **Re Condition No. 2**, this required that waste to be disposed of at the landfill should not exceed 88,000 tonnes per annum, despite the fact that no application based on such a tonnage was ever received by Meath County Council. It is also unclear if 88,000 tonnes of waste is a total figure or if an additional quantity of waste may also be accepted, as would appear to be the intent of the applicant. Finally, Meath County Council failed to require that the landfill footprint be adjusted both in height and area to accommodate the reduced waste tonnage.
- (iii) **None of the conditions have prohibited the dumping of sludge of hazardous waste nor have they had regard to the EU Council Directive 1999/31/EC**, Article 5, which requires member states to set up a national strategy for the implementation of the reduction of biodegradable waste going to landfills, which strategy should include measures to achieve the relevant targets by means of recycling, composting, biogas production or materials/energy recovery. The appellant states that there is no evidence of any such strategy having been employed by the Planning Authorities in granting this permission.

- (iv) None of the conditions have indicated how the **cost of the land fill of waste**, referred to at Article 10 of the Landfill Directive, is to be implemented - the developers have relied on Meath County Council's own site selection process to pinpoint the site in Knockharley, for example; neither has Meath County Council indicated how the costs involved in the setting up and operation of the landfill site, including the cost of the financial security, closure and after-care costs will be covered by the price charged by the operator for the disposal of any type of waste at the site, as required by the 1999/31/EEC Directive.
- (v) The requirement of **Condition No. 3**, which effectively alters the shape of the landfill footprint, requires the revision to be agreed only by the Planning Authority, thus effectively excluding affected parties, including the appellant, from any say in the matter; further exclusion also results from **Condition No. 13**, where details of a landscaping scheme and implementation programme are required to be submitted for the written agreement of the Planning Authority prior to the commencement of development.
- (vi) **Condition No. 11** fails to restrict traffic from using the CR184 to the north of the site; additional traffic on that road will endanger public safety.
- (vii) **Condition 16** allows for changes in the operational hours of the site at the discretion of the Planning Authority - again effectively excluding the appellant from any say in the matter despite the fact that he lives in close proximity to the landfill site.
- (viii) There is **an inherent contradiction between Condition Nos. 16 and 17**; Condition 16 restricts construction hours, while Condition No. 17 limits noise levels during those construction hours; however, Condition No. 17 also allows noise levels of 45dB(A) at any other time - implying that construction activities can also take place outside of the defined hours.

- (ix) Finally, the appellant notes that the proposed landfill will obstruct his southerly views of the hills of Skyrne and Tara and will also result in the devaluation of his property. The Planning Authority has failed to address the latter issue.

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## 9.2 Second Third Party Appellant - Boyne Valley and Newgrange Environmental Protection League

- (i) The submission **reiterates (i)-(vi)** set out in the first party appellant's submission.
- (ii) **The Prevention Principle:** The permitted capacity of the landfill site - 88,000 tonnes per year over a 14-year period is excessive in terms of the county's requirements and will, therefore, frustrate alternative waste diversion strategies. The implementation of the prevention principle should be based on under, not over, capacity.
- (iii) **The Polluter Pays Principle** is not applied in this case as gate fees are not stated, either in the planning application or the EIS.
- (iv) **The Precautionary Principle** is not applied in this case, as the application includes incineration waste, which is highly toxic.
- (v) **The Proximity Principle:** The waste should be disposed of as closely as possible to where it is produced - is not applied here as this application is essentially for a landfill for north Leinster which, if granted permission, would relieve the four Dublin local authorities of their duty to deal with their waste. Such a landfill also conflicts with the regional waste management planning approach enunciated by the DOE and adopted by the four north-eastern counties of Meath, Monaghan, Louth and Cavan.
- (vi) **Inaccurate Information:** The application and EIS failed to refer to new housing provision in Kentstown and relied on out-of-date census figures.
- (vii) **Locational criteria** set out at Annex 1 of the Landfill Directive have not been taken into account by the Planning Authority; the appellant points out that the site lies within an area which Meath County Council

has designated as overdeveloped and where a number of planning applications for residential development have already been refused on grounds of traffic hazard, excessive density of development in an unserviced rural area, failure to meet housing need criteria for this rural area and conflict with the Development Plan zoning objective for the area, namely the preservation of land for the further development of agriculture.

- (viii) **Natural Habitat:** The woodland at Flemingstown and Balrath are Natural Heritage Areas; that natural habitat will be jeopardised by scavenging birds nesting there.
- (ix) **Visual and Locational Intrusion:** The landfill intrudes into the line of sight from Slane Hill and the Hills of Skyrne and Tara; it also lies only 2½ miles south-west of the Interpretative Centre at Newgrange.
- (x) **The KTK Landfill Site at Kilkullen in County Kildare** which the applicants operate cannot be compared to that proposed for Knockharley, as the former does not receive any domestic/municipal waste.
- (xi) **Leachate Management** has not been satisfactorily addressed by Meath County Council, given that Louth County Council has not provided any firm commitment to accept leachate from the site.
- (xii) **Inadequate Time** was given to interested parties to respond to additional information submissions by the applicant of 3<sup>rd</sup> and 9<sup>th</sup> July, as the decision by the Planning Authority was subsequently made on 12<sup>th</sup> July.
- (xiii) The Planning Authority has failed to have had due regard to Government policy on waste disposal as set out in “**Changing Our Ways**”.

### 9.3 Third Third Party Submission - Patrick Lawlor

- (i) **The scale** of the proposed development is excessive, having regard to the landfill requirements set out in the North-Eastern Region Waste Management Plan.
- (ii) The proposed landfill will **generate increased numbers of rodents and carrion** in the area leading to the spread of disease in the cattle population.
- (iii) **Traffic:** The proposed development will generate additional traffic on a road network which is already characterised by traffic congestion.
- (iv) **Local Community Impact:** The proposed development will impact adversely on the amenities of the Kentstown community, being located in close proximity to the national school and an expanding village community.
- (v) **Conditions attached to Grant of Planning Permission:** The appellant objects to the grant of permission for an 88,000 tonne landfill site, noting that this was neither the development applied for nor one in which the public has had any say.

The appellant requests that all monthly records be submitted to the EPA or to the public or the community liaison committee; the question of independent verification of records has not been addressed nor have any penalties for failure to comply with any of the attached conditions.

The practice of the Planning Authority in permitting details or revisions to particular aspects of the proposed development to be submitted at a later stage and decided by the Planning Authority is unacceptable as it effectively excludes the public from commenting on such details and/or revisions. The appellant refers in particular to

separation distances between the landfill footprint and site boundaries, junction design, landscape proposals and a traffic management plan.

The appellant recommends that prior to the commencement of development the applicant should deposit with the Planning Authority a substantial fund which could be drawn down in the event of default of any of the conditions attached to the grant of permission.

The appellant requests that the numbers if the number of the Community Liaison Committee be fixed by condition other than being at the discretion of the Planning Authority.

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#### **9.4 Fourth Third Party Appellant - The Curran Family**

- (i) The appellants state that “Celtic Waste Ltd. and Meath County Council Planning Section have been negligent in recognising ab initio that the appellant’s dwelling and recreational area have always been within the buffer zone of 250 metres”. The proposed development, therefore, if permitted, would adversely impact on the appellants’ residential amenities and on their quality of living. As a result of the proposed development, the appellant notes that “we cannot extend our family, our house or any other plans for the future”. The appellant therefore asks to be relocated from the area should permission for the facility be granted.

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## 9.5 Fifth Third Party Appellant - Mrs. Cepta Timmons

- (i) The appellant refers to the fact that although permission was granted in principle for the proposed development a number of the conditions require additional information to be submitted to the Planning Authority. The appellant refers in particular to the new access road and junction. This is unacceptable.
- (ii) The area in which the proposed landfill is located is described in the Meath County Council as “overdeveloped”.
- (iii) The developer has not indicated how they propose to discourage lorries/landfill traffic from using the county road network which adjoins the Kentstown National School.
- (iv) The proposed landfill will impact visually on the appellant’s dwelling; the appellant failed to fully answer Meath County Council’s additional information request on landscaping.
- (v) The composition of the Liaison Committee is unfairly balanced against the residents.
- (vi) The appellant objects to the operational hours of the landfill site and the inclusion of Saturday as a working day.
- (vii) The proposed development will have an adverse impact on property values in the area due to odours and nuisance associated with the landfill site; the appellant therefore requests that in the events of residents not being able to sell their property on the open market they should be compensated by the developer.

## 10. FIRST PARTY APPELLANTS' SUBMISSION

The first party appeal is against Condition Nos. 2, 3, 5, 6, 12, 13, 16, 17, 18, 21 and 22. The appellant also wishes to extend the permission to a 16-year permission.

### 10.1 Condition No. 2:

Waste for acceptance at the residual landfill waste management facility for disposal and/or treatment shall be strictly limited and confined to waste generated and produced in the north-east region area of Counties Meath, Louth, Cavan and Monaghan. The annual tonnage for disposal and/or treatment shall not exceed 88,000 tonnes per annum.

Each and every consignment of waste howsoever arriving at the landfill site shall be accompanied by a Waste Certificate, which shall identify, inter alia, the following:

- Waste origin, source and area in which it was produced/generated.
- Waste collection schedules.
- Weight of each consignment.
- Waste collection contractor, name and address.
- Composition and nature of waste.

The developer shall submit to the Planning Authority on a monthly basis records of all waste delivered to the site on a daily, weekly and monthly basis, in accordance with the aforesaid Waste Certificate.

**Reason:** In the interest of development control.

**Appellants' Submission:** The appellant appeals *the restriction on the volumes and origins of waste* to be received at the landfill. The appellant also appeals

*those elements of waste certification which refer to waste origin, source and area in which it was produced/generated and waste collection schedules.*

**Re Volumes of Waste,** the developer notes that a smaller landfill restricted to 88,000 tonnes per annum, as set out in Condition 2, would not accord with National Policy which encourages economies of scale. The developer refers in particular to Government Policy which requires fewer but larger landfill facilities designed and operated to very high standards. This policy is carried into the regional approach to waste management in Ireland, where the Government encouraged local authorities to develop joint statutory Waste Management Plans which would provide a “framework in planning **volume terms** for the development of integrated and innovative waste management solutions”. Government policy is in line with the 1995 ESRI Study - *The Economics of Solid Waste Management in Ireland* - which concluded that “considerable savings are achievable from building fewer larger landfills”; given that the study predicted landfills in Dublin accepting waste volumes of 300,000 to 400,000 tonnes per annum, the 180,000 tonnes per annum provided for at Knockharley is not oversized.

**Re Origins of Waste:** The appellant refers to the *proximity principle* as set out by the EC and incorporated into the 1997 Waste Management (Planning) Regulations, paragraph 5.5, subsection (b) where it is noted that:-

“For the purposes of Section 22(7)(f) of the Act, a plan shall include information on or otherwise have regard to:-

- (b) Measures including co-operation with other local authorities with a view to the application of the proximity principle, that is to say enabling waste to be disposed of in one of the nearest appropriate installations by means of the most appropriate methods and technologies in order to ensure a high level of protection and public health”.

The site lies only 12 kilometres from Fingal County in contrast to parts of Cavan, which lie over 100 kilometres distant. If wastes from the Dublin region were to be permitted at Knockharley, it is unlikely that it would be municipal waste as the Dublin region will have self-sufficient landfill disposal capacity for municipal solid waste.

The appellant further notes that County Meath is part of the Greater Dublin Area to which the Strategic Planning Guidelines apply.

The appellant also notes that the Draft Waste Management Plan for the north-eastern region estimates that in the year 2014, 279,733 tonnes per annum of residual household, commercial and industrial waste will be required to be landfilled or treated thermally within the region. If 1998 waste capacities at three existing regional landfill sites are doubled to 148,874 tonnes, a minimum of 100,000 tonnes per annum of waste from the north-east region will be available to Knockharley. However, to avail of the economies of scale, the developer proposes that an additional 80,000 tonnes of mainly commercial and industrial waste from the Dublin region will be accepted in Knockharley; the 80,000 tonnes equate to 6.1% of the 2001 estimated household, commercial and industrial waste figures for the Dublin region. The appellant notes that there is an urgent need in the Dublin region for commercial and industrial waste disposal facilities as the quantities of such waste which can be accepted within existing landfill sites is limited by licence with further limitations being imposed by a quota system by Fingal County Council.

In view of the above, the developer suggests that a total volume of 180,000 tonnes per annum of waste for disposal at Knockharley, including 80,000 tonnes per annum of waste from the Dublin region is not unreasonable.

**Re Waste Origin, Source and Area of Production/Generation,** the appellant states that certification of these matters is impractical as waste accepted at the landfill site will derive from transfer stations/recycling centres where the residual waste which occurs after recyclable elements have been removed would be bulked into large containers for transfer to landfill.

Similarly, waste collection schedules are also considered impractical as the vast bulk of waste accepted at Knockharley is expected to come directly from transfer stations/recycling centres. The exception may be waste collection vehicles operating locally to the site.

### 10.2 Condition No. 3:

The proposed landfill footprint, as indicated on Drg. 200-144-01-17, prepared by Fehily, Timoney & Co., submitted on 11<sup>th</sup> January, 2001, shall not be permitted. The landfill footprint dimensions in the north to south orientation shall be reduced in size such that the northernmost edge should be a minimum of 250 metres as opposed to the proposed 70.99 metres as indicated on the drawing, on the southernmost boundary of the property at this location, unless otherwise agreed in writing with the Planning Authority.

**Reason:** In the interest of residential amenity.

**Appellants' Submission:** The appellant invites the Board to delete Condition No. 3 as (a) the EPA advises a 250 metre separation distance between any new landfill footprint and any occupied dwelling and this has been provided in the current case and (b) landfill capacity is a valuable environmental resource and there is not any planning purpose to be served by sterilising this resource.

### 10.3 Condition No. 5:

A Community Liaison Committee shall be established, consisting of a minimum of eight representatives. (Two officials from the Planning Authority, two representatives from the developer, two local residents, two elected members of Meath County Council). The composition of the committee shall be subject to the agreement of the Planning Authority.

**Reason:** To provide for appropriate ongoing review of landfill operations in conjunction with the local community.

**Appellant's Submission:** The developer considers that the constitution of the Community Liaison Committee is a matter to be determined by the committee itself. The developer notes that the committee will consist of representatives from the company and the local community in accordance with the response given by the developer to the further information request by the Planning Authority.

#### **10.4 Condition No. 6:**

The developer shall pay to the Planning Authority an annual contribution towards the cost of the provision of environmental improvement and recreational/community facility projects in the vicinity of the proposed landfill site. The amount of the contribution shall be based on the payment of £1.00 per tonne of waste disposed/treated, calculated on annual waste inputs. The identification of environmental/recreational community facility projects shall be decided upon by reference to the Community Liaison Committee as provided for in Condition No. 5 thereof.

In the case of expenditure that is proposed to be incurred, the requirement to pay this contribution is subject to the provisions of Section 26(2)(h) of the Local Government (Planning & Development) Act, 1963 generally, and in particular, the specified period of seven years from the date of this order.

**Reason:** It is considered reasonable that the developer should contribute towards the cost of environmental improvement projects for the area in which the landfill site is situated.

**Appellants' Submission:** The appellant states that the amount of the contribution is for determination by the Community Liaison Committee, with

no rationale for the £1.00 per tonne figure referred to in the condition. The appellant therefore requests that Condition No. 6 also be deleted.

#### **10.5 Condition No. 12:**

The developer shall pay to the Planning Authority the sum of £161,000 (one hundred and sixty one thousand pounds) €204,428 (two hundred and four thousand, four hundred and twenty eight euro) as a contribution to the expenditure to be incurred in the improvements and alterations to public roads by the Council to serve the development. Payment of this sum shall be made prior to commencement of development. The above sum shall apply until 31<sup>st</sup> December, 2001, and shall be subject to review on that date and to annual review thereafter unless previously paid.

In the case of expenditure that is proposed to be incurred, the requirement to pay this contribution is subject to the provisions of Section 26(2)(h) of the Local Government (Planning & Development) Act, 1963 generally, and in particular, the specified period of seven years from the date of this order.

**Reason:** It is considered reasonable that the developer should contribute towards the expenditure that is proposed to be incurred by the Council in respect of road improvements to facilitate the proposed development.

**Appellants' Submission:** The appellant asks that the text of the condition be varied to allow for the contribution to be tied to an appropriate construction industry index rather than to an annual review.

## 10.6 Condition No. 13:

In addition to the landscape proposals submitted with the application, the proposed screen mounds and landscaping on the perimeter of the landfill site shall be carried out during the initial construction phase and prior to the commencement of the development. The following shall be submitted for the written agreement of the Planning Authority:-

- (a) Detailed landscaping of proposed screen mounds to include the proposed type/variety of native species, density of planting, maintenance programme and planting to supplement and strengthen hedgerows and tree belts that are to be retained.
- (b) A programme outlining the timescale for the implementation of the proposed landscape scheme.

**Reason:** In the interest of visual amenity.

**Appellants' Submission:** The appellant requests the Board to clarify the wording of the condition in the first paragraph. The developer also asks that the condition incorporate a provision for the Board determining matters in default of agreement.

## 10.7 Condition No. 16:

Site construction working hours shall be confined to between 0800-1800 hours Monday to Friday inclusive and 0800-1300 Saturday (excluding public holidays and Sundays) unless otherwise agreed in writing with the Planning Authority.

**Reason:** To protect the residential amenities of the area.



**Appellants' Submission:** The appellant requests that operational hours at this site be extended to 2000 hours during the months of May, June, July, August and September. The extension would not impact adversely on residential amenity.

**10.8 Condition No. 17:**

During the initial construction period, BATNEEC (Best Availability Technology Not Entailing Excessive Cost) shall be employed by the developer to minimise noise from the construction operations and shall have regard to British Standards BS5228:1997 "Noise Control of Construction and Open Sites".

- (a) Site noises defined in BS5228:1997 shall not exceed during the initial construction period the following criteria:-
- (i) Leq(1 hour) time period,
  - (ii) 65dB(A) 0800-1800 hours Monday-Friday inclusive and 0800-1300 Saturdays, excluding public holidays and Sundays,
  - (iii) 45dB(A) any other time,

at any noise sensitive premises in the locality, when measured in accordance with Annex E of BS5228:1997: Part 1. An appropriate correction shall be applied in the case of tonal or impulsive components in the measurements of noise in accordance with the provisions of ISO1996.

- (b) Construction equipment shall comply with SI320 1988 European Communities Construction Plant and Equipment (Permissible Noise Levels) Regulations, 1988.

**Reason:** In the interests of residential and general amenity.

**Appellants' Submission:** The appellant asks that the hours stipulated in the above conditions also be modified to 2000 hours instead of 1800 hours during the months of May, June, July, August and September.

#### **10.9 Condition No. 18:**

Dust deposition during the initial construction period shall not exceed 130mg/m<sup>2</sup>/day measured at the site boundaries and averaged over 30 days.

**Reason:** To prevent airborne dust and to protect the amenities of the area.

**Appellants' Submission:** The appellant states that Condition No. 18 does not specify the method for collection and measurement of dust and that there may be confusion between British Standard dust deposition limits of 130mg/m<sup>2</sup>/day and German Standard dust deposition limits of 350mg/m<sup>2</sup>/day; although the two dust deposition limits are equal, the developer requests that the limit referred to in the condition be changed to 350mg/m<sup>2</sup>/day, measured at the site boundaries and averaged over 30 days, as was recommended by Meath County Council's Environmental Section's Technical Report and was also the limit set by the EPA in the licence conditions.

#### **10.10 Condition Nos. 21 and 22:**

21. The developer shall submit proposals for monthly monitoring of water quality and water level in private wells in the vicinity of the site during the initial construction phase of the development. In this regard, the developer shall submit a schedule of neighbouring private wells at which it is proposed to monitor. The schedule shall be submitted to and agreed in writing with the Planning Authority prior to commencement of construction of the development. The results of the

monitoring shall be submitted to the Planning Authority within one month of the end of the month being reported on. On the basis of results submitted over time, the Planning Authority may review the frequency of monitoring. Already background dust deposition levels have ranged between 38 - 351 mg/m<sup>2</sup>/day.

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

22. If, in the opinion of the Planning Authority, activities on site during the initial construction phase of the development have had or are likely to have a negative impact on private wells in the vicinity of the development (in terms of quality or quantity of water supplied), the developer shall undertake such remedial works at his own expense as shall be directed by the Planning Authority. These works may include the deepening of private wells, the drilling of new wells or the supplying of a potable water supply in lieu of affected wells.

**Reason:** In the interests of orderly development and surrounding residential amenity.

**Appellants' Submission:** The appellant states that although the risk of contamination of private wells during the construction phase is insignificant due to the low permeability values of the underlying soil, the appellants do not, unlike the Council, have access rights to third party lands. The appellant, therefore, requests the Board to modify Condition No. 21 to reflect that situation and include a Section 26 levy to fund the Council's monitoring costs; the appellant also requests that Condition No. 22 be replaced by a bond condition to be sufficient to fund any remedial works the Council require.

**10.11 Additional Conditions:** The appellant requests that the life of the landfill shall be extended to 16 years in order to provide for a one-year lead in time and a one-year decommissioning period at the end of the 14-year operational programme.

## 11. PLANNING AUTHORITY OBSERVATIONS ON THIRD PARTY APPELLANT SUBMISSIONS

### Observations on Submission by Mr. O'Byrne

The Planning Authority refutes Mr. O'Byrne's submission, which states that Meath County Council's decision is flawed in that the revised EIS referred to waste acceptance from the Dublin area despite the fact that Meath County Council requested the EIS to take into account waste only from the north-east. The Planning Authority states that the applicant's response to the further information request did address the waste disposal requirements of the North-East region despite the fact that waste from the Dublin region was also included. As the EIS was accompanied by revised site and newspaper notices, the Planning Authority did not consider that the additional information required to be processed by way of a new planning application.

- 11.1 Re Landfill of Hazardous Waste and sludges, all documentation including public notices clearly state that the proposed facility is for the disposal of non-hazardous waste. Types of waste are also subject to licensing by the EPA and an application has been made in this regard.
- 11.2 Re Failure of Planning Authority to Adjust Landfill Footprint, the Planning Authority notes that Condition No. 3 restricts the area of the footprint albeit it is open to the applicant to retain the original footprint by acquiring the property which lies within the buffer zone. The capacity of the landfill will be reduced by approximately 15% if the area of the original footprint is reduced..
- 11.3 Re Condition No. 2 Limitations on Waste Volumes, Condition No. 2 specifically states that "the annual tonnage for disposal and/or treatment shall not exceed 88,000 tonnes per annum".
- 11.4 Re Non-Compliance with EC Directive 1999/31/EC, the Planning Authority states that the Planning Officer's report indicates that due regard was had to the directive.

- 11.5 Re Recoupment Costs incurred by Meath County Council on the landfill selection process, this is not a planning matter.
- 11.6 Re Implications of Revised Footprint for the Locational Context of the Landfill, the Planning Authority states that if the footprint is reduced, Phase 7 will be omitted.
- 11.7 Re Visual Screening, the Planning Officer notes that visual impacts have been addressed in the technical reports and in the conditions attached to the grant of permission.
- 11.8 Re Views from Appellant's Residence, the Planning Authority notes that there are not any listed views for preservation in the area and that there is no right to a view.
- 11.9 Re Traffic Restrictions on the CR384, the Planning Authority states that the site will be accessed from the N2 via an underpass of the CR384.
- 11.10 Re Operational Hours, the Planning Authority states that Condition No. 16 allows for flexibility in working hours when weather conditions and construction methods dictate. Any working outside these stated hours is governed by the noise restriction of 45dB(A) set out in Condition No. 17.
- 11.11 Devaluation of Property: The Planning Authority states that Mr. O'Byrne's property is separated by a distance of 250 metres from the landfill footprint and that the issue of devaluation was addressed in the Planning Officer's Report.

**Planning Authority's Observations on Boyne Valley and Newgrange Environmental Protection League Submission**

- 11.12 Re Overdevelopment of the Knockharley Area, the Planning Authority notes that this applies to one-off non-essential housing in rural areas usually accessed from a poor county road network; the proposed development will not

impact on the county road network and has been identified in the County Development Plan as suitable for an engineered landfill site.

**11.13** Comparisons with the Developer's Landfill Site at Kilcullen (KTK): The Planning Authority notes that the proposed development was judged on its own merits and in accordance with the requirements of Development and Waste Management and relevant legislation.

**11.14** Leachate Management: The Planning Authority notes that leachate production and disposal are pollution matters and therefore within the remit of the Environmental Protection Agency when assessing any waste licence.

**Planning Authority's Observations on Third Party Appellant's Submission - Mr. P. Lawlor**

**11.15** Scale of Landfill in Excess of the Requirements of Meath County Council Identified in the North-East Regional Waste Management Plan: The Planning Authority states that the scale of the proposed landfill was on the contrary assessed in the context of the provision and strategies of the Draft Waste Management Plan for the north-east as witnessed by the restriction on waste volumes to be accepted at the site and as witnessed by the reduced landfill footprint required by the Planning Authority. The Planning Authority notes that albeit the developer complied with an additional information request to address only the requirements of the north-eastern region (which the developer over-estimated), the developer also included waste volumes from the Dublin region.

**11.16** Waste Certification: The Planning Authority states that such certification is necessary to limit waste volumes to the north-east regional counties. The Planning Authority does not have any objection to waste certificates being submitted to the EPA.

**11.17** Traffic, Pollution, Health Concerns, Impacts on Groundwater Supplies and Farming Activities, Proximity to Kentstown Village and School were all

adequately assessed by the Planning Authority in the technical reports where it was within the remit of the Planning Authority to assess same. Environmental pollution matters are reserved for the EPA.

- 11.18** Public Input into Details of Junction Design: The Planning Authority notes that apart from minor design details which can be regulated by way of condition, the junction layout and design are acceptable.
- 11.19** Composition of Community Liaison Committee: The Planning Authority states that the rationale for the composition of the committee being made subject to the agreement of the Planning Authority was to ensure adequate and fair representation of all parties concerned.
- 11.20** Breakdown of Roads Contribution: The Planning Authority refers to the Senior Executive Engineer Road Design Report which outlines the basis of the contribution.
- 11.21** Re Archaeological Finds, the Planning Authority states that the attached condition is of a standard format.
- 11.22** Re Independent Monitoring of Emissions, the Planning Authority states that during the initial construction phase these will be subject to agreement by way of condition.
- 11.23** Re Restoration Plan, this is within the remit of the Environmental Protection Agency.

**Planning Authority's Observations on Submission of Third Party Appellant - the Curran Family**

- 11.24** Separation Distance between Appellant's Property and Landfill Footprint: The Planning Authority noted the inadequate buffer zone between the landfill footprint and the appellant's property and hence required under Condition No. 3 that the southern boundary of the appellant's rear garden will be a minimum

of 250 metres from the landfill footprint. An alternative, however, was given to the developer to purchase the property and thereby retain the proposed buffer zone.

**Planning Authority's Observations on Third Party Appellant Submission of Mrs. Cepta Timmons**

**11.25** *Re Further Information*, the Planning Authority is satisfied that the applicant responded to the further information request.

**11.26** *Re Restriction on Traffic Routes*, the Planning Authority notes that this issue was adequately dealt with in both the Environmental Impact Statement and the addendum, where it was indicated that landfill generated traffic would not use the R150 between Kentstown Village and Flemingstown Crossroads; Condition No. 11 was framed accordingly.

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## 12. DEVELOPER (FIRST PARTY APPELLANT) OBSERVATIONS ON THIRD PARTY APPEAL SUBMISSIONS

### Observations on Submission of Boyne Valley and Newgrange Environmental Protection League

- 12.1 *Re Tonnages*, the developer has appealed Condition No. 2, which restricts origins and volumes of waste.
- 12.2 *Re Hazardous Waste Acceptance*, the landfill will only accept classified non-hazardous waste; this includes non-infectious health care waste. Waste from incineration or pyrolysis can be hazardous and non-hazardous; only non-hazardous waste from incineration will be accepted at the site. The EIS clearly indicates that the facility will only accept waste which is classified by the EPA and EU as non-hazardous.
- 12.3 *Re Waste Acceptance Volumes*, the developer notes that the 180,000 tonnes of waste to be accepted at Knockharley can be broken down into 100,000 tonnes of household waste, 45,000 tonnes of commercial waste, 4,000 tonnes of industrial sludges and 30,000 tonnes of other industrial waste. 25,000 tonnes of construction and demolition waste will be received at the landfill; however, this will not be disposed of but will be used for the purposes of intermediate cover and/or restoration.
- 12.4 *Re Sludge Acceptance*, 5,000 tonnes per annum of industrial solid, non-hazardous sludges will be accepted at the landfill; these will not include sewage and septic tank sludges.
- 12.5 *Re Compliance with Landfill Directive 1999/31/EC*, the developer states that residual waste which has been treated at facilities such as waste transfer stations or recycling centres will be accepted at the site. Householders in the North-East region will be encouraged to segregate wastes (confer Waste Management Plan for the North-East). Dry recyclables will be collected in urban areas, while in rural areas householders will be asked to deliver them to

“bring centres”. Treatment of wastes locally, therefore, will be initiated by the householders prior to collection of the residual wastes.

**12.6** Re Compliance with Landfill Directive, Article 10, on Landfill Costs, the developer states that waste charges at the landfill will reflect all costs involved in the setting up, operation, financial security, closure and after-care of the facility as required under Article 10.

**12.7** Re Visual Screening within the Buffer Zone, the developer refers to Figs. 4.10.1 to 4.10.5 inclusive in the EIS.

**12.8** Re Compliance with EU Principles and Policies in Relation to Waste Management,

- (a) **Waste Prevention:** The developer argues that the landfill site is not oversized, having regard to volumes of waste generated annually, both in the North-East region and in the Dublin region (300,000 tonnes per annum and 1,300,000 tonnes per annum respectively). The developer queries the appellants' estimates on waste volumes generated in County Meath; extrapolating the National Waste database figures for Meath, the 2001 figure approximates to 63,500 tonnes and does not include either construction or demolition waste; given that the site is designed to serve the north-eastern region, the figure of 63,500 tonnes is understated.
- (b) **Polluter Pays Principle:** This will be translated into a gate charge.
- (c) **Precautionary Principle:** The natural ground conditions and high standards of design at the landfill will pose a lower risk to the environment and human health than older landfills in the region; in this way the precautionary principle is complied with.

(d) **Proximity Principle:** The EIS addendum and the developer's appeal submission indicate how the proximity principle applies in the current case.

**12.9** Re Traffic Management, the developer notes that the operational traffic arrangements do not include using the county road CR384.

**12.10** Re Operational Construction Hours, the developer notes that this condition can be appealed.

**12.11** Site Selection Fails to Comply with Annex 1 of Council Directive 1999/31/EC - Location: The developer notes that compliance has taken the form of an assessment of likely significant environmental impacts.

**12.12** Overdeveloped Rural Area: the developer notes that any comparison between landfill and rural housing uses is not relevant.

**12.13** Re Impact on Balrath Woods, the developer states that the EIS indicates that there will be no direct impact from the proposed development on the flora of Balrath Woods.

**12.14** Adverse Impact on Tourism: The developer states that no significant negative effects are likely to result from the proposed development.

**12.15** Adverse Visual Impacts: None are expected, even at initial stages.

**12.16** Re Leachate Management, discussions with Louth County Council re leachate treatment are ongoing; no waste will be accepted at the site prior to finalising a contractual agreement with the operator of a suitable wastewater treatment plant.

**12.17** The unsolicited additional information was a correction of earlier information submitted. The unsolicited additional information did not have a significant material impact on the results of the traffic analysis.

## **First Party Appellant's Observations on Submission by Fergal O'Byrne**

A number of Mr O'Byrne's points have already been addressed in the public's response to the Boyne Valley submission. The applicant addresses the remainder as follows:

- 12.18** *Re Views from Appellant's Dwelling*, given the height and location of the proposed development and its separation distance from houses to the north, the operation will not be visible from any of the local houses; any obstructing view from the appellant's property will be simply due to woodland planting in the buffer zones.
- 12.19** *Re Devaluation of Properties*, there is no evidence to suggest that property devaluation will occur.
- 12.20** *Re Potential Adverse Impact on Groundwater*, the developer notes that the underlying geological conditions are those which are most favoured by the National Guidelines for Landfill Site Selection.
- 12.21** The *developer* has addressed potential impacts of the development in terms of traffic, both on the N2 and on the road past Kentstown National School.

## **Developers' Observations on Third Party Appeal Submission of the Curran Family**

- 12.22** *Re Condition No. 3*, the waste disposal area lies 100 metres from the Curran family's property boundary. The proposed disposal area, however, lies 250 metres distant from all existing occupied dwellings, including the Curran family home.

## **First Party Appellants' Observations on Submission by Cepta Timmons**

- 12.23** Access to Site from CR384: The developer states that users of the site will be prohibited by contract from accessing the site via the R150.
- 12.24** Community Liaison Committee: The developer considers the constitution of this is a matter for determination by the committee itself.
- 12.25** Re Operational Hours, the proposed landfill will accept waste from waste transfer stations and recycling centres; these are generally prohibited by licence from storing waste for any period in excess of 48 hours; waste accepted at a transfer station on a Friday has to be treated on Friday or Saturday and the residual fraction disposed of on Saturday.

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### **13. PLANNING AUTHORITY'S OBSERVATIONS ON FIRST PARTY APPEAL SUBMISSION**

**13.1 Re Limitations on Volumes of Waste for Disposal:** The Planning Authority's decision was based on:-

- (a) The proper planning and development of the area.
- (b) The existence of defined regions for the purposes of Waste Management Plans.
- (c) The draft Waste Management Plan for the North-East region.
- (d) The Waste Management Plan for the Dublin region.

The Planning Authority considers that the restriction on acceptance of waste volumes accords with National Policy to develop a network of residual landfill sites and also accords with the Waste Management Plan for the North-East region.

The Planning Authority also points out that there is a contradiction between the first party appellants' submission, which notes that "it is thus highly unlikely that municipal waste will be directed to Knockharley from either the Dublin or other regions apart from the North-East region" yet the proposal is for the disposal of 80,000 tonnes of non-hazardous waste from the Dublin region at Knockharley, (albeit commercial waste). On the basis of that contradiction, therefore, the Planning Authority is justified in restricting waste volumes in accordance with the Waste Management Plan.

**13.2 Re Waste Certification Identifying Origin Source Area and Collection Schedules,** those elements are considered necessary in order to restrict volumes; it is an oversimplification of the process to state that the majority of waste will originate from waste transfer stations as segregated kerbside collections may be introduced in the future.

- 13.3 Condition No. 3:** It is so worded as to give the first party appellants an option to purchase the affected property if they so wish.
- 13.4 Re Community Liaison Committee,** the Planning Authority considers it necessary to act as a facilitator in the interests of development control.
- 13.5 Re Operational Hours of Work and Site Construction Noise Levels,** the Planning Authority considers that working until 2000 hours from May until September is excessive and unnecessary; if it were to be permitted the extended hours should be subject to a noise level limitation as applicable at Condition No. 17.
- 13.6 Re Transition from British to German Standard Methods for Measurement of Dust Deposition,** the Planning Authority has no objection once a particular type of method is stipulated.
- 13.7 Re Condition Nos. 21 and 22 - Proposals for Monthly Monitoring of Water Quality and Water Level in Private Wells during Construction,** the Planning Authority suggest a modification of Condition No. 21 to include for the submission of a private well monitoring schedule subject to the agreement of the well owner.
- 13.8 Re Extension of Landfill Life to 16 years,** the Planning Authority suggests a condition be included providing for a 14-year permission based on a maximum annual input of 88,000 tonnes, with any extension of this timeframe and consequent landfill operations being subject to a separate planning application.

#### 14. PLANNING AUTHORITY ANALYSIS OF FINANCIAL CONTRIBUTION REQUIRED UNDER CONDITION NOS. 6 AND 12

**Condition No. 6** (contribution towards the provision of environmental improvement and recreational/community facility projects based on a payment of £1.00 (€1.27) for every tonne of waste disposed of annually).

The Planning Authority states that the £1.00 per tonne contribution was the figure given by the local authority in respect of a similar proposal by the local authority itself. A similar levy of £1.00 per tonne was attached by way of condition to the grant of permission given by Meath County Council to Indaver Ltd. for a thermal waste management facility at Carranstown in Duleek.

Re environmental improvement work, the Planning Authority notes that expenditure on schemes within the area has amounted to €65,000 to date; A scheme has also been recently approved for future environmental works within the village.

Future environmental improvements and recreational community projects will be determined by the Community Liaison Committee.

The Planning Authority notes, that contributions towards community/recreational facilities have raised €86,000 in the past with €277,00 expected to be raised over the next 7 years.

**Condition No. 12** (road improvements - alterations)

The contribution was based on planned improvements to:-

- (a) The R153 from Navan to Kentstown. The expenditure to be incurred is estimated at €9.144 million to be part funded by the Planning Authority. Planned improvements to this section of road will be



carried out over the next 5 years: In 2001 Local Authority's funding accounted for €65,000.

- (b) A proposed new access road junction with the N2 - €12,697.
- (c) Right turning lanes on the N2 and improvements to other junctions.
- (d) Road improvements in the Duleek/Drogheda/East Meath area, all of which will be part funded by the Local Authority to approximately €6.17 million.

### **Third Party Appellants' Observations on Contributions**

- (i) The expenditure already incurred by Meath County Council in "civil works" in the Kentstown area has prejudiced their decision in the current case.
- (ii) Environmental and community works benefiting residents to the north-east of the landfill site have not been nor are they proposed to be carried out.
- (iii) A €1.84 levy is more realistic and should be increased on an annual basis in accordance with annual increases in waste charges.

## 15. ORAL HEARING

- An Oral Hearing, requested by a number of third parties and acceded to by An Bord Pleanála, was held at the Newgrange Hotel, Tuesday 9<sup>th</sup> April to Thursday 11<sup>th</sup> April inclusive.
- **Those attending on behalf of the developer** included Dr. Gabriel Dennison, Mike Wynn, Judith Hally, Conor Walsh, Declan O’Sullivan, Cameron Herbert, John O’Malley, Yvonne Scannell, Deborah Spence: the developer was represented by Michael Collins and Gareth Fitzsimmons.
- **Third Party** included Fergal O’Byrne, Patrick Lawlor, and Cepta Timmons: The Boyne Valley - Newgrange Environs League was represented by Michael Curran and Michael O’Donnell and Fergal O’Byrne.
- **Planning Authority Personnel attending** included Michael Killeen, Jim Gibney, Greg Duggan, Larry Whelan. The Planning Authority was represented by Patrick Butler and Rory McEntee.
- **The format** of the Oral Hearing which was broadly adhered to was as follows:-
  - Overview of development by developer.
  - Statement of case by: (a) Third Party.  
(b) Planning Authority.  
(c) First Party Appellant (developer).
  - Response to statements of case by developer.
  - Response to statement of case by Planning Authority.

- Response to statement of case by Third Party.
- **Observations**
- **Summations** by all parties.

## 15.1 Overview

This overview was given by way of a slide presentation.

An aerial photograph identifies the site; the site is described as being of good quality agricultural land with no development on site. The site was selected by Meath County Council as part of their waste management strategy and displays a number of the Group 1 criteria used by the EPA, to identify landfill selection, for example, it lies over an aquifer and is covered by a thick clay deposit. It is also characterised by an absence of any floodplains, is well removed from airports and has ecological significance; it is not zoned for any particular amenity, has access to road infrastructure, is well screened by reason of the local topography and is not located close to the source of any public water supply.

The site will be developed in seven phases, the excavation taking place to a depth of approximately 3-4 metres; it is proposed to plant in excess of 100,000 trees around the site; surface water will be diverted around the landfill, emptying into a pond at the southern end of the site; from where it will discharge into the surrounding drainage network. Leachate will be pumped to a leachate lagoon and then tankered off-site to an effluent treatment works.

Daily, weekly and intermediate covers are proposed, the daily cover being artificial, the weekly cover being of geological material. The final capping layer, required by the EPA, is 2.4 metres deep, composed of various layers.

Gas accruing at the site will initially be vented and then flared when sufficient volume has built up and then will be used, if feasible, to generate electricity;

The tipping area has been restricted by the EPA in the Draft Waste Licence to an area 25 metres by 25 metres - a small working area.

A number of controls for nuisances will be put in place - the main control being the use of a buffer zone; other controls prevent scavenging birds, rodent and fly infestations.

## 15.2 Statement of Case by Third Party Appellants and their Representatives

- (a) Mr. Fergal Duff - working with the United Nations Environmental Programme on Bio-Diversity.

Mr. Duff refers to the **Treaty of Biological Diversity** to which Ireland was a signatory in 1992. The proposed development contravenes the spirit and the articles of that treaty, especially Article 8A, 8C, 8D, 8E and 8F, which seek to regulate or manage biological resources, including the conservation of biological diversity whether in or outside protected areas; the Article also seeks to protect habitats, and ecosystems, including the rehabilitation and restoration of damaged ecosystems.

Mr. Duff also notes that there is no evidence of the developer having adopted a modern eco-system management-based approach in the plans for the proposed landfill. As an example, Mr. Duff notes that humans which are part of the eco-system have been excluded from participation in the proposed development, for example no stakeholder consultation ever took place. Mr. Duff also notes that the EIS procedure is not the most up-to-date way of assessing the implications of development. He also notes in response to a question that the eco-system of the area will not be sufficiently resilient to survive a landfill of the size proposed, although he is unable to identify any particular aspect of the landfill which will cause damage to the eco-system.

Mr. Duff then asks the developer if an eco-management system based approach was taken. Mr. Walsh notes that both the developer and the EPA consulted with Dúchas in the preparation of the EIS; Mr. Duff, however, notes that the stakeholders, i.e. residents of the area, were not consulted.

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15.2 (b) Mr. O'Byrne

Mr. O'Byrne states that (a) the proposed landfill is inappropriate for Knockharley and (b) that there are a number of inaccuracies in the application for the proposed landfill.

Re (a) above, Mr. O'Byrne submits a graph which compares the tonnages received at Knockharley under the proposals outlined by Celtic Waste, the proposals outlined in the North-East Region Plan and the proposals which comply with the Government Policy document 'Changing Our Ways'. The graph shows the tonnages proposed by Celtic Waste remaining constant at 180,000 tonnes per annum over a 14-year period, those proposed in the North-East Regional Plan increasing to approximately 90,000 tonnes at year 13 and a decrease in tonnages to less than 30,000 tonnes were Government Policy as outlined in 'Changing Our Ways' to be adhered to.

The appellant refers to a recent Government publication (March 2002 - 'Delivering Change') - which reinforces and re-emphasises the original targets set out in the 'Changing Our Ways' Policy Statement. The targets coalesce with the same timeframe as proposed by Celtic Waste. If the tonnage proposed by Celtic Waste for landfill at Knockharley were to be granted permission, then this would conflict directly with National Policy. The proposed development is, therefore, not only inappropriate for Knockharley but also for any area of the country; furthermore, it conflicts with National Policy and Regional Policy, will facilitate the continuance of bad waste management habits, is unsustainable and is in contravention of a sustainable waste management policy.

Re (b) above - inaccuracies in the application - Mr. O'Byrne notes that the developer's approach is minimalist and in this regard refers to the **EC Landfill Directive 99/31/EC, Article 6**, which states that Member States shall take steps in order to ensure that only waste which has

been subject to treatment shall be landfilled. Treatment in the Directive is defined as physical, chemical, thermal, biological processes, including sorting, that change the characteristics of the waste and which facilitates handling or enhancing recovery. Mr. O'Byrne, therefore, notes that in order to comply with the objectives of the Directive, a trickle down effect is envisaged via the waste hierarchy with landfill at the bottom of the hierarchy. Mr. O'Byrne refers to Section 3.2.4 on waste acceptance procedures which shows that no scheme has been put in place which complies with the mechanics of waste reduction as set out in the Directive.

Mr. O'Byrne refers to the fact that Meath County Council have granted permission for a reduced waste tonnage at the landfill site and while he has no objection to same, as a resident of the area he has not been informed as to what the visual impacts of that reduced landfill will be. Similarly, permission has been granted for a landfill site which will serve the north-eastern region, yet the EIS submitted with the application does not deal with the North-East region.

Mr. O'Byrne refers to Annex 1 of the Landfill Directive, which requires the distances between the boundary of the site and the nearest residences to be taken into account. Although the EIS claims to have done this, Mr. O'Byrne notes that there are 34 houses within 500 metres of the landfill footprint rather than the 21 indicated by the developer; similarly, instead of the 57 dwellings within 1 kilometre of the site there are closer to 64 houses. Mr. O'Byrne also notes that the landfill lies only 1 km from the village of Kentstown and 1.1 kilometre from the National School and that the proposed development will have a major impact on the viability of both.

Mr. O'Byrne refers to the KTK landfill site at Kilcullen which the developer has used as an example of landfill operation; Mr. O'Byrne notes, however, that the landfill site at Kilcullen does not take domestic waste which consists mainly of organic matter but rather

accepts commercial and industrial waste mainly in the form of packaging. The operation of the KTK landfill site at Kilcullen cannot be considered as an appropriate precedent for the operation of the proposed site at Knockharley

Mr. O'Byrne also notes that although the landfill site at Kilcullen was sanctioned by the EPA to accept 242,000 tonnes of waste, the EIS refers to 250,000 tonnes.

Mr. O'Byrne refers to the safety aspects of the proposed development arising from the close proximity of a gas transmission main, an overhead ESB supply and the venting of methane gas.

Re the proposed method of bird control at the site by falcons, the appellant notes that these will rid the entire area of all birdlife.

The appellant refers to Section 4.10 of the EIS and the proposed landscaping arrangements; the appellant notes that the proposed development will have a severe visual impact due to its overall height and this would be exacerbated by the degree of planting proposed.

Re material assets dealt with at Section 4.12 of the EIS, Mr. O'Byrne notes that the developer accepts that property devaluation, particularly devaluation of dwellings, will occur over the life of the landfill but that no analysis as to the extent of that devaluation has taken place. Similarly, with regard to farmland, no analysis of expected decrease in land values has taken place; the EIS refers at Section 4.12.6 to the Whiteriver landfill in County Louth, noting that no property devaluation has taken place there as a result of that site; the appellant, disputes this, noting again that no analysis of property values in that area was carried out.

Mr. O'Byrne concludes that the proposed development conflicts with EU and National Policy; he also states that a change in our ways will



not occur if this scale of landfill is permitted; conversely, if restrictions are put on the least favoured waste disposal option then this will drive the achievement of more favoured options and also prevention and minimisation of waste.

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**15.2 (c) Statement of Case by Mr. P. Lawlor**

Mr. Lawlor is a dairy farmer who farms 100 acres of land approximately 800 to 900 metres to the west of the landfill site.

Mr. Lawlor queries the need for a landfill site on the scale proposed, having regard to the fact that Meath County Council formerly identified a need for landfill disposal of 66,000 tonnes only.

The appellant states that on the basis of professional advice it is likely that his land will depreciate in value, thus inhibiting any future expansion of his holding.

\* Mr. Lawlor also refers to the issue of food safety, noting that if the safety of the milk produced on his farm is perceived to be at risk, whether it is or not, this will result in devaluation of his stock.

The appellant notes that if a landfill has to be constructed in the area then it should be appropriately sited and sized and constructed to the highest standards; furthermore, biodegradable waste should not be accepted at the site but should be composted.

In his capacity as Chairman of the IFA, Mr. Lawlor is aware of the widespread apprehension among the farming community of the proposed development.

**15.2 (d) Ms. Timmons**

Ms. Timmons lives to the north of the landfill site on the CR384. She refers to the uncertainty regarding the visual impact of the proposed landfill will have on the immediate vicinity.

She also expresses concerns about devaluation of her property due to pollution from the site and notes that houses along the county road which are for sale are now tending to remain unsold due to the potential presence of a landfill there.

Ms. Timmons also voices concerns re the composition of waste to be accepted at the landfill site.

The appellant also refers to the lack of any communication between the developer and residents in the area regarding the nature of the proposed development.

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**15.2 (e) Third Party Appellant - Mr. Martin Curran**

Mr. Curran lives to the north of the proposed landfill site. He has a Diploma in Horticulture and a National Certificate in Horticultural Landscape Construction. Mr. Curran notes that the developer's proposal to plant 100,000 trees on 50 acres will only be successful depending on the height and girth of the species, the balance between deciduous and evergreens and the overall maintenance of the planting. He notes that the landscaping will not provide any visual screen until at least 14 years have lapsed from date of planting; the species of planting proposed is also inappropriate as it is more suitable for motorway planting, and will resemble sticks in the ground.

Mr. Curran disagrees with the developers' assessment that no severe visual impact would arise given the extent of planting proposed and given the fact that the proposed development will eliminate many of the natural features and hedgerows on site. Furthermore, this site would be easily seen from the Hill of Skyrne and the Hill of Slane.

The appellant refers to the book of maps - accompanying the application, which was unavailable for inspection by the appellant and to the inadequate separation distance between this property and the landfill footprint.

**15.2 (f) Presentation by Mr. Tony Pain, Auctioneer and Valuer**

Mr Pane's written submission was orally presented by Mr. O'Byrne.

The submission deals with the predicted impact on the value of properties within a 1 kilometre and 1.5 kilometre radius of the landfill site. The submission notes that houses within the immediate vicinity of the site will devalue by as much as 50% to 60% and could in some instances result in a situation of negative equity. The submission notes in particular that dwellings within half a kilometre of the site would be virtually unsaleable. The potential scenario is contrasted with the existing situation whereby Knockharley is one of the most sought after areas of the county, located south of Navan and Slane and within a short distance of the N2 to Ashbourne and Dublin City.

Mr. O'Byrne then calls on Mrs. Bernie McDonald, who lives less than a mile to the west of the proposed landfill site, to relate her experiences in selling her dwellinghouse. Ms. McDonald states that her house was put on the market 18 months ago and that she has, with great difficulty, only recently sold it, after accepting a substantial drop in the initial asking price; Ms. McDonald noted that potential buyers lost interest in the property when advised that a landfill site could be located nearby.

The Planning Authority asked Mr Pain if had he any examples of similar adverse effects on properties adjacent to other similar landfill sites in the country. Mr. Pain said that he didn't have any specific examples at hand. The Planning Authority asks Mr. Pain are there any residential developments currently being carried out in Kentstown Village and, if so, are they selling. Mr. Pain indicates yes there are such developments and yes they are selling but some are still available for sale. Mr. Pain notes, however, that those dwellings are in the village and not adjacent to the overall site.

15.2 (g) Presentation of Evidence by Mr. Richard Brady Chartered Civil Engineer on Behalf of Mr. Fergal O'Byrne

The witness refers to the absence of detail on the revised configuration of the proposed landfill, to the absence of responsibility for setting up a Liaison Committee, to the minimal representation of the community on the Committee, to the lack of detail in Condition No. 6 re community projects and to the traffic hazard likely to be generated by an additional road junction on the N2; Mr. Brady recommends that if the development is to go ahead then it should be serviced by an underpass under the N2; he also refers to other small scale developments in the area for which permission was refused on the grounds of traffic hazard and the erosion of the rural environment. Mr. Brady refers to the traffic hazard which would be created for the residents of the dwelling which fronts the N2 adjacent to the proposed access road.

Mr. Brady also refers to the difficulty in drawing up a Traffic Management Plan which will prevent landfill associated traffic from using the R150; he also sees difficulties with enforcing such a plan.

He refers to the lack of any local input into landscaping conditions, variations to working hours and considers that the monitoring conditions are defective as they could result in a two-month time lapse before any irregularities are detected, during the construction phase of the development.

Mr. Brady also refers to the site selection process - that this would appear to have been determined by soil suitability; he notes, however, that while the soil may be suitable for a landfill site, the proximity of the site to Kentstown Village and the high levels of population within the adjoining rural area make it unsuitable for such a development.

**15.2 (h) Evidence Presented by Fr. David O’Hanlon, ex-Chairperson of the Board of Management of Kentstown National School**

His appearance at the Oral Hearing is supported by the Board of Management of the school and the Parents Association, as well as Mr. Fergal O’Byrne in his private capacity.

He voices the concerns of the parents, the staff and the Board of the school re the welfare of the children during the construction and operational periods of the landfill.

Fr. O’Hanlon notes that the location of the school has been omitted from a number of maps; it lies approximately 600 metres from the landfill site.

In excess of 160 pupils at both national and Montessori level are on the school roll. Fr. O’Hanlon voices concerns for the health of the children arising from contamination by birds, especially seagulls which, having been attracted to the landfill, will then also be attracted to the school grounds to feed on remnants of lunches.

He also refers to the non-feasibility of monitoring landfill traffic flows to ensure that it does not travel the R150 past the school.

Fr. O’Hanlon states that the repercussions for the school arising from the landfill site are two-fold; first, it threatens the viability of the school by reason of withdrawal of children from the school and, secondly, it will make it difficult to secure full-time qualified teachers to work there. He considers that the provision of national education is a matter for the proper planning and development of the area, given particularly that the school forms a focal point in a rural community; in the case of Kentstown this is very much the case, given especially that the school is adjoined on either side by Gaelic and soccer sports grounds.

The use of adjoining woods for educational purposes is also compromised.

Fr. O'Hanlon fears that the proposed landfill will lead to a withdrawal by parents of their children from the school, leading to the ultimate closure of the school. The withdrawal of children was based on a fear that the health of the children would be prejudiced by entirely inadequate measures being taken during the construction phase of the landfill and also the perception of the close proximity of the school to the landfill site.

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**15.2 (i) Presentation by Mr. Olan Heir, Mechanical Engineer**

Mr. Heir's presentation takes the form of an oral submission and a video presentation demonstrating alternative methods of waste management disposal (prevention - recycling) in North America; the proposed landfill site is not in keeping with Government policy as expressed in 'Changing Our Ways' nor is it in keeping with the proper planning and development of the area.

Mr. Heir outlines an alternative scheme which the appellants and the people of the area believe should be put in place.

Mr. Heir states that comprehensive recycling schemes will achieve a target in excess of the 43% set out in the North-East Waste Management Plan; the Waste Management Plan target actually restricts recycling despite the fact that there would be broad-based community support for higher recycling targets.

Mr. Heir states that a number of community groups now support the concept of zero waste and in that context we should not allow ourselves to be limited by landfills or incinerator forms of waste disposal.

The landfill site at Knockharley should only be used as a residual landfill within the context of implementing a full-blown zero waste plan for the North-East region.. The concept of zero waste refers to the non-generation of waste, i.e. not making waste in the first place. In pursuit of the zero waste policy, a number of community groups in Ireland have already banded loosely together in a federation to initiate a number of recycling schemes on a very comprehensive basis.

Mr. Heir recommends that if local communities are asked to host landfills, then if all the organics should be first extracted.

Mr. Heir is then asked to define his understanding of the concept of residual waste; he notes that residual waste is that which is left when all organics and pubrescibles, as well as all toxic matter, have been extracted from the waste. There is therefore a difference in nature, composition and weight between residual and non-residual waste.

Mr. O'Byrne then refers, in the context of Mr. Heir's presentation, to Government policy as set out in the most recent document of March 2000 - 'Delivering Change', and in particular to page 60, Appendix 3, where a definition of "residual waste" is set out.

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**15.2 (j)** Presentation by Mrs. Covney on Behalf of Mr. O’Byrne re Impact on proposed NHA of Balrath Woods.

Ms. Covney indicates that leachate from the proposed landfill may adversely impact on the owl colony at Balrath Woods.

She also queries how the Traffic Management Plan can be policed and also queries the delay by Meath County Council in the collection of kitchen waste.

Ms. Covney also refers to the fact that Dúchas, in communication with the EPA on 26.6.00, noted that while Dúchas had no objection to the granting of a Waste Management Licence, “the boundary for the proposed Natural Heritage Area, Balrath Woods, was incorrectly drawn in the EIS document, and that the proposed landfill site boundary is more like 500 metres away rather than 1 kilometre, as stated in the report. However the development is unlikely to have a major impact on the proposed Natural Heritage Area”.

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**15.2 (k) Statement of Case by Dr. Elizabeth Grehan on Behalf of Third Party Appellant, Fergal O'Byrne**

Dr. Grehan refers to the psychological effects which the proposed landfill will have on residents in the area, mainly experienced through fears and apprehensions as to the impact of the landfill on their locality; she also registers her objection to the separation of powers between the EPA and the Planning Authority which prevents matters of health resulting from environmental pollution likely to be generated by the landfill site from being recorded..

**Submissions to An Bord Pleanála given on Behalf of the Third Party Appellants by the Following:-**

**(i) Marilee Power of Suma Stud.**

Ms. Power makes the following submissions:-

The stud farm is located to the north of the landfill site and covers an area of approximately 150 acres. Ms. Power is concerned at the impact which the proposed landfill will have on the environment and hence ultimately on her livelihood in that (a) she trains students both from Ireland and abroad in horse breeding and stud management; (b) she also since 1976 has invested heavily in collecting and rearing the largest single herd of Irish draft mares in the country and probably still in the world. These animals previously were on the verge of extinction and are classified as an endangered species; (c) the stud farms of Suma and Ashfield House are accessed by Irish and other farm colleges for educational purposes.

Ms. Power refers to the visual intrusion of the landfill site, stating that this will impact adversely on the current locational context of the stud farm; she is also anxious that the lagoon will have insufficient capacity

to accommodate the surface water run-off and it will overflow onto adjoining lands.

Ms. Power states that the additional traffic generated by the development will make it difficult to ride horses on the roads.

(ii) **Conor French Davis, Veterinary Surgeon in Large Animal General Practice**

Mr. Davis refers specifically to Chapter 4.12.6 of the EIS and to the absence therein of any meaningful inquiry as to the effects of the Whiteriver landfill on the surrounding area..

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### 15.3 Statement of Case by Meath County Council

Meath County Council's case was presented by Mr. Michael Killeen, Senior Executive Engineer, Planning. The main points of the presentation are as follows.

The proposed development was assessed in the context of EC and national legislation - the 1963 Local Government (Planning & Development) Act, the Local Government Act, 1991, the 1996 Waste Management Act, the Waste Management (Planning) Regulations, 1997.

The 1989-1999 EIA Regulations, First Schedule, Part 2, Class 11(c).

National Waste Management Strategy - Changing Our Ways - 1998 Government Policy Publication.

The Meath Waste Plan 1994-1999, the Waste Management Plan for the North-East Region adopted in August 2001, the Dublin Region Authority's Waste Management Plan, the 2001 Meath County Development Plan.

Finally, the Planning Authority notes that on 2.4.2002 a proposed decision on a waste licence application in respect of the Knockharley site was received from the EPA proposing the following tonnages of waste acceptance at the site - household 100,000 tonnes, commercial 45,000 tonnes, industrial 30,000 tonnes and construction and demolition waste for recovery 25,000 tonnes.

The Planning Authority does not see any conflict between the tonnage proposed for acceptance at the site by the EPA and the 88,000 tonnes per annum proposed by the Planning Authority; The Planning Authority has arrived at their decision on the basis of the proper planning and development of the area in the context of the north-eastern region, while the EPA's decision is based on the tonnages which would be acceptable at the site without compromising or endangering the environment.

### **Site Selection and Alternatives:**

The Planning Authority notes that Government Policy recommends a hierarchy of waste disposal methods in which landfill, which is the least favourable option, should be considered for the disposal of residual waste only after other tenets of the hierarchy have been fully utilised. Hence Government policy sees a reduced role for landfill over a 15-year planning horizon, as other options for waste disposal are implemented. The pursuit of this policy will lead to a rationalisation of landfill facilities and a reduction in numbers; to ultimately, an integrated network of some 20 state of the art facilities incorporating energy recovery and high standards of environmental protection. The Planning Authority also notes that Meath County Council itself identified Knockharley as being suitable for a similar type development and subsequently identified Knockharley in the Meath County Development Plan as an area suitable for a residual landfill site. The County Council is satisfied that the development currently proposed is in accordance with the EU Landfill Directive EC/31/99 - Annex 1, which sets out the general requirements for all classes of landfill.

### **Waste Origin and Source:**

The Planning Authority notes that the original proposal by the developer comprised the landfilling of 120,000 tonnes of waste from North Leinster and 60,000 tonnes from Meath; the amounts for acceptance were revised following an additional information request by the Planning Authority; the revised amounts comprise 100,000 tonnes from the North-East region counties and 80,000 tonnes from the Dublin Metropolitan area. In assessing the proposed volumes for disposal at the landfill site, the Planning Authority had regard to the core objective of Government policy as expressed in 'Changing Our Ways' namely to reduce reliance on landfill; the Planning Authority notes that the objectives were to be realised by adoption of the **polluter pays principle** and **economies of scale** namely "that waste infrastructure should be planned on a scale that facilities viable cost effective alternatives to landfill and co-operation on an all-Ireland basis". In the current case the Planning Authority

states that the proposed development interprets economies of scale in terms of annual input for disposal, i.e. commercial viability. The Planning Authority notes that economies of scale based on annual input for disposal are not a planning issue; furthermore, the proposed development is contrary to the “polluter pays principle”, the “proximity principle” and the overall core objective of waste management strategy set out in ‘Changing Our Ways’. The Planning Authority argues that economies of scale are based on the need to reduce reliance on landfill and the need to rationalise the location of landfill sites through a policy of regionalisation. The North-East Regional Waste Management Plan enshrines the policy of economies of scale in adopting the waste management hierarchy and in identifying three residual landfill sites for the north-eastern region.

If the proposed development were to be permitted, the Planning Authority notes the following consequences:-

- (a) The acceptance of significant volumes of waste from outside the North-East region would militate against the establishment of other similar facilities in other regions.
- (b) Significant waste transport between regions would occur, resulting in conflict with the proximity principle and sustainable development.
- (c) The life of the facility would be foreshortened, generating development for a further similar facility.

The Planning Authority notes that at a later stage, when other similar facilities are fully developed in other defined regions, then regional co-operation will be possible on the basis of market forces and haul distances.

The Planning Authority refers in particular to the proximity principle set out in the 1997 Waste Management (Planning) Regulations at Section 5.5(b):-



“Measures including co-operation with other local authorities with a view to the application of the proximity principle, that is to say enabling waste to be disposed of in one of the nearest appropriate installations by means of the most appropriate method”.

The Planning Authority notes that the EC Directive 1999/31/EC at paragraph 9 of the preamble advocates the use of the proximity principle on the basis of the need to establish an adequate and integrated network of disposal counts; this principle underpins the regional approach. The Planning Authority notes, however, that although Fingal is within 12 kilometres of the proposed landfill site the waste for disposal, which originates in the Metropolitan area, can be generated some 40 kilometres from the site.

The Planning Authority also draws attention to the fact that the Waste Management Plan for the North-East region identifies approximately 88,000 tonnes of waste per annum to be disposed of not the 100,000 tonnes identified by the developer; the Planning Authority also highlights the fact that 80,000 tonnes which are proposed for disposal on an annual basis from Dublin equates to the amount identified for landfill by the north-eastern region.

#### **EIS Assessment:**

The Planning Authority had concerns with the original EIS in relation to:-

- Construction phase dust emissions.
- Treatment, disposal and volumes of leachate generated.
- Clarification of noise sources during the construction phase.
- Inadequate buffer zone between the landfill footprint and the rear gardens of properties to the north fronting the CR384.

- Location of borrow pit.
- Capacity of surface water attenuation pond.
- Inadequate assessment of impacts of the construction phase and surface/groundwater.
- Inadequate inventory of well water supplies in the area.
- Documentary evidence of applicants' legal interest in lands necessary to facilitate the new junction at the N2.

The Planning Authority was satisfied that the response of the developer to the above was in most instances satisfactory. However, in the case of the 250 metre buffer zone between the landfill footprint and the nearest adjoining dwelling and in the case of night-time noise levels generated during construction periods, the Planning Authority imposed restrictive conditions. In the former the Planning Authority required the landfill footprint to be reduced in size so as to provide for a minimum 250 metre separation distance from the most southerly rear property boundary of the nearest dwelling to the north (Condition No. 9). In the case of the latter, both night-time and daytime noise generated by construction activities on site were regulated by way of Condition No. 17.

The Planning Authority presentation of the EIS assessment also referred to the soil and geology profile within the site which favourably disposes it for an engineered landfill facility. The Planning Authority also refers to the flora and fauna elements of the EIS, noting that the site contains no designated Conservation Areas, NHAs, Areas of Scientific Interest or designated sites under the Habitats Directive. The site does not contain any rare flora, although it does contain some flora protected under the 1976 Wildlife Act. Measures, however, would be put in place to protect those species. The golden plover, which is an Annex 1 species in the Birds Directive, has been

identified on agricultural lands in the area, including on the site area during winter. Despite this, the site is not a designated site under the Directive.

### **Visual Impact:**

This site is located in an area designated in the Development Plan as High Amenity or Natural Beauty; it can be seen from the hills of Skyrne and Tara, but only in the distance. Locally the site will have a presence due to its high elevation within a relatively flat landscape; however, the site will be densely screened by berms, hedgerows and an extensive belt of woodland planting which will result in it being absorbed into the landscape.

### **Cultural Heritage:**

Although the site contains no recorded monument, Dúchas requested (after the date of decision) that building, photographic and measured surveys of all upstanding structures on the site be made, as well as a further geo-physical survey of fields not already surveyed, as well as a method statement for the test excavation of a number of identified areas.

### **Material Assets:**

Material Assets are identified as housing, tourism, agriculture and infrastructure. Re housing, concerns over property devaluation cannot be substantiated by evidence from elsewhere, for example, Tara Mines, Irish Cement Works at Glasson, Lagan Cement Works at Kinnegad, landfill site at Kill referred to by the applicant. The impact on tourism is likely to be manifest mainly in terms of visual impact given the remote distance from tourist sites. In this context, it has been noted that visual impact is not likely to be significant. Re agriculture, the Planning Authority notes that the loss of 135 hectares of land within the wider land bank of County Meath is not significant, although impacts on adjoining agricultural lands during the operational phase may be identified; these are, however, a matter for the EPA to deal with.

### **Traffic Impact:**

Traffic impacts in the area were associated with the construction and operational phases of the landfill in terms of both existing and likely traffic growth over the life of the landfill, as well as the traffic generated by the landfill itself. Traffic impact was assessed with regard to five junctions - the access junction at the N2, the CR384/N2 junction to the north of the access junction, the Flemingston junction, the R150/N2 to the south of the access junction, the Balrath junction defined by the convergence of the R153/the N2/CR322 further south again, and finally the Kentstown Village junction to the south defined by the confluence of the R153/R150/CR390.

Despite the opposition of the NRA on the grounds of reduction in road capacity, traffic hazard and frontage onto the National Primary Route, the Planning Authority considers that access was only one of a number of considerations in the site selection process. The Planning Authority noted, for example, that alternative access to the site by means of the existing narrow county road network which would involve the passage over the R150 past Kentstown National School and which would also impact adversely on residential amenities was inappropriate. The Planning Authority noted that other site selection criteria had to be taken into account, including those set out by the EPA in their site selection manual; those included proximity to a national road network. Other site selection criteria referred to by the Planning Authority included visual impact, impact on groundwater, aquifer protection, the centre of gravity of the waste, archaeological considerations and the site designation itself. As the above criteria were satisfied and as the design of the N2 access junction was considered satisfactory, these points were considered to outweigh the concerns expressed by the NRA. Subsequent to the decision by the local authority, the NRA responded by requesting that the new N2 junction be constructed to DMRB Guidelines; it is intended that the new junction would be constructed under the supervision of the local authority and the NRA. Contributions have also been sought by the local authority towards the junction construction and towards the upgrading of adjoining county roads which will facilitate the proposed development. The Planning Authority

considers that while the traffic impact assessment was robust, further information in terms of AADT was required as the NRA was particularly concerned with the capacity of the N2. The EIS addendum demonstrating AADT flows on the N2 concluded that there would not be any significant impact on the level of service of the N2. It was also noted that construction traffic for the initial phase remained unaltered. The Planning Authority also refers to the traffic sensitivity test based on a waste acceptance of 250,000 tonnes per annum; the Planning Authority were satisfied that the sensitivity test demonstrated a worst case scenario rather than a steady state operation.

In terms of revised waste origins, all junctions were shown to have sufficient capacity and that the Balrath junction would not be over capacity by the year 2016.

#### **Public Support and Participation:**

This is referred to in 'Changing Our Ways'. The applicants, therefore, in a further information request, were asked to consider establishing a Community Liaison Committee, the provision of a public education area within the landfill administration block toward environmental education and the utilisation of a portion of income from waste charges for appropriate environmental improvement projects to mitigate the impact of the landfill on the community. A positive response from the applicants was reinforced by Condition Nos. 5 and 6 of the grant of permission.

#### **Objections to the Proposed Development:**

The Planning Authority notes that there is no proposal in the EIS to dispose of ash from incinerators.

### **Contextual Factors which Influence the Planning Authority's Decision to Grant Permission for the Proposed Landfill:**

These were the EIS addendum, the provisions of the 2001 Meath County Development Plan, the existence of defined regional areas for waste management purposes, the identification of the site in the North-East Waste Management Plan as being suitable for landfill disposal, the proximity principle and Government policy re the rationalisation and regionalisation of waste management, the Dublin Region Waste Management Plan.

### **Observations on Appeal Submissions:**

These were already stated by the Planning Authority in the written submissions.

### **Third Party Appeal Submissions:**

The Planning Authority reiterates the written responses to these submissions already received by An Bord Pleanála; the Planning Authority refers in particular to a traffic management plan for the R150, which is covered by Condition 11 and which is subject to ongoing monitoring during the life of the landfill; with regard to the make-up of the Liaison Committee referred to in Condition 5, the Planning Authority proposes that it act as a facilitator or that the Board itself decide the composition of the Committee. Re buffer zones, the Planning Authority notes that Annex 1 of the Landfill Directive refers to distances from "recreation areas" and that the rear garden of the dwelling must be considered as such. The Planning Authority again refutes the fact that a limitation on the waste volumes to be accepted at the site renders their decision void; the Planning Authority states rather that revised volumes of waste have been determined in accordance with the proper planning and development of the area. The Planning Authority notes, however, that should the waste acceptance of 88,000 tonnes per annum conditioned by the Planning Authority result in unused space within the landfill at the end of the 14-year period, any further extension of the landfill activity beyond that period is a

matter to be decided at that time. Re Waste Certificates, the Planning Authority considers that these are necessary in order to ensure that the volumes of waste accepted will accord with the amounts permitted and that waste can, within reason, be traced to source. The Planning Authority also notes that the reduction in the landfill footprint required under Condition No. 3 will eliminate Phase 7 of the development and reduce the overall capacity of the landfill from 2.5 million to 2.16 million tonnes. Re costs, the Planning Authority states that this is not a planning issue, while in relation to visual impacts and screening the site does not contain any listed views nor have any third parties a right to a view. Re hours of construction, the Planning Authority considers that some degree of flexibility is required here in order to accommodate certain types of work and certain weather conditions; work occurring outside the specified hours will have to be agreed with the Planning Authority and be subject to an emission limit of 45 decibels.

#### **First Party Appeal Submissions Against Conditions:**

The Planning Authority notes that the appellants' statement to the Board that "it is highly unlikely that municipal waste will be directed to Knockharley, their Dublin or other regions apart from the North-East region" is considered somewhat contradictory to the appellants' application for the disposal of 80,00 tonnes of non-hazardous waste from the Dublin region, albeit commercial waste. It would appear to the Planning Authority that such a statement is justification for the Planning Authority's decision to restrict waste volumes in accordance with the North-East Waste Management Plans. Re the Community Liaison Committee, the Planning Authority is anxious that this not be controlled by the applicant and in this regard, therefore, the condition allows the Planning Authority to act as a facilitator. Similarly, in the case of Condition No. 6, which deals with contributions towards the cost of environmental improvements and community facility projects, the Planning Authority is not using contributions to recoup any environmental costs carried out in the region to date. The levy will be used specifically to fund projects to be identified by the Community Liaison Committee and will be operated entirely for the benefit of the local community. The Planning Authority has

incurred expenses in the past on environmental works in the area; detailed costs of these were only made available as a result of an enquiry by An Bord Pleanála and were not identified as work which would attract any portion of the contribution levy. The Planning Authority, however, notes that other levies other than the community levy will continue to be imposed by the Planning Authority as those are linked to community and recreational facilities associated with housing developments and will be imposed not only in relation to Kentstown but also in relation to other settlements throughout the county.

Mr. Killeen was then asked by the Senior Counsel for the Planning Authority if he was asking the Board to maintain the conditions imposed by the Planning Authority save for the addition of a condition restricting the life of the facility to 14 years; Mr. Killeen agreed that this was so. Mr. Killeen was then asked whether the reduced volumes of waste conditioned by the Planning Authority to be accepted at the site would have any impact on the design of the facility and the need to carry out the development in accordance with that design. In response, the Planning Authority stated that despite the reduced volumes of waste conditioned by the Planning Authority the landfill footprint would still be as proposed, save where some revision was necessary as a result of the buffer zone required under Condition 3; therefore, while the life of the facility might be reduced there is no need to re-advertise or submit a new planning application. Finally, Mr. Killeen indicated that he was satisfied that the EIS complied with all requirements of the legislation as a result of the response to the further information request.

Meath County Council; Greg Duggan, Senior Engineer, Environment

Mr. Duggan's presentation is concerned with the role of Knockharley in the context of waste volumes arising in the North-East region and in the context of the diversion of increasing amounts of waste away from landfill towards recycling and thermal treatment, as envisaged in the North-East Region Waste Management Plan. Mr. Duggan's submission was made by way of a written and oral presentation. Paragraph 12 of the written submission concludes that



nowhere in the North-East Waste Management Plan was it ever proposed that Knockharley:-

“Would ever be a major regional landfill site in the short to medium term to accept the bulk of waste arising in the **Region**. It was always intended that Knockharley would serve **Meath** in the **medium term**. As other landfills in the region closed and waste quantities in Meath reduced in line with targets set in the plan, creating greater capacity at Knockharley, waste from the other counties in the region would be diverted to Knockharley. In this way, Knockharley was envisaged as the **long-term residual landfill for the region**.”

Meath County Council: Jim Gibney, Acting Senior Executive Engineer, Roads Design

Mr. Gibney’s submission to the hearing took the form of a written and oral presentation. The main points are as follows.

Access to the proposed facility is proposed from the N2; despite the initial opposition of the NRA to the N2 junction, Mr. Gibney considers that the proposed development should be serviced by a high standard of road and that the N2 serves that purpose given that the sight distances available at the junction comply with DMRB standards, as does the proposed right-turn lane which will also be properly delineated in accordance with the DMRB. In a subsequent letter from the NRA, received by the Planning Authority after the decision to grant permission, the NRA did not state any further objection to the junction but rather requests that it be constructed in accordance with the DMRB and that a safety audit be carried out in accordance with that document.

Mr. Gibney indicates that he is satisfied that the TIA deals adequately with traffic generated by the development and its impact on existing and future traffic in the area. He also notes that traffic figures shown are sufficiently robust to cater for a worst case scenario.

**Re Junctions:**

Right-turn lanes funded by the NRA are to be provided at the R150/N2 and the R153/N2 junctions; however, traffic accessing the landfill will be restricted to the R153/N2 junction only and the applicant is required to submit a Traffic Management Plan showing how this condition may be enforced. The developer is also asked to contribute towards road works on the R153 currently being carried out by Meath County Council and funded by the DOELG and Meath County Council. Mr. Gibney notes that the N2 between the R150 and the access junction will require strengthening due to the extra traffic generated along that section; the developer is being asked to execute this work simultaneously with surfacing of the new junction.

**Re The AADT:**

The NRA's EIS for the Ardee/M1 link predicts a drop of 27% in traffic using the N2 in the opening year of the M1, thus enhancing the safety of the N2 and the new junction.

**Re Contributions:**

Mr. Gibney sets out the basis of the contributions levied on the developer for road works which are based on 2001 rates. The contributions are justified on the basis that extra traffic will be generated and hence improvements required in the areas for which the contributions are sought.

## 15.4 Presentation of Case by Developer (First Party Appellants)

### (a) Mr. Gabriel Dennison

Mr. Dennison's presentation to the oral hearing, noted that:

The company was established in 1999 in response to the Government's call for private sector involvement in the provision of a modern waste management infrastructure for Ireland. It is the leading provider of integrated waste management solutions, in particular for trade and industry; there are only three waste collection and recycling companies in Cork and the Greater Dublin area; plants in the Greater Dublin area are located in Bray and at St. Margaret's in Fingal. The plants are fully licensed facilities and handle primarily commercial and industrial waste. The company is committed to the hierarchy of waste and in compliance with that hierarchy, the company is currently developing four state of the art facilities comprising - materials recovery, recycling, and transfer facilities, including biological treatment of waste by composting. The company also intends to develop a modular 50,000 tonne per annum composting facility at the site in Ballycoolin, with an additional six throughout the country.

The company operates one landfill site - the KTK site at Kilcullen in County Kildare, for which permission was granted by Kildare County Council in 1998 and licensed in 1999 by the EPA for the disposal of 220,000 tonnes per annum of non-hazardous, non-putrescible commercial and industrial waste. A further 10% increase was sanctioned by the EPA, bringing the total waste tonnage for disposal per annum to 242,000. The developer contrasts the landfill situation at KTK with that proposed at Knockharley, noting that: KTK is a quarry site of limited area but of substantial subsurface depth (25-30 metres); this results in a restricted buffer zone unlike the facility proposed Knockharley.

The developer clarifies the concept of residual waste by defining it as a material which cannot be recovered or recycled and which has not been susceptible to diversion from landfill disposal by any of the other tenets of the waste hierarchy. The developer acknowledges that percentage recovery of waste is currently low but states that this is due to a functional lack of investment and lack of infrastructure; percentage recovery, however, will increase as a further investment is made in the industry, resulting in residual waste for landfill disposal being truly residual in nature.

The developer notes that studies show waste volumes to increase with economic growth, and that given Ireland's economic record over the last decade waste generation is likely to have kept pace, given particularly the fact that waste volumes discovered in illegal waste dumps have not been incorporated into the EPA's 1998 National Waste Database or into any of the strategy studies or regional plans which have been drawn up.

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**15.4 (b)** Presentation by Mr. Conor Walsh: Waste Management Consultant with White, Young and Green on Behalf of Celtic Waste

The presentation by Mr. Walsh contained the following points:-

- (i) **The 6<sup>th</sup> EU Environmental Action Programme** sets out current waste management policy in the EU; the Action Programme envisaged therein recognises the need for new landfills which will provide high environmental performance; the same high quality facilities are recommended in the in Government policy document ‘**Changing Our Ways**’ which also encourages economies of scale through an integrated national network of some 20 landfill sites. The **ESRI**, in their 1995 study entitled ‘**The Economics of Solid Waste Management in Ireland**’ concluded that “considerable savings are achievable from building fewer larger landfills”. Thus the average cost of disposal at a facility accepting 50,000 tonnes per annum was found to be twice that of a site receiving 200,000 tonnes. In the context of the study’s prediction for landfill sites in Dublin of 300,000 to 400,000 tonnes per annum, the 180,000 tonnes per annum envisaged at Knockharley is not oversized.

**Wastes Arising in the North-Eastern Region:** Data from the North-East Plan suggests that there is currently a shortfall of some 150,000 tonnes per annum in disposal capacity in the north-eastern region and that that situation is unlikely to change before 2008, when the thermal treatment plant is expected to be commissioned. The 150,000 tonnes, however, is likely to increase to 180,000 tonnes per annum, with the closure in 2002 of the landfill site in Dundalk. Although the overall shortfall figure of 180,000 tonnes, therefore, for the North-East region equates to the proposed capacity of the Knockharley site, there is not any guarantee that Knockharley will get all that waste;

much of that waste is commercial and industrial and is handled by private waste contractors who are not restricted to waste disposal their waste in any particular region as long as the disposal site is a suitable facility. Currently much of this 150,000 tonnes per annum is leaving the north-eastern region and even with Knockharley in place some of that waste may continue to leave the north-eastern region.

Conversely, if waste from the Dublin region is to be accepted at Knockharley the 80,000 tonnes envisaged forms only a small percentage - 6% - of the residual landfill demand arising from sources within the Dublin region. Given that Meath forms part of the Greater Dublin area, as defined by the Strategic Planning Guidelines, the diversion of waste to Knockharley from the Dublin region is acceptable.

Mr. Walsh notes that in restricting the transport of waste to certain regions, barriers are created along county boundaries which conflicts with the **proximity principle**; it would also lead to the scenario whereby waste from a transfer station at St. Margaret's in Fingal could be denied access to the landfill at Knockharley, whereas waste from collection points in Cavan some 100 kilometres distant would be permitted access; such a scenario is contrary to the proximity principle; this would also be contrary to the provisions of the North-Eastern Regional Plan which allows for inter-regional co-operation (confer Paragraph 12.3). Mr. Walsh refers to Figure OH2 in his written submission to the hearing, which shows how the proximity principle already operates within the North Leinster area; viz that, waste from County Meath is transported to Killeen Road in Ballyfermot for baling and from there is sent on to the Arthurstown landfill at Kill in County Clare. In terms of commercial waste, Mr. Walsh notes that there are not any restrictions on commercial waste contractors to dispose of

waste in any particular region - the KTK landfill in Kildare is currently accepting residual commercial and industrial waste from Meath, Dublin and Wicklow.

Mr. Fitzsimons then asked Mr. Walsh “if Knockharley were to be allowed to accept commercial waste from proximate locations in the Dublin region such as St Margarets would it lead to an improvement in terms of the waste management situation in terms of traffic flows”. Mr. Walsh says ‘Yes, as Knockharley lies on a National Primary Route’..

**15.4 (c) Presentation by Declan O’Sullivan, Director of Fehily Timoney & Company, Consultants in Engineering and Environmental Sciences engaged on the Proposed Landfill Project at Knockharley**

Mr. O’Sullivan notes the on-site physical constraints in the design of the landfill, including a 250 metre separation distance between the area to be landfilled and any occupied dwelling, as stated in the Draft EPA Manual on Site Selection.

Other constraints are contained in Annex 1 of the EC Directive ‘The Landfill of Waste’, April 1999, which does not set out any specific requirement re separation distance from either residential or agricultural land uses but which notes it must take into consideration requirements relating to such distances. Hence a minimum separation of 250 metres is maintained between the nearest third party occupied dwelling and the landfill footprint.

Mr. O’Sullivan states that the requirements set out at Annex 1 of the Directive re landfill location have been dealt with in the EIS submission.

Mr. Fitzsimons, Counsel for the developer, refers to the proposed decision issued by the EPA in March 2002 on the waste licence, which

referred to the depth of the buffer zone; Mr. O’Sullivan noted that the licence envisaged a 100 metre buffer zone between the site boundary and the landfill footprint. (Condition No. 3.13.2, page 12).

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## 15.5 Developers' (First Party Appellants') Response to Case Stated by Planning Authority

Mr. Fitzsimons questions Mr. Killeen of Meath County Council; the questions broadly follow the sequence of Mr. Killeen's presentation.

- What does the County Council understand by the proximity principle in relation to the proposed development and other developments of a similar nature within the functional area of the County Council?

Mr. Killeen refers to page 9 of his submission, to the proximity principle as enshrined in the Waste Management (Planning) Regulations at Article 5.5(b) and indicates that his understanding is that waste should be disposed of in one of the nearest appropriate facilities, that Knockharley has been identified as such for the north-eastern region and, therefore, Knockharley should accept waste from the north-east region.

- Mr. Fitzsimons asks if Mr. Killeen is suggesting that Article 5.5(b) imposes a regional boundary; Mr. Fitzsimons himself does not take that understanding from the regulation but merely that the nearest appropriate installation means exactly that.

Mr. Killeen states that this regulation has to be interpreted in the context of the Waste Management Plan prepared for the North-East region and also to the "most appropriate methods" as indicated in the regulation. In that context, Knockharley is identified as the long-term landfill facility for the North-East region and that, in the context of "the most appropriate method" referred to in article 5, Knockharley is a landfill disposal site resource which requires to be protected for the region if the region is to be self-sufficient in terms of waste disposal. In that context, Mr. Killeen notes the 80,000 tonnes of waste to be

disposed of from the Dublin region approximate to that required to be disposed of from the North-East region.

- **JF:** Mr. Killeen is then asked if he sees a linkage between economies of scale and proper planning considerations.

Mr Killeen states that the policy set out in the North-East region and County Development Plan is one which is based on serving the needs of the region - commercial viability is not a planning issue. He refers to the fact that 'Changing Our Ways' envisages the development of 20 state of the art landfill facilities nation-wide; the scale of development proposed would militate against the development of other similar facilities, especially in the Dublin region, and will be contrary to the policy set out in 'Changing Our Ways'.

- **JF:** Refers to the concept of economies of scale as set out in 'Changing Our Ways' and asks if the interpretation of that policy in the document is to acknowledge that landfill is not the best option but to acknowledge that there will always be a need for some degree of residual landfill and that where that need is to be satisfied then it is better to do so with larger scale landfills than with smaller scale disposal facilities.

**MK:** Agrees with above.

- **JF:** Notes that economies of scale relates to the provision of fewer larger landfill sites and not to the plans which the eight regional authorities have drawn up in terms of their own landfill needs.

**MK:** States that Knockharley is one of the 20 state of the art facilities which also satisfied the needs of the North-East region and in that way economies of scale in the context of an all Ireland basis have been taken into account.

- **JF:** If every County Council were to apply a restriction in terms of capacity is there not a risk that the national objectives in relation to economies of scale viz. 20 only state of the art facilities would not be achieved.

**MK:** The core objective of the ‘Changing Our Ways’ policy is to reduce reliance on landfill; the waste at Knockharley is to be restricted to the North-East region only and the limitations imposed on the volumes of waste in pursuit of that objective still allow for economies of scale. In contrast, Celtic Waste is basing their opposition to the waste restriction on the commercial viability of waste but this is not a planning matter.

- **JF:** How would the objectives of the North-East Waste Management Plan be frustrated if Celtic Waste were to dispose of 80,000 tonnes per annum of waste from outside the North-East region at Knockharley?

**MK:** Notes that there are few suitable sites for landfill within the North-East region; a site identified as being suitable should, therefore, be protected as a long-term resource as in the case of Knockharley.

- **JF:** Asks if a facility such as Knockharley, which has a capacity of 180,000 tonnes per annum and which could accept, therefore, all of the north-eastern region’s waste plus commercial waste from Dublin which currently cannot be disposed of, would this not achieve both the objectives of the north-eastern region and national objectives?

**MK:** States that if waste from Dublin is to be accepted at Knockharley this will militate against the development of other sites in the Dublin area.

- **JF:** The core of the issue, therefore, is whether each of the eight regions should be ring fenced in order to achieve the national objective of 20 state of the art facilities; the developer contends that such ring fencing is not necessary.

**MK:** The Planning Authority accepts that ring fencing is not necessary in the long-term as each of the facilities comes on board. There can be interaction between them based, for example, on market forces, haul distances, etc. It is not necessary to wait for all 20 facilities to be developed before interactions occur among them; interactions can take place when the strategic locations are identified, particularly in the case of the Dublin region. Mr. Killeen denies that the objectives of 'Changing Our Ways' are being thwarted by such an approach; he notes that the four counties in the north-eastern region have come together and have identified Knockharley as a long-term residual regional landfill.

- **JF:** He refers to the polluter pays principle set out at Section 2.3 of 'Changing Our Ways' and asks how is the proposed 180,000 tonne facility at Knockharley contrary to that principle, particularly if the 80,000 tonnes coming from outside the region consisted of commercial and industrial waste, the disposal of which would be paid for by the producer.

**MK:** Notes that the proposal is based on commercial viability and is, therefore, contrary to the polluter pays principle.

- **JF:** 'Changing Our Ways' at page 2, notes that a key consideration in achieving the goals is recognition of the importance of economies of scale and that waste infrastructure should be planned in a way that facilitates viable cost effective alternatives to landfill and that it also should take account of opportunities for co-operation on an all Ireland basis. How then is it possible to justify a quasi iron curtain approach to the north-eastern region i.e. that unless economies of scale relate specifically to that region they cannot form any part aspect of a proper planning consideration.

**MK:** States that economies of scale have been enshrined in the Waste Management Plan for the North-East in that the four counties have come together and have identified a landfill site in the region suitable, for one of the 20 landfill sites identified in ‘Changing Our Ways’.

- **JF:** Refers to page 9 of the Planning Authority’s submission, in particular that “significant waste transport from one region to another is against the proximity principle and sustainable development”. In that context he refers to the waste transportation map submitted by Conor Walsh and asks in that context if waste from the northern portion of the Dublin region were to be disposed of at Knockharley would this not comply with the proximity principle.

**MK:** The Planning Authority states that while the Knockharley site may be located 12 kilometres from the Meath/Fingal boundary, the waste originating in the Dublin area would come from much greater distances, i.e. 40 kilometres. Mr. Killeen acknowledges that while waste is currently transported between counties, this is due to a deficiency in facilities which Government policy is trying to overcome.

- **JF:** Is not waste generated in North County Dublin being disposed of in Kildare, leading to unnecessary travel distances hence to a breach of the proximity principle?

**MK:** Mr. Killeen denies that this is a breach, noting that it is a core objective of the ‘Changing Our Ways’ policy that 20 sites be developed.

- **JF:** How can the acceptance of waste from outside the region shorten the life of the Knockharley landfill facility?

**MK:** Notes that if 180,000 tonnes of waste per annum are accepted at the facility, it will have a life expectancy of 14 years; if this is reduced to 88,000 per annum, then excess capacity beyond the 14 year timeframe

will be available; the life of the facility can then be further extended by way of planning application at the end of the 14-year period.

- **JF:** If the site is closed at the end of the 14-year period is it not likely that waste generated in the North-East region after that time will have to be disposed of elsewhere?

**MK:** No, because the Knockharley site is considered a long-term resource for the area.

- **JF:** In reference to market forces and haul distances determining use of landfill disposal facilities. Mr Fitzsimons asks is it not the case that commercial and industrial waste hauliers, for example, in the north-west of Cavan will go outside the north-eastern region to dispose of waste.

**MK:** Yes, but one must look at the long-term planning horizon, i.e. when all the state of the art facilities are in place then market forces and haul distances will take over and determine which landfill is appropriate.

- **JF:** Argues that the concept of market forces and haul distances should equally apply in the present as well as in the future; therefore if the restriction on the capacity of Knockharley has been influenced by future aspirations then that is not a valid consideration.

**MK:** Refers Mr. Fitzsimons to the considerations which the Planning Authority took on board, namely the North-East Region Waste Management Plan and the County Development Plan.

- **JF:** Refers to page 10 paragraph 9 of the EC Directive 1999/31/EC, namely “whereas the member states should be able to apply the principles of proximity and self-sufficiency for the elimination of their waste at community and national level, in accordance with Council Directive

75442/EC and whilst the objectives of this Directive must be pursued and clarified through the establishment of an integrated network of disposal plans based on a high level of environmental protection”; is not the true manifestation of that principle, a highly integrated network of disposal facilities with integration between waste management reasons.

**MK:** Paragraph 9 advocates both the integrated approach and the regional approach - an approach which was taken in the North-East Regional Plan.

- **JF:** Does integration in the Planning Authority’s viewpoint, therefore, mean integration within the North-East region?

**MK:** No, the integrated network refers to the 20 state of the art facilities advocated in ‘Changing Our Ways’, the Knockharley site is the first of those integrated facilities.

- **JF:** Does this approach not therefore presuppose co-operation across regional boundaries?

**MK:** Yes, but only when the other facilities are fully developed.

- **JF:** Is it an obligation of the Planning Authority to take account of the common good? I.e. considerations which might be outside the remit or functional area of the North-East region in order to comply with a national objective?

**MK:** Yes, this is what has happened in the North-Eastern Regional Management Plan and the identification of Knockharley.

- **JF:** How does the limitation of an 88,000 tonne capacity take account of the common good to dispose of certain types of other waste in other

regions where there is the capacity to deal with that additional need over and above the internal needs of the region?

**MK:** The Planning Authority is restricted to considering the proper planning and development of the area and the provisions of the County Development Plan.

- **JF:** Is the common good of other regions a matter of consideration by Meath County Council?

**MK:** Yes.

- **JF:** Mr. Fitzsimons states that the condition requiring a 250 metre buffer zone to be observed would appear to be imposed in order to abate noise and odours; such a condition is surely precluded by Section 54 of the Waste Management Act, and is, therefore, a matter to be determined by the EPA.

**MK:** Mr. Killeen agrees but says that the Planning Authority imposed this condition in the interests of residential amenity, e.g. noise sources associated with the construction phase of the development.

- **JF:** Asks Mr. Killeen to identify the factors which led to a buffer zone condition being applied in the interest of residential amenity;

**MK:** Notes that this could relate to a number of matters;. However, in this case, visual amenity would appear to be the only factor which would have influenced the requirement for a 250 metre buffer zone.

- **JF:** Asks Mr. Killeen to clarify the Planning Authority's reference in its presentation to private sector involvement, public private partnerships and Condition No. 6 attached to the grant of permission by the Planning Authority.



**MK:** Notes that these references concern the Community Liaison Committee and a portion of gate fees to be expended on appropriate environmental improvement projects in the area so as to mitigate against the impact of the landfill; Mr. Killeen acknowledge that the concept of the scheme originated with the developer, although the Planning Authority may have determined the details. Mr. Killeen noted there was no pre-planning consultation on the scheme with the developer as the site had already been identified by Meath County Council as a landfill site.

**Examination by the Developer of Mr. Greg Duggan's Submission to the Oral Hearing**

**JF:** Refers to paragraph 2 of the typed submission and the assumptions upon which the analysis in paragraph 2 is predicated.

**GD:** Mr. Duggan notes that the North-East Waste Management Plan assumes that household waste generation per capita will slow from 3% per annum over the period of the plan; similarly with commercial and industrial waste but this is unlikely to ever reduce to 0.

Mr Duggan refers to Paragraph 3 and the accompanying table; the figures outlined therein are based on the reduced volumes resulting from the introduction of waste management practices such as kerbside collections in 2003, expansion of the bring bank system by 2004, as well as the provision of additional recycling centres in that year, separation collection of kitchen waste in 2005 and finally, thermal treatment of waste in 2008. Mr. Duggan states that an allowance for a 3% growth in waste has been built into the figures until 2006, with volumes of waste slowing after that as the public becomes more aware of waste issues and as more facilities are introduced, such as recycling. Mr. Duggan also notes that the most recent database currently in the process of preparation shows that generation of waste has reduced, while disposal of waste within and outside the North-East region is less than the planned figures.

- **JF:** Refers to the large drop in household waste collection between 1999 and 2005.

**GD:** Mr. Duggan indicates that kerbside and kitchen waste for compost each take out approximately 35%. 60% approximately of the county is served by kerbside collection, with the remaining 40% having access to bring banks in commercial centres. While the 60% figure may not obtain for the North-East region overall, it is not expected to be significantly less.

- **JF:** Refers to the significant reduction in the waste stream between the years 1999 and 2014.

**GD:** Mr. Duggan indicates that the plan calls for 48% landfill ultimately but does not consider this overly optimistic in the public reaction towards kerbside collections and recycling centres, noting that use is commensurate with availability. Mr. Duggan, however, notes that without a thermal treatment facility it will be difficult to achieve the target set out in the plan. Mr. Duggan notes, however, that the process to bring thermal waste treatment on-stream started prior to the formal adoption of the Waste Management Plan so that thermal treatment is expected to be operational by 2007/2008. One year's delay in the commissioning of the thermal treatment plant from 2008 to 2009, for example, would result in a knock-on effect of approximately 120,000 tonnes per annum of waste to be disposed of by landfill.

- **JF:** Turning to the specifics of the development at paragraph 6, asks Mr. Duggan if Meath County Council accepts that even with the scheduled implementation of all waste treatments there will be a shortfall to some degree in the years beyond 2005.

**GD:** Mr. Duggan notes that up until 2007 there will be a shortfall but with the arrival of thermal treatment then a surplus landfill capacity will be

available; the shortfall is calculated at 132,000 tonnes approximately; this will require to be disposed of outside the region as currently happens. Mr. Duggan then clarifies paragraph 10 of his written submission, noting that if no thermal treatment option is available by 2014 there will not be enough landfill capacity with the current landfills in the region as recycling will not exceed 44%.

- **JF:** Mr. Fitzsimons asks, therefore, would it not be prudent in the event of no thermal treatment option being available by 2014 to allow the shortfall to be dealt with in the region.

**GD:** Mr. Duggan notes that Celtic Waste's figure was for 100,000 tonnes only; he also notes that if additional landfill capacity is provided for safety net purposes then the plan will never be implemented.

- **JF:** Asks if it is not better to provide a state of the art landfill facility which will provide capacity in excess of 88,000 tonnes in order to deal with unforeseen eventualities and if such eventualities do not come to pass then all the better; Meath County Council will have succeeded in meeting its target and its obligations under the Waste Management Act while Celtic Waste will be left financially exposed.

**GD:** Mr. Duggan contends that there is not any satisfactory answer to this question as this is a hypothetical question;

- **JF** Mr. Fitzsimons indicates, however, that all the targets for waste disposal are also predicated on a 'what if' situation;

**GD:** Mr. Duggan disputes this, noting that they are based on scenarios which they are currently working towards.

Cross-Examination of Developer (First Party Appellant) by the Planning Authority

- **PA:** The Planning Authority notes that Mr. Walsh accepts from his own presentation that the Planning Authority has to work within the parameters of certain plans, namely the County Development Plan where the site at Knockharley was identified (page 26, Section 2.7.3). In the North-Eastern Regional Waste Management Plan, Knockharley is specifically identified in the implementation statement at paragraph 10.5.2 as one of three medium to long-term landfill facilities developed to service **the residual landfill needs of the region** and that is the context within which the Planning Authority are required to operate. The Planning Authority also refers to the EIS addendum, which notes that the proposed landfill at Knockharley is intended to serve the needs of the north-eastern region; the addendum does not refer to Knockharley as being intended to serve anywhere else.
- CW:** Mr. Walsh states that nowhere in the plan does it state that serving the region will preclude Knockharley from serving other regions.
- **PA:** The Planning Authority agrees, but argues that the plan is for four counties and arises from the Government policy document ‘Changing Our Ways’ in accordance with the regionalisation approach set out in that document.
- **PA:** The Planning Authority then asks Mr. Walsh to clarify the nature of the 80,000 tonnes of waste which the developer proposes to divert to Knockharley.
- CW:** Mr. Walsh states that that tonnage will comprise commercial and industrial waste only.

- **PA:** Mr. Butler, on behalf of the Planning Authority, then asks about the revised figures submitted by the developer in the EIS addendum;

**CW:** Mr. Walsh states that he has subsequently revised even those figures as they were based on an over-estimate of the capacity of Corranure and Scotch Corner; he therefore considers that the 100,000 tonnes of waste which will require to be landfilled from the north-eastern region should be revised upwards to between 150,000 and 180,000 tonnes and that those volumes are unlikely to decrease significantly until the thermal treatment plant comes on-stream in 2008, if even then. Mr. Walsh, however, indicates that he does not wish to revise the 100,000 tonne figure for disposal at Knockharley, noting that the excess tonnage, which may still require to be landfilled, may be landfilled at alternative locations. Even when thermal treatment comes on-stream, there will always be between 250,000 and 280,000 tonnes requiring disposal by means of either thermal treatment or landfill during the length of the plan.

- **PA:** Mr. Butler then asks Mr. Walsh if he subscribes to the principle set out in the plans that the Council must move away from landfill; Mr. Walsh agrees. Would he also agree that in principle it is correct that the greater the space provided for landfill, greater volumes of waste will be accommodated there.

**CW:** Mr. Walsh does not agree, noting that the tonnages involved at Knockharley will not distract from any proposals for recovery or prevention.

- **PA:** Mr. Butler, for the Planning Authority, then asks if, by providing excess capacity for landfill does this have the effect of postponing implementation of other policies higher up the waste hierarchy. Mr. Walsh does not agree.

- **PA:** Mr. Butler asks Mr. Walsh if he considers that the grant of a licence by the EPA refers merely to the fact that the development is acceptable on environmental grounds and that the Planning Authority's remit is different as it relates to the proper planning and development of the area.

**CW:** Mr. Walsh agrees.

Mr. Butler refers to the waste movements set out in Mr. Walsh's submission to the hearing; he also refers to the inter-regional movement of waste set out in Mr. Walsh's submission to the Oral Hearing; Mr. Butler notes that Arthurstown in Kill was developed specifically by the four governing authorities and this accounts for the waste movements within that region.

- **PA:** Mr. Butler, on behalf of the Planning Authority, then asks Mr. O'Sullivan if it is his understanding that when dwellings are spoken about this also refers to the curtilage of the dwelling Mr. Butler refers specifically to the Exempted Development Planning Regulations; where dwelling also means curtilage of a dwelling.

**DOS:** Mr. O'Sullivan notes that 'dwelling' is short for 'dwellinghouse', i.e. the structure or building itself; he disagrees with the Planning Authority interpretation of dwelling.

## **15.6 First Party Appellants' Response or Rebuttal by Mr. Peter Bacon to Cases Stated by the Third Party Appellants and the Planning Authority**

The presentation is submitted in the form of a written statement and accompanying oral submission.

The witness indicates that the presentation is given mainly from an economics perspective.

The witness indicated that the formulation of regional waste strategy represents a significant improvement over the old ad hoc county situation but notes that Meath unusually forms part of the north-eastern region rather than the Dublin region for waste purposes.

The details of the plan are briefly outlined - that it provides for the handling of a total of approximately 535,000 tonnes of waste in 2014 (confer Table 10.3 of Draft Waste Management Plan) of which 43% is proposed to be recycled, 38.9% to be thermally treated and 18.1% to be landfilled (87,736 tonnes). Mr. Bacon concludes that the plans tend to be aspirational based on assumptions that processes would be put in place re recycling and incineration. They fail, however, to indicate how the strategies will be implemented, i.e. who would put the recycling facilities into place, who will invest financially in them, how the incentive structure to be provided for the general public will ensure that particular responses which are envisaged will result. It would appear that the responsibility will lie entirely with the local authorities, whose finances generally are weak and under-developed.

Another general area of weakness in the Plan is the failure to recognise the relationship between economic growth and waste generation. The EPA database emphasises a strong link between economic growth and waste generation. While the relationship between GDP and waste generation may not be typical of the long-term trend, it has served to undermine the assumptions in the plans regarding the growth of waste resulting from economic growth. This means that waste production in Ireland is now

standing at a much higher absolute volume than was foreseen in the Waste Management Plans, i.e. the base figures are higher than was originally thought. As a result, many of the underlying assumptions and resultant conclusions of the plans are now out of date and strategies must address the problem as it currently stands, rather than when it was first seen a number of years ago.

Notwithstanding the reservations expressed regarding the aspirational nature of the plans, Mr. Bacon is prepared to accept those reservations as they stand in the plan but is not prepared to take on board assumptions about gross waste production between 1995 and 1998, which form the base years for the plan. He points out that if more conservative assumptions are made than are contained in the plan, the estimate for waste volumes in the year 2014 approximate to 800,000 tonnes rather than the 535,000 tonnes indicated in the plan. The implication of that revised forecast is that the residual requirement in 2014 is of the same order of magnitude as the licence provision proposed by the EPA.

He notes that projections extending to 2014 are inherently uncertain - noting that one factor which requires to be built into any strategy is that small variations in the region of one or two percentage points projected forward for 14 years can lead to significantly different outcomes - yet there is no sensitivity analysis contained in the plan.

Mr. Bacon states that whatever about economic growth and the link between economic growth and waste production any strategy or plan should deal comprehensively with the situation as we know it today - and in this context Mr. Bacon notes that there is a proposition that gross waste production was 318,000 tonnes; of which approximately 50% was presented for landfill and the ratios of 1.9:2 derived from that figure are being applied to a future projection. This gives rise to a fundamental question, namely where does the remaining 50% of the waste produced not directed to landfill go? Mr. Bacon outlined the likely possibilities:-



- (a) Understatement or errors in the recording of presentations at legal landfill sites.
- (b) Illegal dumping.
- (c) Export of waste to other areas.

It would therefore appear that projections based only on waste presented at the landfills is dealing with only half of the problem.

Mr. Bacon is then referred to Mr. Greg Duggan's written submission to the hearing, paragraph 2, where there is an assumption that current waste growth at 3% will slow to zero. In response, Mr. Bacon notes that this is excessively optimistic - between 1995 and 1998 household wastes grew by 11%. Mr. Bacon himself suggests that more realistic figures for the period 1999 to 2003 are that waste would grow by the population growth plus 3%, followed by population growth plus 2% in the years 2004 and by population growth plus 1% to the year 2014. He also notes that there are parallel projections for commercial and industrial waste over the same period. He indicates that the current rates of 2% and 1.5% referred to for commercial and industrial waste generation do not correspond with his understanding of what the current rate is, which is 38% cumulative between 1995 and 1998.

**Mr. Bacon is then questioned by the Planning Authority as follows:-**

- **PA:** The Planning Authority asks Mr. Bacon if he is aware that in the EIS addendum the developer revised the waste figures for the North-East region to 100,000 tonnes, with 80,000 tonnes from the Dublin region? Mr. Bacon states that his brief was simply to provide an analysis of the North-Eastern Waste Management Plan and it was that which formed the basis of his submission to the Oral Hearing. He wishes, however, to re-emphasise that the North-Eastern Plan and indeed the other Waste Management Plans suffered two generic shortcomings, namely they don't incorporate the situation over the last two years and they don't

recognise in any explicit way the relationship between economic growth and the projection of waste and that changing that relationship is going to take time.

- **PA:** Whatever the view of Celtic Waste the view of the Planning Authority as put at this inquiry has been that the waste directed to Knockharley should originate in the North-East area solely and that that should not exceed 88,000 tonnes; the developer, in the EIS addendum, has accepted a figure of 100,000 tonnes which compares favourably with that indicated by the Planning Authority.

**PB:** Mr. Bacon concludes, however, that both estimates are erring on the side of caution and fail to take into account waste generation between 1998 and 2002.

- **PA:** The Planning Authority then asks Mr. Bacon is it not probable that if landfills are provided over the next ten years with a capacity greater than that indicated in the projection and plans that there will be more of a move towards landfill than towards alternative methods of waste handling.

**PB:** Mr. Bacon states that he doesn't think it is dependent on the quantity of landfill provided or the capacity of incinerators but rather on economic incentives and that the strategies are silent on those. In other words, we do not operate a system of economic incentive, but rather a system of statutory provision and responsibility.

**Mr. Bacon is then questioned by the third party appellants, namely Mr. O'Byrne, as follows:-**

- **FOB:** Mr. O'Byrne asks Mr. Bacon why does he consider that the figures which form the basis for waste data are undersized?

**PB:** Mr. Bacon indicates that there are doubts as to whether the methodologies used to collect the information are adequate and comprehensive, for example, there are not weighbridges at all landfill sites. Mr. Bacon acknowledges, however, that it is on the basis of hearsay evidence by experts that he makes this statement

- **FOB:** Mr. O’Byrne then asks him to clarify whether his assumptions that the figures are undersized is based on hearsay.

**PB:** Mr. Bacon corrects Mr. O’Byrne in the context that there is a significant difference between waste quantities brought to landfill and volumes of waste produced; the difference can be explained either by error or by waste either being landfilled illegally or being exported outside the county.

- **FOB:** Mr. O’Byrne refers to the correlation by Mr. Bacon between economic growth and waste generation

**PB:** Mr. Bacon states that there would appear to have been such a relationship in Ireland between 1995 and 1998, with that relationship corroborated by international literature.

- **FOB:** Mr. O’Byrne then refers Mr. Bacon to page 17 of ‘Delivering Change’ where waste figures for EU member states are set out on a per capita basis, noting that Finland, which is a relatively prosperous country, generates a lower per capita waste production than Portugal or Greece.

**PB:** Mr. Bacon clarifies the position by indicating that the relationships which he has expressed between economic growth and waste production are relationships between the rate of change and GDP and the rate of change and waste production; this is not the same as rates per capita.

- **FOB:** Mr. O’Byrne then asks Mr. Bacon if, in formulating his analysis he had regard to the tax incentives by way of the bag levy, the landfill tax disincentive to be imposed in 2002 and the 127 million ecu investment by Government as set out in ‘Delivering Change’, asking what impact those financial conditions would have as drivers in ‘Delivering Change’.

**PB:** Mr. Bacon notes that he still has reservations as to whether that particular set of incentives and strategies will deliver the kind of gross to nett transformation that is required. Not only that, but the number of incentives is relatively small.

- **FOB:** Finally, Mr. O’Byrne refers to the Galway City experience whereby within a period of approximately 14 months Galway City diverted approximately 58% of waste from landfill and was this taken on board by Mr. Bacon in his analysis of the Waste Management Plans?

**PB:** Mr. Bacon notes that his document was based on an analysis of the Strategic Waste Management Plans and considers that the assumptions made in those plans may be more aggressive than the 58% referred to by Mr O’Byrne.

## 15.7 Third Party Appellants' Response to Statement of Case by Developer and Planning Authority

Mr. Patrick Lawlor states that the concerns of the community haven't been addressed by either side during the Oral Hearing; he notes in particular the concerns of Mr. Curran re the proximity of his dwelling to the landfill site and the lack of regard paid to those concerns by the developer as well as the lack of commitment on the part of the developer to fostering community relations. Mr. Lawlor then asks Mr. Walsh why cannot alternative waste management systems be implemented rather than be aspirational. Mr. Walsh says that these are systems for the local authority to implement; Mr. Walsh notes that although a bond is required by the EPA to secure the further management of the site there is no bond in place to off-set devaluation of properties in the area; however, that there will be no devaluation of properties in the area due to the mitigation measures proposed by the developer.

Mr. Lawlor asks for clarification of the waste energy generated by the landfill; Mr. Walsh refers to the EIS, where it was stated that a feasibility study would be carried out to assess the viable options, such as the creation of electricity to feed gas generated into the gas grid and, finally, use of gas for horticultural purposes; Mr. Lawlor also queries whether a power station could also be considered as a possible option; Mr. Walsh indicates 'yes'.

Finally, Mr. Lawlor indicates the poor level of engagement and communication between the local community and the other statutory bodies, as well as with the developer, noting that the concerns of the community have never been addressed.

Response by Ms. Cepta Timmons to Presentation of Case by Applicant and Planning Authority

Ms. Timmons queries the scales used in the maps, layouts and drawings accompanying the applicants' application and endorses the submission of the other third party appellant, Mr. Martin Curran, in this regard; Mr. O'Sullivan, for the developer, clarifies this point by reference to Map No. 2000-144-01, noting that Ms. Timmons' property, including her front garden, lies outside the 250 metre buffer zone. Ms. Timmons also asks if the developer will be required to put in place a bond which will compensate any persons selling their properties who suffer devaluation of their properties as a result of the proposed landfill; Mr. Walsh indicates that there is no such bond and neither will it be needed.

Response by Third Party Appellant, Mr. Fergal O'Byrne, to Presentation of Case by the Developer and Planning Authority

Mr. O'Byrne refers to a newspaper article on the targets achieved by Galway City in diverting 58% of waste from landfill and also to the Meath County Council report which indicated that a large number of dwellings within the zonal influence of the Fara Mines have been bought out by the company.

Mr. O'Byrne then questions Mr. Dennison on his slide presentation, particularly with reference to the origins of the company and the date of their initial involvement in waste disposal. Mr. O'Byrne notes that as the original application for a landfill site at Kilcullen in County Kildare was not made by Celtic Waste but rather by KTK, it would be misleading if Celtic Waste were to claim credit for the success of that application process. Dr. Dennison agrees.

Mr. O'Byrne then asks Mr. Dennison to clarify the composition of the waste received at the KTK site in Kildare. Mr. Dennison states that the Waste Licence under which the site is operated permits the landfilling of non-hazardous, non-putrescible commercial and industrial waste, i.e. paper, plastic,

timber, metals, soils, etc., with all the material arriving at the site being directed there via various processing and transfer facilities. He notes that waste landfilled at KTK is non-hazardous, non-putrescible commercial and industrial waste and does not, therefore, contain any household or organic waste. Mr. O'Byrne contrasts this with Knockharley, where the applicant proposes to landfill 100,000 tonnes of domestic waste.

Mr. O'Byrne then queries Mr. Conor Walsh on the 1995 ESRI Report specifically with reference to page 35 'economies of scale', asking Mr. Walsh to clarify the concept of economies of scale; Mr. Walsh refers to the definition as set out in 'Changing Our Ways' at Section 3.5. Mr. Walsh expands on that concept, by stating that with fewer larger landfills as recommended in 'Changing Our Ways' better technology can be provided at a better unit cost to deal with the environmental issues associated with the landfill site; Mr. Walsh gives the example of leachate production between the landfill volumes proposed by the developer and those proposed by Meath County Council as outlined in the EIS addendum. Mr. O'Byrne then asks who benefits from cheaper unit costs? Mr. Walsh understands that it is society.

Mr. O'Byrne asks Mr. Walsh to clarify the polluter pays principle; Mr Walsh refers to Section 6.1 of 'Changing Our Ways' and the definition at Appendix 3. Mr. O'Byrne then asks is there a conflict between that concept and the concept of Economics of sale - the polluter pays principle is designed to make landfill the least attractive option for waste disposal, whereas the economies of scale will allow for larger landfills which are less expensive for the polluter. Mr. Walsh says there is not any conflict between the two concepts. Mr. O'Byrne then asks Mr. Walsh to comment on the fact that it would not appear, therefore, to make any difference to the cost to the polluter as to whether the landfill facility has an 88,000 tonne capacity or a 188,000 tonne capacity. Mr. Walsh states that the economies of scale concept does not conflict with the polluter pays principle as long as the waste generator pays for the full cost of the treatment of that waste.

Mr. O’Byrne then asks what is the rationale behind a landfill tax? Mr. Walsh states that its purpose is to make recycling more viable in that the tax gathered will be used to promote prevention, minimisation, recycling and recovery of waste and that that tax would be a disincentive to landfill. Mr. O’Byrne then states that the last thing that the Government would encourage is cheaper landfills. Mr. Walsh agrees in that any reduction in gate fees would militate against national policy. In that context also, Mr. Walsh notes that landfill is not the cheap option that it was in the past; better environmental standards have considerably increased the price for disposal at landfill sites.

Mr. O’Byrne then refers to the Dublin Waste Management Plan and the role of Fingal as one of the four Dublin local authorities to provide a landfill site at either Garristown or The Naul and in that context would the development of Knockharley have any impact on the Dublin planning process? Mr. Walsh states that it would have a very small impact in that the amount of waste from the Dublin area proposed to be received at Knockharley amounts to 80,000 tonnes only of commercial and industrial waste - 6% approximately of the overall Dublin waste volumes. The primary focus of the Dublin Authorities, as with most other local authorities, is the disposal of household waste which they must dispose of under their legal statutory function. When asked if the disposal of commercial and industrial waste at Knockharley from the Dublin region would have an impact on the Dublin Waste Management Plan, Mr. Walsh indicates that it will but not to the extent where it will distort the plan.

Mr. O’Byrne asks Conor Walsh to define “residual waste”. Mr. Walsh refers to ‘Changing Our Ways’, Section 3.9. Mr. O’Byrne then asks if the waste which has been deposited at Knockharley has gone through a process prior to disposal at Knockharley. Mr. Walsh says yes but indicates that with the advance of time as recycling becomes more common volumes of residual waste will reduce; currently, waste which technically would be available for recycling may not be economically or commercially feasible for recycling, due to such as lack of infrastructure, for example. Mr. O’Byrne states, however, that Mr. Walsh’s definition is not to be found in ‘Changing Our Ways’ and states that Mr. Walsh is qualifying the definition set out at 3.9 with reference



to economic issues. Mr. Walsh says 'yes'. He notes for example that in recycling centres as much waste as possible is recycled due to insofar as it can be technically and economically and any waste which cannot be recycled is forwarded to landfill; encouragement to recycle derives from its financial incentives, while intent to landfill the least possible fraction is promoted by financial penalties, such as landfill charges. Mr. O'Byrne then asks it is possible for some of the waste arriving at Knockharley to have come straight there from the polluter without having gone through some form of processing due to economics. Mr. Walsh says yes and that this would be classified currently as residual waste; that classification is not out of line with Government policy which proposes that over a 15-year period planned reliance on landfill will be reduced, i.e. volumes of waste currently going to landfill will reduce as volumes of residual waste reduce. Mr. O'Byrne then states that waste which has gone through a process as defined in 3.9 of 'Changing Our Ways' is residual waste; the developers' reference to the term "residual" is, therefore, an incorrect interpretation of that term as there is no reference in 3.9 to any economic vehicle. The application for development, therefore, which is grounded on residual waste, is incorrect as the development is proposed to service all waste only some of which is residual.

Mr. O'Byrne then asks Mr. Walsh to point out in any of the plans or supporting documentation a form of definition of residual waste in accordance with Paragraph 3.9 of 'Changing Our Ways'. Mr. Walsh refers to page 1, Section 1.1 - Introduction of the EIS, paragraph 4 - the facility will ...in different local administration areas at any particular time. Mr. O'Byrne then asks Mr. Walsh if he can assure the Oral Hearing that the application is absolutely in agreement with the definition of residual waste as set out at 3.9 of 'Changing Our Ways' and page 60 of 'Delivering Change'. Mr. Walsh indicates 'yes'.

Mr. O'Byrne then asks Mr. O'Sullivan to clarify with regard to best practice the proposed buffer zones, i.e. 250 metres and 100 metres. Mr. O'Sullivan notes that the 100 metre buffer zone is not referenced to any guidelines or legislative requirements but has been formulated as a discretionary buffer zone

created by the developer in order to provide for landscaping, the waste containment embankment, monitoring infrastructure and an inspection track. Re the 250 metre zone, there is not any guidance given in the Directive on the separation distance from residential properties; the EPA, however, recommends in their Draft Site Selection Manual that a 250 metre buffer zone obtain between the landfill footprint and the nearest occupied dwelling. Mr. O'Sullivan notes that the two zones are not cumulative.

Mr. O'Byrne then queries the factors which influence the design of the landfill in relation to odours and dust likely to arise during the construction phase and in this regard asks if it correct that further from the source of the odour the less concentrated is the odour. Mr. O'Byrne then applies this conclusion to the case of the Curran family's enjoyment of their recreational space, noting that the southern extremity of his property would be more impacted on by odours than locations closer to his dwelling.

Mr. O'Byrne then refers to the Landfill Directive 99/31/EC, Article 6 (which refers to treatment of waste) and Article 2(h) (which defines treatment), asking if the waste to be accepted at the landfill complies with Articles 6 and 2(h); Mr. O'Sullivan notes that the treatment afforded to the waste is the treatment that will be available for the waste, noting that the landfill catchment includes an increasing waste diversion industry which will result in more comprehensive treatment with time.

Mr. O'Byrne then notes that the all Ireland basis referred to in 'Changing Our Ways' is not a concept distinct from the regional planning concept - it simply refers to cross-border co-operation at specific geographic locations, for example Donegal and its hinterland to the east; it is not a national overarching concept.

Mr. O'Byrne then cross-examines the local authority.

Mr. O'Byrne queries the rationale for a contribution towards the expenditure on the provision of a right-turn lane at Flemingstown (N2/R150 junction) if

the R150 is not to be used by landfill traffic. Mr. Gibney indicates that this is a contribution towards expenditure that was to be spent there, irrespective of the application and is a contribution towards the provision of the lanes. Mr. O'Byrne then asks whether the provision of an underpass on the N2, which would benefit traffic accessing the site from the north, would lessen the traffic hazard? Mr. Gibney indicates that it would but that it would have a more severe impact on adjacent houses to the north of the site. Mr. O'Byrne then asks if the underpass were to be located to the east of the N2 in the vicinity of the proposed junction location, would that achieve a safer design outcome than that currently proposed. Mr. Gibney agrees but indicates that such an underpass would be out of character with the road, not economically feasible, not warranted by the flow of traffic on the N2 and not warranted by reason of the adverse impact that it would have on properties to the north of the junction. Mr. O'Byrne asks was any attempt made during the planning process to look at the feasibility of an underpass. Mr. Gibney says no for the reasons stated; given the flow of traffic on the N2 a T-junction would probably suffice but, in the interests of safety, the proposed junction arrangements were provided. Mr. O'Byrne then contrasts the decision on this application and that of other applications where permission was refused for development having regard to the fact that such development was located within the maximum speed limit zone on a heavily trafficked national route.

Mr. O'Byrne then refers to Condition No. 3, asking if the local residents are disadvantaged by reason of the fact that a drawing showing the landfill footprint as requested by the Planning Authority in Condition No. 3 does not exist. Mr. Killeen says no as the landfill footprint is being reduced rather than increased in area. Mr. O'Byrne then asks Mr. Killeen is there a conflict between Condition 3 and the information supplied to the Board by the Planning Authority on 17<sup>th</sup> September at page 6, paragraph 4. Mr. Killeen indicates 'no'.

Mr. O'Byrne asks was the disposal of incinerator ash a consideration in the Planning Authority's deliberation; Mr. Killeen states that there is no proposal to dispose of incinerator ash in the EIS.

This concludes Mr. O'Byrne's response to the opening statements.

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### **Third Party Submission and Closing Statement made by Michael Donnell on Behalf of the Boyne Valley and Newgrange Environmental Protection League**

The appellants have a particular difficulty in participating in the appeal, having regard to the matters which can be raised in respect of the proposed development; the proposed development is of such size and scale that the application requires to be accompanied by an Environmental Impact Statement; it is also, however, a facility which requires a Waste Licence under the 1996 Waste Management Act. In accordance with the Board's statutory powers and functions, the Board is required to carry out an Environmental Impact Assessment prior to the determination of the appeal; the Board's functions are, therefore, two-fold.

1. Consider the adequacy of the EIS, and
2. Have regard to the contents of the EIS before determining the appeal.

The Board, therefore, in carrying out their Environmental Impact Assessment, must have regard to the impact of the development on human beings, flora and fauna, soil, water and air, climate and on the landscape, on material assets and on the cultural heritage and how each of these interact with each other. The difficulty here in the matter of European Law is that the 1996 Waste Management Act expressly prohibits the Board from doing what the Council Directive requires them to do and thus an extraordinary situation arises whereby a critical issue in the Directives which binds the Board is simply not capable of being complied with. The interaction, which is a necessary and a critical part of the Environmental Impact Assessment procedure, simply cannot be complied with by virtue of the limitations contained in Section 54 of the Waste Management Act, as under that Act the Board is unable to consider any submissions or observations relating to the risk of environmental pollution from the activity.

There are therefore three issues which are pertinent to the hearing of the appeal; first, the third parties are entitled to participate in the Environmental Impact Assessment procedures, as well as the planning application because that is the manner in which the Directive has been introduced and implemented into Irish Law; as they cannot do so and the entire legal basis upon which the hearing is predicated in terms of the public notices and in terms of the administrative procedures being relied upon are fundamentally flawed as being in breach of the obligations of European Law.

The second point is that the Board has a duty to carry out an assessment of the adequacy of the Environmental Impact Statement submitted itself. If they cannot have regard to the risk of environmental pollution, then they cannot consider the adequacy of the Environmental Impact Statement

Thirdly, it is difficult to see what matters the Board can have regard to at all in this hearing without straying into areas which would lead them to be acting in excess of their jurisdiction; the appellants are left in a situation therefore where it is very difficult to see what submissions they could make to this hearing and be sure that they are making a submission which complies with the stringent requirements of the legislation as set out.

Mr. O'Donnell then asks that his submission be recorded and that the Board be asked as a preliminary matter that they would have the law clarified insofar as the jurisdiction of the Board having regard to Section 54 of the Waste Management Act and having regard to their obligation under the Council Directive 97/11 and 85/337 are concerned before the application would be considered.

First Party's Response to Third Party Submission of Boyne Valley  
Environmental Protection League

Mr. Fitzsimons agrees with Mr. O'Donnell that Directives 85/337 and 97/11 require the proper assessment in terms of the impact on the environment of any significant private or public sector project; however, that obligation is posited on Ireland as a member state and not in the first instance upon any emanation of the State. In other words, once the Directive has been implemented then certain responsibilities pursuant to the Directive are allocated, in one instance to An Bord Pleanála and in the other instance to the Environmental Protection Agency, but the overriding obligation in ensuring the adequate assessment of such projects is based upon Ireland as a member state and in terms of the division of responsibility which the Irish Legislator has chosen in order to implement that single objective. It is clear that both the EPA and An Bord Pleanála both carry out to some degree assessments of Environmental Impact Statements in this jurisdiction and, therefore, Ireland does allow, through that division of statutory responsibility, for the full assessment of Environmental Impact Statements, both from the land use planning point of view and from the environmental pollution point of view; in the view of the first appellant, that statutory division of labour is permissible under the Directive and achieves the objectives of the Directive.

Dealing with the second substantive element of Mr. O'Donnell's presentation, i.e. the interactions referred to in Article 3 of the 85 Directive. Mr. Fitzsimons first refers to the fact that there may not be in any given case such significant interactions in the first place; secondly, it may be that the Environmental Impact Statement has covered those interactions so that nothing outstanding of environmental significance remains; the only way to achieve this in the context of the existing process are through the extensive consultation arrangements which exist between the EPA on the one side and the Planning Authority and An Bord Pleanála on the other.

Planning Authority's Response to Third Party Statement by Michael O'Donnell

The Planning Authority states that the European legal hierarchy is based on a number of forms of rules issued to individual governments, and includes the form of the Directive; when a Directive is issued to a Government it is at the discretion of the Government to decide how to implement it; the Irish Government has chosen an implementation system whereby matters relating to planning are dealt with by planning authorities and matters relating to the environmental pollution are dealt with by the EPA. Once the Directive has been implemented in that form European Law has been complied with; the Planning Authority, therefore, refuses to accept that Mr. O'Donnell's submission has any substance and considers that An Bord Pleanála is entitled to deal with this matter in accordance with the submissions made at the hearing, bearing in mind that the objective of the hearing is a fact finding exercise; in this regard, therefore, there is no requirement by the Board to clarify its legal position.

Re Mr. O'Donnell's statement that he is unable to put submissions before the Board because of the infirmities in the system, Mr. O'Byrne, in his capacity as Secretary of the Boyne Valley Environmental Protection League, has already adopted and endorsed submissions made by other third party appellants.

Response by Boyne Valley Environmental Protection League to Arguments of the Planning Authority and First Party Appellant

Mr. O'Donnell asserts that it cannot be correct as a matter of law that once a Directive is implemented by the Irish State, that the matter is finished and that no matter how inadequately or otherwise it has been implemented that no further issues can ever arise; this is an untenable argument, yet one which Meath County Council have adopted in their determination of the application; hence the matters which Mr. O'Donnell raises on behalf of the Boyne Valley Protection League are the very matters which the hearing is required to consider; Mr. O'Donnell acknowledges that in dealing with the matter the



Board is interpreting the legislation as they saw it but that that does not alter the fact that there is a statutory regime which causes difficulties; Mr. O'Donnell also notes that the hearing is not simply an information gathering exercise but is also a necessary and critical part of the Environmental Impact Assessment procedure in which the public participate with obligations in that regard.

Mr. O'Donnell states that his statement should be taken as the submission of the Boyne Valley Environmental Protection League; however, if it is possible to make a range of submissions beyond what Mr. O'Donnell considers to be allowable under Section 54, then Mr. O'Donnell is willing to adopt other submissions that have been made; Mr. O'Donnell considers, however, that this is not allowable and has stated so in his submission.

Mr. O'Donnell also notes that neither Mr. Butler nor Mr. Fitzsimons' submissions dealt with the fact that the exclusions relating to waste disposal installations appear to be all embracing and leave few residual matters to be dealt with by the Oral Hearing.

Mr. Fitzsimons' point that it is a matter for the Government to decide as to how the Directives would be implemented, Mr. O'Donnell agrees that the Government can implement the requirements of the Directive but only in accordance with the Directive; in this regard, Mr. O'Donnell refers to the case of O'Connell -v- the EPA where the EPA has indicated in its legal submissions that it had no function in carrying out an Environmental Impact Assessment, thus adding to the confusion. What is clear, however, is that the Environmental Protection Agency, as a matter of law, can only deal with environmental pollution and the Board can only deal with anything other than environmental pollution; however, the dividing line between the two is unclear. What is clear, however, is that no-one deals with the interaction of the two, i.e. where one influences the other, hence the totality of the development is not assessed.

Mr. O'Donnell disagrees with Mr. Fitzsimons that the Board are not bound by the provisions of the Directive; there is extensive law on this matter which states that not only is the State bound directly by the provisions of the Directive but all emanations of the State also.

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## **Closing Statements by Third Party Appellants**

Mr. O'Byrne reiterates his individual objection and that of other third party appellants to the proposed landfill site at Knockharley and believes that on the basis of both written objections and oral submissions at appeal stage that the proposed development should be refused permission by An Bord Pleanála. Mr. O'Byrne also refers to the EIS Regulations, 1999. The applicant had a duty to put forward to the Planning Authority alternatives for their proposal; Mr. O'Byrne states that only one method of disposal was proposed, namely a residual landfill site. Permission for the proposed development should, therefore, be refused on the grounds that the developer failed to comply with the Second Schedule of the 1999 Regulations, to show alternative approaches to waste management.

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## **Closing Submission by Planning Authority**

The Planning Authority notes that it has been stated during the Oral Hearing that there has been a progressive development and implementation of Government policy relating to the disposal of waste; that policy is set out in the Government publication 'Changing Our Ways', which seeks to implement the European Directives and that that policy has incorporated in it the regional approach towards the implementation of national policy. That regional approach has been implemented in Meath by means of the North-East Regional Draft Waste Management Plan, in which Knockharley was identified as the future long-term landfill for the region. The County Development Plan also identifies Knockharley as a landfill site and the policy in the Plan has been informed by the Regional Plan; there is, therefore, a logical progression from Government policy through the identification of the site to an ultimate grant of permission; the divergence between the Planning Authority and the developer relates to method of implementation of the regional policy - that although the policy exists the developer indicates that it must not be an iron curtain around the regions and that there must be flexibility in the implementation of that regional policy. While the Planning Authority agrees with that concept, it also states that flexibility must be referenced to the policy context, that it must mean that if there is to be a movement of waste between the regional area that it cannot mean that the total projected waste volumes for this area should be moved between areas, i.e. from Dublin to the North-East. The implementation of flexibility must mean that where there is a proven need in one region in particular circumstances that another region may be asked on a temporary basis to deal with that need. Arising from that, there has been no evidence produced and no argument made on behalf of the developer to show that there is any requirement to move 80,000 tonnes from the Dublin area. Unless it is shown and proven that there is a need in the Dublin area to move quantities of waste of the amount stated by the developer into the North-East region, it shouldn't happen. The Planning Authority contends that regionalisation should remain the bulwark of the waste management policy and that movement between regions should only happen where it is established that there is a need; in that context it is not correct for the

developer to assess the 80,000 tonnes imported from Dublin in terms of being a 6% fraction of the Dublin waste production; it may only be 6% of Dublin's waste but it is equivalent to the figure produced by the local authority with regard to the North-East region.

The Planning Authority refers to the figures produced by Mr. Bacon in his evidence, noting that Mr. Bacon had referred to them as being based on hearsay evidence and also notes that Mr. Bacon's submission did not contain any figures.

In relation to the third parties, it is noted that although the third parties are totally opposed to a landfill they do accept that a landfill is necessary and a third party's constant references to the Landfill Directives are an acknowledgement of that. It is therefore a matter of degree as to how the policies relating to landfill are to be implemented.

Re Mr. O'Donnell's submission, the Planning Authority notes that environmental matters were considered in relation to the construction stage of the development, despite the fact that Mr. O'Donnell considered that such matters could not have been considered at all.

## First Party Appellants' Closing Statement

This was accompanied by a written submission:

Mr. Fitzsimons refers to Condition Nos. 2 and 3; re Condition No. 2 - waste to be accepted at the landfill to be limited to that generated in the North-East region - and in this context refers to the proximity principle set out under Article 174(2) of the Treaty and European Union, in European Secondary Legislation in the Waste Directive (91/156/EC) and in terms of national legislation in Section 5.5 of the Schedule to the 1997 Waste Management (Planning Regulations). The proximity principle as set out in the Waste Directive and the 1997 Regulations clearly envisages waste disposal at "one of the nearest appropriate installations". Accordingly, it is clear that there may be instances such as in the current case where the nearest appropriate installation may alleviate some of the waste management needs in contiguous areas; the application of the proximity principle in those precise circumstances not only facilitates the movement of waste from one region to another but that it should prohibit such inter-regional movement would contravene the terms of the proximity principle itself.

On the issue of regionalisation, Section 22(3) of the Waste Management Act, 1996, makes it clear that what is envisaged in terms of waste management regions is that one or more local authorities come together to jointly make a plan, as is happened in the case of the north-eastern region. However, in terms of strategic and transport planning, Meath forms part of the Greater Dublin area and in those circumstances the acceptance of waste across waste management planning boundaries is consistent with the proximity principle and also sustainable development.

The first party appellant refers to the County Development Plan, which provides the blueprint for development within the functional area of the Planning Authority; the most recent Meath County Development Plan is predicated on the assumption that originally Knockharley was envisaged as a local authority landfill; in that context it would have been acceptable for the

local authority to adopt a policy in respect of its own landfill so as to exclude wastes from other regions; in the context of this particular development the proposal is for a privately owned landfill facility and the obligation which the local authority can avail of should not be imposed on the private sector so as to exclude wastes from other regions; to place such an obstacle in the path of the private sector would run counter to the objectives set out in 'Changing Our Ways', in particular the concepts of the polluter pays and economies of scale. (Confer Section 4.1 of 'Changing Our Ways'). The developer also refers to the proposed decision of the EPA in respect of the waste licence application, which states that "the Knockharley residual landfill complies with the type and scale of landfill envisaged in 'Changing Our Ways'.

The developer also states that it is important to distinguish between the obligation which is apposite on a local authority and the involvement of the private sector; the only obligation placed upon a local authority by the 1996 Waste Management Act relates to the collection and treatment of household waste but they are not obliged to provide facilities for non-household wastes. In a number of regions, however, the private sector has provided facilities for disposal of non-household wastes - a situation endorsed by Government policy, which envisages the involvement of the private sector in terms of public private partnership and recognition of economies of scale. The proposal by the first party appellant, therefore, to dispose within the north-eastern region waste generated from outside the region is not in breach of the proximity principle as is expressed in 'Changing Our Ways'; rather that principle has been contravened by the Planning Authority in attaching a condition prohibiting the disposal of waste generated outside the region from being disposed of within the region. The first party appellant also points out that there are valid land use planning criteria upon which the treatment and disposal of waste generated outside the North-East region can be prohibited from being treated and accepted at the Knockharley facility.

The second substantive aspect of **Condition No. 2** deals with the restriction on tonnage for disposal at Knockharley. The appellant states that there is no consideration of proper planning and development which would justify the

Planning Authority's restriction on tonnage disposal at the site; neither are there environmental pollution considerations as witnessed by the draft license by the EPA, on 28<sup>th</sup> March, 2002. The developer therefore would, subject to permission granted on appeal, propose to operate the landfill facility at the level set by the EPA, namely 175,000 tonnes per annum for disposal and 25,000 tonnes for recovery. Any shortfall arising between the waste generated in the north-eastern region for disposal at the facility and the excess capacity that may exist at Knockharley, will be made up from waste arising outside the region and would, in the first instance, be sourced from the developer's own waste transfer stations.

The appellant refers to the unsound assumptions upon which the estimated waste generation figures are based, particularly with regard to the coming on-stream of other waste disposal options and, in particular, thermal treatment; in this context, the first party refers to the remarks of the EPA Inspector, page 13 of her report.

The first party developer also notes that there are not any planning and development considerations upon which the restrictive tonnage for disposal can be based.

The developer states that the Environmental Impact Statement is adequate in terms of the decision which the Board will have to make in that respect.

The developer also states that An Bord Pleanála does have the capacity to take into account the views of the Environmental Protection Agency because the Board has the residual power to consult with the Environmental Protection Agency in respect of the interactions to which Mr. O'Donnell referred and which arise directly from Article 3 of the Environmental Impact Assessment Directive, if there are such interactions to be considered.

Re the absence of need by the Dublin Authorities as referred to by the Planning Authority in their closing submission, this was addressed at page 7 of Mr. Walsh's submission, where he refers to the 2001 Forfas report, Chapter 4,



which notes that “the existing landfill network is under increasing pressure and that major landfill sites in Dublin, Cork and other areas now limit the intake of commercial and industrial waste by implementing a quota system”. This is independent verification of the arising need in the Dublin area at least in relation to the intake of commercial and industrial waste and by implication other wastes.

Clarification by Inspector of the Traffic Management Proposals for the Development as set out at Page 21 of the EIS Addendum and as set out in Condition No. 11 attached to the Grant of Permission; the Inspector asked particularly how the traffic management scheme will be monitored; the first party appellant states that it is hoped that there would be community support in the form of community policing which would result in an escalation of penalties for the company and/or drivers, resulting ultimately in banning of that company and/or drivers. The Planning Authority subscribes to this system of monitoring and enforcement, noting that a similar system is in force for the landfill site at Kill. The developer adds, however, that the system in place at Kill is prescriptive.

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Observations: James Mullen, as Spokesperson for a number of Community Groups in the Kentstown Area

The observations were made by way of written submission and accompanying oral presentation; the observations state that the community groups do not wish to see a landfill site at Knockharley, but in the event of permission being granted for it, they would request that Condition Nos. 5 and 6 be amended; in respect of Condition No. 5, they request that the composition of the Committee be revised to ten representatives, to include six representatives from the Kentstown community; in relation to Condition No. 6, the submission requests that the annual contribution towards the provision of environmental improvement and recreational/community facility projects be revised to recreational/community facility projects only, these being identified by the Community Development Committee and that the contribution should be payable to the Committee instead of to the Planning Authority.

A written observation was also received from Dúchas; the observation mirrors that which was the subject of a submission received by the Planning Authority after the date for receipt of further information.

A further third party oral submission was permitted at the Oral Hearing; as the observer failed to pay or forward the appropriate observation fee to An Bord Pleanála, that observation has been discounted.

## 16. ASSESSMENT

I consider that the main issues for assessment in the current appeal are:-

- (a) Whether the proposed development is a residual landfill facility,
- (b) If so whether there is a need for such a facility,
- (c) Whether the proposed development is acceptable at Knockharley having regard to issues of visual impact, devaluation of property, traffic hazard and traffic impact,
- (d) Whether the proposed development as permitted by the Planning Authority is acceptable having regard to conditions attached/omitted from the grant of permission.

**16.1 Re Residual Landfill Facility** the Boyne Valley and Newgrange Environmental Group, in its written submission states that the developer fails to show how the requirements set out at Article 6(a) of the 99/31 EC Landfill Directive has been complied with viz - that only waste that has been subject to treatment is landfilled. Mr. O'Byrne in this regard at the Oral Hearing stated that permission was sought for a **residual** landfill site - residual waste being defined at Chapter 3.9 of '**Changing Our Ways**' as waste "which cannot be prevented or otherwise treated". Mr. O'Byrne then refers to the definition of treatment at Article 2(h) of the Directive which is "**the physical, thermal, chemical or biological processes, including sorting that change the characteristics of the waste in order to reduce its volume or hazardous nature, facilitate its handling or enhance recovery**". In that context, Mr. O'Byrne indicates that the proposed landfill is for the disposal of all waste types, only some of which are residual.

In assessing the third party appellants' argument, I have had regard to the submission made by the developer at Chapter 1.1.1 of the EIS, which states that "the facility will accommodate residual, non-hazardous, municipal

(including commercial) waste arising in this catchment with the waste types and quantities reflecting the maturity of the recycling programmes in operation in the different local administration areas at any particular time. These programmes are set out in the relevant waste strategy studies and plans for the region”.

The 1999-2004 North-East Region Waste Management Plan clearly identifies sorting as the first step in waste recycling procedures; while current sorting processes carried out in the North-East region may be quite basic and currently may lack a degree of sophistication proposed under the full blown waste management policy for the region, nevertheless they are a form of treatment as defined in the Directive at Article 2. The Plan aims to further refine that treatment so that by 2014 approximately 18% of the waste stream will be disposed of to landfill. In that context, the definition of residual waste as articulated by the developer is reasonable as it reflects the level and nature of waste treatment currently available at any given time.

Without prejudice to the above conclusion, I consider that if the appellant’s argument were to be sustained - that the Landfill Directive imposes an obligation on the developer to dispose of only residual waste defined by Article 2(h) of the 99/31 EC Directive - then the appellant would appear to be successful in pleading the doctrine of direct effect of a directive against an individual. However, as the directive does not confer rights or impose obligations on individuals, the appellant’s argument in this case cannot be supported.

- 16.2 Re Need** - The Meath Waste Management Strategy Study commissioned by Meath County Council in 1995 and reviewed again in 1997 concluded that “while there were a number of feasible options for reducing the county’s reliance on landfilling of waste, **a central landfill would be required in the county for the foreseeable future for the safe disposal of waste which cannot be prevented, recycled or recovered**”. The Study noted that the then existing landfill facility at Basketstown would have reached its capacity by the end of the year 2000 and that unless a “major alternative treatment to landfill

is found it can reasonably be assumed that over 62,000 tonnes of waste per annum will require landfilling”<sup>\*</sup>.

In August 2001 the Waste Management Plan for the North-East Region (Meath, Louth, Cavan and Monaghan) was formally adopted. The purpose of the Plan is to provide a framework for the management of non-hazardous wastes in the North-East region over a five-year period. **The Plan identifies Knockharley as a potential medium to long-term landfill facility to service the residual landfill needs of the region.**

Witnesses presenting evidence on behalf of the third party appellant, Fergal O’Byrne, challenged the need to dispose of wastes by landfill; Mr. O’Hare in particular refers to the concept of zero waste, which pre-empts the need for landfill due to implementation of a preventative waste generation scheme, coupled with a comprehensive recycling scheme. Such a scheme has been successfully adopted in Nova Scotia.

In this context, I would refer to ‘Changing Our Ways’ - a policy statement issued by the DOE in September 1998 and to a further policy document issued in March 2002 - ‘Delivering Change’. The strategic targets set out in those policy documents aim to stabilise and, in the long term, reverse the growth of waste generation by reference to a hierarchy of options, namely prevention, minimisation, re-use, recycling and finally, environmentally sustainable disposal of waste which cannot be prevented or recovered. The concept of waste management, therefore, as set out in Government policy aims at prevention and minimisation of waste - concepts which are central to the zero waste strategy. The proposed development of a residual landfill site does not therefore conflict with a zero waste strategy; rather it is an integral component of a waste management strategy which, when fully implemented, will promote zero waste.

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<sup>\*</sup> c.f. Meath County Council EIS for Proposed Landfill at Knockharley, Volume 1.

Having regard, therefore, to national waste management policy as set out in 'Changing Our Ways', which notes that landfill will continue to have a role, albeit a diminishing one, in future waste disposal in Ireland, and having regard also to the identification of Knockharley as a landfill facility which will form an integral component of a waste management strategy for both the county and the north-eastern region, I consider that the proposed development is acceptable in principle having regard to landfill disposal needs which have been identified at regional and county level.

**16.3 Re (c) above viz. Whether the Proposed Development is Acceptable in Principle at Knockharley?** The third party appellants, through their written submissions as supplemented by submissions made at the Oral Hearing, challenge the decision of the Planning Authority to grant permission for a landfill site at Knockharley on a number of grounds; those relate mainly to visual impact, devaluation of property and traffic hazard.

**16.3 (a) Visual Impact:** I consider that the Board is not precluded by Section 54 and Section 5 of the 1996 Waste Management Act from assessing the visual impact of the proposed development. I consider that the reference at Section 5(c) - adversely affect the countryside - may be interpreted as adverse impact through the media of the atmosphere, land or water and does not refer to adverse visual impact. In that context, I would therefore comment on the visual impact of the proposed development as follows.

The landscape and visual aspects section of the EIS are poorly presented; site plans and sectional drawings only are provided with no attempt made to provide elevational drawings or three dimensional models showing the relationship of the landfill to its surrounding environment; as a result, the full visual impact of the proposed development within the surrounding area is not fully represented at any given phase of the development.

In the event, however, I note that the final capping level of the proposed landfill structure will lie at a maximum height of 18 metres approximately above existing ground levels in the vicinity of the Phase 2/Phase 3 divide; the minimum height of the cap above existing grounds levels is 8 metres approximately within the area of Phase 4 where the existing farmyard is located and where the highest point of existing ground levels within the landfill footprint is found (66 OD). North of the midpoint of the footprint in the vicinity of Phases 6 and 7, the final capping level of the landfill will lie approximately 13 to 14 metres above existing ground levels; given the overall scale (900 x 280 metres approximately) and average height (15 metres) of the proposed landfill, it is inevitable that the landfill will have a major visual impact on the immediate area in the absence of any mitigating landscape proposals.

In the absence of any mitigating landscaping proposals, the impact will be most acute on southerly views from the CR384 to the north of the site, where long southerly views may currently be had over rising land, unobstructed by any significant field boundary hedgerows or tree planting. The proposed landfill will have a less acute impact on views from the CR384 to the east and the R150 to the south due to the increased separation distances of the footprint from those roads (in the case of the CR384, 400 metres minimum, and in the case of the R150, 900 metres minimum) and the strong field boundary planting between the landfill site and those roads; in the case of the CR383 to the west, the visual impact is likely to be diluted by the separation distance and by the intervention of a low ridge. In the case of the N2, westerly views of the landfill will be significantly screened by intervening hedgerow and tree planting and by the separation distances obtaining between the landfill footprint and the N2; these range between 600 metres to 1.2 kilometres (approximately). From the R153 it is unlikely that there will be any views of the landfill given the vertical alignment of the road and the intervention of the Flemingstown/Balrath Woods into northerly vistas from that road.

To ameliorate the visual impact of the landfill within its immediate environs, the applicant proposes to screen the site by means of a belt of woodland planting along all site boundaries; the belt will have a minimum depth of 50 metres, increasing to 300 metres along the northern and north-western boundaries; even when semi-mature, therefore, the planting is likely to significantly screen the site from the north and north-west, while on maturity the planting can be expected to provide complete screening. Hence the construction and operation of the last two phases of the landfill which also lie closest to the CR384 will be substantially screened from view due to the maturity of the planting at that stage. Conversely, however, the initial construction and operational phases of the landfill, namely Phases 1 and 2, are likely to have the most profound short-term visual impact as these phases will be unable to rely on any significant screening other than that afforded by existing hedgerows. The applicant, therefore, proposes to create planted berms of minimum height 5 metres along the south-western and southern boundaries of the site which will provide a degree of short-term visual remediation there. Those berms are, I consider, essential given that the southern boundary of the site is elevated above the R150 and that views of the site will be available intermittently from that road. Were permission to be granted for the proposed development, I would recommend that the 5 metre high berm around the stormwater lagoon be extended northwards along the eastern boundaries of field units 8 and the western boundary of field unit 28, indicated on Figs. 2.11.4-2.11.8 of the EIS in order to provide additional short-term screening of Phase 1 from the east.

I note that the reinstatement proposals for the landfill set out at Chapter 4 of the EIS essentially propose the integration of the landfill into the wider landscape by grassing the surface of the landfill and planting the lower slopes with hedgerows to reflect that wider landscape; in this regard I concur particularly with the EIS assessment of the predicted impact, which states that “the woodland will also ensure that the raised landfill will not contrast with its flatter surrounds”.



However, I would recommend that in the event of permission being granted for the proposed development, detailed landscaping proposals for the site should, prior to the commencement of development, be submitted to and agreed upon with the Planning Authority; these should particularly incorporate details of the depth and configuration of the proposed woodland belts along the boundaries of the site, as identified at Fig. 2.11.4 of the EIS, as well as the height and type of the trees to be planted in those belts. In this regard, I recommend that trees planted on the southern berms, and around the northern perimeter of the footprint shall comprise a mix of feathered and standard deciduous fast growing native species of minimum girth 8-10 centimetres with 10% of all trees planted comprising fast growing evergreens; I also recommend that the developer submit details of a schedule for the removal of hedgerows with reference to Fig. 2.11.4 of the EIS.

I have no doubt, therefore, that the proposed landfill will significantly change the landscape character of its immediately surrounding environs in that the existing gently sloping landscape of field and hedgerow will become a heavily wooded elevated area resulting in foreshortened views and limited vistas. I do not consider that such a change is synonymous with adverse visual impact, however, as the landscape at this location is not one of high sensitivity; neither will the proposed landfill interfere unduly with the landscape setting of Kentstown Village, the landfill being located on the fringes of that setting; ultimately the mature planting on the berms around the southern slopes of the landfill site may enhance the village setting by providing additional definition.

Within the wider rural area I consider that the proposed landfill facility can also be successfully assimilated by reason of its modest elevation and wooded surrounds - landscape characteristics which are already found within the area at Realtogue Hill and Balrath Woods respectively.

**16.3 (b) *Devaluation of Property:*** Substantive evidence in this regard was given by expert witness, Mr. Tony Pain, Auctioneer and Valuer, who noted that dwellings within the immediate vicinity of the site could devalue by as much as 50%-60% and could in some instances result in a situation of negative equity; he also noted that dwellings within half a kilometre of the site would be virtually unsaleable in contrast to the existing situation whereby Knockharley is one of the most sought after areas of the county due to its location just south of Navan and Slane, within easy reach of the N2 which gives access to Ashbourne and Dublin City. A resident of Knockharley who lives approximately a mile to the west of the proposed landfill site, also indicated that since putting her dwelling on the market approximately 18 months ago it has only recently been sold at a figure substantially less than the original asking price.

However, Mr. Pain, when asked if he could reference his opinion to experiences from similar developments elsewhere in the country, was unable to do so. When also queried by the Planning Authority if there are houses for sale in the village and were they selling, Mr. Pain said yes on both counts, noting however that such houses were in the village rather than on the periphery of the landfill site boundaries.

It is evident that potential property devaluation is a major issue for residents of the Knockharley area - all third party appellants and some witnesses at the Oral Hearing who presented evidence on behalf of the third parties have also referred to it. Despite the absence, however, of specific but broad ranging market research indicating the impact of landfill sites on house values in the vicinity of the site, the developer and the appellants are in common agreement that a negative impact on property values can be expected; they differ, however, as to the likely extent of that impact, the developer indicating that the impact is likely to be slightly negative and of short to medium term duration, with property values expecting to revert to normal levels in the long-term. The third party appellants on the other hand indicate that properties are

likely to devalue substantially to the extent that negative equity may in some cases result. The perceived disamenity resulting from the proposed landfill which, as acknowledged by all parties will result in property devaluation, is a major consideration in the current case as the townlands of Knockharley, Flemingstown and Tuiterrath comprise a heavily populated rural area with approximately 57 houses lying within 1 kilometre of the landfill footprint, while Kentstown Village, with a population of 324 persons (1996 Census), lies within 1.5 kilometres south of the proposed footprint.

The question, therefore, arises as to whether the disamenity of the landfill site as reflected in property devaluation can be counteracted; if that devaluation is such as to be prolonged and severe then successful counteractive measures may be difficult to put in place; there is no indication in the current case, however, that devaluation suffered at Knockharley would be of this nature, rather it is more likely that with strict environmental controls in place and the visual integration of the site within the surrounding landscape that perceived disamenities and corresponding property devaluation would be of a short-term nature only; on that basis, short-term property devaluation could be largely off-set by the utilisation of “a proportion of income from waste charges and gate fees to mitigate the impact of such facilities on local communities through appropriate environmental improvement projects” as is recommended at Section 9.2 of ‘Changing Our Ways’. This is the approach which has been adopted by the Planning Authority in the current case and expressed in principle through Condition No. 6 attached to the grant of planning permission. Such an approach balances the regional need for a disposal facility with local losses incurred through facility siting, where such losses are not likely to be severe or prolonged.

- 16.3 (c) **Traffic Hazard:** Mr. O’Byrne and a number of third party witnesses at the Oral Hearing referred to the traffic hazard likely to be generated by the proposed development. The R150 in particular is, I note, used

regularly by the local community for access to the school, community hall and sports facility. Although therefore a rural road it performs the function of a village main street, bringing together religious, residential, educational and leisure facilities along a 1 kilometre length. It is essential, therefore, that the R150 be excluded from any access network proposed for the landfill site. To that end the applicant proposes to prohibit landfill traffic from accessing the site via the R150 through Kentstown and to enforce that prohibition by way of a traffic management plan which incorporates community policing. Given that fact and the additional fact that there is not any access to the site from the CR384, I consider that the proposed development is unlikely to endanger public safety by reason of traffic hazard, certainly within the environs of Kentstown Village.

Re hazard on the N2, I have noted that the NRA, in a submission to the Planning Authority of 15.2.01, opposed the proposed development on the grounds that it would be accessed from a new junction on the N2 where the maximum speed limit applies and that, together with the additional HGV traffic which it would generate, would restrict traffic flow along the N2 and increase traffic hazard for other road users there. The Planning Authority, however, indicated that a development of the type proposed should be serviced by a high standard of road such as the N2; provided therefore that the sight distances available at the junction and the delineation of the right-turn lane there complied with DMRB standards, the Planning Authority had no objection to the proposed development.

The third party appellants (by way of expert witness Mr. Richard Brady) have indicated that the proposed junction on the N2 is likely to create a traffic hazard and that if the development is to go ahead the site should instead be accessed from the N2 by an underpass. The Planning Authority acknowledged that such an underpass would reduce the risk of traffic hazard but that it would be out of character with the existing road and would not be warranted by the flow of traffic on the

road. The Planning Authority noted that given the flow of traffic along the N2 a simple T-junction would probably suffice but in the interest of safety a right-turn lane was proposed. The third party appellant, Mr. Byrne, contrasts the approach adopted by the Planning Authority to the proposed landfill to that adopted for housing developments in the area; in the latter permission was refused on the grounds of traffic hazard, having regard to the maximum permissible speed limit which applies along that stretch of national route.

I consider that a comparison cannot be drawn between a single access/exit point serving a dwelling and a control junction proposed by the applicant; the characteristics of that junction are a 7 metre wide access road flanked on either margin by 3 metre wide grass verges and terminating in a 'Stop' sign arrangement at the N2. The proposed development also involves a substantive landtake along the eastern margin of the N2 in order to facilitate a standard of junction which will comply with DMRB requirements. In this regard, therefore, I concur with the County Council, which states that a development such as the proposed landfill should be served by a high standard of road and that a National Primary Route offers such a standard; given that the junction layout proposed at the N2 will accord with relevant design and safety requirements, as set out in DMRB, and having regard to traffic volumes along the proposed access route and along the N2, I do not see any justification in the current case for the replacement of the proposed junction by an underpass along the eastern margin of the N2.

The appellant, Mr. Byrne, also refers to the impact which the proposed N2/access road junction is likely to have on the amenities of residents of the dwellings adjoining the junction. As the noise levels and traffic volumes already experienced by residents of the dwellings fronting the N2 are unlikely to be intensified to any material extent by the proposed development, I consider that the appellant's argument in this regard cannot be sustained.

The **traffic impact assessment** prepared in respect of the proposed development was referenced to both junction capacity and AADT flows for original and revised traffic distribution. The assessment concluded that generally key junctions on the road network would be impacted on insignificantly in terms of reserve capacity, increased traffic flows and queuing times; in the case of the N2/access road junction, the N2/CR384 junction, the N2/R150 junction and the R153/R150/CR390 junction there would not be any significant queuing or capacity problems occurring there as a result of the proposed development. In the case of the N2/R153/CR322 junction, which modelled at over-capacity for 2016, the Traffic Impact Assessment concluded that this scenario is unlikely to occur as the level of development along the R153 which would tend to generate the commuter traffic ascribed to the junction is unlikely to occur and as improvements to the N3 are likely to diminish east bound flows at the junction.

At the request of the Planning Authority AADT flows on the road network in the vicinity of the proposed development were provided; these indicate that the impact of the proposed development on the level of service and capacity of the N2 will not be significant, although the composition of that traffic particularly along the R153 is likely to show an increased HGV component - the EIS addendum states that this is likely to be in the region of 39%.

I consider that the analyses of key junction capacities and AADT flows on the N2 demonstrate that the proposed development is unlikely to impact significantly on the capacities of the junctions or on the carrying capacity of the N2; however, the increased volumes of HGV traffic likely to occur along the R153 and the potential overloading of the R153/N2/CR322 junction in the year 2016 do give cause for concern. This concern, however, must be balanced by the fact that the R153 is approximately 3 kilometres in length, is not characterised by a high level of residential development, and that the development of

Kentstown to a level which may be expected to generate a significant increase in traffic at the R153/N2 junction (having regard to the planned development for the area) is unlikely to take place,. I also note that traffic growth figures used in junction capacity analyses are robust in that:- (a) although traffic growth on the local road network can largely be attributed to development in the area and hence should include landfill development traffic, that inclusion has been discounted with traffic growth on the local road network having been compounded by 3.5% **plus** traffic generated by the landfill; (b) the resultant traffic growth rates have been applied to the peak hour period, even though such growth rates are not always applicable to the peak hour period - the EIS notes that it is generally accepted that the peak hour, instead of increasing or intensifying as a peak, tends to spread over a longer period. Finally, I also note that while modelling is based on a disposal figure of 180,000 tonnes of waste per annum sensitivity tests based on disposal of 250,000 tonnes per annum are included for the years 2008 and 2016, in order to provide a worst case scenario and an in-depth traffic impact analysis.

I therefore consider that on balance and having had regard to the issues of visual impact, devaluation of property and traffic generation that there is not any overriding constraint which would result in Knockharley being an unsuitable location for the proposed landfill development. I also consider that fears and anxieties expressed by residents of the area regarding potential impacts from the construction phase of the development and from increased rodent and carrion numbers cannot be justified having regard to the distance of potentially affected facilities from the site and to the standards of operation proposed to be carried on at the site.

- 16.4 Re (d) above** - The third party appellants have not only objected however to the principle of the proposed development at Knockharley but have also objected to the **conditions attached to the grant of planning permission by the Planning Authority indicating that the decision to grant permission is**

flawed by reference to the unsound nature of a number of those conditions. In that regard, I would comment as follows:-

16.4 (i) **Condition No: 1:** That condition reads as follows:-

**The development shall be carried out in accordance with the plans and particulars submitted on 11<sup>th</sup> January, 2001, as amended by submissions of 17<sup>th</sup> May, 2001, 1<sup>st</sup> June, 2001, 3<sup>rd</sup> July, 2001, and 9<sup>th</sup> July, 2001, and in accordance with the provisions of the Environmental Impact Statement (EIS) as amended.**

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

Mr. O'Byrne, in an individual capacity and on behalf of the Boyne Valley Environmental Protection League, states that as a result of Condition No. 1 above, **permission was granted for a development where the applicant failed to furnish the additional information as requested by the Planning Authority and where the form of such information when furnished conflicted with the provisions of the North-East Regional Waste Management Plan.** In response, I would note that the Planning Authority's decision was essentially a grant of permission in principle for the proposed landfill at Knockharley, with the landfill disposal capacity and origins of the waste being regulated by condition. I consider that this approach is quite appropriate in that planning permission was essentially granted for the type of development for which permission was sought by the applicant; the restrictive conditions regulating capacity and waste origins did not broaden the scope of the proposed development but rather restricted it in order that it would comply with the provisions of the Waste Management Plan upon which the Planning Authority's additional information request was based. Any criticism which I would make of Condition No. 1 is that the text of the condition failed to reflect the fact that permission was being granted subject to compliance by the



applicant with all ensuing conditions, including conditions relating to volumes and origins of waste. This situation can be amended by insertion of appropriate wording at Condition No. 1

- 16.4 (ii) Re Additional information constituting a new application;** a new application was not necessary as the nature and scale of the development did not materially alter as a result of the additional information.
- 16.4 (iii) Re Condition No. 2 - Tonnage of waste for disposal at Knockharley** - as I have already noted regulation by the Planning Authority of tonnage for disposal at the site is within the jurisdiction of the Planning Authority to impose by way of condition; the condition imposed is not ultra vires as it neither results in any increased volumes of waste for disposal over and above that proposed by the applicant nor does it result in any material change in the character of the proposed development.
- 16.4 (iv) Re Condition No. 2. Failure of Planning Authority to include prohibition on disposal of hazardous waste,** the 1996 Waste Management Act identifies the EPA as the body charged with the making of a National Hazardous Waste Management Plan which will, inter alia, identify facilities currently available for the collection, recovery or disposal of hazardous wastes and the recommendations regarding infrastructure, waste facilities and other physical resources considered necessary for the management of these wastes. In line with national policy, therefore, the public notices described the proposed development for which permission was sought from Meath County Council as being for non-hazardous waste; the prohibition, therefore, referred to by the appellant is non-essential.

With regard to the discrepancies between the waste description set out in the planning application and those in the waste licence application, the contents of the licence application are not a matter for consideration

by the Planning Authority; neither are the specific waste stream for disposal a matter for consideration by the Planning Authority other than to clarify whether such wastes are of a hazardous/non-hazardous nature. The regulation of the types of waste to be accepted at the landfill site are a matter for the licensing authority - the EPA - and in that regard, therefore, the third party appellants' reference to dumping of sludge is not a matter for the Planning Authority. Re discrepancies between waste volumes indicated on the planning application and those in the waste licence application, the Planning Authority can only adjudicate on the basis of the information which it receives and not that received by any other body.

- 16.4 (v) Re Failure of Planning Authority to require an adjustment of landfill footprint in line with reduced waste tonnage;** the Planning Authority at Condition No. 3 requires the developer to provide a 250 metre buffer zone between the landfill footprint and the appellant, Mr. Martin Curran's, rear garden boundary; that a buffer will ensure a reduced landfill take which can accommodate the reduced annual volumes for waste disposal permitted by the Planning Authority; however, I also note that the 88,000 tonnes of waste per annum permitted for disposal at the site by the Planning Authority is less than 50% of that originally proposed by the developers and in this case, therefore, the scale of the landfill may greatly reduce, both in terms of landtake **and/or** elevational height and configuration; in any event I consider it appropriate that were permission to be granted for the proposed development the developer should be required to submit to the satisfaction of the Planning Authority, prior to the commencement of development revised plans and drawings including sectional drawings and elevations showing the reduced area of the disposal footprint and its final capping levels. The absence of any such requirement, however, in any of the conditions does not invalidate the decision of the planning authority.

**16.4 (vi) Failure by the planning authority to have due regard to EC Directive 99/31 which requires member states to set up a national strategy for the implementation of the reduction of bio-degradable waste going to landfill within a specified period and to notify the commission of this strategy.** I note that a recent Government policy statement of March 2002 - 'Delivering Change' - states that:-

- The Government will draw up a national strategy on bio-degradable waste in 2002 in consultation with the National Waste Management Board\*. This will meet the requirement of the EU Landfill Directive to have such a strategy in place by July 2003.
- Increased diversion of organic waste from landfill does not have to await the national strategy on Biodegradable Waste. The regional and local Waste Management Plans already provide generally for the introduction of segregated collection systems for dry and organic recyclables... and the development of a network of centralised biological treatment facilities for organic municipal waste...and separate smaller facilities for composting garden wastes. (c.f. p.47 'Delivering Change').

The Policy Document acknowledges that the national strategy is already articulated in Regional Waste Management Plans; in the case of the North-East region, the Waste Management Strategy articulated in Scenario 3 incorporates proposals which seek to reduce the volumes of biodegradable waste diverted to landfill; predicted volumes of waste for landfill disposal in 2014 which have incorporated projected reductions in biodegradable waste in accordance with the requirements set out in the Landfill Directive have informed the planning authority's decision in the current case.

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\* A National Waste Management Board will be established in 2002 to co-ordinate, monitor, review and advise on all aspects of waste management policy at all levels of the waste hierarchy.

**16.4 (vii) Re Recoupment of landfill site selection costs,** this is not a matter which is within the remit of this appeal.

**16.4 (viii) Re Condition No. 13:**

**In addition to the landscape proposals submitted with the application, the proposed screening mounds and landscaping on the perimeter of the landfill site shall be carried out during the initial construction phase and prior to the commencement of the development the following shall be submitted for the written agreement of the planning authority:-**

- (a) Detailed landscaping of proposed screening mounds to include the proposed types/variety of native species, density of planting, maintenance programme and planting to supplement and strengthen hedgerows and tree belts that are to be retained.**
- (b) A programme outlining the timescale for the implementation of the proposed landscape scheme.**

**Reason: In the interests of visual amenity.**

The appellant challenges this condition on the grounds of (a) lack of clarity and (b) exclusion from participation in determination of the final landscaping proposals and schedule of implementation. I do not consider that the appellants' objections in this regard are valid. Despite the fact that Fig. 16.1 is an illustrative drawing only, it is quite clear from that drawing and from the post-closure drawing (Fig. No. 4.10.4) that the overall site will comprise both agricultural land and planted woodland and that these are not conflicting uses. Neither do I consider that the exclusion of the appellant from final determination of the

landscaping arrangements by the planning authority is ultra vires as the rights of third party appellants are not affected by the condition and the condition does not propose any fundamental alterations to the original landscaping proposals.

**16.4 (ix) Re Obstruction of view:** I would endorse the planning authority's assessment of this issue, which notes that this objection cannot be sustained as there are not any listed views for preservation in the area; I also note that there is a distinction between obstruction of a view and adverse impact on visual amenity; while the appellants' long range southerly views may be foreshortened, the proposed boundary planting will not, I consider, impact on visual amenities as the range of species proposed is consonant with the rural area in which the appellant's dwellinghouse is located and is sufficiently far removed as not to create any overshadowing.

**16.4 (x) Re Condition 11 - Restriction of traffic on the County Road CR384** - I note that the only access to the landfill is from the N2, therefore the appellants' fears of traffic hazard are ill-founded.

**16.4 (xi) Re Condition No. 16 - Regulation of site construction working hours** - The appellants' fears that stipulated construction working hours could be significantly varied at the discretion of the planning authority, are also ill-founded; the thrust of the condition is to strictly regulate construction working hours; I note that any variation in those working hours must first be the subject of a written agreement by the planning authority, hence a formal procedure must be adhered to, to enable any such variation to take place; I also consider that the planning authority's rationale for any variation to stipulated construction working hours is reasonable, namely the need to accommodate construction methods and working conditions. In this context, the permitted noise level of 45dB(A) permitted at "any other time" as set out in Condition No. 17, which is queried by the appellant, is acceptable and also essential.

- 16.4 (xii)** The third party also states that the decision by Meath County Council to allow 88,000 tonnes of waste for disposal at the site is excessive, having regard to the waste estimates for the county of Meath itself. It is also in direct conflict with EU waste management principles, particularly the prevention principle, which requires that waste be prevented and minimised where possible. I do not consider that this objection can be sustained for the following reasons.

Under the 1996 Waste Management Act, Part 2, local authorities were required to make Waste Management Plans in respect of their functional areas in order to prevent or minimise the production of waste; the 1997 Regulations clarified this role by encouraging local authorities to adopt a regional approach to this process by adopting detailed regional Waste Management Plans which would provide for the development of an integrated waste management infrastructure. The Government policy document '**Changing Our Ways**' gave further encouragement to the adoption of a regional approach to waste management planning with a view to the more efficient provision of services and infrastructure. The appellants' argument, therefore, that the permitted landfill disposal volumes are excessive in regard to the needs of the individual county are not, I consider, pertinent having regard to the fact that Government policy and statutory legislation recommends the subordination of the needs of the individual county to those of the region.

Neither do I consider that Meath County Council's decision conflicts with the waste management principles; I note for example that the 88,000 tonnes per annum disposal capacity is based on reductions in waste arising over the lifespan of the landfill.

- 16.5 Re Third Party Appeal Submission by Patrick Lawlor:** Some of the grounds in the appeal submission, such as scale of the facility, traffic generation, have been already dealt with; others referred to by the appellant concern the increase in "vermin and carrion" in the area, leading to the spread

of diseases in the animal population. These are matters which under the 1996 Waste Management Act are not excluded from consideration by An Bord Pleanála.

I do not consider that these objections with regard to those matters can be sustained. First, the objections are generalised in nature and are not substantiated by facts; secondly, modern measures for rodent control combined with an effective state of the art landfill facility are likely to ensure that any increase in the carrion and rodent population will not be significant and certainly not at a level which is conducive to the spread of disease.

The appellant also queries the submission of details and agreement on a number of matters to and by the planning authority prior to the commencement of development, stating that this effectively excludes the general public from reviewing and assessing those details. The appellant refers particularly to the Traffic Management Plan, landscape proposals, junction design details and environmental education facilities; having regard to the environmental facilities, I note that these will be at the discretion of the Community Liaison Committee and, therefore, the public, through their representative on that Committee, will have an opportunity to comment on such facilities. With regard to traffic management, road design and landscaping, these concern matters of detail only - not decisions in principle.

- 16.6 Re Appeal Submission by the Curran Family:** The appellant notes that the family dwellinghouse and recreation area (back garden) are within 250 metres of the landfill footprint. The planning authority has acknowledged this fact and has therefore requested, by way of Condition 3, that the north-south dimensions of the landfill footprint be reduced in order to ensure that a 250 metre separation distance is provided between the northern boundary of the footprint and the southern boundary of the Curran property. In response, the developer contends that a 250 metre distance already separates the northern boundary of the site from the appellant, Mr. Curran's, dwellinghouse; that buffer is in accordance with EPA Guidelines which advise a 250 metre separation distance between the area to be landfilled and any occupied

dwelling at new landfills. The developer notes that there is not any residential amenity or other planning related ground for unnecessarily restricting capacity in the manner proposed by the Council.

I note that while the appellant, Mr. Martin Curran's, dwellinghouse lies 250 metres north of the landfill footprint, his rear garden boundary lies approximately 100 metres only north of the landfill footprint. However, as I have noted, the rear garden of the appellant's property has been laid out and maintained as part of the functional area of the dwellinghouse and is associated with the use and enjoyment of the dwellinghouse. In that respect, it comprises part of the curtilage of the dwelling and an integral feature of the appellant's property at that location. The developer's argument that the 250 metre buffer zone is required to obtain only between the house itself and the landfill footprint cannot, I consider, be sustained on the grounds that the use and enjoyment of the dwellinghouse is dependent not just on the internal facilities of the dwelling but also on the external or outdoor facilities associated with it. While I agree with the Planning Authority "that the requirement for a buffer zone in the first instance is to facilitate the control and management of the zone by the applicants for the development" and that a 100 metre buffer is inadequate in that regard. I also consider that the depth of the buffer zone should be influenced by a further factor viz, the impact of the proposed development on the locational context of the Curran property. In this regard, I consider that the undue proximity of the Curran's rear garden boundary to the footprint will diminish the locational context of the third party appellant's property, thereby impacting adversely on the residential amenities of that property and resulting in devaluation of that property. I have noted the developer's submission made at the Oral Hearing which drew attention to the draft Waste Licence issued by the EPA in March 2002 where a 100 metre buffer zone between the site boundary and the landfill footprint was envisaged. However, that decision is informed by environmental considerations of land use planning viz. locational context, residential amenity and property devaluation. I have also taken on board the point made by the Planning Authority at the Oral Hearing where it noted that Annex 1 of the 99/31 EC Directive refers to distances from "recreation areas" and that the rear



garden of the dwelling must be considered as such an area. In that context, as use and enjoyment of the garden may be diminished as a result of an increase in ambient noise and dust emissions generated during the construction phase of the development, I recommend that Condition No. 3 attached by the Planning Authority to the grant of permission should be endorsed, were permission to be granted by the Board in the current appeal.

Mr. Curran also notes that the height and maturity of proposed planting is more appropriate for motorway planting than for screening purposes and will not provide adequate screening for a prolonged period of time; I consider that the overall broad proposals for landscaping of the site are acceptable and that the matter raised by Mr. Curran can be dealt with by way of regulatory condition should permission for the proposed development be granted. The condition should be framed with reference to the mix of feathered, standard trees proposed for planting, their rate of growth and the mix of species proposed. I have already referred to those considerations at 16.3(a) of this report.

**16.7 Third Party Appellant, Mrs. Cepta Timmons:** The written and oral submissions made by Ms. Timmons reiterate largely those raised by other third parties - visual impact, devaluation of property, composition of waste to be accepted at the landfill site and, finally, an absence of interaction between the developer and residents in the area; while the latter is regrettable, it does not in itself form substantive grounds for recommending a refusal of permission in the current case.

**16.8 First Party Appellant Submissions Against Condition Nos. 2, 3, 5, 6, 12, 13, 16, 17, 18, 21 and 22.** The first party appellant also contends that the proposed development as permitted by the Planning Authority is unacceptable having regard to Condition Nos. 2, 3, 5, 6, 12, 13, 16, 17, 18, 21, 22.

**16.8 (i) Re Condition No. 3:** This requires the landfill footprint to be revised to provide for a 250 metre buffer zone between the footprint and the southern boundary of the Curran property. I have already considered

this condition in the context of the third party appellant, Mr. Martin Curran's, appeal submission, and recommend that this condition remain attached to the grant of permission.

**16.8 (ii) Re Condition No. 5:**

**A Community Liaison Committee shall be established consisting of a minimum of eight representatives (two officials from the Planning Authority, two representatives from the developer, two local residents, and two elected members of Meath County Council). The composition of the Committee shall be subject to the agreement of the Planning Authority.**

**Reason: To provide for appropriate ongoing review of landfill operations in conjunction with the local community.**

The developer/first party appellant states that this condition is unnecessary in that the constitution of the Committee is a matter to be determined by the Committee itself and that the purpose of the Committee will be to inform the community and to respond promptly to its every request. The Planning Authority on the other hand suggest that the composition of the Committee is not about the balance of power but about community liaison consultation and participation.

In granting any permission for the proposed development, I consider it essential that the stakeholder role of the local community be formally acknowledged and incorporated where necessary into relevant conditions; there are various aspects to that role - the hosting of the landfill, the policing of its operation, particularly with regard to traffic, and the informed recommendations which it can make in respect of mitigation measures to reduce the impact of the facility on the community. In this regard, therefore, I see the role of the Committee as being wider than that proposed by the first party appellant; I

consider that the composition of the Committee, therefore, as recommended by the Planning Authority would facilitate that role and would pre-empt any adversarial overtones which could arise were the composition suggested by the first party appellant to endure.

I have noted in this regard the observations submitted by Mr. James Mullins and the Oral Hearing regarding the amendment of Conditions 5 and 6, i.e. the composition of the Liaison Committee and payment of contribution to the Community Development Committee rather than the Planning Authority. I do not consider that such amendments are warranted as they will effectively undermine the role of the Planning Authority as a facilitator - a role which I consider is valid in the current case.

I therefore recommend that Condition No. 5 remain attached to any grant of permission which may issue in respect of the proposed development.

**16.8 (iii) Re Condition No. 6.**

**The developer shall pay to the planning authority an annual contribution towards the cost of the provision of environmental improvement and recreational/community facility projects in the vicinity of the proposed landfill site. The amount of the contribution shall be based on the payment of £1.00 per tonne of waste disposed/treated calculated on annual waste inputs. The identification of environmental/recreational/community facility projects shall be decided upon by reference to the Community Liaison Committee as provided for in Condition No. 5 hereof.**

**In the case of expenditure that is proposed to be incurred the requirement to pay this contribution is subject to the**

**provisions of Section 26(2)(h) of the Local Government (Planning and Development) Act, 1963 generally, and in particular, the specified period of seven years from the date of this order.**

**Reason: It is considered reasonable that the developer should contribute towards the cost of environmental improvement projects for the area in which the landfill site is situated.**

The first party appellant objects in principle to the setting of a fixed sum to be contributed to the Planning Authority, noting that the sum is a matter to be decided by the Community Liaison Committee itself; furthermore, the first party appellant also queries the origin of the £1 (£1.27)per tonne figure set out at Condition 6.

Government policy as set out in **‘Changing Our Ways’** at paragraph 9.2, recommends that “local authorities working closely with local communities should utilise a proportion of income from waste charges and gate fees to mitigate the impact of such facilities on these communities through appropriate environment improvement projects”. The Planning Authority’s submission at the Oral Hearing contended that in view of the policy set out in **‘Changing Our Ways’** where public private partnerships are advocated, it is reasonable that if local authorities are required to utilise a proportion of income from gate changes to mitigate the impact of the facilities in the community, then so also should the private developer. I consider that the Planning Authority’s justification for the contribution set out at Condition No. 6 is rational and should be endorsed.

The Planning Authority fails, however, to justify the basis for the amount of contribution sought other than by reference to a precedent. In that regard I would refer the Board to the Waste Management

(Landfill Levy) Regulations, 2002, which were recently signed into effect by the Minister. The Regulations provide for the commencement and operation of a new landfill levy with effect from 1<sup>st</sup> June, 2002, at an initial rate of €15 per tonne of waste disposed of to landfill. The levy is payable by the holder of a waste licence to the local authority, which in turn pays into the environment fund in every calendar month an amount equal to the sum of levy payments received during that month subject to the abstraction of defrayment expenses. Having regard to the €15 levy, therefore, permitted under the 2002 Regulations, I consider that on a pro rata basis the €1.27 required under Condition 6 is not excessive and I therefore recommend that Condition No. 6 remain unaltered and attached to any grant of planning permission which may issue in respect of the proposed development.

(It should be noted that the levy imposed under Condition No. 6 is a local authority levy in contrast to the Landfill Levy which is paid into a central fund (the National Environment Fund) which will be used to provide grants to local authorities and other bodies mainly for the development of waste management infrastructure.

- 16.8 (iv) Re Condition No. 12 - Contribution towards expenditure to be incurred in improvements and alterations to public roads** - The appellant requests that the text of the condition be reworded to provide for indexing in accordance with an appropriate construction industry index, such as the Wholesale Price Index. I consider that that request is reasonable and that the text of the condition be revised to incorporate same.
- 16.8 (v) Re Condition No. 13 - Landscaping proposals** - The appellant suggest a minor revision to the text and the inclusion of a provision that the Board determine matters in default of agreement. I consider that these requests are reasonable and should be incorporated into the text of the condition.

**16.8 (vi) Re Condition No. 16 - Construction working hours** - The appellant asks effectively that for five months of the year a 12-hour working day be permitted for construction works; given the urgency in the North-East region for additional landfill disposal facilities, and also the relatively high levels of weather dependent works likely to involve the use of heavy excavation and earth moving plant, I do not consider it unreasonable that initial construction works should be facilitated by an additional two hours per day, Monday to Friday in the initial start up year 2002-2003 in order to expedite the first phase of the landfill.

I therefore recommend that the text of Condition No. 16 be revised to provide an extended working day during the months of August and September 2002, May, June, July, August and September 2003. Any further extension of working hours outside of those months or beyond 6pm for the remaining months of the year should not be permitted except where the Planning Authority considers it justified.

I do not consider that overall a two hour extension of working hours for construction purposes over a period of approximately seven months will impact adversely on residential amenities in the area by reason of noise or dust emissions.

**16.8 (vii) Re Condition 17 - Limitations on site noise during specified time periods** - I consider that if construction working hours are to be extended to expedite development of the first phase of the landfill, then noise levels appropriate to those extended working hours should also be permitted. I note that the Planning Authority has stipulated a maximum noise level of 65dB(A) between the hours of 0800 to 1800 Monday to Friday and part of Saturday; while this may seem excessive in regard to properties fronting the CR384 to the east of the landfill site, I note that ambient daytime noise levels of between  $L_{(Aeq)}$  50-55 have been recorded there (confer EIS Chapter 2); an increase of 10dB(A) as permitted under Condition No. 17 is therefore, I consider, acceptable. In the case of those dwellings located adjacent to the

N2/access road junction, ambient daytime noise levels are already likely to be quite high as a result of traffic noise on the N2. (The EPA Guidance Note for Noise in relation to Scheduled Activities indicates that heavy road traffic noise at 60 metres is approximately 80dB(A)).

- 16.8 (viii) Re Condition No. 18 - Absence of specified method for collection and measurement of dust** - I note that the Planning Authority has no objection to dust deposition limits being defined as 350mg/m<sup>2</sup>/day measured at the site boundaries and averaged over 30 days; given that this limit is appropriate to the German standard method for dust monitoring, as recommended by the EPA, I recommend that the text of the condition be revised to reflect the limits specified by the appellant.
- 16.8 (ix) Re Condition Nos. 21 and 22 - Monitoring of well water quality and levels during construction, and the undertaking of remedial works by the developer respectively** - The appellant requests that as they do not enjoy access rights to third party lands, Condition No. 21 be replaced by a levy payment to fund the Council's monitoring costs, while a bond is proposed in lieu of Condition No. 22. I note that the principles of monitoring and remediation are not in dispute here - what is in dispute is the body/agency which should assume responsibility for monitoring. I consider that as any construction works which may impact on the quality and level of well water supplies in the area are being undertaken by the developer, the developer should also have responsibility for monitoring the impact of those works, in the same way as the responsibility for monitoring noise, dust deposition and surface water run-off is assigned to them under Condition No. 20.

I consider that the developer's request to revise Condition No. 22 to include a bond provision is reasonable.

**16.8 (x) Permission to amend the life of the landfill to 16 years** - The appellant requests an additional lead-in time of one year and a one-year decommissioning period over and above the 14-year operational programme proposed for the landfill. I consider that if the life of the landfill requires to be extended then the appropriate time to seek such an extension is towards the end of the permitted life of 14 years.

**16.8 (xi) Re Condition No. 2:** The condition reads as follows:-

**Waste for acceptance** at the residual landfill waste management facility for disposal and/or treatment shall be strictly **limited and confined to waste generated and produced in the North-East region** areas of Counties Meath, Louth, Cavan and Monaghan. The annual **tonnage for disposal and/or treatment shall not exceed 88,000 tonnes per annum.**

Each and every consignment of waste howsoever arriving at the landfill site shall be accompanied by a waste certificate, which shall identify, inter alia, the following:-

- **Waste origin, source and area in which it was produced/generated.**
- **Waste collection schedules.**
- Waste of each consignment.
- Waste collection contractor, name and address.
- Composition and nature of waste.

The developer shall submit to the Planning Authority on a monthly basis records of all waste delivered to the site on a daily,



weekly and monthly basis in accordance with the aforesaid waste certificate.

**Reason:** In the interests of development control.

The appellant has challenged the restrictions on disposal set out in the above condition; in relation to both sources of waste and annual tonnages; the appellant also challenges the need for consignments of waste to be accompanied by a waste certificate.

- 16.8 (xii)** Re restriction of the disposal facility to waste generated and produced in the North-East region, the appellant states that this restriction conflicts with the proximity principle as set out in Article 174(2) of the Treaty on European Union, where it is stated that “environmental damage should as a priority be rectified at source”. That principle is transposed into national legislation at Section 5.5(b) of the Schedule to the Waste Management (Planning Regulations), 1997, where it is stated that Waste Management Plans are obliged to have regard to:-

Measures including co-operation with other local authorities with a view to the application of the proximity principle, that is to say enabling waste to be disposed of in one of the nearest appropriate installations by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

The appellant therefore states that the proximity principle both in European and Irish National Law not only facilitates but in certain instances requires the disposal of waste in an adjoining region or local authority area where the nearest appropriate installation is located.

The appellant supplements this argument by noting (a) that the **Strategic Planning Guidelines** for the Greater Dublin Area incorporate County Meath as part of that area and (b) that the proposed

landfill site is nearer to Dublin than many other parts of the north-eastern region.

I note that there is not any explicit guidance given by way of legislation or Government policy statement as to the level at which the proximity principle should operate in respect of waste management, i.e. whether it should operate at settlement level, county level or regional level; however, Government policy as set out in ‘**Changing Our Ways**’ at paragraph 5.3.1 notes that:-

Local authorities have been encouraged to adopt a regional approach to waste management planning with a view to the more efficient provision of services and infrastructure...

It would therefore appear that, for the purposes of waste management, the regional level is the level which should initially inform the planning and provision of services and infrastructure associated with waste management.

Meath County Council’s argument in the current case is essentially that the regional approach and the resultant North-East waste management policy would be seriously undermined by the proposed development were the North-East region required to provide landfill disposal capacity in excess of its own needs, for contiguous regions. If this were to be the case, then the north-eastern region would be required to plan and provide for waste disposal capacity for a number of neighbouring counties; the Planning Authority argues that the acceptance of waste for disposal from contiguous regions may be acceptable in the long-term when an integrated national network of landfill disposal facilities has been set up by the regions but that to do so in advance of the establishment of such a system would be premature.

I concur with Meath County Council's argument in this regard, noting in particular that the developer has not presented any evidence that the Dublin Area Waste Management Plan has provided insufficient disposal capacity for waste arising within its own functional area. I also note the validity of Meath County Council's argument that Dublin waste proposed for disposal at Knockharley may not necessarily originate in close proximity to the North-East region but at a considerable distance from it. Conversely, I also note that the proposed medium to long-term landfills at Corranure and Scotch Corner will provide disposal facilities for the northern part of the North-East region, thus obviating the need for waste generated within the region to travel long distances within the region as alluded to by the developer. The appellant's argument therefore that the North-East region is required to provide additional landfill capacity to service the needs of other regions, does not, I consider, provide a sound and rational basis for the development of a regional waste management framework for the North-East and would, if permitted, be likely to have an adverse ripple effect on the implementation of adjoining regional waste management plans, frameworks and policies. This argument is without prejudice to the fact that in the medium to long-term a system allowing for the acceptance of non-regional wastes for disposal within the North-East may be put in place in accordance with the proximity principle; however, this would appear to require initially the identification of landfill sites within adjoining regions, an assessment within those regions of available landfill capacity and the compliance of each region with prevention and minimisation targets set out in their respective plans. The role of the National Waste Management Board, as set out in the policy document 'Delivering Change', would appear to be pivotal in this regard as its function will be to co-ordinate, monitor, review and advise on all aspects of waste management policy at all levels of the waste hierarchy (c.f. 'Delivering Change', p.4).

- 16.8 (xiii)** With regard to the appellant's argument that the application of the proximity principle is endorsed by Meath's inclusion within the

Greater Dublin area for the purposes of the Strategic Planning Guidelines; I am unable to agree; it is quite clear from the Government policy statement - **‘Changing Our Ways’** - that the primary unit for the purposes of waste management is the region in contrast to the settlement or development centre which forms the basis of the Guidelines; in that context Meath forms part of the north-eastern region - a distinct and separate entity to that of the Dublin region. Furthermore, the issues which inform the Strategic Planning Guidelines are not necessarily those which inform waste management planning. I do not see any merit, therefore, in the appellant’s argument in this regard.

- 16.8 (xiv) I would also refer to the appellant’s argument that while it may be acceptable for Meath County Council to adopt a policy to exclude wastes from outside the region being accepted at its own local authority landfill, it should not impose an obligation on the private sector to do likewise and that such a policy runs contrary to the concept of “economies of scale” specifically referred to at Section 4.1 of **‘Changing Our Ways’**. I consider this argument cannot be sustained for the following reasons. Meath County Council, as a Planning Authority, is required to have regard to the proper planning and development of the area whether the development be in the nature of a public authority development, a private development or a public private partnership. To propose that a local authority should not impose restrictions on private development is to deny the role of the local authority as a Planning Authority and runs contrary to the spirit and provisions of the Planning Acts; I also consider that while the appellant seeks to justify a non-exclusionary approach to the landfill of wastes based on the principle of economic viability, this is not an argument which can operate in isolation from the principles of land use planning. In that context, I would refer the Board to the policy document **‘Changing Our Ways’**, where economies of scale are not seen as a separate concept to land use planning but only one of a range

of issues to be taken on board in the successful implementation of a waste management strategy by the regional authority.

**16.8 (xv)** I have also noted the developer's argument that in the interests of the common good, Meath County Council is required to take account of matters which relate to the planning and development of areas outside its own functional area. However, I note first that the decision of Meath County Council is referenced to the regional waste management strategy for the four North-East counties as set out in the North-East Regional Waste Management Plan. Secondly, were the consequences of the Meath County Council decision to adversely impact on the structure and implementation of the Dublin Region Waste Management Plan, resulting either in that plan being undermined or becoming unworkable, then the developer's argument may have some merit. However, there is not any suggestion of that in the current case.

**16.8 (xvi)** The first party appellant also challenges that provision of Condition 2 which restricts waste tonnages for disposal at the site to 88,000 tonnes per annum. The appellant notes that that figure is fundamentally flawed on the basis that the figures posited in the North-East Region Waste Management Plan are unsound by reason of:-

- (a) Assumptions upon which the estimate of waste arisings are made being incorrect,
- (b) Assumptions that other disposal routes will come on-stream when such routes may not be effected on schedule or at all.

In respect of (a) above, this argument was expanded on by the expert witness, Mr. Bacon at the Oral Hearing (c.f. written submission to Oral Hearing of 10.4.02). Mr. Bacon referred to the years 1995-1998 when GDP growth was close to 9.2% per annum, during which time the quantity of reported manufacturing waste grew by 38%. Mr. Bacon notes that that relationship between GDP and waste generation...has

served to undermine the assumptions in the plans regarding the growth of waste resulting from economic growth. In response, however, I consider that:-

- (i) The last 6-7 years represent an exceptional transitional phase of very high national economic growth - this is confirmed by Mr. Bacon, who states that the relationship between GDP and waste generation over that period may not only be atypical of the long-term trend, but would also be unsustainable in the long term.
- (ii) Waste quantities used in the waste generation model are derived from, inter alia, the North-East Waste Management Strategy; that strategy was published in 1999 and therefore is of recent origin.

Mr Bacon's written submission also refers to other incorrect assumptions in the Waste Management Plan namely that its use of "population projections for the early 1990s that are now clearly inappropriate"... "while the use of household data from the 1980s is questionable". The above criticism however would not appear to be valid in the case of the North-East Region Plan which (a) bases its population projections on 1996 Census figures - the most recent official data on population numbers and (b) sources household waste data by reference to the period 1995 to 1999.

- 16.8 (xvii)** In respect of (b) above - that other disposal routes projected to come on-stream may not be effected on schedule if at all, again this is referred to in Mr Bacon's submission. I would however point out to the Board that targets set in the EU Landfill Directive (1999/31 EC) for the reduction of waste disposal going to landfill are mandatory targets and therefore it would not be realistic to long finger alternative disposal methods which have a more preferred rating in the waste hierarchy.

**16.8 (xviii)** However I consider that the Planning Authority's decision to impose an 88,000 tonne per annum restriction on waste disposal capacity at Knockharley does give cause for concern in that it fails to address the issue of the shortfall between waste arisings in the North-East region and available disposal capacity there; in that context I would comment as follows.

First I note that discrepancies exist between projections set out in the North-East Regional Waste Management Plan and those indicated in Meath County Council's submission to the oral hearing; I refer particularly to projected start up dates for alternative and preferred methods of waste disposal and also to 2014 projections for volume of waste arisings. I have however relied on the data submitted at the oral hearing as this provides a current analysis of the general waste management programme in the region.

In the oral hearing submission Meath County Council indicates that by 2005 waste arisings for landfill disposal in the North-East region would total 196,909 tonnes. In 2005 however, due to the closure of the Dundalk landfill (September 2002) and White River (in 2004), the only available landfills will be Scotch Corner in Monaghan, Corranure in Cavan and Knockharley (if permitted) in Meath; those landfills will give a combined disposal capacity of 153,000 tonnes p/a; this leaves a shortfall disposal capacity in 2005 of 44,000 tons approximately; currently any shortfall in disposal capacity in Meath is dealt with by exporting waste to landfill facilities outside the North-East region such as in County Kildare; it would appear from the evidence given at the oral hearing that any shortfall occurring until 2005 will be similarly dealt with. The issue therefore arises as to whether the 88000 tons disposal capacity at Knockharley should be temporarily increased until 2007 to accommodate that shortfall.

At the end of 2007 with the coming on-stream of alternative and preferred methods of disposal in the waste hierarchy such as thermal

treatment/incineration respectively waste volumes disposed of to landfill will reduce considerably. Until the end of 2007, however, I consider that if the proximity principle is to be applied consistently then waste generated in the North East Region should be disposed of as close to source as possible; given that Knockharley is proposed as a long-term landfill facility for the region compliance with the proximity principle dictates that the shortfall in disposal capacity until the end of 2007 should be made available within the North East region rather than outside it at distant locations such as in County Kildare. Such increased disposal capacity at Knockharley would, I consider, be acceptable given that (a) it would be a temporary and not a long term proposal, (b) it would simply be a redirection of waste already earmarked for disposal outside the North-East region; I would, therefore, recommend that the volumes of waste permitted for acceptance at Knockharley should be increased to 132,000 tonnes per annum until the end of 2007; after 2007 waste arisings for disposal by landfill are likely to reduce due to more preferred options in the waste management hierarchy coming on-stream. I do not consider that a temporary increase in disposal capacity would impact adversely on the road network having regard to the reserve junction capacity and estimated AADT flows on the road network as presented in the TIA Assessment submitted to the planning authority in the EIS and the EIS addendum.

- 16.8 (xix)** The developer also challenges the provisions of Condition No. 2 which requires consignment of waste arriving at the landfill to be accompanied by waste certificates identifying waste origin, source and area in which it was produced/generated and waste collection schedules. The developer argues that such a requirement is impracticable and that such information is more properly recorded through the waste management (permit) regulations (1998) and the licensing of individual waste and recycling stations.

In this matter I would refer the Board to the Waste Management (permit) Regulations 1998 and the Waste Management (collection



permit) Regulations 2001. The former governs waste recovery or disposal activities carried on at a facility while the latter are concerned with the collection of waste on a commercial basis. Both sets of regulations require that the application for the waste permit and waste collection permit state the name, and address of the applicant, the type, quantity and nature of the wastes to be recovered/disposed of or collected and in the case of waste collection permits the area(s) in which the waste collection activity will be carried on, the frequency of collections (in the case of waste collection from households) and the location or postal address of the facility or facilities to which collected waste will be delivered for the purpose of recovery or disposal.

Condition No. 2 therefore results largely in an unnecessary duplication of information already available to the planning authority under the 1998 and 2001 Waste Permit and Waste Collection Permit Regulations respectively. I do not therefore see any justification for including it at Condition No. 2. I consider however that information relating to the weight, composition and nature of the waste consignments arriving at the landfill site together with the name and address of the collection contractor is necessary in order to ensure that waste proposed for disposal is delivered by a licensed contractor, that volumes, nature and composition of waste arriving at the site can be monitored to ensure compliance with any permission granted and that data relevant to the imposition of levies may be collated.

**16.8 (xx)** I would also refer the Board to the submission made at the Oral Hearing by Mr. O'Donnell on behalf of the Boyne Valley and Newgrange Environmental Protection League that the following issues be clarified before the appeal assessment viz.

(a) That the entire legal basis upon which the hearing is predicated is fundamentally flawed as being in breach of the obligations of European Law.

- (b) That if the Board cannot have regard to the risk of environmental pollution in the course of the appeal assessment then it cannot consider the adequacy of the Environmental Impact Statement.
- (c) That the Boyne Valley and Newgrange Environment Protection League cannot be certain as to what submissions they may make at the Oral Hearing which comply with the stringent requirements of the legislation as set out.

I consider, however, that the above submissions are not within the remit of the Board for assessment in the current case, given that the Board's role and function is set by primary legislation. The points raised in the third party appellant's submission are ones which I consider are more properly addressed in an alternative forum and there is not any constraint on the appellant which prevents relief from being sought in such an alternative forum.

- 16.9** Finally, I note that although a gas transmission line and ESB overhead transmission cables cross the site, the planning authority has not required that appropriate wayleaves be maintained in respect of those utilities. I therefore recommend that a condition providing for wayleaves be attached to any grant of permission which may issue in respect of the proposed development.

## 17. CONCLUSION

**17.1** The proposed development comprises the construction of an engineered landfill facility at Knockharley for the acceptance of 180,000 tonnes per annum of residual waste; the overall site, which has a stated area of 300 acres approximately, will incorporate a waste disposal area of approximately 53 acres; the area will be developed in seven phases, each phase covering an area of approximately 9 acres. A 250 metre buffer zone is generally (except in the case of a third party appellant's dwelling) proposed between the footprint of the disposal facility and the nearest occupied dwelling. The buffer zone will be extensively planted to provide screening; the only access to the site will be from the N2 to the east via a dedicated service road. A 14-year operating life for the facility is proposed, at the end of which the site will be returned to agriculture or amenity use.

**17.2** A number of issues with regard to the above development have been identified in the course of the appeal. These are:

- (a) Whether the proposed landfill facility can be accurately described as a residual waste facility;
- (b) The need in principle for such a facility in the North-East region;
- (c) Whether such a facility is acceptable at Knockharley having regard to its potential impacts on the visual amenities, property values and traffic flows in the area.
- (d) Whether, if such a facility is acceptable, a restriction should be imposed on the volumes and origins of waste for acceptance at the landfill.

In relation to the issue of residual waste, the developer defines this as “the waste remaining after allowance has been made for attaining national and regional recycling and recovery targets”. I consider that this definition is

acceptable having regard to the fact that such a definition acknowledges the incremental approach to waste management which will enable Ireland to comply with the requirements of the Directive 99/31/EC (the Landfill Directive) namely that by 2020 the volumes of biodegradable municipal waste to be landfilled shall be reduced to 35% of that produced in 1995. The third party appellant's argument that the waste proposed for disposal at Knockharley is not truly residual, is something of a red herring in that it places an unrealistic obligation on the developer to ensure that waste proposed for acceptance at Knockharley will have been treated to a degree which is not possible under existing waste management practices and technologies.

**17.3** The need for a landfill site within the North-East region has, I consider, been clearly identified in the North-East Regional Waste Management Plan 1999-2004 as further clarified by the Planning Authority's submission at the Oral Hearing. The plan notes that as of that period waste arisings for landfill disposal are projected at 87,736 tonnes in the year 2014, even after other preferred waste management options have been put in place. The plan notes that in the absence of a facility being available at Knockharley the only other facilities in the region capable of providing medium to long-term capacity are at Corranure in Cavan and Scotch Corner in County Monaghan and even then available disposal capacity at those landfills can only be provided by way of extension to existing facilities. The Planning Authority's submission to the Oral Hearing, in particular the written submission presented by Mr. Greg Duggan (Senior Engineer, Meath County Council) clarifies the provisions of the North-East Regional Plan by providing up-to-date implementation schedules for the period with regard to all aspects of waste management; that information shows a need, even in 2014, for a landfill disposal facility despite comprehensive and intensive use of prevention recovery and disposal facilities which rank as more preferred options in the waste hierarchy.

**17.4** The developer's proposal to locate a landfill facility at Knockharley builds on the permission granted by the EPA to Meath County Council in 2001, also for a landfill site there and to the fact that Knockharley is identified in the 2001 Meath County Development Plan as being suitable for landfill disposal.

The development which is the subject of the current appeal, however, is considerably larger in scale by that proposed by Meath County Council - 180,000 tonnes per annum, as opposed to the 76,000 tonnes (including 13,500 tonnes of inert waste) permitted to Meath County Council by the EPA. The substantive difference in scale between the two facilities could give rise to a number of potentially adverse impacts on visual amenities, property values and traffic flows in the area.

Re Impact on visual amenities, the overall scale of the proposed landfill in terms of height, bulk and massing, is likely to be visually intrusive as the landfill will be located within a predominantly flat landscape. I consider, however, that the comprehensive screening and landscape restoration programme proposed by the developer, coupled with the extensive areas proposed for such screening and restoration, will significantly mitigate any adverse visual impacts which may potentially arise. I note that although the screening and landscaping proposals will result in what was an open agricultural landscape becoming an area of foreshortened wooded views, this could not be considered an adverse visual impact.

Re Property devaluation, the developer and third parties both agree that property devaluation is likely but disagree as to the duration and extent of that devaluation. I consider that short-term property devaluation is likely to occur and to last until at least the construction phase, including the construction of cells in Phase 1, has come to an end; at that point, given the standard of waste management operation and procedures which will have been implemented and the mitigation of visual impacts by maturing screening, I can see no reason why property values should remain depressed.

In regard to traffic impact, I am satisfied that the dedicated access to the site from the N2 plays a significant role in reducing the impact of the proposed development on the local road network; the impact of landfill associated traffic on Kentstown Village has also been dealt with by the developer in that it is proposed to by-pass that section of the R150 which runs between the N2 to the east and the junction with the R153 to the west. A traffic management, in

conjunction with community policing will, I am satisfied, maintain that stretch of the R150 free from landfill associated traffic either going to or coming from the site. The capacity of the R153/N2 junction at 2014, while it does give some cause for concern is, I consider, unlikely to create a traffic hazard or give rise to traffic obstruction at that junction, having regard to a combination of factors such as the easterly perimeter of the Kentstown Development Plan boundary, Development Plan policy on rural housing and traffic relief afforded to the N2 by proposed improvements on the N3.

- 17.5** A major component of the third party submissions is the challenge to Condition No.2 attached to the grant of permission by the Planning Authority, and in particular the restriction on volumes and origins of waste permitted for disposal at Knockharley.

In this regard, I note that the Government policy statement ‘Changing Our Ways’ is based on a national policy for the prevention and minimisation of waste, that policy being grounded in an internationally recognised hierarchy of waste management options in which landfill disposal is the least favoured option. The Government policy notes that “reducing reliance on landfill is the most fundamental issue to be addressed in the waste management area and should be the core objective of the current local planning process”. The North-East Regional Waste Management Plan has sought to implement that policy by promoting a range of waste prevention and minimisation measures which ultimately reduce reliance on landfill disposal. The plan, as updated by Meath County Council’s submission at the Oral Hearing, notes that by 2014 waste arisings for landfill comprise 74,369 tonnes in the North-East region. The Planning Authority has, therefore, I consider, correctly restricted waste for disposal at Knockharley to that arising in the north-eastern region. The developer argues against such a restriction on the grounds that it conflicts with the proximity principle whereby waste should be disposed of in one of the nearest appropriate installations, as close to source as possible. On that basis, therefore, waste arisings in a contiguous region should be permitted for disposal at Knockharley. That argument, however, is I consider flawed, first in that waste which the developer proposes to be disposed of at Knockharley

may not necessarily have been generated in close proximity to Knockharley but at a considerable distance from it; secondly, that proposal is premature until such time as the location of the landfill site(s) for the Dublin region has been identified and a cross-referencing of relevant waste management data has taken place in order to ensure that the proximity principle may operate on an equitable basis. To provide otherwise would, I consider, undermine the regional approach to waste management as set out in the Government policy document 'Changing Our Ways' whereby each region, by way of a regional waste management plan, sets targets for prevention and minimisation of waste and assumes responsibility for attainment of those targets.

The developer also argues that in the context of economies of scale an acceptance disposal capacity of 180,000 tonnes per annum at Knockharley is not excessive and will provide a viable framework for an environmentally high standard of facility. In response, I note that Government policy as set out in 'Changing Our Ways' envisages and promotes economies of scale primarily at a regional level and while the 88,000 tonnes per annum permitted at Knockharley may be considered modest for example in regard to the needs of the Dublin region, it cannot be considered an insignificant amount in terms of its lifespan totality at 1.23 million tonnes.

I consider, however, that if the proximity principle is to be applied consistently then those wastes arising in the North-East region for landfill disposal should be disposed of in the North-East region. Meath County Council's submission at the Oral Hearing indicated quite clearly that already waste arisings within the North-East region are being disposed of in Kildare; and that given the shortfall which is likely to exist until 2007 between available landfill disposal capacity in the north-east and waste arisings there, the continued export of waste for disposal outside the region is envisaged. I consider that such a situation is environmentally unsustainable, in that the haulage distances involved for example in transporting waste to County Kildare will generate significant environmental impacts through air pollution, energy consumption and impact on road traffic and infrastructure; it is this very situation that the proximity principle if properly and consistently applied can pre-empt. On that

basis, therefore, I recommend that additional disposal capacity of 44,000 tonnes per annum be made available at Knockharley until the end of 2007, at which time more preferred options in the waste management hierarchy are scheduled to come on-stream. It should be noted that the additional capacity which I have recommended on an interim basis for Knockharley is not additional capacity over and above that which is required to service the needs of the north-eastern region, but rather is additional capacity required to service what must be considered an unsustainable practice of exporting waste arising in the north-east to contiguous regions.

- 17.6** Finally, with regard to the Planning Authority's requirement that each and every consignment of waste shall be accompanied by a certificate identifying origins, source and area in which the waste was produced, as well as waste collection schedules, I note that as the waste proposed for disposal at Knockharley will have been generated within the North-East region itself, that information will already be available to the Planning Authority under the appropriate Facility and Collection Permitting Regulations.

Having regard, therefore, to the identification of Knockharley as a suitable landfill site for both the county and the region, to the need for additional landfill disposal facilities over and above available existing facilities, to the mitigation measures proposed for the site, particularly in terms of landscaping, and site access, the latter being designed to avoid interference with local road network traffic and residential amenities, I consider that the proposed development is acceptable in principle at the site; the Planning Authority's restriction on origins of waste for disposal at the site are also, I consider, reasonable but require to be modified to take account of the shortfall in landfill disposal facilities likely to occur until 2007. Overall, therefore, I recommend that permission be granted for the proposed development in accordance with the conditions indicated in the Second Schedule.



## FIRST SCHEDULE

Having regard to:-

- (a) the provisions of Section 54(3) of the Waste Management Act, 1996, which precludes the Board from consideration of matters relating to the risk of environmental pollution from the activity;
- (b) the national waste management policy framework and strategy as set out in Government policy statements “Changing Our Ways” and “Delivering Change” published by the DOE in September 1998 and March 2002 respectively;
- (c) the waste management strategy for the North-East region as set out in the North-East Regional Waste Management Plan, 1999-2004;
- (d) the 2001 Meath County Development Plan which has an objective the provision of a landfill site at Knockharley;
- (e) permitted use by the EPA in February 2001 of portion of the site for a landfill facility;
- (f) and to the operational procedures and mitigation measures set out in the accompanying Environmental Impact Statement,

it is considered that the proposed development, subject to compliance with conditions set out in the Second Schedule, would not seriously injure the amenities or result in any long-term devaluation, of properties in the vicinity, would not give rise to traffic hazard, would be acceptable in terms of traffic safety and convenience and would accord with the proper planning and development of the area.

## SECOND SCHEDULE

1. The development shall be carried out in accordance with plans, drawings, documentation and particulars submitted to the planning authority on 11<sup>th</sup> January, 2001, as further supplemented and amended by plans and particulars received by the planning authority on 17<sup>th</sup> May, 2001, 1<sup>st</sup> June, 2001, 3<sup>rd</sup> July, 2001 and 9<sup>th</sup> July, 2001, except as may otherwise be required in order to comply with the following conditions.

**Reason:** To clarify the nature and extent of the proposed development.

2. Waste to be accepted for disposal at the residual landfill facility:-
  - (a) Shall be limited to waste arisings from the North-East region as defined by the Counties of Meath, Louth, Cavan and Monaghan.
  - (b) Shall be restricted to 132,000 tonnes per annum until December 2007; thereafter tonnage for disposal at the landfill facility shall be restricted to a maximum of 88,000 tonnes per annum.

Each consignment of waste arriving for disposal at the landfill facility shall be accompanied by a Waste Certificate which shall identify the weight of each consignment, the name and address of the waste collection contractor disposing of the waste and the composition and nature of the waste for disposal.

On a monthly basis to be agreed with the planning authority, the developer shall submit to the planning authority records of all waste delivered to the site on a daily, weekly and monthly basis.

**Reason:** To ensure that waste arisings within the North-East region shall be disposed of within that region in accordance with the proximity principle as expressed in the 1997 Waste Management (Planning Regulations) and to

ensure that the principles of regional waste management as set out in the 1999-2004 North-East Region Waste Management Plan are adhered to.

3. The proposed landfill footprint indicated on Drg. 2000-144-01-17, submitted to the planning authority on 11<sup>th</sup> January, 2001, shall be revised to provide for a minimum separation distance of 250 metres between the northern perimeter of the landfill footprint and the existing southernmost boundary of the third party appellant, Mr. Martin Curran's, property to the north. Plans and drawings showing the revised on site location of the landfill shall be submitted to and agreed upon in writing with the planning authority prior to the commencement of development.

**Reason:** To ensure that the residential amenities associated with the private open space at the rear of the dwelling will not be adversely impacted upon during the construction phase of the proposed development by reason of noise and to ensure that the locational context of the dwelling will not be adversely impacted on by reason of undue proximity of the rear garden to the landfill footprint.

4. Prior to the commencement of development the developer shall submit for the written agreement of the planning authority plans and drawings providing details of that area within the landfill administration block which it is proposed to provide for use as a public education area as outlined at Section 17 of the EIS Addendum submitted to the planning authority on 17<sup>th</sup> May, 2001.

**Reason:** To clarify the extent of the proposed public area within the administration block.

5. The identification of environmental community projects and works shall be decided upon by a community liaison committee; the composition of the committee shall be based upon equal representation of personnel from the planning authority, the developer, local residents and elected members of Meath County Council; any variation in the composition of the committee shall be subject to the prior agreement of the planning authority.

**Reason:** To identify appropriate environmental community projects which will mitigate the impact of the landfill facility on the local community in accordance with Government policy as set out in 'Changing Our Ways' published by the DOE in September 1998.

6. Prior to the commencement of development the development shall submit for the written agreement of the planning authority and the National Roads Authority design details for the following:-
- (a) The landfill access road junction with the National Primary Route, the N2, including drainage and lighting details.
  - (b) Details of all construction work associated with the proposed underpass of the CR384, including bridge construction works and associated traffic diversion arrangements to facilitate same.

No landfill operations shall take place on site until such time as the proposed access road to the landfill site from the national primary route, the N2, is complete as certified in writing by the planning authority.

**Reason:** In the interest of vehicular and pedestrian safety.

7. The developer shall:-
- (a) Submit for the written agreement of the planning authority and the National Roads Authority prior to the commencement of development details of the proposed traffic management plan which shall include,

inter alia, provisions prohibiting landfill associated traffic from travelling along the regional road, the R150, between its junction with the R153 to the west and the N2 to the east;

- (b) Submit over the lifetime of the traffic management plan details of any modifications deemed necessary to the plan as a result of any plan review; the review shall be carried out in conjunction with the planning authority and the National Roads Authority at not less than three monthly intervals during the initial construction phase of the landfill development and thereafter at not less than six monthly phases during the remaining life of the landfill.

**Reason:** In the interests of traffic and pedestrian safety and to protect existing educational and recreational facilities associated with the village.

8. Working hours during the construction phase of the proposed development shall be confined to between 0800-2000 hours Monday to Friday inclusive and 0800-1300 hours on Saturdays (excluding public holidays and Sundays) during the months of August and September 2002, and May, June, July, August and September 2003 unless otherwise previously agreed in writing with the planning authority; working hours outside of the above during the construction phase of the proposed development, shall be confined to between 0800-1800 hours Monday to Friday inclusive and 0800-1300 hours on Saturdays (excluding public holidays and Sundays) unless otherwise previously agreed in writing with the planning authority.

**Reason:** To protect the residential amenities of the area during the construction phase of the proposed development.

9. During the initial construction phase of the proposed development noise levels at the site when measured at noise sensitive locations in the vicinity shall not exceed 65dB(A) between 0800 and 2000 hours Monday to Friday inclusive and 0800-1300 hours on Saturdays, excluding public holidays and Sundays, and 45dB(A) at any other time.

Noise monitoring locations for the purposes of the construction phase of the proposed development shall be agreed upon in writing with the planning authority prior to the commencement of any development on site.

**Reason:** To protect the amenities of property in the vicinity of the site.

10. All domestic wells indicated at Fig. 7.1 of the EIS Addendum which are in use or come into use and any other wells as requested by the planning authority shall, with the permission of the owners, be surveyed and monitored in accordance with a programme to be agreed with the planning authority. If in the opinion of the planning authority the initial construction phase of the development has had or is likely to have a negative impact on private wells in the vicinity of the development, the developer shall make such provisions and take such measures as are deemed necessary by the planning authority to ensure immediate mitigation of impact to water supplies adversely affected during the construction phase of the development. The full costs of such measures shall be borne by the developer. An alternative water supply shall be made available immediately if it becomes evident from the monitoring programme that supplies are being adversely affected. Alternative water supplies may be secured by the deepening of private wells, drilling of new wells or other such alternatives as may be deemed necessary by the planning authority.

**Reason:** In the interest of residential amenity.

11. Prior to the commencement of development the developer shall put in place monitoring arrangements for the measurement of noise emissions, dust deposition and suspended solids of surface water run-off associated with the initial construction phase of the development; during the construction phase of the development the developer shall submit to the planning authority, on a frequency to be determined by the planning authority, the results of the monitoring programme. Monitoring locations for the above shall be agreed upon in writing with the planning authority prior to the commencement of development on site.

Dust deposition during the initial construction phase of the proposed development shall not exceed 350mg/m<sup>2</sup>/day when measured at the site boundaries and averaged over 30 days.

**Reason:** To protect the amenities of the area.

12. Prior to the commencement of development the developer shall submit for the written agreement of the planning authority details of temporary settlement ponds/silt traps and interceptors to control discharges of site surface water run-off in advance of the construction of the proposed permanent attenuation pond. The concentration of suspended solids in the surface water run-off from the site construction works, for discharge to surface waters shall not exceed 30mg/litre.

**Reason:** To prevent surface water pollution during the construction phase of the proposed development.

13. Prior to the commencement of development the developer shall submit for the written agreement of the planning authority details of:-

- (a) The extent, alignment, grading, elevational height and overall configuration of the screening berms proposed along the perimeter of the landfill footprint; the details shall provide for a 400 metre northerly extension of the screening berm proposed at the south-eastern corner of the footprint in order to provide screening of Phases 1, 2 and 3 from the dwellings to the east;

- (b) Landscaping proposals for the planted woodland belts around the perimeter of the site and for the proposed screening berms shall:-

- (i) indicate the configuration and depth of the planted perimeter belts;

- (ii) provide for a mix of feathered and standard, mainly deciduous fast growing native species of trees of minimum girth 8-10 centimetres,
  - (iii) provide for 10% of all planted trees to be fast growing evergreens.
- (c) Supplementary planting to strengthen hedgerows, and tree belts proposed for retention;
- (d) The estimated height of proposed planting at completion of each phase of the landfill;
- (e) A proposed planting scheme to a minimum depth of 10 metres along the entire length of both margins of the site access road.
- (f) Phased landscape implementation and maintenance programmes for the entire site including replacement of failed planting; the implementation and maintenance programmes shall accord priority to the landscaping treatment proposed around the southern, south-western and south-eastern corners of the landfill footprint and the site access road; the scheme shall provide in particular that the slopes of the screening berms be topsoiled, grass-seeded and planted as soon as practicable after their construction and that dust suppression sprays shall be used during periods of dry weather until a stable grass covering has been established.

Where modification to the above proposals at (a)-(f) above are required these shall not be carried out without the prior written consent of the planning authority and in default of agreement shall be decided by An Bord Pleanála.

**Reason:** To protect the visual and residential amenities of the area.



14. During the construction phase of the proposed development:-
- (a) Bunded storage areas shall be provided for the containment of oil, fuel storage tanks, chemicals and any other materials which pose a risk during the construction phase of the development to waters spilled. The bunded area shall be equivalent to a volume of 110% of the capacity of the largest container stored. Proposed method of drainage of the bunded area shall be to the satisfaction of the planning authority.
  - (b) A wheel-wash facility shall be provided adjacent to the site exit, the details, including the location of such a facility, being agreed upon in writing prior to the commencement of development with the planning authority.
  - (c) Arrangements for the collection, storage and disposal of all foul sewage effluent arising from temporary site sanitary facilities shall be submitted to and agreed upon with the planning authority prior to the commencement of development.

**Reason:** In the interests of public health and the protection of the amenities of the area.

15. The developer shall facilitate the planning authority in the archaeological appraisal of the site and in preserving and recording or otherwise protecting archaeological materials or features which may exist within the site. In this regard, the developer shall:-
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
  - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:-

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

Prior to the commencement of development, a report containing the results of the assessment shall be submitted to the planning authority. Arising from this assessment, the developer shall agree with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be determined by An Bord Pleanála.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site.

16. During the construction phase of the proposed development a minimum 15 metre wayleave free from development shall be provided adjacent to the gas transmission line and the ESB high tension pylons crossing the site. The developer shall consult with the relevant statutory utility operators in this regard.

**Reason:** In the interest of public safety and to conform with the requirements of the relevant utility operators.

17. Within two years of the final capping of the last phase of the landfill, the planning authority shall, by way of formal notification, require the developer to implement any final landscaping restoration measures it may require. In the event of failure to comply with that formal notification, the planning authority shall be empowered to apply the funds or part thereof as referred to in Condition No. 21 to the satisfactory completion of such restoration measures.

**Reason:** To ensure satisfactory restoration of the site in the interests of amenity.

18. The internal road network accessing and serving the proposed landfill disposal facility, including turning bays, junctions, parking, hardstanding areas, footpaths, kerbs and the construction of the N2/access road entrance shall be carried out in accordance with the detailed requirements of the planning authority for such works.

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

19. Lighting arrangements for the overall site and access road shall be provided in accordance with a scheme, details of which shall be submitted to the planning authority for agreement prior to the commencement of development.

**Reason:** In the interests of public safety and to provide a satisfactory standard of development.

20. Prior to commencement of development the developer shall lodge with the planning authority a cash deposit to secure satisfactory implementation of measures to replace affected water supplies which may result from the construction phase of the proposed development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the provision of such implementation. The amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

**Reason:** In the interest of public health and to ensure a continuous supply of potable water during the construction phase of the proposed development.

21. Prior to commencement of development the developer shall lodge with the planning authority a cash deposit to secure any final landscaping restoration measures required to be undertaken under the terms of Condition No. 19, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion and maintenance of any part of the landscape restoration plan. The amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

**Reason:** To ensure the satisfactory completion of a landscape restoration plan for the site.

22. The developer shall pay a sum of money to the planning authority as a contribution towards the expenditure that is proposed to be incurred by the planning authority in respect of environmental improvement projects facilitating the community in which the landfill site is located. The amount of the contribution shall be based on a payment of €1.27 per tonne of waste disposed of at the landfill site as calculated on annual waste inputs.

Payment of this contribution is subject to the provisions of section 26(2)(h) of the Local Government (Planning and Development) Act, 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order.

**Reason:** It is considered reasonable that the developer should contribute towards the expenditure proposed to be incurred by the planning authority in respect of environmental improvement projects and works for the area in which the proposed landfill facility is situated in order to mitigate the impact of such a facility on the community in accordance with Government policy as set out in “Changing Our Ways” published by the DOE in September 1998.

23. The developer shall pay a sum of money to the planning authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of road works facilitating the proposed development. The amount of the contribution and the arrangements for payment shall be agreed between the developer and the planning authority or, in default of agreement, shall be determined by An Bord Pleanála.

In the case of expenditure that is proposed to be incurred, the requirement to pay this contribution is subject to the provisions of section 26(2)(h) of the Local Government (Planning and Development) Act, 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order.

**Reason:** It is considered reasonable that the developer should contribute towards the expenditure that was and/or that is proposed to be incurred by the planning authority in respect of works facilitating the proposed development.

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**Mary Cunneen,**

**Inspectorate.**

**July, 2002.**

**mk**