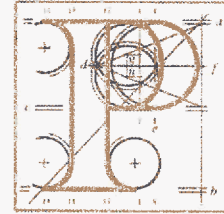


Our Case Number: ABP-300506-17



**An
Bord
Pleanála**

Environmental Protection Agency
C/O EIA Planning Department
Johnstown Castle Estate
Co. Wexford
Y35 W821



Date: 12 NOV 2020

Re: Increase in waste material at disposal facility
Drehid Waste Management Facility at Timahoe West, Coolcarrigan, Killinagh Upper, Killinagh Lower, Drummond, Kilkeaskin, Loughnacush, Parsonstown, Carbury, County Kildare.

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned case. A copy of the order is enclosed.

Please be advised that in accordance with the provisions of section 37H(4) of the Planning and Development Act, 2000 as amended a grant of permission under section 37G shall not become operative until payment by the applicant of a sum in respect of costs has been complied with.

Furthermore, section 37H(5) states that where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement made under subsection 2(c) the Board, the authority or any person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.

In accordance with section 146(5) of the Planning and Development Act, 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The attachment contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Teil	Tel	(01) 858 8100
Glaio Áitiúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maolbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

Yours faithfully,

Rob Mac Giollarnáth

Rob Mac Giollarnáth
Executive Officer
Direct Line: 01-8737247

PA17

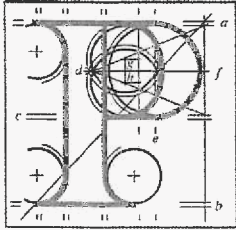
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An
Bord
Pleanála

Board Order
ABP-300506-17

Planning and Development Acts, 2000 to 2020

Planning Authority: Kildare County Council

Application for permission under section 37E of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an Environmental Impact Assessment Report lodged with An Bord Pleanála on the 20th day of December, 2017 by Bord na Móna Environmental Limited care of Tobin Environmental Services Limited of Block 10-4, Blanchardstown Corporate Park, Dublin. A Natura impact statement was subsequently requested by An Bord Pleanála and was received by An Bord Pleanála on the 8th day of November, 2018.

Proposed Development: The development will consist of further developments to the existing Drehid Waste Management Facility (developed pursuant to a grant of permission under Kildare County Council planning register reference number 04/371 and An Bord Pleanála appeal reference number PL 09.212059) including:

- Changes to the volume and nature of wastes to be accepted at the landfill disposal facility;
- Development of additional non-hazardous and new hazardous landfill capacity to provide for the sustainable landfill of these waste streams for a period of twenty five years;
- Pre-treatment or processing of certain waste streams prior to landfill;
- Increasing the volume of waste to be accepted at the composting facility, and the removal of the restriction on the operating life of the composting facility

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contained in Condition 2(2) of An Bord Pleanála appeal reference number PL.09.212059;

- On-site treatment of leachate; and
 - Development of associated buildings, plant, infrastructure and landscaping.
- (A) the development of a new landfill footprint of approximately 20.89 hectares (ha) to accommodate the sustainable landfill of an additional 250,000 tonnes per annum (TPA) of non-hazardous waste including incinerator bottom ash (IBA), construction and demolition (C&D) waste including fine fraction, soil and stone, and stabilised biowaste arising from the biological treatment of the biodegradable fraction of municipal waste [over and above the already permitted disposal of 120,000 TPA of non-hazardous municipal waste permitted for a 20-year period to 2028, and the already permitted disposal of an additional 240,000 TPA which is scheduled to cease by the end of 2017];
- (B) the on-site recovery of approximately 15,000 TPA of metals prior to landfilling of the residual IBA in a Non-Hazardous IBA Maturation and Metals Recovery Facility which includes: -
- (i) a reception and maturation building with a floor area of 7,380 square metres and maximum height of 14.1 metres, and
 - (ii) a metals recovery building with a floor area of 2,520 square metres and maximum height of 12 metres;
- (C) the provision of a 4.69 hectares inert material storage area;
- (D) the development of a new landfill footprint of approximately 10.79 hectares to accommodate the sustainable landfill of 85,000 TPA of hazardous wastes, including incinerator fly ash and other residues, as well as other hazardous waste streams which are currently exported from this country for landfilling;
- (E) on-site pre-treatment of incinerator fly ash and flue gas treatment residues prior to landfilling in the Ash Solidification Facility entailing: -
- (i) an ash solidification building with a floor area of 613 square metres and maximum height of 15.2 metres with associated external silos approximately 22

- metres in height and two number external bunded liquid additive tanks with a maximum height of 5 metres, and
- (ii) a switch and control room with a floor area of 24 square metres with a maximum height of 3 metres;
- (F) a Hazardous Waste Handling Building with floor area of 400 square metres and a maximum height of 12 metres;
- (G) a Hazardous Waste Storage and Quarantine Area with a floor area of 400 square metres and a maximum height of 6.5 metres;
- (H) an increase by 20,000 TPA in the volume of waste to be accepted at the existing Composting Facility (from the currently permitted 25,000 TPA), and removal of the restriction on the operating life of this facility, which is currently aligned with the landfill life. [This will not require any changes to the existing footprint of the facility];
- (I) an extension to the existing Composting Facility to cater for an additional 45,000 TPA entailing: -
- (i) a composting building, including biofilters/odour abatement, with a floor area of 6,905 square metres and maximum roof height of 12.0 metres (with a maximum stack height of 15 metres);
- (ii) a composting plant control room, with a floor area of 576 square metres and maximum height of 6.5 metres and
- (iii) addition of a new hygenisation tunnel to the existing compost facility.
- (J) a Waste Control Building with a floor area of 188 square metres and maximum height of 5.5 metres within a 13,165 square metres waste control area, including delineated holding areas for waste delivery vehicles and eight number car parking spaces;
- (K) an existing maintenance building converted to a Welfare Building with a floor area of 356 square metres and a maximum height of 6.5 metres;

- (L) a Maintenance Building with a floor area of 850 square metres and maximum height of 9 metres, with an associated storage yard and adjacent Fuel Storage Bund with a maximum height of 5.5 metres;
- (M) the provision of a Leachate Treatment Facility (within a 3,402 square metre bunded area) to cater for the treatment of leachate from the existing and proposed landfill infrastructure at the Drehid WMF, prior to transport off-site by road tankers, for safe disposal at a licensed municipal wastewater treatment plant;
- (N) the provision of seven number additional surface water attenuation lagoons comprising:
 - (i) surface water attenuation lagoon No. 5 (5,163 square metres)
 - (ii) surface water attenuation lagoon No. 6 (5,163 square metres)
 - (iii) surface water attenuation lagoon No. 7 (2,442 square metres)
 - (iv) surface water attenuation lagoon No. 8 (2,442 square metres)
 - (v) surface water attenuation lagoon No. 9 (650 square metres)
 - (vi) surface water attenuation lagoon No. 10 (1,264 square metres), and
 - (vii) construction surface water attenuation lagoon No. 11 (5,183 square metres).
- (O) the provision of four number additional integrated constructed wetlands;
- (P) service and dedicated circulation roads with new junctions from the existing internal site access road serving the Drehid Waste Management Facility;
- (Q) an 829 square metres parking area to provide for 35 number additional parking spaces (five number car parking spaces will include electric car charging facilities);
- (R) Two number 238 square metre weigh-bridges and bypasses, two number 43 square metre wheel-washes and areas of hard-standing and one number Weighbridge Kiosk with a floor area of 18.58 square metres and a maximum height of 3.55 metres;
- (S) landscaped areas and screening bunds of varying heights; and,

CMG

(T) all associated ancillary development works necessary to facilitate the proposed development and the restoration of the site following cessation of waste acceptance.

Planning permission is sought for a period of ten years.

The development will take place on a total site area of 272 hectares in the townlands of Timahoe West, Coolcarrigan, Killinagh Upper, Killinagh Lower, Drummond, Kilkeaskin, Loughnacush, and Parsonstown, Carbury, County Kildare, and comprises:

Decision

Refuse permission under section 37G of the Planning and Development Act 2000, as amended, for the above proposed development based on the reasons and considerations set out below.

Determine under section 37H(2)(c) the sum to be paid by the applicant in respect of costs associated with the application as set out in the Schedule of Costs below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

European Legislation, including of particular relevance:

- Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment.
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- Directive 2000/60/EC for establishing a framework for Community action in the field of water policy.
- Directive 2006/118/EC concerning groundwater.

National legislation, including of particular relevance:

- The European Communities Environmental Objectives (Surface Waters) Regulations 2009, as amended.
- The European Communities Environmental Objectives (Groundwater) Regulations 2010, as amended.

National and regional planning and related policy, including:

- The National Planning Framework – Ireland 2040, which contains objectives to increase waste treatment and management capacity and a standardised approach to managing waste.
- The National Development Plan – Ireland 2018 - 2027, which identifies the need to increase capacity in waste management infrastructure to meet existing and future waste management objectives.
- The Regional Policy Guidelines for the Greater Dublin Area 2010-2022.
- The Eastern-Midlands Region Waste Management Plan 2015–2021.

The local planning policy including:

The provisions of the Kildare County Development Plan 2017-2023, specifically Policy Objectives WM1; WM3; WM5; WM12/ WM17; and WM18, in addition to Transport Policy MT15 and Policies BL1-BL8 for Boglands.

The following matters were taken into consideration:

- (a) The evidence provided with regard to the European, national and regional requirements for the treatment and disposal of wastes, including bottom ash, hazardous waste, and biological waste.
- (b) The nature, scale and design of the proposed development including the new landfill cells and associated infrastructure.
- (c) The evidence submitted with regard to the operation of the existing facility, including traffic impacts and the impact on water quality in the Cushaling catchment.
- (d) The design, layout, and landscaping of the proposed facility.
- (e) the range of proposed mitigation measures set out in the submitted documentation lodged including the Environmental Impact Assessment Report and the Natura impact statement incorporating appropriate assessment screening.
- (f) the submissions made in relation to the application including those submitted at the oral hearing and the report and recommendation of the Inspector and the additional report provided to the Board by the consultant.

Appropriate Assessment: Stage 1

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report dated 12th of September, 2018, in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives. The Board, in its Direction dated the 20th of

September, 2018, requested the submission of a Natura impact statement in accordance with section 177T(5) of the Planning and Development, 2000 (as amended).

Appropriate Assessment: Stage 2

The Board considered the Natura impact statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the site's Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (a) the uncertainty regarding the potential impact of suspended solids and ammonia run-off from the proposed disposal site and/or from drainage works associated with the works and their potential impact on actual or potential salmonid breeding grounds in the tributaries of the Barrow River.
- (b) the mitigation measures, which are included as part of the current proposal, and
- (c) the conservation objectives to restore the favourable conservation condition of Salmon in the River Barrow and River Nore Special Area of Conservation (Site Code: 002162).

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposal on the aforementioned European Site, having regard to the site's conservation status. It is a conservation objective of the aforementioned River Barrow and River Nore Special Area of Conservation to restore the favourable conservation condition of salmon and the protection and improvement of water quality in potential and existing spawning beds in the upper reaches of the catchment are considered to be significant to this objective.

CMG

Having regard to:

- i. The mitigation measures proposed,
- ii. the scientific information set out in the Natura impact statement in respect of water quality and habitat status in the upper reaches of the catchment, and
- iii. the impact of ammonia arising from the site resulting from the proposed operation and the management of Timahoe Bog,

the Board concluded that the proposed development would adversely affect the favourable conservation status of Salmon because of the potential for raised ammonia levels in the upper reaches of the catchment. In overall conclusion, the Board was not satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site, in view of the site's conservation objectives.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) The nature, scale and extent of the proposed development.
- (b) The Environmental Impact Assessment Report and associated documentation submitted in support of the application.
- (c) The submissions from the planning authority, the observers and prescribed bodies in the course of the application and the submissions of the applicant, planning authority, observers and prescribed bodies during the oral hearing,
- (d) The Inspector's report and consultant's report.

The Board agreed with the summary of the results of consultations and information gathered in the course of the environmental impact assessment, and the examination of the information contained in the Environmental Impact Assessment Report and the associated documentation submitted by the applicant and the submissions made in the course of the application as set out in the Inspector's report. The Board is satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.

Reasoned Conclusions on the Significant Effects

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts as set out below.

The main significant effects, both positive and negative are:

- **Significant negative impacts** on local ecology, specifically ammonia run-off from the site and landholding into local watercourses. It is not considered that the mitigation submitted is sufficient to prevent direct and indirect impacts on the ecology of the upper reaches of tributaries of the River Barrow.
- Significant **negative impacts** on **material assets** as a result of additional traffic loading on public haul roads. Notwithstanding the mitigation measures proposed, the residual impacts could still be significant.
- There is a **significant potential for impacts** on ground and surface waters by way of ammonia emissions from cutaway bog and the disposal activities, with consequent impact on downstream habitats.
- There is potential for a number of slight or short and very localised negative impacts to **biodiversity**. The loss of scrub and woodland habitat on the cutaway bog would reduce the extent of habitat for a range of local species.

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The Board completed an environmental impact assessment in relation to the proposed development and concluded that, having regard to the potential downstream effects on the environment of ammonia emissions the proposed development, by itself and in combination with other development in the vicinity, would not be acceptable. In doing so, the Board adopted the report and conclusions set out in the Inspector's report.

Overall Conclusion

The proposed development would give rise to impacts which are significantly negative. Environmental impact assessment and appropriate assessment have been considered as set out in the sections above. It can, therefore, be concluded that the proposed development would not be in accordance with the proper planning and sustainable development of the area.

Reasons and Considerations

1. On the basis of the information provided with the application documentation and the further information submitted, including the Natura impact statement, and in the light of the potential for the proposed development, in combination with other developments in the area, to continue the ongoing degradation of remaining peat within Timahoe Bog resulting in an excess of ammonia and suspended solids in the Cushaling and Figile Rivers, with a consequent impact in preventing these rivers, part of the Barrow Nore catchment, to develop into suitable habitat for salmonid species, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162), in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting permission.

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2. Having regard to the complex hydrological and hydrogeological conditions obtaining on-site, to the limited investigation carried out of those conditions and hence to the potentially inadequate mitigation measures associated with the proposed development, it is considered that on the basis of the information submitted with the application documentation and the further information submitted, the development site is unsuitable for a development of the nature and scale proposed, having regard to ongoing excess ammonia concentrations in groundwater and in local watercourses, which include watercourses with potential for salmonid habitat which flow into the River Barrow and River Nore Special Area of Conservation (Site Code: 002162). The proposed development would, therefore, have a significant adverse effect on the conservation and protection of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162), and would therefore be contrary to the proper planning and sustainable development of the area.

3. The Board is not satisfied, on the basis of the information submitted with the application documentation and the further information submitted, that the subsurface geology of the site is suitable for the proposed hazardous waste cell. It is considered that given the site's high groundwater levels and the uncertainty regarding the nature of the subsurface, that the applicant has not demonstrated that the proposed development would ensure the safe disposal of this material on the site. The proposed development would give rise to a hazard to public health and would, therefore, be contrary to the proper planning and sustainable development of the area.

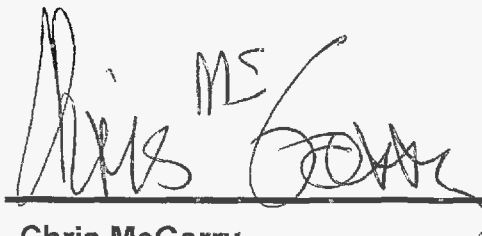


4. Having regard to the proposed development being accessed solely via a sub-optimal network of Regional Roads which run through a series of villages before connecting with the National Road Network, it is considered that the proposed development would generate a significant volume of traffic, including a high number of movements by heavy goods vehicles, and the Board cannot be satisfied on the basis of the information submitted with the application documentation and the further information submitted and the documentation submitted from other parties, that the road network in the vicinity of the site is capable of accommodating this significant additional volume of traffic safely due to the restricted width and capacity of the R402, R403, R407 and R409 in the vicinity of the site. The proposed development would, therefore, give rise to traffic congestion and would endanger public safety by reason of traffic hazard.

Schedule of Costs

In accordance with the provisions of section 37H(2)(c) of the Planning and Development Act 2000, as amended, the amount due to be paid by the applicant to the Board is **€109,723**.

A breakdown of the Board's costs is set out in the attached Appendix 1.

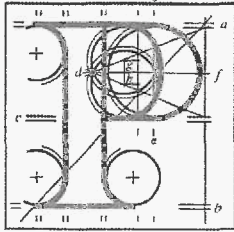


MS
MS

Chris McGarry

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 11th day of November 2020



An
Bord
Pleanála

**Board Order –
Appendix 1
ABP-300506-17**

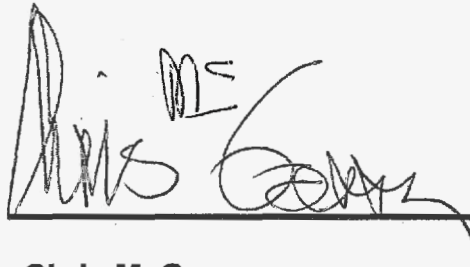
Strategic Infrastructure Development

File Number: ABP-300506-17

Proposed Development: 10-year planning permission for development to existing Drehid Waste Management Facility, County Kildare.

Costs incurred by the Board in determining the application.

Board's Costs		
(1)	Cost (calculated based on Inspector's time) Inspector 1 (pre-application consultation) Inspector 2 (application)	€17,352 €183,160
(2)	Costs invoiced to Board: Consultant Fees Oral hearing venue costs Oral hearing sound/recording	€8,100 €2,600 €3,661
(3)	Total chargeable costs	€214,873
(4)	Application Fee - €100,000 Pre-application Consultation Fee - €4,500	€104,500
(5)	Observer fees paid	€650
(6)	Net amount due to be paid to the Board	€109,723



Chris McGarry

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 11th day of November 2020

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(7) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

