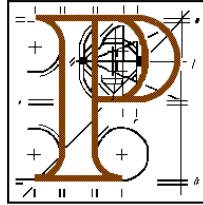


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## An Bord Pleanála



### Inspector's Report

**Development:** Alter condition no.1 of previously permitted landfill at Drehid Waste Management Facility (PA0004)

**Site Address:** Drehid Waste Management Facility, Killinagh Upper, Carbury Co. Kildare

**Applicant:** Bord na Móna plc

**Type of Application:** Request for alteration to condition of planning permission granted for the Engineered Landfill under section 146B of the Planning and Development Acts 2000, as amended

**Inspector:** Pauline Fitzpatrick

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## 1.0 INTRODUCTION

Bord na Móna is requesting that the Board exercise its power under section 146B of the Planning and Development Act 2000, as amended, to alter condition 1 attached to a previously approved permission to allow municipal solid waste to be disposed at its Drehid landfill facility at the higher rate of 360,000 tonnes per annum until 1<sup>st</sup> December 2017, rather than 1<sup>st</sup> December 2015 which is stipulated in condition 1 attached to the existing permission as amended by way of a previous Section 146B application in 2013.

The site has a stated area of 179ha within a larger landholding of 2,544ha within Timahoe Bog in the north of county Kildare c18km northwest of Naas.

## 2.0 SCOPE OF REPORT

Section 146B of the Act provides for a two stage process to be undertaken by the Board. In the first stage the Board must decide as soon as possible, whether or not the making of a proposed alteration would constitute “the making of a material alteration of the terms of the development concerned”. If the Board decides that the alteration proposed would not constitute a material alteration, it may proceed to alter the permission. The second stage arises if the Board decides that the proposed alteration would constitute a material change. This triggers certain requirements including consideration of environmental impacts and whether there is a need for the preparation of an environmental impact statement.

The main purpose of this report is to assist the Board in completing the first stage of the 146B process i.e. determination of the materiality of the proposed alteration viz a viz the strategic infrastructure subject development.

## 3.0 PLANNING HISTORY

**PL 09.212059, Reg. Ref.04/371** - Permission granted on appeal on the 21/11/15 for an engineered landfill of 21.8ha to accept up to 120,000 tonnes per annum of non-hazardous residual municipal waste for disposal, a composting facility with a capacity of 25,000 tonnes and all ancillary works on a total site area of 139 Ha at the Drehid Waste Management Facility.

Condition 2(1) of the permission states -

*The landfill footprint shall be as proposed in the documentation submitted to the planning authority on the 24th day of February, 2004.*

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*The active deposition of waste is permitted for a period of twenty years and shall not exceed an annual tonnage of 120,000 tonnes for the deposition of waste. Capping and restoration works on the site shall be completed within two years of the expiry of the period for waste deposition.*

*Reason: To define the scale of the proposed development, in the interest of minimising recourse to landfill in accordance with national policy.*

**PA0004** – Permission granted by the Board 31/10/08 under section 37G of the planning act for the extension and intensification of the Drehid facility, increasing the footprint of the landill by 17.8ha and disposing of 240,000 tonnes of non-hazardous municipal waste per annum for 7 years (over and above the 120,000 tonnes per annum previously authorised).

Condition no 1 of the permission states –

*The landfill footprint extension shall be as proposed in the documentation submitted to the Board on the 30th day of April, 2008. Waste to be accepted at the facility for disposal shall be restricted to 360,000 tonnes per annum until 1st of December 2013. Thereafter waste for landfill disposal at the facility shall be restricted to a maximum of 120,000 tonnes per annum, in accordance with the conditions attached to the original permission, PL 09.212059, unless a further permission in this respect is granted.*

*Reason: The Board considers it appropriate that the increased rate of waste deposition hereby permitted should be reviewed after five years, in the light of waste policy and capacity pertaining at that time.*

**PA0027** Grant of permission by the Board on 15/03/13 under section 37G of the planning act for a mechanical biological treatment facility with a capacity of 250,000 tonnes per annum of waste on the same landholding as the current site.

**PM0003** – Alteration by the Board on 23/12/13 of decision made under PA0004 by way of Section 146B(3)(a) so that Condition 1 be set out as follows:

*The landfill footprint extension shall be as proposed in the documentation submitted to the Board on the 30th day of April, 2008 under register reference number PA0004. Waste to be accepted at the facility for disposal shall be restricted to 360,000 tonnes per annum until the 1st day of December, 2015. Thereafter waste for landfill disposal at*

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*the facility shall be restricted to a maximum of 120,000 tonnes per annum, in accordance with the conditions attached to the original permission, PL09.212059, unless a further permission in this respect is granted.*

**Reason:** *The Board considers it appropriate, in the light of waste policy and capacity pertaining at this time, that the increased rate of waste deposition shall only be authorised until the 1st day of December 2015, in accordance with the application made under PL09.212059 and the accompanying environmental impact statement.*

As per the reasons and considerations cited the Board had regard to:-

- (a) the provisions of the document “A Resource Opportunity – Waste Management Policy in Ireland”, issued by the Minister for the Environment, Community and Local Government (2012), which has extended the duration of the waste management plans that were applicable when An Bord Pleanála granted permission under application reference number 09.PA0004,
- (b) the absence of certain facilities envisaged in the Waste Management Plan for the Dublin Region 2005 - 2010,
- (c) the likely waste arisings and capacity issues in the Greater Dublin Area in 2014 and 2015,
- (d) the terms of the waste licence that governs activity on the site, issued by the Environmental Protection Agency under License Register Number 0201-03,
- (e) the nature of the development applied for under PL09.212059, which was for a period of operation of seven years, and which was accompanied by an environmental impact statement,
- (f) the purpose of the development permitted under PL09.212059, which was principally to serve the Greater Dublin Area,
- (g) the nature and limited duration of the alteration sought,
- (h) the environmental impact assessment already undertaken by the Board in respect of the seven-year operation of the development under PL09.212059, whereby the Board concluded that the development would be acceptable.

The Board considered that the making of the proposed alteration would be in accordance with the waste management policies of the State and its obligations under European legislation and that the proposed alteration would not be likely to have significant effects on the environment or on any European site. The proposed alteration would, therefore, be in accordance with the proper planning and sustainable development of the area.

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## 4.0 THE REQUEST

### 4.1 Proposed alteration

The request from the applicant seeks the alteration of condition no. 1 of the permission 09. PA0004 (as amended) to allow for the reception of 360,000 tonnes per annum of municipal waste per annum for a further two years until 1<sup>st</sup> December 2017. So the altered condition would be –

*The landfill footprint extension shall be as proposed in the documentation submitted to the Board on the 30th day of April, 2008. Waste to be accepted at the facility for disposal shall be restricted to 360,000 tonnes per annum until **1st of December 2017**. Thereafter waste for landfill disposal at the facility shall be restricted to a maximum of 120,000 tonnes per annum, in accordance with the conditions attached to the original permission, PL 09.212059, unless a further permission in this respect is granted.*

*Reason: the Board considers it appropriate in the light of waste policy and capacity pertaining at this time, that the increased rate of waste deposition shall only be authorised until the 1<sup>st</sup> day of December 2017.*

The grounds for the request which is accompanied by supporting documentation can be summarised as follows:

### 4.2 Need for Alteration

- The Regional Waste Authorities have estimated that there is a national shortfall of capacity for treatment/disposal of residual municipal waste and associated wastes of up to 6,000 tonnes per week. There is a backlog of waste with stockpiling at licenced and permitted sites.
- The Regional Authorities have identified that the only facility with immediately available additional capacity is Drehid.
- In March 2016 all Local Authorities simultaneously and collectively invoked their powers under section 56 of the Waste Management Act, to make Orders specifically in relation to making arrangements for the activation of all immediately available landfill capacity and the taking of such other necessary measures to limit or prevent environmental pollution for a prescribed period up to 10<sup>th</sup> June 2016. The additional capacity required to be provided at Drehid is 138,000 tonnes (6,000 tonnes per week for 23 weeks up to 10<sup>th</sup> June).
- The potential to export waste falls off from April/May onwards as the demand for heat and electrical power from incinerators softens and

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such plants undergo outages for maintenance during summer months. This is reflected in increased demand for landfill capacity in the home market. Operators have been reporting increased difficulty in securing exports contracts and it is predicted that exports in 2016 will be less than 2015.

- The EPA has issued an amendment to the licence to permit Drehid to accept 360,000 tpa until 31/12/17. A new EIS was not required.
- The MBT facility permitted under PA0027 has not yet commenced.

### **4.3 Waste Policy**

#### *National*

- Waste policy has not changed significantly since the permission was granted. The most recent document, *A Resource Opportunity – Waste Management Policy in Ireland* issued by the Department of the Environment in July 2012 reduced the number of waste management regions from 10 to 3. It recognises the need for a sufficiency of waste management infrastructure in the state, including landfill facilities. There is a change of emphasis from each of the 10 regions acting somewhat independently to a State approach.

#### *Regional*

- The continued intensification of the deposition of waste at the landfill provides a key physical infrastructure to support continued population and economic growth while other facilities are progressing and would accord with the policies and objectives of the RPGS for the Greater Dublin Area 2010-2022.
- The Eastern – Midlands Regional Waste Management Plan 2015-2021 states that a key challenge is the managing of waste in a sustainable and self-sufficient way. The exporting of waste is not considered to be self-sufficient. The plan also identifies the risks in relying on the export market.
- In 2013 300,000 tonnes was exported which equates to approx. 20% of the available residual waste market in Ireland. It is estimated that approx. 550,000 tonnes may have been exported in 2015.
- There is a shortage in the region and State until the Dublin Waste to Energy facility is fully available to accept waste.
- The plan identifies that there will be an ongoing need for landfill capacity and that there is also a need to maintain a contingency supply.

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- Policies E8 to E10 acknowledge the continued need for disposal capacity at existing landfills.
  - Due cognisance of the other Waste Management Regional Plans (Southern and Ulster) is relevant in view of the need to ensure sufficient infrastructure is available at State level.

#### *Local*

- The 2011 Kildare County Development Plan incorporates the current Kildare Waste Management Plan and recognizes the need for waste management facilities. The continued intensification of deposition of waste fully complies with Plan policies in that it forms part of a balanced approach to ensuring the provision of infrastructure to accommodate future economic growth of the county.

#### **4.4 Effects on the Environment**

- The EIS submitted with the original application considered the potential effects. It concluded that the extension and intensification of the landfill would not have significant effects on the environment. The current proposal does not entail any physical changes to the footprint of the landfill nor the final overall volume of waste that will be disposed of which were assessed within the EIS.
- A number of the matters that the Board had regard to in December 2013 are still valid with respect to this request:-
  - There is still a demonstrated need for the capacity that can be provided by Drehid in the absence of expected new facilities in the state
  - The waste arisings and capacity issues highlighted by the Regional Authorities,
  - The limited duration of the request
  - The importance that the development is acceptable as demonstrated in the EIA undertaken by the Board
  - And the issuing of a Technical Amendment by the EPA to permit 360,000 tpa for disposal until 31/12/17 without the need for a new EIS.

It is requested that the Board in accordance with Section 146 B (5)(a) determines that the making of the alteration is not likely to have significant effects on the environment, and proceeds to make a determination under subsection (3)(b).

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## 5.0 ASSESSMENT

I consider that the matter for adjudication at this juncture is whether the making of the alteration to the terms of the development subject of the permission granted under re. PA0004 and altered under PM0003 would constitute the making of a material alteration in the terms of the development concerned.

### *Materiality of the proposed alteration*

The issue of materiality is related to '*the terms of the development concerned*' which would imply that what is envisaged to be considered is whether there is a material change in the nature or terms of the development approved.

The Board in granting permission for the extension and intensification of the Drehid landfill facility under ref. PA0004 saw fit to restrict the higher rate of disposal of 360,000 tonnes per annum for 5 years rather than the 7 year period sought. This period was subsequently altered by way of Section 146b(3)(a) allowing for a further 2 year period. The Board did this explicitly and for stated reasons that referred to public policy, the likely waste arisings and capacity issues in the Greater Dublin Area and the nature and limited duration of the alteration sought.

The current request seeks to extend the period of increased disposal for a further two year period until December 2017. I note that the proposed request would bring about a period of 9 years in which the higher rate of deposition would be applicable. This exceeds the 7 year period sought in the application made under PA0004. In light of these circumstances I submit that the proposed alteration, although for a temporary period, should be regarded as material within the meaning of section 146B(2)(a) of the act.

The Board should therefore decide whether to make the alteration under section 146B(3)(b). Prior to making such a determination Section 146b (8)(a) requires the person making the request to initiate consultation.

### *Consultation*

I consider that due to the period of time within which the higher rate of deposition could occur which is a material departure from the stated terms of the extant permission, coupled with the level of interest and scale of observations submitted in respect of both the application made under ref. PA0004 and the subsequent Section 146B request I recommend that the public should be afforded an opportunity to comment.



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*Likelihood of significant effects on the environment*

I propose to make some initial comment in relation to likelihood of significant effects on the environment based on the information submitted and a review of development permitted on the site.

The proposed alteration would allow the disposal of 360,000 tonnes of waste each year for a further two years. The submission made by the applicant with respect to the likely effects of the proposal is comparable to that made on the previous Section 146B alteration request. I note the Inspector's assessment on the previous request. I would concur with same and consider it to be relevant in this instance.

I note that the Board's consent to the development under 09. PA0004 was only given after an EIA of the proposed development was carried out, as required by the EIA directive. The EIA was therefore complete before the decision was made. The conditions on a permission might alter the development in order to make sure that its impact on the environment was acceptable. But this happens after the environmental impact of the development presented to the board has been assessed.

The development that was put before the Board under PA0004 provided for the deposition of MSW to landfill at the same rate as now proposed for a period of 7 years. The current proposal will result in a period of 9 years by which the rate of deposition is proposed. As noted in Table 1 of the applicant's submission the facility has not accepted the maximum permitted volume of 360,000 tonnes in any of the 7 preceding years.

The alteration that is now being requested does not entail the carrying out of works to land that were not proposed in the application, it does not entail any physical changes to the footprint of the landfill, the final overall volume of waste that will be disposed of nor amend the nature of the waste accepted at the site. All these matters were described and assessed within the EIS. Neither the EIS nor the Inspector's report for the application identified any significant effects on the environment arising from the proposal.

The restriction in the period of the increased rate of deposition effected by condition no. 1 of the permission which was subsequently amended under Section 146 (b) in 2013 did not alter the physical works required to facilitate the extension of the landfill, or the method by which the emissions from the deposition would be managed. The reason for the restriction expressed in the Board's order referred to matters of policy. It did not refer to any effect of the period of deposition on human beings; flora and fauna; soil, water, air, climate and the landscape; material assets and cultural heritage; or the

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interaction of the foregoing. The clear inference is that no significant effects on the environment were identified from the period of intensified deposition proposed in the last application.

I note that the EPA issued a Technical Amendment to the relevant licence (register number W0201-03) to permit 360,000 tonnes per annum for disposal to landfill until 31/12/17 without the need for a new EIS. The said amendment is dated 15/03/16.

On the basis of the above I would advise that the extension of the period by which the increased deposition can be received at the facility by 2 years over the 7 year period cited in the application would not, in itself, have material effects on the environment.

#### *Appropriate Assessment*

There has been no alteration in terms of European Sites since the previous Section 146(b) request. I would concur with the Inspector's assessment in that instance.

The site is not within or immediately adjacent to any Natura 2000 sites. The consideration of the development undertaken before permission was granted addressed the likely direct and indirect impact of the development on designated sites, and concluded that no significant impact upon them was likely. This is evident from the submitted EIS and the Inspector's report, from which the Board's decision did not depart. The proposed alteration would not involve any activity or works that was not considered in the EIS and the inspector's report on the previous application.

The making of the alteration would not, therefore, in my opinion be likely to have significant effect on any designated Natura 2000 site in the light of the conservation objectives of the site

## **6.0 RECOMMENDATION**

I recommend that the Board –

- makes a determination under section 146B(2) of the Planning and Development Acts 2000-2011 that the making of the alteration to which this request relates would constitute a material alteration to the terms of the development concerned, and
- under section 146B(8) require the person who made this request to

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make accompanying information available to the public and the consultees as detailed below and to notify them that the information is available and that submissions on the request may be made to the Board within a stated period of time.

*Prescribed Bodies*

- Department of Housing, Planning and Local Government
- Department of Regional Development, Rural Affairs, Arts and the Gaeltacht
- Environmental Protection Agency
- Transport Infrastructure Ireland
- An Taisce
- Heritage Council
- Inland Fisheries Ireland
- Eastern and Midland Regional Assembly
- Kildare County Council
- Meath, Wicklow, Fingal, South Dublin, Dun Laoghaire County Councils and Dublin City Council
- Eastern-Midlands Regional Waste Office

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**Pauline Fitzpatrick**  
**Inspectorate**

**May, 2016**