



# Clyde Shanks

Hightown Quarry Mallusk

Residual Waste  
Treatment Project

**Planning Statement**

**April 2025**

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# 1. Executive Summary

- 1.1 This supporting planning statement explains the planning history to date in consideration of this application for full planning permission for co-location of residual waste infrastructure at Hightown Quarry, Mallusk.
- 1.2 It uniquely co-locates and integrates:
- a weighbridge complex;
  - a pre thermal treatment mechanical and biological treatment facility (MBT) to recover materials for recycling;
  - an energy from waste (EfW) facility to recover energy for power generation and heating;
  - an incinerator bottom ash (IBA) processing plant to recover materials for reuse;
  - a refuse derived fuel (RDF) store for operational resilience and
  - an educational visitor centre.
- 1.3 It sets out how the application has been considered on three previous occasions by Departmental officials and on each they have weighed the local development plan and all other material considerations to conclude that planning permission should be granted.
- 1.4 It also explains how the application has also been the subject of assessment by the Planning Appeals Commission who also recommended - following a hearing in October 2016 - that planning permission should be granted and that there was a need established for the project through the Waste Management Strategy and Waste Management Plan.
- 1.5 In the consideration of this application to date, previous Ministers have sought to disregard the advice of professional planning officers, a senior Planning Appeals Commissioner and/ or failed to provide rational reasons for refusal that are supported by planning policy.
- 1.6 The Planning Appeals Commissioner heard and tested the representations from No arc21 and other members of the public in considerable detail and following that process recommended approval.
- 1.7 This application is entirely compliant with extant planning policy and is also consistent with binding climate change commitments as set out in the Climate Change Act (Northern Ireland) 2022.
- 1.8 Two judicial review processes have been determined in respect of the planning application.
- 1.9 The first of these was a successful challenge, on procedural grounds, by objector group Noarc21 to the decision by the Department for Infrastructure (DfI) to grant planning permission in September 2017. In May 2018 the High Court ruled that the Department had no power to make

a decision in the absence of a Minister. The Court of Appeal in *Buick's (Colin) Application as Chair Person of NOARC 21 [2018] NICA 26* ruled that it was unlawful because the application was “significant, controversial and cross-cutting” and in accordance with Sections 20 and 28A of the Northern Ireland Act and Ministerial Code should have been considered by the Executive Committee. Subsequent legislation, the Executive Committee (Functions) Act (Northern Ireland) 2020 amended Section 20 of the Northern Ireland Act to state that the decisions in respect of the planning applications may be made by the Department or the Minister in charge of that Department without recourse to the Executive Committee.

- 1.10 The second and more recent judicial review proceedings were taken by arc21/Indaver in challenging the decision of the former DfI Minister Nicola Mallon in April 2022. This was found to have been unlawful on the basis that there were no rational reasons to justify the Minister’s departure from the professional advice received from her planning officials.
- 1.11 This Statement provides an up-to-date and comprehensive overview of the local development plan, regional planning policy and legislation and draft strategies and guidance that have been published since March 2022 that are relevant to the decision-making context.
- 1.12 It sets out material planning considerations that weigh in favour of the application – as in all previous occasions - being recommended once again by Departmental officials for a positive determination.
- 1.13 This planning application has consistently been recommended for approval by Departmental officials following assessment and consideration of current and complete Environmental Statement (ES) information, local development plans, regional planning policy and legislation; all related strategies and guidance; consultee feedback and public representations.
- 1.14 On two separate occasions in determining this planning application Ministers have made decisions that contradicted the advice and approach recommended to them by professional planning officers.
- 1.15 The most recent decision by Minister Mallon was challenged by a judicial review on the grounds that the Minister misinterpreted the Department’s waste planning policies. The Department ultimately had to concede the challenge, underlining the importance of Ministers following professional advice and guidance.
- 1.16 A recent decision (February 2025) by Northern Ireland’s most senior judge, Lady Chief Justice Dame Siobhan Keegan (*Duff v Causeway Coast and Glens Borough Council [2025] NICA 8*) for a housing site near Limavady emphasises the importance of grounding decisions in planning policies and the danger if elected representatives proceed against the recommendations of experienced planning officials and planning officer reports without good reason.
- 1.17 This judgment cautions political representatives in that their decision must be carefully reasoned by reference to planning policy, particularly where they depart from the recommendations of professional planning officers.

1.18 The Lady Chief Justice emphasises the crucial role of planning policies in her judgement.

*“This judgement should reiterate the point that planning policy exists to protect the rural environment and should not be underestimated or considered in a relaxed way”*

1.19 This planning statement also assesses objector submissions made by Noarc21 and its representatives in the period since the last Development Management Report (DMR) was prepared by planning officials in March 2022.

1.20 It sets these in the context of the updated April 2025 ES addendum and the series of nine ES addenda that have been consistently endorsed and accepted by all statutory and non-statutory consultees through the duration of this planning application’s consideration since 2014.

1.21 The proposed development will contribute positively towards achieving the targets within the Climate Change Act (Northern Ireland) 2022 and a Circular Economy. It is consistent and compliant with the aspirations and strategic objectives of the draft Environmental Improvement Plan.

1.22 It will deliver a net carbon benefit and a positive effect in reducing carbon emissions. It offers a more sustainable and cost predictable alternative to the current reliance by councils on exporting waste for treatment and other disposal in other jurisdictions and other waste management options such as landfill with the intrinsic value of materials and energy lost to Northern Ireland’s economy.

1.23 It is appropriately designed to be resilient to the effects of climate change and will provide a substantial reduction in GHG emissions compared to landfilling and a combination of export and landfill, supporting NI’s and wider UK’s net zero trajectory.

1.24 Further undue delay in making a decision on this regionally significant planning application will result in further costs and diminishes the prospects of c. £300million of inward investment in publicly owned and professionally managed infrastructure being realised. Chris Mills in his December 2013 report on the Mobuoy illegal landfilling scandal recommended such waste treatment infrastructure be delivered. Chris Mills pointed out the vulnerability Northern Ireland has to waste crime when multiple movements of waste take place.

1.25 Prolonging this planning application will harm Northern Ireland’s reputation in the sectors aligned with climate change mitigation. This is at a time when the Executive has already committed above and beyond the UK Climate Change Committee’s recommendations to reductions in greenhouse gas emissions. This requires the mobilisation of private capital, inward investment into the region and support from regional and central government. The Climate Change Committee has also recommended assessing the feasibility of the phasing out of waste exports by 2030 and the Northern Ireland Audit Office in 2024 recommended that alternatives to export are required and that... *“if exporting restrictions were to be introduced or exporting costs increase prohibitively, the need for additional domestic processing capacity would arise.”*<sup>1</sup>

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<sup>1</sup> NIAO Review of Waste Management in Northern Ireland, July 2024

1.26 The application has been recommended for approval on four occasions, three times by the Department officials and once by the Planning Appeals Commission following a public inquiry.

1.27 As previously summarised by DfI officials in March 2022 in their Addendum to the final DMR, the following points remain pertinent in reaching the conclusion that planning permission should be granted:

- The proposal remains compliant with all relevant local and regional planning policy;
- The need for the facility has been established by way of the WMS and arc21 WMP (as required by policy) which remain extant. Any forthcoming updates to either the WMS or WMP will not depart from the identified need for infrastructure to deal with our residual waste particularly in light of diminishing landfill capacity, landfill bans, potential phasing out of export, recycling levels and decarbonisation efforts. The proposed development is entirely consistent with the future direction of waste and environmental policy;
- The proposal will achieve wider governmental environmental, waste, economic and climate change objectives and statutory obligations;
- The refreshed survey information reaffirms that that the proposal will not result in any unacceptable environmental, public health or visual impact;
- Matters raised by third parties have been addressed and/or are inviting the Department to substitute the assessment of need contained within the extant policy documents with its own, for which there is no discretion for the Planning Authority to do so; and
- The Department should give very significant weight to the contents of the WMP, the PAC's recommendation and the clearly expressed need for the proposed development.

1.28 The unique opportunity to capture the benefits that come with creating a suite of co-located waste treatment and reprocessing facilities - that exist nowhere else in Northern Ireland - which can manage materials and energy flows to meet well established legislative environmental imperatives and that aligns with Northern Ireland's economic strategy should not be discarded.

1.29 The planning determination process should not deny the proposal's urgently needed contribution to:

- net zero targets (e.g. diversion of biodegradable waste from landfill, renewable electricity targets, fossil hydrocarbons reduced from emissions),
- circularity (e.g. materials recovery / recycling)
- sustainability and energy security (e.g. base load electricity generation from an indigenous predominantly renewable fuel that is currently being exported);
- better regulation by providing fully auditable systems that will reduce vulnerability to waste crime (e.g. Mills Report recommendations) and

- environmental awareness and education (e.g. provision of a visitor centre).
- 1.30 The proposed development will be subject to regulation of operations via a range of consents, permits and licences. The proposed development will, for example, require a Pollution Prevention Control Permit (PPC Permit) which will be subject to conditions including those setting emission limit values and limiting or directing the processes and abatement equipment. The conditions attached to the PPC Permit will be determined by reference to Best Available Techniques (BAT) and published BAT Reference Standards (BATREF). The conditions attached to PPC Permits are reviewed regularly and where appropriate, amended to reflect the latest BATREF and BAT.
- 1.31 The proposed development is designed and located to be as responsive as possible to future conditions set by authorities such as the Northern Ireland Environmental Agency (NIEA) and the UK ETS Authority. The development is consistent with UK and NI long-term legislative targets (e.g. net zero by 2050, 65% municipal recycling target by 2035, effective landfill ban by 2035) and the policy direction provided by the UK Climate Change Committee.
- 1.32 For the reasons outlined in this Statement, the determination of the proposal in a timely manner is unquestionably in the public interest and is consistent with the applicable principles and guidance that Senior Officers must have regard to when taking decisions on such a matter. It is a settled point of law that DfI or Minister can issue a decision without referral to the Executive Committee.
- 1.33 DfI officials are respectfully asked, for a fourth time, to recommend approval for this full planning application for vital and necessary publicly owned integrated waste infrastructure.

## **2. Planning Application - background to date**

- 2.1 This planning statement has been prepared to capture the decision-making context within which the Department must consider this full planning application by arc21 for vital and necessary publicly owned integrated waste infrastructure on lands at Hightown Quarry, Boghill Road, Mallusk.
- 2.2 In doing so it summarises the history to date of the Department's consideration of this planning application since it was formally submitted on 27 March 2014.
- 2.3 It highlights how the application has previously been considered by Departmental officials on three separate occasions and on each it has recommended that full planning permission should be granted.
- 2.4 In addition to Departmental officials assessing the application it has also been the subject of scrutiny by the independent planning appellate body for Northern Ireland, the Planning Appeals Commission, who has also recommended that planning permission should be granted following a hearing before it in October 2016.
- 2.5 The Department has consulted across a very wide range of statutory and non-statutory consultees over a very considerable period of time. It has sought the expert views of its consultees on a series of environmental impact assessment (EIA) and EIA addendum documentation that have since 2014 been the subject of several survey updates to ensure the timeliness of the evidence base is robust.
- 2.6 It is notable that all of the respective consultees have responded throughout the history of the consideration of the planning application with no objection.
- 2.7 The application has previously been considered by Departmental officials against a backdrop where the Northern Ireland Assembly was in suspension and Executive Committee was not formed and the Department has been operating in the absence of a Minister.
- 2.8 At the present time that is not the case with the Assembly having been restored in February 2024.
- 2.9 In this context the decision on the application will ultimately be a matter for the Infrastructure Minister informed by the recommendation from her Departmental planning officials.

### **History of Departmental consideration to date**

- 2.10 On 27 March 2014 arc21 submitted a planning application ("the Application") in respect of the Facility to the then planning authority, the Department of the Environment for Northern Ireland ("the DOE") for the "*Proposed development of a Residual Waste Treatment Facility incorporating a Mechanical and Biological Treatment (MBT) facility, an Energy from Waste (EfW) Thermal Treatment facility, and Incinerator Bottom Ash (IBA) Treatment facility, a Refuse Derived Fuel (RDF) Bale Storage building, an Administration / Visitor Centre and related infrastructure*

*including widening of the Boghill Road from its junction with Hydepark Road to west of the existing access road into Hightown Quarry site and other ancillary works.”*

- 2.11 In **June 2015** DOE Planning officials prepared their final Development Management Report (DMR) **recommending approval** of the Application.
- 2.12 However, the then Minister, Mark H Durkan (of SDLP) adopted a contrary view to his planning officials.
- 2.13 On 23 September 2015 the Minister issued a Notice of Opinion together with a memo from him to his Chief Planner. The Notice of Opinion stated that the DOE was minded to refuse to grant planning permission and cited two reasons:
1. *“The proposal is contrary to Policy WM1 of the Department’s Planning Policy Statement 11: Planning and Waste Management in that it has not been clearly demonstrated, to the satisfaction of the Department, that the proposed method of treatment will not result in harm to human health.”*
  2. *“The proposal would result in an additional waste treatment facility in the arc21 region that is not considered necessary in light of other approved developments in the region and would run contrary to the program of encouraging recycling through ‘zero waste’.”*
- 2.14 On 16 October 2015 arc21 requested a hearing before the Planning Appeals Commission.
- 2.15 On 12 January 2016 correspondence from the DOE Environmental Policy Division (EPD) to the Director of the Strategic Planning Division was received anticipating that there would be a regional requirement for thermal capacity between 668,000-759,000 tonnes to meet 2030 EU landfill/recycling targets.
- 2.16 The PAC hearing took place on 11 and 12 October 2016 during which the campaign group No-arc21 made submissions in objection to the Application and the Facility. Those submissions were considered in detail and tested by a senior Planning Appeals Commissioner as part of the inquiry process.
- 2.17 By the time of the hearing the DOE had been dissolved and the planning authority for planning applications for regionally significant developments became the Department for Infrastructure (Dfi).
- 2.18 Following the Stormont elections of 5 May 2016 a new Executive Committee was formed and Chris Hazard MLA (of Sinn Fein) became the new Minister for Infrastructure, replacing Mark H Durkan.
- 2.19 At the PAC hearing in October 2016 planning officials from Dfi advised that things had *“moved on”* since the notice of opinion had been issued and that the Department was no longer seeking

to defend the stated reasons for refusal. They added that Minister Hazard was taking a “neutral” stance and that the advice of the PAC would be taken into account in reaching a decision.

- 2.20 On **8 March 2017**, having considered the evidence before it at the hearing, the PAC issued its report which **recommended that the application be approved**, consistent with Departmental planning officers’ recommendation to Minister Durkan.
- 2.21 The PAC found that there was an identified need for this sub-regional facility as established through the Waste Management Strategy and the relevant adopted statutory Waste Management Plan. It also found that the wording of relevant policy, Policy WM2 of Planning Policy Statement 11, is significant as it provides support and is permissibly worded where need has been established through the WMS and WMP. The PAC also recognised the support for the proposal from both the Strategic Investment Board and the Environmental Policy Division (“EPD”) of DAERA.
- 2.22 Overall, the PAC considered that there was no conflict between the proposal and the relevant Development Plans and that the development, on balance, met the relevant requirements of regional planning policy. Having considered the environmental information and all relevant evidence, it was also concluded that the various objections raised by third parties had not been sustained.
- 2.23 The PAC considered it notable that none of the statutory consultees indicated an opinion that the proposal should be refused. The report stated the following at its paragraph 158:
- “Importantly, the need for the proposal is recognised by DAERA EPD and the bodies responsible for waste management in N.I. It has also been deemed acceptable by the authorities responsible for protecting health and the environment. Having weighed all of the important material considerations, I take the view that the Department’s opinion to refuse the application, for the reasons stated, was unjustified”*
- 2.24 The Northern Ireland Executive Committee power sharing collapsed in January 2017, leading to elections to the Northern Ireland Assembly being held on 2 March 2017.
- 2.25 These did not result in the formation of a power-sharing government. The Northern Ireland Assembly remained in place but did not convene.
- 2.26 Accordingly, at the time of the PAC’s report being received in March 2017 there was no Minister leading the Department and as such it was left to Departmental officials to consider the next steps.
- 2.27 In March 2017 officials in the Department liaised with officials in DAERA about the PAC report and recommendation. As noted in a letter to the Director of the Strategic Planning Division dated 24 March 2017, DAERA welcomed the PAC’s recommendations and stated:

- *DAERA welcomes the report's recognition that the proposal would move waste up the waste hierarchy, away from landfill and towards recovery and recycling.*
- *DAERA agrees with the overall conclusions of the report in relation to the risks attached to reliance on export in order to meet targets and the potential for the proposal to contribute to a reduction in waste crime.*
- *DAERA welcomes the Commissioner's recommendation.*

2.28 On 24 August 2017 the Application was referred by planning officials to Peter May, the Permanent Secretary of the Department.

2.29 Mr May considered that, in the light of the legal advice that he had received, he had the ability to exercise or to direct other senior officials to exercise the powers of the Department to determine the Application.

2.30 On 29 August 2017 Mr May decided that the Application should be approved, and **on 13 September 2017 planning permission was granted.**

#### **Legal challenge by No-arc21**

2.31 Following the Department's decision an application for judicial review was made by Colin Buick, the chair of No-arc21.

2.32 The legal challenge was not based on the merits of the proposed application or any challenge to the environmental impact assessment documentation that supported it. The challenge related to the way in which the decision was reached which has now been clarified by legislation<sup>2</sup>.

2.33 Consequently, the Department's decision was quashed and the Application was returned to the Department for re-consideration.

#### **The post-Buick consideration of the Application**

2.34 On 1 October 2018, No-arc-21 submitted an objection enclosing inter alia a report prepared by Eunomia called Need and Impact analysis relating to the Facility ("the "Eunomia Report").

2.35 The Department consulted Environmental Policy Division (EPD) in relation to the content of the Eunomia Report, and it received a response on 18 December 2018.

2.36 EPD's response set out a number of criticisms of the Eunomia Report, including the assumptions applied by Eunomia such as the discounting of illegal waste in the calculation of need, the assumptions in respect of Refuse Derived Fuel ("RDF") exports (which Eunomia assumed would remain static despite evidence to the contrary) and the failure to consider the impacts of Brexit.

2.37 EPD stated that any assessment of need must consider RDF exports within the capacity deficit. Importantly, at paragraph 2 EPD stated as follows:

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<sup>2</sup> The Executive Committee (Functions) Act 2020 which amends Section 20 of the Northern Ireland Act 1998.

*“The need for the proposed arc21 residual waste treatment facility development has been identified through the Waste Management Strategy and the relevant Waste Management Plan. The assessment of need was based on expert advice from the Strategic Investment Board”*

2.38 In March 2019 a number of revised drawings were submitted to the Department by the applicant to assist their re-consideration of the planning application. These included:

- Drawing 70 (REV B) - Proposed Swept Path Analysis and Visibility
- Drawing 69 (REV B) - Proposed Swept Path Analysis and Visibility 2 of 4
- Drawing 68 (REV B) - Proposed Swept Path Analysis and Visibility 1 of 4 –
- Drawing 67 (REV B) - Proposed Road Marking and Signage 3 of 3
- Drawing 66 (REV B) - Proposed Road Marking and Signage 2 of 3
- Drawing 54 (REV B) - Proposed Boghill Rd Long Section 6 of 6
- Drawing 65 (REV B) - Proposed Road Marking and Signage 1 of 3
- Drawing 52 (REV B) - Proposed Boghill Rd Long Section 4 of 6
- Drawing 51 (REV B) - Proposed Boghill Rd Long Section 3 of 6
- Drawing 49 (REV B) - Proposed Boghill Rd Long Section 1 of 6
- Drawing 45 (REV B) - Proposed Hydepark Rd and Boghill Rd Layout 3 of 3
- Drawing 108 (REV B) - Landscape Proposals Sheet 6 of 9
- Drawing 109 (REV B) - Landscape Proposals Sheet 7 of 9
- Drawing 95 (REV B) - Proposed Undesignated Watercourse Bridge General Arrangement
- Drawing 50 (REV B) - Proposed Boghill Rd Long Section 2 of 6
- Drawing 94 (REV B) - Proposed Flush River Bridge General Arrangement
- Drawing 44 (REV B) - Proposed Hydepark Rd and Boghill Rd Layout 2 of 3
- Drawing 71 (REV B) - Proposed Swept Path Analysis and Visibility 4 of 4
- Drawing 43 (REV B) - Proposed Hydepark Rd and Boghill Rd Layout 1 of 3

2.39 This was followed by the submission of further drawings in August 2019:

- Drawing 110 - General Arrangement Drainage Layout 4 of 4
- Drawing 40 (REV B) - General Arrangement Drainage Layout 3 of 4
- Drawing 39 (REV A) - General Arrangement Drainage Layout 2 of 4
- Drawing 38 (REV B) - General Arrangement Drainage Layout 1 of 4

#### **Further Environmental Statement (ES) addendums**

2.40 In addition, a number of ES addendums have been made primarily to refresh EIA baseline surveys and to respond to objections received by the Department:

2.41 A summary of the date order and nature of these ES addendum submissions is provided below:

- **March 2019** - an ES addendum submission was made to review EIA baseline surveys/methodologies and respond to No-arc21 objections including risk assessment for the potential sporadic occurrence of erionite in the basalt rock subject to disturbance during construction, the updated Water Framework Directive assessment, ecology, landscape and visual impact appraisal, cultural heritage, review of the Transport Assessment, background noise monitoring, air quality, climate, economics, Health Impact Assessment and grid connection.
- **August 2019** - an ES addendum submission was made to respond to DfI Rivers' request for Drainage Assessment and an updated Appropriate Assessment, which formed Appendix 3.1 of that submission.
- **October 2020** an ES addendum submission was made to respond to objections and provide further information in relation to need for the proposal given outstanding advice from DAERA Environmental Policy Division including a residual waste market assessment, review of local authority procurements, updated ecology surveys, clarification regarding grid connection, telecommunications, health and climate.

This submission included an independent specialist advisor's market analysis in relation to the need for the proposal and considered the current and projected tonnages of residual waste available in Northern Ireland for thermal treatment towards 2035 and the achievement of the Circular Economy Package targets for recycling and landfill diversion by that date.

- **December 2020** an ES addendum submission was made to provide additional ecology surveys not available at the time of the October 2020 submission.
- **May 2021** an ES addendum submission was made to provide further information in relation to need for the proposal given the outstanding advice from DAERA Environmental Policy Division and the response to No-arc21's objection including an updated residual waste market assessment by an independent specialist advisor

On 13 August 2021 the DAERA Minister, Edwin Poots, responded to the ES addendum submitted in October 2020 and May 2021 by writing to the DfI Minister in respect of the need for the Facility. Minister Poots stated:

*“Currently, Northern Ireland has in the order of 435,000 tonnes of capacity, so this leaves a capacity gap of 320,000 tonnes for NI infrastructure to be of similar proportions to both UK and RoI. This approach would help provide a balanced UK and all island market in terms of capacity and support the proximity principle by not incentivising ‘waste tourism’ between the jurisdictions in either direction.*”

*I believe that on balance there is a clear need at this time for providing planning approval for more waste infrastructure. However, it is for DfI to decide if the arc21 project is the right infrastructure.”*

2.42 On 12 October 2021 the Department wrote to Minister Poots seeking clarification in respect of his letter of 13 August 2021 and particularly as to whether DAERA required more time to provide an update on the future need for waste infrastructure

2.43 Minister Poots responded on 28 October 2021 stating that he had not commissioned SIB to provide DAERA with any further update on the statement of need for waste infrastructure in Northern Ireland.

2.44 He restated the position that there *“is a clear need at this time for providing planning approval for more waste infrastructure”*, and continued *“I trust that this concludes your Department’s request for determination on the future need for waste infrastructure in Northern Ireland.”*

2.45 He concluded:

*“I would like to reiterate that I believe that any decision your Department makes on the arc21 Residual Waste Treatment Facility planning application should be robust and sustainable, and my Departments response, should give you reassurance in arriving at your decision.”*

2.46 On 24 November 2021 EPD responded to a further consultation request from the Department in respect of a report prepared by Tolvik submitted as part of the ES addendum submission in October 2020 and updated in May 2021. EPD responded by stating:

*“DAERA has no reason to disagree with the findings of Tolvik’s analysis in relation to the need for additional capacity to treat residual waste and their findings are consistent with both letters from Minister Poots (13 August 2021 and 28 October 2021), in which he addresses the issue of need.”*

2.47 By 24 November 2021 the consultation process with statutory consultees had concluded and all statutory consultees had confirmed that they had no objection to the Application.

#### **Departmental engagement with Minister Mallon and her approach to the Application**

2.48 Following the completion of the statutory consultation process, in **March 2022** a detailed Development Management Report (DMR) was prepared by the Directorate in DfI for the then Minister, Nichola Mallon. The DMR considered all of the issues in detail including the need for the Facility and its visual impact and **again recommended approval** of the Application subject to conditions.

2.49 It also concluded that there was no need to issue a revised Notice of Opinion under Section 26(11) of the 2011 Act. The reason for that conclusion was stated as follows:

*“The planning applicant and the relevant council are aware of the Department’s position on the planning merits of the application from the pre-Buick decision and that position has not changed as a result of this post Buick assessment. Both the Council and third parties have had, as a consequence of the obligations under the EIA Regulations, the opportunity to make representations on the Further Environmental Information. There is, therefore, no detriment to any party if the Department proceeds to issue a decision to approve without re-issuing a further NOP recommending approval.” (emphasis added)*

2.50 It was therefore the case that the Directorate’s rationale for not requiring a fresh Notice of Opinion was that the Applicant, host Council and third parties were aware of the Department’s position, namely that planning permission should be granted. This reasoning is not applicable to what actually occurred given that the Department’s position was radically altered by the Minister’s determination.

2.51 On 14 March 2022, the Development Management Group met virtually to consider the DMR. It agreed with the recommendation and contents of the DMR. The Directorate on 18 March 2022 sent a memo to the Minister along with a draft decision notice to grant planning permission (which was subject to 34 planning conditions and 42 informatives) together with a copy of the DMR dated 14 March 2022 recommending approval with related appendices.

2.52 This memo re-asserted the Department’s recommendation that the Application should be approved. At paragraph 24 it states:

*“Accordingly, following the legal advice [redacted] and in the absence of amendments to the Ministerial Code to reflect the Northern Ireland Act 1998, as amended, officials are of the view that a decision on this application requires referral to the Executive Committee.”*

2.53 On 23 March 2022 a further memo was issued by the Director to Minister Mallon. This appears to be in response to a request from the Minister to issue a letter to her ministerial colleagues. The memo refers to the Court of Appeal judgment in the Buick case in which the court determined that the Application was significant, controversial and cross-cutting. The memo cautioned the Minister that:

*“Overall, therefore and informed by the legal advice we have received officials could not recommend this as a sound course of action”.*

2.54 Despite this advice, on Thursday, 24 March 2022 at 10:45am a letter from the Minister was circulated to the following:

- i. The Executive Office;
- ii. The Department for the Economy;

- iii. DAERA;
- iv. Department of Education;
- v. Department of Justice;
- vi. Department of Health.

- 2.55 That letter invited ministers to confirm to the Minister that they did not consider the Application significant, controversial or cross cutting. She requested a response by 5pm on Friday 25 March 2022, the last sitting day of the Assembly before the purdah period began at midnight on Sunday 27 March 2022.
- 2.56 Importantly, the letter did not state that the Minister intended to refuse to grant planning permission contrary to the advice of her planning officials.
- 2.57 Two responses were received but not within the timeframe requested – the first came from Minister Poots and was issued on the afternoon of Sunday 27 March 2022.
- 2.58 Minister Poots confirmed he could not comment on another department’s decision-making process and that it was up to the Minister to conclude whether or not it was appropriate to take a decision on the arc21 application.
- 2.59 He reiterated his previously expressed position that there was a clear need for providing planning approval for more local infrastructure to deal with residual waste. This letter was issued after Minister Mallon announced her decision and therefore cannot have influenced the Minister’s determination
- 2.60 The second response came from Minister Murphy on 28 March 2022. Minister Murphy comments that it is for the Infrastructure Minister to judge if the matter is significant, controversial or cross-cutting but he confirms his opposition to the Facility. Again, this cannot have influenced Minister Mallon as it post-dated her determination.
- 2.61 A further memo was issued to the Minister on 26 March 2022 from the Director of the Directorate.
- 2.62 That memo related to the letter issued to the Minister’s ministerial colleagues and the absence of any response by the deadline identified.
- 2.63 It reiterated the official’s previous advice to the effect that the Application had to be referred to the Executive Committee.
- 2.64 The memo warned that any decisions taken on the Application (and other planning applications) in the absence of a referral to the Executive Committee would be open to legal challenge and the likelihood of such a challenge succeeding if brought was high.
- 2.65 It concluded by stating ‘*officials would advise that no decisions be taken on the applications until the Executive Committee reforms, or the Ministerial Code is changed to reflect the provisions of the Northern Ireland Act 1998, as amended, or there is otherwise a change in case law allowing a reconsideration of the position*’.

2.66 The Minister did not heed this advice as by email dated 26 March 2022 to her Private Secretary she set out her decision to refuse to grant planning permission, contrary to the advice she had received from her planning officials to approve the planning application.

*“I have very carefully considered all of the issues and the assessment of need set out in the correspondence from Minister Poots – that DAERA is “unable to provide a definitive statement of need as part of the ongoing planning process for the Hightown facility” and that the Department “believes on balance there is a clear need at this time for providing planning approval for more waste infrastructure. However, it is for DfI to decide if the arc21 project is the right infrastructure. Continuing economic changes, such as fluctuations resulting from the current global pandemic and emerging waste treatment technologies, may alter the quantity, composition and best treatment method of our waste arisings in the future”.*

*In the absence of a definitive, updated statement of need from DAERA, I am not satisfied that sufficient evidence of need for this specific facility has been provided that would outweigh the negatives including the visual impact of this proposal. The application is therefore refused.”*

2.67 The Minister’s Private Secretary shared that email amongst senior officials 26 March 2022. This was responded to by the Department’s Permanent Secretary the same Saturday evening:

*“I was not, given the strength and consistency of the advice provided by officials and legal advisers expecting to see these decisions and they give me very significant concern. Additionally, and leaving aside the already stated risks around s20 of the NI Act and breach of the Ministerial Code, I am also not sure that the reason provided below would be considered a robust planning reason. <sup>3</sup>*

*Would you mind just double, triple checking with the Minister for me that, taking account of all the advice provided to her and the very real risks of legal challenge that might be exceptionally difficult for the Department to defend (and the associated costs and reputational risks) she is absolutely convinced she wishes to take this action?”*

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<sup>3</sup> The issue of whether the Ministerial Code requires a planning application to be referred to the Executive Committee has now been resolved by the Northern Ireland Court of Appeal in Re: Safe Electricity for Armagh and Tyrone’s application [2022] NICA 61 where the Court of Appeal concluded that the Ministerial Code should be read in light of amendments to the Northern Ireland Act. During the suspension of the Assembly between May 2022 and February 2024, legislation, the Northern Ireland (Executive Formation etc) Act 2022 as amended, permitted the Permanent Secretary to make decisions on behalf of the Department in the absence of a Minister.

2.68 The Minister responded, also that evening, via her Private Secretary:

*“I have set out my reasons for my decisions. In respect of the application referenced above in the subject matter which seems to have prompted the email below, need is a significant material planning consideration as has been stated on numerous occasions. The law has been updated to enable me as the Minister for Infrastructure to take planning decisions. The decision to update the Ministerial Code accordingly has received Executive approval via Urgent Procedure. It hasn’t been possible to enact this decision via the Assembly due to the absence of a First Minister and deputy First Minister. Given political circumstances, there is a high probability that an Executive will not be formed after the election. The planning system is under significant and justifiable criticism for the length of time it takes to process applications and make determinations with all of the economic implications that result from this uncertainty. As Minister, my job is to carefully consider all of the issues and in my view it is in the wider public interest to take the decisions I have on these three planning applications. My decisions, as previously advised, to be enacted”*

2.69 In response the Permanent Secretary commented via email:

*“For the record, I am satisfied that the correct advice has been given by officials in the submissions provided on this application and on the Upperlands and Gruggandoo applications and re-emphasised in Alistair’s submission from earlier today. That advice is that decisions should not be taken without Executive referral. I am also satisfied that the risks have been clearly stated. As the Minister’s principal adviser, I have registered my serious concerns and the Minister has been able to consider these”*

2.70 The Minister issued her press release on the afternoon of Sunday 27 March 2022. This was issued in the context of purdah being imposed at midnight later the same day, in advance of the campaigning for the May Northern Ireland Assembly elections.

2.71 As already noted above, the Minister’s determination was formalised by the decision notice of 1 April 2022 to refuse the planning application, contrary to the professional advice of her officials. That decision notice recorded the following reasons for refusal:

- (i) the proposal was contrary to Policy WM1 of Planning Policy Statement 11: Planning and Waste Management in that it had not been demonstrated that the visual impact of the waste management facility is acceptable in the landscape; and

(ii) the proposal was contrary to Policy WM2 of Planning Policy Statement 11: Planning and Waste Management, in that it has not been demonstrated that there was a need for the Project.

#### **Judicial Review by arc 21/Indaver**

2.72 Arc 21 and Indaver (NI) Limited sought leave to apply for judicial review of Minister Mallon's decision on 29 June 2022.

2.73 The Judicial Review set out four grounds of challenge. In particular, ground four stated:

Dfl has misdirected itself and erred in law in making the Impugned Decision in that:

- i. Minister Mallon acted contrary to and/or failed to take into account arc21's Waste Management Plan which identified the need for the Facility. That Waste Management Plan was in conformity with DAERA's Waste Management Strategy and policy WM2 of Planning Policy Statement 11.
- ii. Minister Mallon concluded that there was no need for the Facility, which was contrary to the views of the Planning Appeals Commission in 2017, the Department for Agriculture, Environment and Rural Affairs ("DAERA") in 2021, and the Proposed Respondent's Strategic Planning Directorate in March 2022. She wrongly approached policy WM2 of Planning Policy Statement 11 so as to require that need be definitively be shown by DAERA.
- iii. Minister Mallon in part based the Impugned Decision on a concern that the Facility may increase demand for waste disposal and reduce demand for recycling. There was no evidence before her to enable such a conclusion to be reached.
- iv. Minister Mallon improperly weighed the need for the Facility against the visual impact. Further, in determining that need did not outweigh visual impact she acted without any evidential foundation. The Facility complied with policy WM1 and WM2 of Planning Policy Statement 11.
- v. Contrary to section 26(12) of the 2011 Act Minister Mallon failed to take into account the 2017 recommendation of the Planning Appeals Commission.

2.74 In advance of the case proceeding to a hearing the Department conceded the challenge for reasons set out in ground four as set out above.

2.75 In a hearing in the High Court before Mr Justice Humphreys on 31 May 2023 the decision to refuse planning permission dated 1 April 2022 was formally quashed.

2.76 As a consequence of the quashing of the application the application reverted once again to the Department for re-consideration.

The net effect of Minister Mallon's unlawful decision has been considerable additional cost to the public purse as a consequence of further two-and-a-half-year delay in determining the planning application and has induced the requirement to undertake more extensive environmental survey work and other studies to ensure baseline information of all types is up to date.

### **Importance of Planning Policy and Professional officer advice – Legal Judgment**

- 2.77 A recent judgment by Northern Ireland's most senior judge, Lady Chief Justice Dame Siobhan Keegan (*Duff v Causeway Coast and Glens Borough Council [2025] NICA 8*) serves as a stern reminder to elected representatives when making planning decisions and the risks involved when elected representatives disregard professional advice.
- 2.78 The Lady Chief Justice stated that the case exposes many issues in relation to rural development not least the danger if elected representatives proceed against the recommendations of experienced planning officials and planning officer's reports without good reason.
- 2.79 The Court of Appeal emphasised the importance of grounding decisions in planning policies and suggested that political representatives must now provide solid evidence-based justifications when departing from professional advice. Politically expedient decisions not supported by planning policy, will no longer be sufficient.
- 2.80 This judgment reinforces the essential need for any decision on this application to be grounded in planning policy and to carefully consider professional officer advice and recommendations. The Lady Chief Justice found "*the suggestion that a policy is considered in a more relaxed way...is a cause of great concern for us*".
- 2.81 In the consideration of this application to date, previous Ministers have sought to disregard the advice of professional planning officers, a senior Planning Appeals Commissioner and/ or failed to provide rational reasons for refusal that are supported by planning policy. The Planning Appeal Commissioner heard and tested the representations from No arc21 in considerable detail, following that process, recommended approval. This application is entirely compliant with extant planning policy and is also consistent with binding climate change commitments as set out in the Climate Change Act (Northern Ireland) 2022.

### **Department Consideration post quashing of the Minister Mallon decision**

- 2.82 In September 2023 arc 21 made a further ES addendum submission to the Department including an updated supporting planning statement.
- 2.83 That ES addendum was volunteered by the applicant and reviewed and refreshed EIA baseline surveys.
- 2.84 That was due to the significant processing delay caused by the time that elapsed from the date of Minister Mallon's decision in April 2022 and its quashing by the High Court and to protect the evidence base from any future timeliness challenge to the survey data.

2.85 The Department issued the updated ES addendum to a number of consultees in October 2023. In summary the responses received are as follows:

- *DAERA Environmental Policy Resources Division* – No objections; Response issued 19 April 2024.

*“Environmental Policy Resources Division within DAERA has now considered the additional information provided and concluded that it does not materially affect our previous position. **It remains our opinion, on balance, there is currently a clear need for planning approval for more waste infrastructure.** However, it is for DfI to decide if the ARC21 project is the correct infrastructure. We would continue to recommend that any decision on the Arce21 Residual Waste Treatment Facility planning application is robust and sustainable”*

- *DfI Roads* – No objections; Response issued 11 December 2023

*“DfI Roads has carried out a review of the additional information (Chapter 9 – Transport and the technical note Appendix 8.1) uploaded to the planning portal on 6<sup>th</sup> October 2023. The department would agree with the conclusion, contained within this further information, that the recommendations/mitigations set out in the original approved EIA and the subsequent FEI submissions remain valid and current.”*

- *Antrim and Newtownabbey Borough Council (ANBC) Environmental Health* – No objections; Response issued 23 January 2024

*“Environmental Health have reviewed the contents of the voluntary Further Environmental Information (FEI) for the proposed development, and have no further comments to make in addition to the previous Environmental Health consultation responses in respect of this planning application. The contaminated land control condition previously recommended to be attached to any approval has been updated to take into account the most up to date guidance document”*

- *NIEA – Regulation unit* – No objections; Response issued 19 April 2024

- *Public Health Agency* – No objections; Response issued 21 February 2024

*“The Public Health Agency acknowledge the additional information that seeks to provide further reassurance that the proposed installations will have a negligible impact on public health. Whilst we don’t have any objections at this stage to the planning application on the basis of the information provided to support the application, our fuller assessment on this would be on receipt of a full and detailed IPPC application”*

2.86 Additional information has been requested by the following:

- *NIEA – Marine Strategy Team* – Response issued 19 April 2024; identified candidate bathing water at Reas Wood and the need for the ES to address possible impact on faecal indicator bacteria
- *NIEA – Inland Fisheries Division* - Response issued 19 April 2024; request for specific CEMPs outlining construction process for the bridges/realignments
- *NIEA – Water Management Unit* – Response issued 19 April 2024; request full site drainage plan confirming destination of all drainage with all clearly stated and identified to discharge to foul sewer; combined sewer; surface water sewer; underground stratum or waterway.
- *NIEA – Industrial Pollution & Radiochemical Inspectorate* – Response issued 19 April 2024; request additional air emission modelling using the latest version of AERMOD or ADMS and specifically a re-run of the air emission modelling using updated meteorological data
- *NIEA – Natural Environment Division* – Response received 19 April 2024; request confirmation that the ecological surveys comply with NIEA specifications and sets out series of bullet points to be addressed; reiterates need to ensure mitigation measures are the subject of conditions; mitigation clarification required relating to badgers and common lizards

2.87 Following receipt of the overarching NIEA response on 19 April 2024 arc21 and its professional advisers met with NIEA and its Water Management Unit (WMU) and Industrial Pollution and Radiochemical Inspectorate (IPRI) Divisions in two MS Teams calls first on 11 June 2024 and a further follow up call on 19 June 2024.

2.88 The purpose of these meetings was to explore the consultation response more fully in order to understand what additional information NIEA require.

#### **IPRI comments**

2.89 In terms of addressing the comments raised by IPRI the following scope of additional air quality modelling work was agreed between the applicant’s advisers and IPRI.

- Air quality modelling to be rerun to sense check the findings of the ES and ensure these remain sound
- Rerun AERMOD and ADMS using latest version of the software
- Use 5 years of recent meteorological data for Belfast International Airport (2019-2013)
- Run for a unitised emission rate and estimate for selected pollutants
- Present results for a selection of representative receptors
- Check PC against new EALs, check PEC using latest backgrounds.
- Produce a technical addendum containing tabulated results comparing with ES 2014
- Update the plume visibility assessment as part of addendum to Landscape and Visual ES Chapter

### **WMU comments**

- 2.90 In terms of the WMU consultation response it was confirmed that they wished the storm and foul drainage regime on site to be kept separate.
- 2.91 Accordingly, the planning application now proposes a larger package treatment plant on site. In response to advice from WMU separate submissions have subsequently been made to them for discharge consent under the Water (Northern Ireland) Order 1999 for separate storm and foul discharges to their respective discharge locations.
- 2.92 This is explained further in an updated Water Quality chapter (Chapter 7; April 2025 ES addendum) and related appendices that form part of the parallel further ES addendum that accompanies the submission of this planning statement.

### **Natural Heritage Comments**

- 2.93 In terms of the response received from NIEA Natural Heritage it has requested information to demonstrate that the applicant's 2021 and 2022 survey reports meet NIEA specifications.
- 2.94 The applicant has continued to undertake ecological surveys of the application site and this has continued through 2023 and into 2024. These are articulated in Chapter 9 of the attached April 2025 ES addendum.
- 2.95 It is noted that NIEA has not specifically asked for any new surveys but this has been done to update the evidence base and reinforce the findings and proposed mitigation that have previously been articulated. This updated information is included in the ES addendum Chapter 9 that addresses the above IPRI and WMU requirements.
- 2.96 It includes 2023 survey assessment and a further site survey review in September 2024 that addresses the quarry site, Boghill Road and updated review of the three proposed grid connection routes.

### **NIEA Inland Fisheries Division**

- 2.97 In the meetings with NIEA in June 2024 the comments made by Inland Fisheries relating to the submission of CEMPs was discussed.
- 2.98 The planning application submission includes an updated draft CEMP (Appendix 3.1; ES Addendum April 2025) that goes into significant detail on the approach to construction of new bridges on the Boghill Road. NIEA agreed that a condition can capture the requirement for a single final CEMP to be submitted once a construction contractor has been appointed.

### **Further ES addendum April 2025**

2.99 In addition to the updated ecological survey, air quality modelling and approach to foul and storm discharge the applicant has also instructed an overarching review across each ES chapter area to inform both the Department and consultees and ensure robustness of their decision making.

2.100 That reviews the robustness of the ES addendum update submission in September 2023 across all of its content including:

- geology soils and agriculture; Chapter 6
- water environment; Chapter 7
- land quality; Chapter 8
- ecology; Chapter 9
- landscape and visual; Chapter 10
- cultural heritage; Chapter 11
- transport; Chapter 12
- noise; Chapter 13
- air quality; Chapter 14
- climatic factors; Chapter 15
- population and human health, Chapter 16
- Material assets, Chapter 17
- Assessment of significance of effects and Impact interactions

2.101 This planning statement and the April 2025 ES addendum also responds to objector comments submitted to DfI by objector group No-arc 21 in the period since the most recent Development Management Report was prepared by the Department and specifically over the period March 2022 to the present. These are addressed at Section 4 of this report.

### 3. Planning Policy Context

#### Relevant Planning Policy

##### Local Development Plan context

- 3.1 In accordance with Section 45 of the Planning Act (Northern Ireland) 2011 the decision maker must, in dealing with the application for planning permission, have regard to the local development plan, so far as material to the application, and to any other material considerations.
- 3.2 Section 6(4) of the 2011 Act states that, in making any determination, regard is to be had to the local development plan and the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 3.3 Hightown Quarry lies within what was previously Antrim Borough (now included in Antrim and Newtownabbey Borough Council area).
- 3.4 The adopted local development plan relevant to the consideration of this proposal is the Antrim Area Plan 1984-2001 (AAP) and the provisions of the plan apply in respect of these development proposals.
- 3.5 The site lies within the rural area identified in the AAP, outwith any policy area or environmental designation.
- 3.6 In respect of the rural area, the AAP indicates that the Department will have regard to various criteria when dealing with planning applications. These criteria include, inter alia, the amenity of the countryside, traffic hazards caused by development and the need to protect nature conservation interests.
- 3.7 With regards to waste disposal, the AAP states that *“in the rural area particular regard will be paid to the location of landfill sites for waste and facilities associated with them. Vehicle or scrap metal dumps cause particular visual problems and it is unlikely that they would be approved in the rural area. The only possible exception may be a well screened derelict quarry”*
- 3.8 The AAP contains policy in respect of the location, siting and design of buildings in the countryside.
- 3.9 The PAC report of the hearing in held in October 2016 remarked that *“Ultimately it must be recognised that the AAP is very much outdated and regional policy has been produced since its adoption, which provides greater direction in my consideration of the subject proposal”*.
- 3.10 The application includes works to Boghill Road from its junction with Hyde Park Road to the access to Hightown Quarry. Boghill Road, running northeast from Black’s Bridge, lies within the previous Newtownabbey Borough (also now within the Antrim and Newtownabbey Borough Council area).

- 3.11 draft Belfast Metropolitan Area Plan (dBMAP), in the absence of a Local Policies Plan following the adoption of Belfast City Council's Plan Strategy, remains the operational local development plan for this element of the proposal.
- 3.12 dBMAP indicates that the section of the Boghill Road within its plan boundary runs through countryside which is unaffected by any designations. BMAP defers to regional policy in respect of proposals for waste or renewable energy.

### **Emerging ANBC Plan Strategy**

- 3.13 Antrim and Newtownabbey Borough Council has prepared a draft Plan Strategy which was the subject of a Public Examination before the Planning Appeals Commission in June 2022.
- 3.14 The Planning Appeals Commission forwarded its report of the independent examination to DfI in October 2023. Following review of this DfI found the draft Plan Strategy to be sound and issued a direction to the Council in September 2024 to adopt the Plan Strategy. It is therefore anticipated that the Council will adopt the Plan Strategy in the coming months.
- 3.15 In that context and following a recent High Court judgment in the Glebe Homes Ltd judicial review it is clear that the Plan Strategy policies must be given substantial weight in the consideration of which development management policies will apply in the determination of the planning application.
- 3.16 The emerging Plan Strategy sets out strategic planning policy SP 10.7 and SP 10.8 and operational policy DM53 relating to waste management. These are set out below:

### **Policy SP 10.7**

- 3.17 The Council supports the objectives of sustainable waste management as set out in the Waste Regulations (NI) 2011, the Waste Management Strategy for Northern Ireland and the Regional Development Strategy and will encourage adherence to the 'Waste Hierarchy' and application of the 'Proximity Principle' through the provision of sustainable waste management facilities and any necessary waste infrastructure in accordance with Policy DM 53.

### **Policy SP 10.8**

- 3.18 In assessing all waste proposals, it will be a priority for the Council to ensure that there will be no significant detrimental impact on human health, amenity or the environment.

### **Policy DM53**

- 3.19 Proposals for new waste management or disposal facilities or extensions to existing facilities will be supported where it is demonstrated that they meet a need established through the Council's Waste Management Plan (WMP) or it is otherwise established that there is a local need for the proposal in relation to a particular waste stream that is consistent with the objectives of the WMP.

- 3.20 It must be demonstrated that the proposal will bring an overall net social, environmental and economic benefit without having a likely significant adverse effect:
- (a) On human health;
  - (b) In terms of air, water, noise or light pollution;
  - (c) On the historic environment and natural heritage assets; and
  - (d) On neighbouring uses and the character and amenity of the surrounding area.
- 3.21 All proposals for waste management or disposal facilities should have regard to the proximity principle, be designed to be compatible with the character of the surrounding area and adjacent land uses, and be suitably located, preferably within an existing or proposed industrial area; on derelict or degraded land; or within the confines of an existing or former waste management site. Where the facility is proposed in the countryside, it should preferably involve the reuse of existing buildings or be sited within or adjacent to a group of existing buildings and adequately integrated into its surroundings.
- 3.22 Any location proposed must have safe access arrangements and be capable of accommodating the potential transport impacts within the surrounding road network.
- 3.23 The need for the proposed facility has been established through the arc 21 Waste Management Plan as reflected in the ES and other information supporting the application as required by PPS11.
- 3.24 It is evident that the emerging Plan Strategy which has been recommended for adoption by DfI, and is therefore consistent with the SPPS, maintains the position adopted by PPS11 in requiring that proposals for new waste management or disposal facilities or extensions to existing facilities will be supported where it is demonstrated that they meet a need established through the Council's Waste Management Plan.

### **Regional Policy**

#### **The Regional Development Strategy (RDS) 2035**

- 3.25 The Regional Development Strategy (RDS) 2035, published in March 2012, sets out strategic guidelines for development in Northern Ireland.
- 3.26 It attaches weight in decision making to significant economic infrastructure and notes that strategic projects contributing to economic infrastructure development include those that help meet renewable energy targets and contribute to successful waste management.
- 3.27 The RDS confirms that meeting these targets through diversion of waste from landfill to other treatment methods will require the development of significant new waste management infrastructure.

3.28 Paragraphs 4.22 and 4.23 state:

*“Central government is working closely with local government in the development of new waste facilities to ensure that Northern Ireland’s long-term needs for all waste streams are met. These will be delivered at a limited number of key sites convenient to the major centres of waste production”*

*“Research suggests that to meet the Landfill Directive targets Northern Ireland will require a combination of up to seven Mechanical Biological Treatment (MBT) and three ‘energy from waste’ plants. This includes both incineration and gasification plants to deal with the residue from the MBT process.”*

3.29 Regional guidance requires that we manage our waste sustainably. RG10 of the RDS sets out the need to:

*apply the waste hierarchy principles* – the 5-step waste hierarchy embraces the prevention of waste; the re-use and refurbishment of goods; value recovery through recycling and composting; energy recovery and finally disposal being only considered where no other option up the hierarchy is possible.

*apply the proximity principle* - the need to treat or dispose of waste as close as practicable to the point of generation to minimise the environmental impacts of waste transport

3.30 In addition to the RDS, relevant regional planning policy for waste management infrastructure is contained with the Strategic Planning Policy Statement (SPPS) and Planning Policy Statement 11 ‘Planning and Waste Management’ (PPS11).

### **Strategic Planning Policy Statement**

3.31 The Strategic Planning Policy Statement for Northern Ireland “Planning for Sustainable Development” (SPPS) was published in September 2015. Its provisions are material to planning decisions.

3.32 Paragraph 6.307 echoes the RDS by confirming:

*“Government recognises the strategic importance of managing our waste sustainably. The Northern Ireland Waste Management Strategy “Delivering Resource Efficiency” emphasises that waste is a resource and an opportunity rather than a burden”*

3.33 It re-asserts the 5-step waste management hierarchy laid down in Article 5 of the Waste Framework Directive, consistent with the RDS, and confirms that is a core principle of the NI Waste Management Strategy.

3.34 The SPPS confirms that the provision of waste facilities and infrastructure can make a valuable contribution towards sustainable development. The aim of the SPPS in relation to waste

management is to support wider government policy focused on the sustainable management of waste and a move towards resource efficiency.

- 3.35 Regional Strategic Objectives and Policy relating to waste management are dealt with in paragraphs 6.310 to 6.323 of the SPPS. Paragraph 6.310 indicates that the regional strategic objectives for waste management include the promotion of development of waste management and recycling facilities in appropriate locations whilst ensuring that *“detrimental effects on people, the environment and local amenity associated with waste management facilities (e.g. pollution) are avoided or minimised”*.
- 3.36 In terms of policy, paragraph 6.313 cites acceptable locations for waste management facilities and these include inter alia, a site...*“within an active or worked out hard rock quarry”*.
- 3.37 Paragraph 6.314 states that *“in the case of a regional scale waste collection or treatment facility its location should relate closely to and benefit from easy access to key transport corridors and where practicable make use of the alternative transport modes of rail and water”*.
- 3.38 Paragraph 6.316 makes clear that **a presumption in favour of waste collection and treatment facilities will apply** where a need for such development is identified through the Waste Management Strategy and the relevant Waste Management Plan.
- 3.39 Paragraph 6.320 refers to the need for planning authorities to take into account the Northern Ireland Waste Management Strategy and respect the ‘waste hierarchy’.
- 3.40 Paragraph 6.321 sets out important considerations to be taken into account in decision making by planning authorities. These include:
- Impacts on human health and the environment (including environmental pollution)
  - Roads/transport considerations (particularly where facilities depend on large transfer of materials, often generating a substantial volume of traffic)
  - Visual impacts on the landscape or townscape
  - Impacts on nature conservation or archaeological/built heritage interests;

#### **Policy Planning Statement 11, Policies WM1 WM2**

- 3.41 PPS11 was published in 2002.
- 3.42 Policy WM1 is entitled “Environmental Impact of a Waste Management Facility” and states that proposals for the development of a waste management facility will be subject to a thorough examination of environmental effects and will only be permitted where it can be demonstrated that twelve listed criteria are met. These include those contained in paragraph 6.320 of the SPPS.

- 3.43 PPS11 WM2 is entitled “Waste Collection and Treatment Facilities”. It is a permissively worded policy and confirms that proposals for the development of a waste collection or treatment facility will be permitted where various criteria are met.
- 3.44 The first of these is that there is a need for the facility as established through the WMS (Waste Management Strategy) and the relevant WMP (Waste Management Plan).
- 3.45 In terms of location the policy requires that the proposed facility is sited in any one of a number of locational contexts including, inter alia, within an active or worked out hard rock quarry.
- 3.46 The policy goes on to state that, where it is demonstrated that new buildings/plant are needed, these must have an acceptable visual and environmental impact and various criteria are also met.
- 3.47 The wording of Policy WM2 is notable. It sets out that proposals for the development of a waste collection or treatment facility **will be permitted** where:
- “there is a need for the facility as established through the WMS and the relevant WMP, except in the case of Waste Water Treatment Works (WWTWs) where the need must be demonstrated to the Department’s satisfaction”*
- 3.48 The wording of the headnote of PPS11 policy WM2 was considered by the Planning Appeals Commission to be **‘significant’**. (emphasis added).
- 3.49 Paragraph 36 of his report of the 2016 hearing states:
- “I consider the wording of this part of the policy to be significant since it makes clear that if a proposal for a waste collection and treatment facility, other than a wastewater treatment works, is under consideration WM2 provides support if need has been established through the WMS and WMP. It is important to recognise that the subject Section 26 process (the PAC hearing) is not a forum for questioning or amending the content of either the WMS or the arc21 WMP”*  
(my underlining)
- 3.50 Policy WM2 reflects the statutory position that district councils are required to provide waste management services and as such are the bodies that are best placed to determine what facilities and resources are required to meet those legal obligations.
- 3.51 The consultation response received from DAERA EPD in April 2024 reaffirms its consistently articulated position throughout the determination of the application process that there is a need for further waste infrastructure of the type proposed by the application.
- 3.52 Policy WM2 unequivocally provides support for the application as need for it has been established through the WMS and WMP. It follows from the wording of the policy that planning permission will be permitted. It does not set any further test of need in respect of capacity or assessment against any other factors.

- 3.53 Over more than ten years three separate considerations by Departmental officials and a further assessment by the Planning Appeals Commission after a public hearing have rightly concluded that there is a need for this vital residual waste infrastructure where MBT/EfW/IBA treatment and an educational visitor centre are co-located on one site at Hightown Quarry.
- 3.54 It is notable that the Department conceded the judicial review taken against the unlawful decision of Minister Mallon. The Department accepted that Minister Mallon's views on planning policy relating to need, and in particular not properly weighing the application's clear compliance with Policies WM1 and WM2 of PPS11, were irrational.
- 3.55 The judgment of Lady Chief Justice Keegan in *Duff v Causeway Coast and Glens Borough Council* as referenced above reinforces the essential importance of the DfI Minister carefully considering professional planning officer advice and recommendations in reaching an evidence based and lawful decision in determining this planning application.

### **Waste Management Strategy**

- 3.56 The Northern Ireland Waste Management Strategy 'Delivering Resource Efficiency' was published by the DoE in October 2013.
- 3.57 The Strategy focuses on waste prevention (including re-use), preparing for re-use and recycling, and moves the emphasis of waste management in Northern Ireland from resource management to resource efficiency i.e. using resources in the most efficient way while minimising the impact on their use on the environment.
- 3.58 The Ministerial foreword to the WMS recognises that it is not possible to prevent, re-use or recycle all the waste we produce, and the next priority is to extract value from residual waste in the form of energy and other by-products through the most appropriate technologies.
- 3.59 That echoes the Regional Development Strategy (RDS) 2035 which requires us to manage our waste sustainably (RG10, page 47). It goes further to suggest that in order to meet targets through the diversion of waste from landfill to other treatment methods significant new waste management structure will be required, specifically a need for three EfW plants and up to seven MBT facilities (paragraph 4.23).
- 3.60 There is currently no waste management facility either operational, committed or proposed in Northern Ireland that seeks to secure the combination of treatment processes and surety of controls for arc21 in an integrated fashion consistent with the proposal.
- 3.61 The WMS adds that EfW can contribute to meeting NI's non-fossil fuel obligations and Government's policies on renewable energy, as well as helping NI to meet its landfill diversion targets and preventing some of the negative greenhouse gas impacts of waste in landfill.
- 3.62 In supporting efficient energy recovery, the Department acknowledges that technology solutions include the mechanical and biological treatment (MBT) of waste which can produce a bio-stabilised or bio-dried fuel (often referred to as Refuse Derived Fuel (RDF)) which can be used

for energy recovery during subsequent thermal treatment (Energy from Waste) , in this case by way of use of modern, moving grate incineration.

- 3.63 At the time the WMS was published, it refers to arc21 remaining in dialogue in the context of a public procurement with a bidding consortium (who would be the operator of the facilities) *‘to implement their plans in respect of residual waste infrastructure procurement’*.
- 3.64 Notably, the WMS refers to an analysis undertaken (Analysis of 2020 Residual Waste Infrastructure Requirements in Northern Ireland, DoE/SIB, March 2012), which acknowledges the additional benefits the arc21 project may generate by contributing to an increased recycling rate and compliance with any prospective landfill ban.
- 3.65 DAERA EPD are expected to publish a consultation on a new Waste Management Strategy in the short to medium term.

### **Waste Management Plan**

- 3.66 arc21 is responsible for developing and formulating effective management of all waste stream arisings within the sub-region formed by its constituent Councils. Further, arc21 takes the lead in implementing the management strategies for the waste its councils collect. arc21 has assessed the need for an infrastructure project to deal with council collected residual municipal solid waste as part of its statutory Waste Management Plan (WMP).
- 3.67 arc21’s WMP sets out how it proposes to deal with waste throughout its area. It was initially produced in 2003 and reviewed in 2006. A second review was completed in December 2013 and was the subject of a consultation period which ran to 28 February 2014. The latest WMP was approved by DAERA in September 2015 and was ratified by the relevant councils thereafter. It sets out how it proposes to deal with its waste over the period to 2020.
- 3.68 In July 2024 arc21 produced an addendum to its WMP which has been the subject of public consultation which ran until 24 October 2024. This statement returns to the addendum in further detail below.
- 3.69 The WMP sets out in detail the need for the proposed development, providing a comprehensive analysis not only of the need for such a scheme in a general way but also expressly assessing the need for this specific project at the proposed location:

*“In order to meet statutory obligations, arc21 require additional treatment of the residual waste stream. In terms of the siting of facilities, arc21 developed a multi staged process for the purposes of selecting suitable sites for residual waste infrastructure.*

*The site selection process sought to identify potential sites in either the private sector, public sector or local authority ownership with interested parties being invited to put forward sites.*

*The process was undertaken in a number of stages, primarily due to a lack of suitable sites in the southern region of arc21. The councils then selected the site or sites considered most suitable for their solution. In this regard, Hightown Quarry site in Antrim was selected for the development of both MBT (Mechanical Biological Treatment) and EfW (Energy from Waste) Facilities”*

- 3.70 A key element of the delivery of the arc21 strategy is that the preferred solution to deal with residual waste arisings provides an auditable pathway of Council collected waste.
- 3.71 The proposed integrated waste management facilities have been deliberately fused into one project and associated public procurement to ensure that the recycling opportunities are maximised and landfill of waste minimised. The co-location of the proposed facilities provides further enhancement in respect of tracking the input of Council waste and the recovery of materials, output of products and by-products.
- 3.72 The inclusion of a pre-treatment, MBT recycling facility an educational visitor centre an EfW facility and IBA processing facility will deliver education, recycling, energy recovery and residue processing on one site delivering economies of scale and carbon reduction benefits.
- 3.73 There are no other waste management facilities elsewhere in Northern Ireland with planning permission for such provision. They are proposed in order to fulfil arc21’s corporate objectives to substantially pre-treat Council collected waste prior to thermal treatment, minimise waste to landfill and to promote, educate and influence others on waste prevention, minimisation and recovery.
- 3.74 The arc21 WMP, as updated in October 2014, was prepared in fulfilment of its Councils’ obligations under Article 23 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”).
- 3.75 After the review of public administration in 2015 the Councils at that time were restructured into the current Council areas. A plan covering the present 6 Council areas was subsequently published in September 2015.
- 3.76 Under Article 23 of the 1997 Order, District Councils have a duty to prepare Waste Management Plans for the forward planning of waste management requirements for collecting, recovering, treating and disposing of controlled waste within the region.
- 3.77 The WMP also establishes the overall need for waste management capacity and details the proposed arrangements to deal with the wastes produced in a sustainable manner.
- 3.78 The need for arc21’s proposal has been comprehensively assessed as part of the WMP.
- 3.79 The principal objective of the WMP is to identify options for managing waste from within the arc21 region which draws the correct balance between:
1. The provision and maintenance of sufficient capacity to deal with the waste produced;

2. Meeting strategic targets for recycling and recovery, and potentially for reduction;
  3. The protection of the environment for present and future generations; and
  4. Optimising resource utilisation in the arc21 region.
- 3.80 The WMP confirms that irrespective of achieving the target of recycling 50% of household waste by 2019/20 (as set out in the Waste Framework Directive), there will still be a significant quantity of residual waste remaining within the arc21 region (estimated to have been in the region of 260,000 tonnes per annum in 2019/20).
- 3.81 Within the key objectives of the Plan it is made clear that implementing a waste management option to deal with this residual waste, in turn contributing to a reduction in waste requiring disposal to landfill, is of priority.
- 3.82 Whilst the WMP refers to a number of date driven targets (contained within the WMS and EU Waste Policy and Legislation, namely the Landfill Directive 93/31/EC limiting the quantity of biodegradable waste going to landfill to 35% of 1995 levels by 2020), it is acknowledged that:
- 'Energy from Waste, incorporating state of the art environmental protection will form part of the solution for the long-term management of residual waste, and will not distract effort from increasing recycling and composting'*. (emphasis added)
- 3.83 In this regard, arc21's WMP confirms a preferred option for achieving this objective by way of a proposed integrated EfW/MBT/IBA facility to ensure that recycling opportunities through pre-treatment are maximised at an identified site at Hightown Quarry.
- 3.84 The alternative to the proposal is continuing/increasing our reliance exporting of waste and landfill disposal.
- 3.85 Landfill is widely recognised as environmentally damaging and will be limited to 10% by 2035.
- 3.86 Reliance on export is a high-risk strategy with both environmental and economic risks associated with it.
- 3.87 The proposed fully integrated proposal at Hightown Quarry is a sustainable long-term solution that is consistent with the inherent principles embedded within the waste hierarchy, maximising recycling and energy recovery. It further creates the opportunity for further positive use of incinerator bottom ash as a construction product reinforcing the recovery element of the overall development.

#### **Waste Management Plan – arc21 Addendum**

- 3.88 Arc 21 has prepared an addendum to its WMP previously determined by the Department in September 2015.

- 3.89 A draft of this addendum was the subject of public consultation over the period July-October 2024.
- 3.90 The purpose of the addendum is to reflect the evolving nature of waste management in Northern Ireland and to:
- Reflect changes and up-to-date waste legislation and regulations
  - Provide detail on current performance and waste arisings
  - Identify and analyse information on relevant policies and procedures that may inform future/further review of the plan as the strategic and statutory environment stabilise
- 3.91 The draft addendum undertakes a review of the Waste Management Plan from 2015 through to 2023. It anticipates that a more comprehensive review will be required once a new DAERA Waste Management Strategy is published for consultation later in 2025. As a consequence, the addendum covers the period up to the end of 2027.
- 3.92 One of the key targets in the 2015 WMP was in relation to landfill diversion. The Landfill Regulations (Northern Ireland) 2003 are amended by The Waste (Circular Economy) (Amendment) Regulations (Northern Ireland) 2020.
- 3.93 The purpose was to bring the EU Directives up to date with the 2018 amendments made as part of the Circular Economy Package including restrictions on waste separately collected for preparing for re-use or recycling from being accepted for landfill.
- 3.94 The Waste (Circular Economy) (Amendment) Regulations (Northern Ireland) also 2020 sets statutory landfill targets of the amount of municipal waste landfilled which will be reduced to 10% or less of the total amount of municipal waste generated by 2035. It also sets targets for recycling of municipal waste with this to achieve 50% by 2025; 60% by 2023 and 65% by 2035.
- 3.95 The 2015 WMP specifically identified the ongoing Residual Waste procurement project at Hightown Quarry to fulfil the requirements of diverting waste from Landfill to comply with the Landfill Diversion targets and maximise recycling from residual waste.
- 3.96 Although the WMP was adopted in 2015 the arc21 project configuration remains critical to modernising how we treat our waste in Northern Ireland. It will deliver recycling through pre-treatment and recovery of recycling in the MBT. It will secure substantial landfill diversion and reduction in the present reliance on export of waste to Europe. It will also deliver energy recovery. In so doing it will significantly contribute to achieving the objectives of the WMP, CE and Climate legislation targets.

### ***The Mills Report***

3.97 A report prepared by Mr. Christopher Mills, former director of the Welsh Environment Agency, in December 2013 for the DoE 'A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland' shines an alarming light on the significant tonnages of waste that have been disposed of illegally, estimated in Mills to be in the region of 516,000 tonnes at the Mobuoy site alone. Figures from NIEA in 2015 indicated the estimated volume of waste discovered had increased to a minimum of 913,105 m<sup>3</sup><sup>4</sup>.

More recently, the volumes of illegal waste disposed of at Mobouy have been estimated by DAERA to be as high as 1.6 million tonnes.

The likely estimated cost to the public purse as a consequence of the Mobouy illegal dumping is extremely high. It ranges between £17million and £700 million in its 2022/23 accounts with a "preferred option" for remediation costed at c.£107million.

There is also a very significant ongoing expenditure incurred by DAERA in its ongoing remediation assessment of the site.

The Mobuoy site is not the only major incident exposed by NIEA. NIEA has uncovered other illegal waste dumping sites.<sup>5</sup>

3.98 Evident from the findings of the Mills Report is a number of external factors facilitating criminals entering the waste industry and enabling them to tender for waste contracts. The challenges facing the regulator to track waste flows with any accuracy, in turn, makes the movement of waste in and out of both licensed and unlicensed sites and concealment of unregulated and illegal activities easier.

3.99 Significantly, a key recommendation of the Mills report (page 3) is that:

*'Consideration needs to be given to limiting the number of waste authorisations and developing new waste infrastructure that is easier to regulate and monitor'. (emphasis added)*

3.100 The Mills report was also considered by the Planning Appeals Commission with commentary at its paragraphs 42-44.

3.101 The Commissioner noted the key recommendation of Mills as described in 2.86 above and added *"this would clearly assist in the altogether necessary fight against illegal dumping. I recognise that arc21 sees significant merit in the proposal facilitating the tracking of flows of local authority collected municipal waste (LACMW)"*

3.102 The delivery of a public waste infrastructure project as proposed is wholly consistent with the recommendations set out in the Mills Report to deter waste crime and is the only means of

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<sup>4</sup> Source: <https://www.daera-ni.gov.uk/publications/mobuoy-road-waste-project>

<sup>5</sup> Source: DAERA website, Press Release 28 May 2016

providing a 'safeguard' that the waste generated in the arc21 region will be disposed of in a transparent and lawful manner.

3.103 Having public waste infrastructure to process public waste generated within the arc21 region will allow comprehensive waste management that can be effectively regulated and monitored.

#### **Northern Ireland Audit Office reviews**

3.104 The Northern Ireland Audit office is presently preparing a review of Waste Crime in Northern Ireland which it expects to publish in Spring 2025.

3.105 That follows its publication 'Review of Waste Management in Northern Ireland, July 2024.

3.106 That report suggests that DAERA, working with stakeholders, should ensure that Northern Ireland has sufficient infrastructure to process waste in line with future prevention, reuse, and recycling targets.

3.107 It recommends that DAERA works to ensure that the pathway to meeting future environmental targets is facilitated by the development of appropriate infrastructure, through engagement with waste and environmental experts and stakeholders.

3.108 The report specifically references the £240million energy from waste (EfW) plant and recycling facility at Hightown Quarry.

3.109 It notes the May 2023 High Court quashing of Minister Mallon's unlawful decision to refuse planning permission for this planning application and that determination of the planning application will now again be considered by the Department for Infrastructure. It importantly acknowledges that the arc21 facility could provide substantial additional processing capacity for local black bin waste (an anticipated 250,000 tonnes annually).

3.110 Paragraph 15 further confirms that:

*"Northern Ireland exports waste to other countries for recycling and energy recovery due to insufficient available local infrastructure to process it. As local targets to reduce landfill are increased, sufficient solutions must be in place to process waste in the most economic and environmentally friendly manner. Furthermore, exporting waste to countries which process and financially benefit from the waste, represents a loss of revenue for Northern Ireland"*

3.111 A further recommendation of the report is that DAERA examines alternative options to exporting waste to ensure that Northern Ireland has contingency plans in place for dealing with this waste in the future, other than by landfill.

3.112 The report also notes the requirement of the Circular Economy Package to cap the proportion of municipal waste sent to landfill in Northern Ireland to 10 per cent by 2035.

- 3.113 Whilst UK national and EU Member States are seeking to move away from landfilling and focus on recycling and recovery waste must be treated or disposed of and to ensure this accurate forecasting and planning is required.
- 3.114 If the target of 10 per cent of municipal waste to landfill by 2035 is to be met a 2015 Strategic Investment Board Report highlights that *“All Residual Waste will require treatment rather than being sent to landfill as is currently the case. This will require additional infrastructure to provide necessary treatment capacity”*
- 3.115 Para 4.19 identifies that under the Climate Change Act (Northern Ireland) 2022, Northern Ireland is required to reach net zero greenhouse gas emissions by 2050. Section 52 of the Climate Change Act (Northern Ireland) 2022 requires Departments to exercise their functions in a way that is consistent with the attainment of those binding climate change commitments.
- 3.116 In the *Coolglass Windfarm Limited v. An Bord Pleanála [2025] IEHC 1*, the Irish High Court ruled on January 10, 2025, that An Bord Pleanála (the national planning authority) unlawfully refused permission for a wind farm on the basis of alleged visual impact, finding they failed to adequately consider climate implications and breached their duties under the Climate Act applicable in the Republic of Ireland. This might indicate how the Northern Irish Courts will interpret Section 52 of the Climate Change Act (Northern Ireland) 2022.
- 3.117 Waste management plays a key part in the move towards net zero by focusing on waste prevention through reusing rather than disposing of materials thereby reducing emissions through less consumption, improved recycling and recovery processes and less transporting of waste.
- 3.118 The proposal at Hightown Quarry will deliver much needed additional capacity and where all elements of the waste process will be integrated on a single site. It will deliver a net carbon benefit and substantial reduction in greenhouse gas emissions over the current reliance on landfill and export to Europe. Further details are found in the accompanying ES addendum Chapter 15 Climactic Factors.

## 4. Relevant Material Considerations

- 4.1 In the continued absence of a positive planning decision on this planning application Northern Ireland will have failed to implement regional scale residual waste treatment infrastructure to divert residual waste from landfill and meet its statutory obligations of less than 10% of municipal waste being sent to landfill and 65% recycling targets by 2035.
- 4.2 arc 21 has statutory responsibilities for the collection and management of waste and as such needs to be able to operate in a stable framework of policies and laws so as to be able to make long-term, cost-effective plans to meet their legal obligations. That is what the arc21 WMP set out to do when last prepared in 2015 and continues to do moving forward with its recent addendum to project forward to 2027.
- 4.3 The delay in delivering the vital and necessary waste treatment infrastructure that the planning application proposes to deliver requires Councils to make shorter-term, cost volatile, less economical transparent arrangements exposed to changes in markets in other jurisdictions.
- 4.4 The NI Audit office July 2024 report states that Councils presently export around 260,000 tonnes of waste annually. It also notes that if exporting restrictions were to be introduced or exporting costs increase prohibitively the need for additional domestic processing capacity would arise.
- 4.5 Short-term solutions run counter to the strategic objectives shared by many stakeholders of arc21 Councils of having local waste treatment infrastructure to which waste being landfilled or exported can be diverted to and treated locally.
- 4.6 The NI Audit office July 2024 report concurs with these objectives. Its findings confirm:
- “In the context of a circular economy and the move towards Net Zero, the nature of waste management and disposal must be considered. The role of the waste hierarchy should be central in all decision making”*
- 4.7 The proposal delivers a publicly owned, modern, well-regulated and auditable waste treatment facility.
- 4.8 The difficulty in planning for waste management provision in the medium and long term is exacerbated by project delay.
- 4.9 This in turn makes it more difficult for Councils to set out long term operational plans and make prudent financial plans (e.g. required capital and revenue budgets reflected in the local rate setting processes). This does not benefit ratepayers or provide certainty regarding public sector commitments in relation to waste management costs which are one of the biggest budget lines managed by Councils.
- 4.10 The grant of planning permission for the residual waste infrastructure is notably one step in the delivery of the waste treatment infrastructure.

4.11 It will be the responsibility of the private sector developer to make a compelling final tender through an on-going public procurement to arc21 Councils that will be subject to scrutiny to deliver a cost effective, resilient, local solution for their waste for years to come. The project has the potential to deliver significant economic benefits as follows:

- Contributing an estimated capital investment of £300million to the Northern Ireland economy which will result in a publicly owned asset;
- Enhancing Northern Ireland’s security of energy supply and increasing diversity of energy production by exporting 18 MW electricity to the National Grid – enough to power 30,000 homes;
- Although not part of the planning application and subject to further development control, the proposed development has been designed or “future proofed” to enable the means to transition to a decarbonised future via ‘green growth’ initiatives by providing a platform for the deployment of other decarbonisation technologies such as carbon capture and utilisation, hydrogen production, e-fuels, district heating and energy storage (when technically and economically feasible).;
- Creating approximately 455 direct jobs at peak construction and support a significant number of additional jobs in the supply chain;
- Creating/sustaining 337 direct and indirect jobs annually during the operational phase; and
- Boosting the local economy during the construction phase by creating and sustaining direct and indirect jobs generating £122 million in total wages and £215 million of Gross Value Added (GVA) to the Northern Ireland Economy.

4.12 The successful implementation of the arc21 project would provide economic opportunities, improve waste management practices, and significantly contribute to Northern Ireland’s environmental and climate change goals.

4.13 Given the 2023 recorded level of reliance on exporting waste (280,683 tonnes annually), the economic value (including energy recovery) associated with our waste management practices is being realised elsewhere with this fuelling EfW plants in Sweden and other European countries.

4.14 This is contrary to the self-sufficiency and proximity principles of the Environment Act (2021), the Circular Economy Regulations (2020) and illogical as we continue to import fossil hydrocarbon fuels to Northern Ireland while facing a climate emergency and cost of living crisis.

4.15 Unlike wind and solar energy generation which is intermittent, the Energy from Waste facility at Hightown Quarry will operate continuously, constantly generating electricity for export onto the grid.

- 4.16 This type of baseload generation helps the grid operator SONI balance the grid, something which will be increasingly challenging in seeking to achieve NI's target of 80% renewable energy by 2030.
- 4.17 Delays or failure in the planning process will adversely impact market confidence that NI is not an attractive place for investment. Over £15million of private sector funds and public funds have been applied since 2008 to-date, which would be subject to scrutiny in the event that the arc21 project should take the same path as the two other public sector promoted projects in the NI waste infrastructure programme which have been abandoned.
- 4.18 The direction of the former Minister Mallon to refuse to grant planning permission in April 2022 was irrational and not based on any evidence and went against the expert assessment and recommendation of the Planning Appeals Commission and Department officials.
- 4.19 This is reaffirmed by the Department's decision to concede the legal challenge concluding that Minister Mallon's decision was not accompanied by rational reasons.
- 4.20 The concession by the Department that the Minister's previous decision was not accompanied by rational reasons underscores the need for the Department to make a prompt and robust re-determination of the application so as not to delay project delivery and stop frustrating Councils from being able to implement their statutory waste management plan, inducing significant extra costs for stakeholders in the process.
- 4.21 Uncertainty surrounding securing planning permission and other necessary consents will frustrate the implementation of NI's waste infrastructure programme and arc21's statutory waste management plan.
- 4.22 It also would be contrary to the thrust of the Programme for Government which advocates support *"for our net zero future and a long-term strategy for 2024-2035 to deliver smart investments to maximise opportunities for our green economy, job creation, and move us towards a fairer, more sustainable net zero future. This will change the lives of our people and communities for the better"*
- 4.23 The programme for Government sets a clear objective to facilitate net zero infrastructure and through a Net Zero Accelerator Fund to make the region more attractive for net zero investment and also help cut greenhouse gas emissions in line with the Climate Change Act 2022.
- 4.24 The intent is to *"create solid foundations for our economy, inward investment, health and social wellbeing both now and for future generations"*
- 4.25 For all the above reasons, the determination of the proposal in a timely manner is unquestionably in the public interest and is consistent with the guidance that Senior Officers must have regard to when preparing their latest recommendation in the Development Management Report to the Minister for the Department for Infrastructure.

## Environmental Policy

- 4.26 In the period since the last DMR (March 2022) a number of additional environmental legislation and policy strategy/guidance documents have been issued which are of relevance.

### *The Climate Change Act (Northern Ireland) 2022*

- 4.27 The Climate Change Act (Northern Ireland) 2022 that came into force in June 2022, sets a target of at least a 100% reduction in net zero greenhouse gas (GHG) emissions by 2050 (i.e., net zero emissions by 2050) for Northern Ireland compared to baseline, along with interim targets including an at least 48% reduction in net emissions by 2030 and by 77% by 2040
- 4.28 The Act also sets other sectoral targets including 2030 targets at least 80% of electricity consumption from renewable sources (DfE) and 70% of waste is recycled (DAERA) as well as a target for a minimum spend of 10% of overall transport budgets on active travel (DfI).
- 4.29 The UK Climate Change Committee (CCC) advice in relation to the waste sector pathway acknowledges that one of the key drivers is to increase recycling rates to at least 70% by 2030 in line with the Climate Change Act (Northern Ireland) 2022.
- 4.30 In line with the CCC pathway, DAERA's focus over the next five years is on actions to reduce the amount of waste sent to landfill sites as this will have the biggest impact on the reduction of emissions. The UK CCC had previously recommended a ban by 2025 on all biodegradable waste to landfill in Northern Ireland as methane emissions from landfill are 28 times more potent than carbon dioxide year period and 84 times more potent over a 20-year period, a crucial timescale for combating climate change.
- 4.31 An assessment of the impact of the proposed development on and from climate change is provided at Chapter 15 of the further updated ES Addendum (April 2025). It confirms that when compared to a baseline alternative of landfill, there is a clear net carbon benefit with the proposed Energy from Waste Facility predicted to produce 43,815 fewer tonnes of CO<sub>2e</sub> per annum and 28,464 fewer tonnes of CO<sub>2e</sub> when compared to the alternative baseline of landfill and export reliance to Europe (see Table 15.5 Chapter 15 of ES Addendum April 2025.)
- 4.32 In addition to providing a 'carbon beneficial' alternative to landfill, the proposal includes a pre-treatment facility in the form of a Mechanical Biological Treatment (MBT) plant that will contribute up to 10% recycling from residual waste, directly contributing to the achievement of recycling rate targets in accordance with the 2022 Act.
- 4.33 It will further assist in the delivery of renewable energy targets insofar as it will provide security of supply and a continuous base line for the system operator, SONI.
- 4.34 In the absence of the proposed development, the residual municipal waste management alternatives are limited to landfill which is clearly unsustainable and soon to be unlawful and a generator of potent GHG emissions or the export of our waste which has similar disbenefits as it

needs to be handled multiple times then often stored for months) awaiting shipping. It is also susceptible to the fluctuations of overseas market.

- 4.35 When stored prior to export, the biodegradable content of residual waste unless thoroughly dried can degrade, resulting in further emissions of greenhouse gases, particularly methane. Whilst difficult to quantify such GHG emissions, there will be GHG from transporting waste for export to its final destination. The overall carbon intensity of the proposed development must therefore be framed in a context of that which it is seeking to offset. Such an alternative to the proposed development at Hightown Quarry (export) goes against the revised Waste Framework Directive principles of proximity and self-sufficiency.
- 4.36 The absence of the proposed development would make the delivery of Circular Economy objectives and commensurate greenhouse gas reductions more difficult.
- 4.37 The opportunity to reprocess plastic material recovered via the MBT plant or to harness process flows from the EfW such as captured CO<sub>2</sub> to produce e-methanol for producing e-fuels or a feedstock for manufacturing a wide range of building products (if and when technically and economically feasible), hydrogen production, or the processing of bottom ash to displace virgin minerals in aggregates or the use of the air pollution control residues to displace Portland cement used in Antrim's salt mines would all be lost.
- 4.38 The arc21 project has always been open and transparent that it is a waste treatment project for residual municipal solid waste collected by its Councils.
- 4.39 The primary purpose of the arc21 proposed development is to deliver waste infrastructure as identified as being required in arc21's statutory waste management plan that meets the statutory imperatives arc21 Councils have and that is aligned with policy direction. It goes without saying a direct comparison of carbon intensity of EfW with other forms of electricity generation such as wind or solar, would therefore be misplaced. A wind or solar farm cannot accept and treat council collected waste.
- 4.40 It is recognised that carbon capture technologies for EfW may be a feature in the future for the purposes of meeting emissions limits and net zero targets as well as meeting the requirements of Best Available Techniques (BAT) as and when legislation and permitting requirements evolve.
- 4.41 With this in mind, the Hightown Quarry site is capable of adaptation and is of sufficient size to accommodate these technologies when or if they become deployable. As a public sector body arc21 will follow best practice as it evolves. The contractual arrangements for the operation of the facilities will contain review mechanisms and improvement plans informed by policy and legislative developments.
- 4.42 In summary, it is considered that the proposal will assist in the delivery of the aims of the Climate Change Act (Northern Ireland) 2022 Act insofar as it will contribute towards recycling targets, providing a carbon beneficial alternative to landfill and exporting to Europe and a secure energy supply in Northern Ireland that is 'future proofed' to accommodate carbon capture technologies,

district heating and be a platform for reprocessing material and energy flows needed for a Circular Economy.

#### *Draft Green Growth Strategy*

- 4.43 The draft Green Growth Strategy (which closed to consultation in December 2021) is the Northern Ireland Executive's multi-decade strategy, balancing climate, environment and the economy in Northern Ireland. It sets out a framework within which all other NI government policies and strategies must align.
- 4.44 One of the key commitments of the draft Green Growth Strategy is to develop Northern Ireland's first Climate Action Plan which is currently being prepared by DAERA.
- 4.45 Consultation was carried out by DAERA between June and October 2023 on NI's 2030 and 2040 emissions reductions targets and first three carbon budgets.
- 4.46 Subsequent to this the Climate Change (Carbon Budgets 2023-2037) Regulations (Northern Ireland) 2024 were published in December 2024.
- 4.47 These set following targets across each 5-year carbon budget period:
- 2023-2027 – 33% lower than baseline
  - 2028-2032 – 48% lower than baseline
  - 2033-2037 – 62% lower than baseline
- 4.48 The draft Green Growth Strategy recognises that:
- "...We must utilise better what we think of as waste through a strong circular economy, an economy where we move from "make, use, dispose" to one where we keep resources in use for as long as possible, where waste is eliminated, resources are circulated and nature regenerated".*
- 4.49 High level Green Growth principles underpinning this strategy include:
- *Decarbonise – replace fossil fuels with renewable energy; and*
  - *Reduce our wasteful use of resources – through greater efficiency and an increasingly diverse and circular economy.*
- 4.50 Integrated recycling and energy recovery infrastructure as proposed will directly support the achievement of Circular Economy targets. This is aligned with arc21's long-standing aim of providing the waste treatment infrastructure that minimises waste to landfill reflected in its statutory waste management plan.

- 4.51 As legislated in the Waste (Circular Economy) (Amendment) Regulations (Northern Ireland) 2020 by 2035 Northern Ireland Councils will have to ensure that less than 10% of their municipal waste is sent to landfill.
- 4.52 By 2030 recycling rates shall be increased to at least 60% and by 2035 a 65% recycling rate applies. Council collected waste has seen significant gains in recent years with the recycling rate increasing from 41.8% in 2015/16 to a high of 50.7% in 2019/20.
- 4.53 This enabled NI to meet its target of 50% by 2020. But recycling levels have plateaued over recent years with 50.0% in 2020/21, 49.7% in 2021/22 and 50.5% in 2023/24. This is not unusual and reaching higher recycling levels is impacted by various factors such as “low hanging fruit” (food waste etc.) already having been captured, contamination, difficulty in recycling complex waste streams (e.g. coffee cups), the economic and environmental cost and limited recycling infrastructure. A step change and further intervention is therefore required to meet forthcoming targets.
- 4.54 That step change will require new integrated recycling and energy recovery infrastructure such as that proposed that will also negate the requirement for Northern Ireland to continue exporting its residual waste.
- 4.55 The continued export of our waste is not commensurate with the revised Waste Frame Directive and Circular Economy legislation which enshrines the principles of self-sufficiency and proximity. Northern Ireland is failing to realise its Gross Value Added (GVA) economic potential by unsustainably transporting an indigenous renewable energy resource large distances to supply energy to other European households and businesses whilst importing expensive virgin fossil fuel.

*Draft Environment Strategy for Northern Ireland*

- 4.56 The Environment Strategy (which was approved in March 2022 ) sets out Northern Ireland’s environmental priorities for the coming decades and forms part of the Executive’s Green Growth agenda. As such it includes a mix of both existing and new environmental targets / objectives for DAERA and all Northern Ireland Departments with a role in improving the environment.
- 4.57 The then DAERA Minister announced in March 2022 that the Draft Environment Strategy had been approved but would require Executive approval before publishing:

*“This Strategy will provide a coherent response to the global challenges of biodiversity loss and climate change. Our environment affects every aspect of our existence – it is central to all life, what we do, what we eat, how we work, where we live and play, and is unquestionably our most precious asset. Northern Ireland faces a range of local environmental challenges, including habitat and species loss, agricultural greenhouse gas emissions, climate change, waste management, the development of a circular economy, soil quality, air quality and waste crime.”*  
(emphasis added)

4.58 In relation to waste management, its actions and targets include publishing a new Waste Management Strategy and makes reference to a closure report for the current Waste Management Strategy being developed. It also reiterates the Circular Economy package targets. It is noted that the new Waste Management Strategy has not yet been consulted upon having been delayed by the absence of an Executive reforming until February 2024. It is presently anticipated in 2025.

4.59 The Strategy identifies “Zero waste and highly developed circular economy” as a Strategic Environmental Outcome stating:

*“The Circular Economy is an economic system which reduces overall demand for resources, retains the value of resources and seeks to regenerate our natural ecosystems. By designing things differently, we can reduce overall demand for raw materials, reduce waste generation and create things that retain value throughout their entire life cycle. By keeping technical and natural materials in circulation for longer at their highest value we retain their embodied carbon and can increase nature’s ability to sequester carbon. A circular economy is fuelled by renewable energy and while the decarbonisation of the energy sector is a necessary part of achieving net zero, the circular economy is an equally essential element because by its application we create more sustainable production and consumption patterns which are needed to tackle resource scarcity, inequality and waste generation”.*

4.60 A future vision/outcome of the strategy is a low carbon, resource efficient society in which resources are valued and reused, putting them back into the economy and waste is prevented. Increased recycling rates with targets set to support this is also identified.

4.61 As outlined above, the proposal will make a substantial contribution towards achieving Circular Economy recycling and landfill targets in tandem with realising associated energy, material and economic benefits for Northern Ireland.

*Draft Circular Economy Strategy for Northern Ireland*

4.62 The Department for the Economy (DfE) launched a public consultation on the draft Circular Economy Strategy for Northern Ireland which closed in March 2023.

4.63 Relevant policy goals outlined in this strategy include the ‘designing out of waste’ and ‘managing resources to retain value’ in acknowledgement that the revolution of minimising waste and maintaining the value of our products and material is an essential part of reducing our emissions that will be embedded within climate action plans and the delivery of the Green Growth Strategy.

4.64 The Circular Economy principles of recycling, energy recovery and managing resources are very firmly encompassed within the arc21 proposal as outlined above.

## **Waste Management Policy**

### *Closure Report Northern Ireland Waste Management Strategy 2013*

- 4.65 The Closure Report for the Northern Ireland Waste Management Strategy 2013, found that the majority of the actions and targets of the 2013 Strategy have been achieved or significant improvements have occurred over the lifetime of the strategy.
- 4.66 This included the two headline objectives set in 2013:
- To reduce the amount of biodegradable waste going to landfill to 35% of 1995 levels by 2020; and
  - To achieve a recycling rate of 50% for waste from households by 2020.
- 4.67 Following this report, a new waste strategy, which is still in development will be required to take into account new legislation and policy initiatives, most notably those imposed by the Circular Economy Package.
- 4.68 It is also imperative that NI Councils plan and future proof their residual waste treatment infrastructure as more robust technologies are required to deal with increasingly complex waste streams such as bulky waste and contaminated Persistent Organic Pollutants (POPs), which under the UK government's response to its international obligations under the 2011 Stockholm Convention require physio-chemical destruction / irreversible transformation e.g. incineration. Without sufficient incineration capacity Northern Ireland is at risk of breaching it's Stockholm Convention obligations.
- 4.69 Any forthcoming updates to either the WMS or WMP will not depart from the identified need for local appropriate infrastructure to increase recycling, divert from landfill and maximise the recovery of the energy and material remaining in residual waste.
- 4.70 To the contrary, with diminishing landfill capacity, landfill bans and restrictions and the potential to contribute towards (currently declining) recycling levels and decarbonisation efforts, the arc21 residual waste treatment project remains a vital and critical requirement to achieve a sustainable future and meet challenging targets.
- 4.71 Reliance cannot be placed upon continuing to export our waste as a solution. In recognition of the climate impact of exporting waste and the risk to sustainability of relying on markets in external jurisdictions - at their waste sector consultation event on carbon budgeting held on the 16 August 2023 - DAERA indicated they have accepted the UK Climate Change Committee's recommendations to phase out waste exports by 2030.
- 4.72 The latest (DAERA) data which tracks waste exports of Refuse Derived Fuel (RDF) from Northern Ireland shows that in 2023 Councils exported [almost??] 257,000 tonnes of our black bin waste to fuel energy from waste plants elsewhere across Europe, including in Norway, Sweden, Denmark, Germany, Latvia and Ireland. This figure has more than doubled since 2020 when

125,766 tonnes of this type of waste was exported at cost to local ratepayers to other European countries for them to realise its value in the form of renewable electricity and low carbon district heating.

- 4.73 The approach is not commensurate with the Circular Economy Regulations and revised Waste Framework Directive principles of self-sufficiency and proximity as well as being counterintuitive as an indigenous renewable energy source is transported large distances to add to the energy security of others while reducing Northern Ireland's.

#### **UK Emissions Trading Scheme (ETS); EU Emissions Trading Scheme**

- 4.74 In May 2024 the UK ETS Authority, which includes DAERA, consulted on the implementation proposals to expand the scope of the UK ETS to waste incineration processes. The Authority proposed a 2-year monitoring, verification and reporting (MRV) only period to start from 1 January 2026, for waste incineration installations, and for full ETS obligations including ETS allowance surrender to begin from 1 January 2028.
- 4.75 In accordance with the 'polluter pays' principle the UK ETS cost to the waste incineration installations would be passed to the waste producers/suppliers under a Cost-Pass-Through (CPT) mechanism. Under such CPT mechanism, cost will be apportioned to the different suppliers of the waste to the incineration facility.
- 4.76 The CPT mechanism means that in the case of local authority waste treatment the ETS cost would be passed on to the local authority supplying the waste. Given that the ETS cost is directly proportional to the amount of fossil greenhouse gas emissions, a reduction in the fossil content of the waste prior to incineration, through sorting, pre-treatment and recycling would consequently reduce the ETS burden to which the local authority would eventually be liable.
- 4.77 The proposed residual waste infrastructure at Hightown Quarry would be undertaking processes that would minimise the UK ETS burden of the treated local authority waste.
- 4.78 The UK ETS Authority has also consulted on incentivising heat offtake through the UK ETS. It is proposed that this could be achieved through either free allowances or subtraction from the installation allowance surrender obligation. Apart from reducing the ETS burden through this, the financial benefit from this would then be passed down to local heat customers.
- 4.79 The proposed residual waste infrastructure facility has been designed or "future proofed" to allow it to supply district heating (subject to technical and economic feasibility) therefore offering the potential for additional benefits of a reduced ETS burden and cheaper heating bills for district heating customers.
- 4.80 Further mitigation on the impacts of ETS on local authorities include the ability to adopt and fit or retrofit emerging carbon technologies when technically and economically feasible. .

## **Programme for Government**

- 4.81 In February 2025 the NI Executive published a programme for government to cover the period 2024-2027. That set out a number of immediate priorities that include:
- Growing a globally competitive and sustainable economy
  - Protecting Lough Neagh and the environment
- 4.82 The programme confirms the Executive priority of moving to decarbonise our economy and become self-sufficient in affordable renewable energy.
- 4.83 It references the Executive’s proposed Green Growth Strategy which it says will provide our framework for tackling the transition to a greener, sustainable future. A future in which society enjoys a low carbon, nature rich existence reaping the advantages from jobs and opportunities from the expanding green sector and the health and wellbeing advantages of an improved environment.
- 4.84 In respect of decarbonisation, it confirms *“we will also move to decarbonise our economy and become self-sufficient in affordable renewable energy”*.
- 4.85 It reinforces the Executive’s intent to publish a Circular Economy Strategy with responsible production and consumption at its core. It makes clear that:
- “We need the right infrastructure which will create the foundations for a more productive and prosperous economy, for better rural and urban communities and for healthier and greener lives”*
- 4.86 The arc21 Project’s commitment to the circular economy and resilient waste management directly supports the environmental goals in the Programme for Government 2024-2027 by reducing resource extraction, lowering energy consumption, cutting emissions from waste disposal and promoting sustainable consumption and production.
- 4.87 It will do so where it will deliver a benefit in terms of greenhouse gas emissions over reliance on landfill and the alternative, present reliance on landfill and exporting of waste to fuel EfW facilities in other parts of Europe

## **Environmental Improvement Plan for Northern Ireland**

- 4.88 The Environment Act 2021 set out a range of core provisions which includes the:
- establishment of the Office for Environmental Protection (OEP), a new environmental body to assume a role previously undertaken by the European Commission
  - preparation and publication of an Environmental Improvement Plan (EIP) for NI and
  - a policy statement on environmental principles to which all NI departments and UK Government Ministers making policy for Northern Ireland must have due regard.

- 4.89 A draft EIP for NI was issued by DAERA in September 2024 following pressure from the OEP for failing to meet the original legislative deadline set for it of July 2023.
- 4.90 It sets six strategic environmental outcomes:
- Excellent air, water and land quality
  - Healthy and accessible environment and landscapes everyone can connect with and enjoy
  - Thriving, resilient and connected nature and wildlife
  - Sustainable production and consumption on land and at sea
  - Zero waste and highly developed circular economy
  - Net zero greenhouse gas emissions and improved climate resilience and adaptability
- 4.91 The draft EIP sets out a strategic context in its section 2. That identifies that Northern Ireland *'has a range of local environmental challenges including habitat and species loss, greenhouse gas emissions, climate change, waste management, the development of a circular economy, water quality, soil quality, air quality, waste crime etc'*.
- 4.92 It identifies a target date of December 2024 to consult on a new Waste Management Strategy to gather views on the future of waste management in NI.
- 4.93 It further confirms:
- an objective of achieving 65% of municipal waste recycled by 2035 with interim targets of 55% by 2025 and 60% by 2030
  - By 2035 send no more than 10% of municipal waste to landfill to move waste up the waste hierarchy
  - Achieve a 70% recycling rate by 2030
- 4.94 In addition, the EIP signalled a forthcoming consultation on the ban of biodegradable waste to landfill which is welcomed. It included a commitment by December 2024 to make new legislation to ensure greenhouse gas emissions reduction targets for the year 2030 and 2040 are in line with the Climate Change Act's net zero by 2050 target. That saw publication of The Climate Change (Carbon Budgets 2023-2037) Regulations (Northern Ireland) 2024.
- 4.95 There is also a target to publish NI's first Climate Action Plan to set out NI's approach to meeting the first carbon budget through a set of policies and proposals for emissions reductions. The Climate Action Plan will also establish a pathway towards the interim targets for 2030 and 2040 and the overall net zero by 2050 target.

4.96 The proposed residual waste infrastructure at Hightown Quarry with its integrated pre-treatment, recycling and energy recovery is fully aligned with the principles and thrust of the draft EIP. It will deliver a long-term sustainable strategy for managing and processing of residual waste across the six constituent Councils of the arc21 region.

#### **Clean Power 2030 Action Plan**

4.97 The Clean Power 2030 Action Plan is a UK Government Policy Paper which was published by the Department for Energy Security and Net Zero on 13 December 2024.

4.98 The action plan states that energy recovery from EfWs is primarily a waste management solution, with electricity as a by-product.

4.99 However, the plan recognises that EfWs do minimise emissions from waste management by diverting residual waste from landfill and when operating as combined heat and power plants are provide an efficient means of energy generation in a variety of settings including industrial, commercial and public sector. The plan explains that as electricity from EfWs is a by-product of the waste management process it is excluded from clean power calculations.

4.100 EfW solutions and the potential to decarbonise on the path to net zero are expected to make their contribution to the industry sector. Despite not being featured in the UK governments forward planning for additional ‘clean power’ generation in the power sector. The paper highlighted that the UK government sees EfWs as a ‘must run’ form of electricity generation due to public health and environmental imperatives.

#### **Press Release from UK Government: “Government to crack down on waste incinerators with stricter standards for new builds”**

4.101 Although not directly applicable to Northern Ireland as planning and environmental policy is devolved, consideration has been given to DEFRA’s statement issued on 30 December 2024, which said it was going to “crack down on waste incinerators with stricter standards for new builds”.

4.102 According to the new rules, developers in England will have to “*demonstrate that their projects will help lower the amount of non-recyclable waste sent to landfill or enable the replacement of older, less efficient plants*”.

4.103 In Great Britain there are currently 60 EfW facilities operational with another 10 under construction. Additionally, there is significant volume of consented capacity, though it is unlikely all this capacity will be developed.

4.104 DEFRA’s statement and capacity note<sup>6</sup> is therefore set in a very different context to Northern Ireland where there is one operational thermal treatment facility, meaning Northern Ireland is reliant on landfill and export as outlined for the treatment of our residual waste. The proposed

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<sup>6</sup> [Residual waste infrastructure capacity note - GOV.UK](#)

arc21 project also includes a recycling facility which differentiates it from the EfW only facilities targeted in the DEFRA statement.

**Committee for Climate Change (CCC) The Seventh Carbon Budget Statutory Report<sup>7</sup> (UK wide)**

4.105 The CCC published its Seventh Carbon Budget on the 26 February 2025 which sets out a limit on the UK's Greenhouse Gas Emissions (GHG) over the 5 years between 2023 to 2042 required to meet the UK wide 2050 Net Zero target.

4.106 In respect of the waste and recycling sector the CCC make a number of recommendations which the proposed facility can support. The first is that there must be a near elimination of biodegradable waste to landfill from 2028 and all waste types from 2045. The CCC believe the UK needs to achieve a recycling rate (for both household and non-household) of 68% by 2035. Finally, the CCC recommend that no new EfW facilities should be permitted without the deployment of carbon capture and storage by 2045.

4.107 The proposed facility will directly support both the landfill elimination and recycling pathways recommended by the CCC through diverting council waste from landfill and pre-treating this waste to remove recyclable materials. The location of the proposed facility could also facilitate carbon capture infrastructure in the future when economically and technically feasible.

**Northern Ireland's Fourth Carbon Budget<sup>8</sup>**

4.108 The CCC also provide independent expert advice to the Northern Ireland Executive on the level of target caps on emissions with NI's Carbon Budgets that started in 2023. The carbon budgets are part of the framework set out within the Climate Change (Northern Ireland) Act 2022 which has the overall target of Net Zero GHG by 2025. The CCC provided their latest recommendations to the DAERA Minister on 19 March 2025.

4.109 In 2022 waste was the seventh highest emitting sector in NI, accounting for 4% of Northern Ireland's emissions. In line with the UK wide Seventh Carbon Budget the CCC recommend the Executive ensure policies to support landfill diversion, recycling and carbon capture are implemented. Specifically, they recommend:

*“Ensure policies to increase recycling and waste reduction are implemented as part of efforts to eliminate biodegradable waste to landfill and minimising fossil-derived waste (for example, plastics) being sent to EfW”*

4.110 As outlined, the proposed facility will recycle materials such as plastics and will divert the remaining material from landfill.

4.111 With regards to carbon capture the CCC recommend the following – *“Carbon capture and storage and removals. Produce a strategy for development of CCS infrastructure in Northern Ireland,*

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<sup>7</sup> [The Seventh Carbon Budget - Climate Change Committee](#)

<sup>8</sup> [Northern Ireland's Fourth Carbon Budget - Climate Change Committee](#)

*considering the requirements of industrial plants, energy from waste, and its use for engineered removals. This should include assessing the viable approaches for transporting and storing captured CO<sub>2</sub>, as well as options for incentivising engineered removals businesses to locate in Northern Ireland”*

#### **Duncrue Medical Waste Incinerator approval LA04/2022/2103/F**

4.112 It is notable that full planning permission has recently been approved by Belfast City Council for a Medical Waste incinerator at Duncrue Industrial Estate.

4.113 Application LA04/2022/2103/F is described as:

*‘Proposed change of use and redevelopment of the existing waste management facility and adjoining plant hire business to create a new waste disposal installation for the incineration of healthcare and hazardous waste streams and associated works’*

4.114 It was granted planning permission on 05 March 2025 after being approved at Belfast City Council’s Planning Committee on 21 January 2025.

4.115 Similarly to the proposed residual waste facility at Hightown Quarry, the proposed facility at Duncrue delivers an alternative to shipping waste to Great Britain and Europe. It will incinerate healthcare, hazardous and other waste at source at a facility that would be regulated through a PPC permit.

4.116 It would have a capacity of 20,000 tonnes of waste per annum which would be capped by the PPC permit. The facility could generate up to 10MW in heat which could convert to 1-2MW of electricity. The applicant intends that the primary energy use would be as a local heat supply, then local energy source.

4.117 During the Planning Committee the Planning Manager highlighted the following key issues for consideration:

- Principle of development;
- Natural Heritage and Impact on ecology;
- Impact on water / marine environment;
- Design, layout and visual impact;
- Impact on amenity and environmental health;
- Access, parking and transport;
- Flood risk; and
- Waste infrastructure.

4.118 The agent described the application in the following terms:

*‘the project is a forward thinking response to a pressing infrastructure need and environmental and technical assessments had demonstrated that the development would not adversely affect human health, ecology or air and water quality’*

4.119 The application was deemed acceptable and was proposed for approval by Councillor Garrett (Sinn Fein) and seconded by Councillor Brennan (Sinn Fein). The committee approved the

application, subject to conditions and including a condition to prevent the import of waste from outside the island of Ireland.

## 5. Third Party Representation

5.1 This statement considers representations made to the Department in the period since its most recent Development Management Report was prepared and since March 2022.

5.2 Correspondence from TLT Solicitors dated 21 June 2023, available to view on the planning portal, raises a number of matters that are largely a repetition or restatement of previous objections raised on behalf of No-arc21.

### **Need / Kilroot Multi-Fuel CHP Facility**

5.3 The TLT correspondence asserts that DfI Strategic Planning Division gave substantial weight to the Statement of Need from the DAERA Minister dated 13 August 2021 that identified a treatment capacity gap of 320,000 tonnes for NI infrastructure existing at that time.

5.4 The TLT letter relies on the grant of planning permission for the “Erection of Multi Fuel Combined Heat & Power (CHP) facility including associated infrastructure and development” at Kilroot power station (planning application reference LA02/2021/0439/F) (hereinafter referred to as the “Kilroot Multi-fuel CHP facility” to conclude that the capacity gap no longer exists and cannot be relied upon as justification to approve the arc21 proposal.

5.5 However, such an approach to need and assertions extrapolated from them is erroneous, as set out below.

5.6 As previously outlined to the Department, the demonstration of ‘need’ for the proposed facility is limited to whether it is established through the Waste Management Strategy (WMS) and relevant statutory Waste Management Plan (WMP) as required by Policy WM2 of PPS11.

5.7 The WMP expressly identifies the need for the Facility:

*“In order to meet statutory obligations, arc21 require additional treatment of the residual waste stream. In terms of the siting of facilities, arc21 developed a multi staged process for the purposes of selecting suitable sites for residual waste infrastructure. The site selection process sought to identify potential sites in either the private sector, public sector or local authority ownership with interested parties being invited to put forward sites. The process was undertaken in a number of stages, primarily due to a lack of suitable sites in the southern region of arc21. The councils then selected the site or sites considered most suitable for their solution. In this regard, Hightown Quarry site in Antrim was selected for the development of both MBT (Mechanical Biological Treatment) and EfW (Energy from Waste) Facilities”.*

5.8 DAERA approved the WMP (following public consultation and Strategic Environmental Assessment processes), and it is consistent with DAERA’s own WMS.

5.9 Pursuant to the Department’s Planning Policy Statement 11 at Policy WM2, proposals will be permitted where “*there is a need for the facility as established through the WMS and relevant WMP*”.

- 5.10 Policy WM2 does not give the Department discretion to override and superseded statutory plans.
- 5.11 It is notable that the Commissioner for the PAC Inquiry clearly stated at paragraph 36 of their report that:
- “It is important to recognise that the subject Section 26 process is not a forum for questioning or amending the content of either the WMS or the arc21 WMP”.*
- 5.12 In this context, any perceived change in relation to capacity gaps that may or may not exist as a result of other approved facilities is irrelevant.
- 5.13 The “Kilroot Multi-fuel CHP facility”, is an example of a thermal electricity generating station purporting to be reliant on fuel derived from imported or local waste being approved without any interrogation of “need” for such facilities against waste management requirements.
- 5.14 The Department should not give any weight to the grant of planning permission for the Kilroot Multi-fuel CHP facility when assessing the need for the arc21 facility particularly when the Department previously distinguished the facility from the arc21 proposal when they accepted that it did not involve the incineration of waste, but rather it was an electricity power generating station in determining that the application would not be of significance to the whole or substantial part of Northern Ireland. The application was therefore assessed and approved by Mid and East Antrim council.
- 5.15 The Kilroot Multi-fuel CHP facility does not exist. It is a planning approval and there is no guarantee that it will ever be built much less operated at its full capacity. The objector group in the past has suggested that other facilities which had planning should also be considered in a need assessment. Facilities such as the North West Waste Management’s Group’s project in Derry and the proposed Energos facility at Lisburn. Both projects have been abandoned and serve as a warning to the consideration of undeveloped ‘merchant’ capacity.
- 5.16 Unlike the arc21 proposal, the Kilroot Multi-fuel CHP facility (if built as proposed) will not offer pre-treatment and recycling on-site. The proposed facility does not meet the requirements outlined in arc21’s WMP for pre-treatment.
- 5.17 Consistent with the recommendations of the Mills Report, the arc21 proposal delivers integrated waste treatment infrastructure with reduced waste movements.
- 5.18 TLT go further to suggest that the need as set out in the arc21 WMP has been met because arc21’s own alternative site assessment for the project shortlisted Kilroot and Hightown as their preferred locations.
- 5.19 That is not correct as the site that was the subject of the site selection process was a former RUC sports ground site and not that which is the subject of planning permission LA02/20121/0439/F.
- 5.20 Irrespective of whether the Kilroot site was previously screened by the applicant for its suitability, the detailed screening exercise undertaken by the applicant (see paragraphs 4.18 - 4.24 of

Chapter 4 of the original ES (submitted in March 2014) clearly articulates the reasons why Hightown Quarry represented a more favourable and environmentally sustainable location for the co-located facilities.

- 5.21 Notwithstanding this, the criteria applied and the conclusions reached as part of the Consideration of Main Alternatives in the 2014 ES has been reviewed for robustness.
- 5.22 The updated April 2025 ES addendum that accompanies this planning statement further underscores that Hightown Quarry performs best and is the most appropriate site to absorb the residual waste infrastructure necessary to meet arc21's needs as set out in the WMS and the WMP.

#### **Outdated Technology / Failure to comply with Policy WM2 of PPS11**

- 5.23 TLT assert that the proposed MBT facility does not meet the requirements set by the WMS and therefore fails to comply with Policy WM2 of PPS11. These same arguments were brought to the attention of the Department by TLT previously and have been responded to in full by way of the applicant's correspondence dated 13 May 2021.
- 5.24 The TLT reference to the preferred bidder's project in Rivenhall, Essex is plainly irrelevant given the different geographical context and project/waste market circumstances. Furthermore, the Rivenhall project is a merchant facility developed by Indaver in the context of the very large market that exists in the southeast of England<sup>9</sup> which unlike the arc21 project is not part of a design, build and operate procurement process specifically tailored to meet the needs of arc21's constituent councils and the statutory WMP.
- 5.25 The technology configuration proposed today, which is in conformity with both the extant WMS and arc21 WMP represents a robust, long term economical solution for arc21 waste requirements for the future with the MBT and EfW facilities both adaptable to different waste compositions, particularly the expected low-calorific wastes that will require treatment as policy interventions result in less fossil hydrocarbon derived plastics, these being replaced with sustainable alternative materials.
- 5.26 It is evident that the waste policy landscape is becoming increasingly aligned with the project over time, to the contrary of TLT's suggestion.
- 5.27 The ever-increasing restrictions on landfilling of waste, increasing recycling targets, the adoption of Circular Economy principles in statute, energy insecurity, the climate change emergency, the Mobuoy illegal landfilling scandal and the vulnerability to Northern Ireland waste crime all underpin the need for the proposed development at Hightown Quarry.

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<sup>9</sup> The latest available figures show the UK generated 222.2 million tonnes of total waste, with England responsible for 84% (187.3 million tonnes) of the UK total <https://www.gov.uk/government/statistics/uk-waste-data/uk-statistics-on-waste>

### **Outdated Needs Assessment**

- 5.28 The same TLT criticisms of the Tolvik Consulting reports submitted in 2020 relating to a combined MBT/EfW proposal have been previously responded to by the applicant in the May 2021 ES addendum. That reaffirmed the need for the arc21 project.

### **Out of Date Environmental Information**

- 5.29 The TLT correspondence suggests that the ecological survey information submitted in 2021 is now out of date based on relevant guidelines and advice.
- 5.30 A full suite of further updated ecological surveys undertaken in 2023 and again in 2024 is now submitted as part of the parallel April 2025 ES addendum (Chapter 9) that includes re-surveys of the application site including both the quarry element, the proposed widening of Boghill Road and a further review of the three potential grid connection routes in addition to responding to the consultation response from NIEA Natural Heritage dated 19 April 2024.
- 5.31 The results of these further surveys confirm no material change in the habitats or ecological features present on the site. The extent and regularity of the ecological survey effort over the years the project has been under determination has ensured that the results captured do not represent a snapshot of ecological activity at the site but rather a stable and reliable baseline upon which a decision can be robustly made.
- 5.32 NIEA Natural Heritage has consistently reviewed the baseline evidence presented before it and confirmed it accepts the findings and mitigation proposed.

### **Decision-Making Process**

- 5.33 TLT conclude that based on guidance published by the Northern Ireland Office that it would not be in the public interest for a decision on this application to be made in the absence of a Minister, specifically citing that *“the principle that the policy direction of former Ministers should normally continue to be followed”*.
- 5.34 As articulated earlier in this Statement, the policy direction of Minister Mallon to refuse to grant planning permission was not based on any evidence and went against the four sets of consistently positive recommendations of the PAC and Department officials to approve the proposed development. This is reaffirmed by the Department’s decision to concede when challenged through the judicial review process.
- 5.35 The Department concluded from the affidavit evidence submitted to the High Court by both the applicant and the Department that the Minister’s decision was not accompanied by rational reasons.
- 5.36 There is no significant change in circumstances or new compelling objective evidence that would change the Department’s previous recommendations to grant planning permission that is also in the public interest.

### **No-arc21 submissions**

5.37 This statement also responds to more recent submissions made by no-arc 21 and notably:

- Letter to DfI Planning dated 23 April 2024 relating to Local Authority commitment to arc21 project
- Objection to DfI dated 23 April 2024 relating to DAERA assessment of need
- Objection to DfI Planning dated 5 June 2024 relating to Incinerator Bottom Ash
- Objection letter to DfI Planning 21 June 2024 relating to climate

5.38 It also reviews correspondence in the form of a duplicate letter issued to Minister O'Dowd by multiple signatories each described as a supporter of community group No-arc21.

- Letter to DfI Planning Minister John O'Dowd dated 5 June 2024

### **Noarc21 submission to DfI Planning dated 23 April 2024**

5.39 No-arc21 claim in their letter that arc21 do not represent all six Councils (Antrim and Newtownabbey Borough Council; Belfast City Council; Ards and North Down Borough Council; Lisburn and Castlereagh City Council; Mid and East Antrim Borough Council; Newry and Mourne District Council).

5.40 They do so on the basis that Antrim and Newtownabbey Borough Council of *'their wish to withdraw from the process'* as reported on BBC Spotlight in March 2022. They suggest that there is significant doubt that the other Councils remain committed to the project.

5.41 The arc21 joint committee remains the statutory waste body that is legislatively responsible for delivering vital and necessary, sustainable waste management infrastructure and services for its six constituent Councils. Its WMP specifically seeks to deliver this residual waste infrastructure on the Hightown Quarry site. It is critical to secure planning permission for this to meet legal requirements to reduce landfill to 10% by 2035 and to reduce dependence on export of RDF to other EfW facilities in Europe.

### **No-arc Submission to DfI Planning re Need 23 April 2024**

5.42 No-arc21 submitted a representation to DfI on 23 April 2024. That appeared to have been in response to DAERA'S Environmental Policy Unit's consultation response of 19 April 2024.

5.43 **DAERA EPD** considered the ES addendum submitted by the applicant in September 2023 and concluded that it does not materially affect their previous position. It reaffirmed, once again, **a clear need for planning approval** for more waste infrastructure and confirmed it is for DfI to decide if the arc21 project is the correct infrastructure.

5.44 The No-arc21 representation makes reference to over 520,000 tonnes of capacity for incinerating waste being either in use or has planning consent in Northern Ireland.

- 5.45 That appears to be a reference to the permission at Kilroot Power Station referenced by TLT solicitors above and to the existing gasification plant at Airport Road West, Belfast.
- 5.46 The Kilroot planning permission has been commented upon at paragraphs 5.2-5.19 in the context of the permissively worded headnote to the applicable regional planning policy provisions of PPS11 WM2.
- 5.47 In relation to the Airport Road West facility the applicant has previously submitted expert analysis from Tolvik Consulting which demonstrates that Northern Ireland needs both the arc21 facility and the operational airport road facility and this will remain the case as recycling targets of 65% are reached in 2035.
- 5.48 The Airport Road facility, to date has not processed the amount of waste which it is licensed for (Annual Performance report 2023; issued 31.01.2024) This is common with the technology and in GB the majority of facilities have struggled to process waste at the volume needed to make them economically viable and have stopped operating completely. On the other hand there are now some 60 Energy from Waste facilities operating in GB with the same moving grate technology proposed for the Hightown EfW.

#### **No-arc21 submission to DfI re Incinerator Bottom Ash 5 June 2024**

- 5.49 The submission to DfI is an objection from No-arc21 in respect of Incinerator Bottom Ash arising out of incineration of waste by product of the incineration process. It copies and pastes, and in several areas duplicates commentary taken from '*Toxic Fallout – Waste Incinerator Bottom Ash in A Circular Economy* ', Research report – January 2022 [ZWE Publications Template \(zerowasteurope.eu\)](https://zerowasteurope.eu)
- 5.50 As detailed in the original application and Environmental Statement, and subsequent ES addendum, the potential hazards of incineration are well known, understood, and addressed through planning, and are subject to some of the most rigorous permitting requirements of any industry.
- 5.51 As a consequence, emissions to air of substances of concern are negligible, remaining well within air quality objectives protective of health and are orders of magnitude lower than would be required to quantify any measurable risk to health. This is why EfW facilities are commonly deployed to manage waste close to its source of arising, increasing recycling and facilitating energy recovery and use. As stated above, there are 60 operational facilities in the UK and over 500 in Europe.
- 5.52 Bottom Ash is the non-combustible residue of combustion. It goes through a stabilisation process to remove hazards before being committed to its next use. The proposed facility includes an Incineration Bottom Ash (IBA) processing facility, where IBA will be stored, matured, analysed and then processed to recover metals not recovered in the MBT pre-thermal treatment stage.

- 5.53 The remaining fraction can be used as a sustainable alternative to virgin sand and aggregate in suitable construction applications. The practice is common across the UK, in line with circular economy principles.
- 5.54 It provides significant carbon, transport and cost savings. As with all activities on the proposed site all regulatory and legislative requirements will be met. In this context, the proposed project will satisfy all regulatory and legislative requirements as part of the planning and permitting processes. A draft permit was previously issued by NIEA's Industrial Pollution & Radiochemical Inspectorate (IPRI) and that will be progressed to a final permit and all regulatory requirements that will involve only after planning permission has been issued by the Department.

#### **Objection letter to Minister O'Dowd 05 June 24**

- 5.55 A letter of objection was issued to Minister O'Dowd that was duplicated by multiple names. It states that its objections are grounded in a number of planning issues, some of which it suggests have been set out in representations made by TLT Solicitors in December 2023 and January 2024.
- 5.56 The 5 June 2024 letter raises a number of points of objection under a series of headings. The ES and series of addendum ES submissions have all considered the points that are raised. Further this planning statement addresses matters of planning policy and other material planning considerations.
- 5.57 For completeness we comment as follows:

#### **Traffic and road safety**

- 5.58 The original ES included preparation of a Transport chapter and related Transport Assessment (March 2014). The evidence baseline was subsequently updated in the 2016 statement of case evidence before the Planning Appeals Commission, again in the March 2019 ES addendum submission and once again in the September 2023 ES addendum. The updates have involved undertaking fresh, updated traffic survey count information on the road network.
- 5.59 DfI Roads has confirmed on each occasion that it has been consulted that it is satisfied with the methodology used and agrees with the conclusions/recommendations/mitigation set out in the original assessment and subsequent ES addendums. It has done so for a fourth time in responding to the latest transport assessment review submitted as part of the September 2023 ES addendum. It has no objections. Notwithstanding this context the April 2025 ES addendum has been further updated to assess an opening year of 2030. This latest update (Chapter 12) reaffirms the original ES and follow on addenda conclusions that transport impact and capacity on the network is at acceptable levels.

## **Emissions and Air Pollution**

- 5.60 Chapter 14 of the April 2025 ES addendum that accompanies this planning statement provides an updated chapter on air quality and technical appendices relating to an updated air quality impact assessment and remodelling of updated meteorological data.
- 5.61 The chapter also includes a quantitative assessment of the impact of operational traffic movements, odour emissions and the EfW stack emissions.
- 5.62 Increases in road traffic due to the operation of the proposed development have been compared against the IAQM (2017) development screening criteria. Pollutant concentrations were estimated through an air quality screening assessment using the National Highways DMRB spreadsheet tool at locations representative of sensitive exposure.
- 5.63 The results confirm that estimated impacts due to the operational traffic generated by the proposed development are of negligible significance, in line with IAQM guidance
- 5.64 Overall, the AERMOD and ADMS air quality modelling assessment outcomes for human health and ecological impacts are similar to those reported in the March 2014 ES and subsequent addenda. Emissions from the proposed development are not expected to result in significant effects on air quality and the assessment approach adopted is robust and in line with best practice.

## **Impact on the local natural environment and biodiversity**

- 5.65 The site has been the subject of a series of ecological surveys as articulated in the original ES submitted in March 2014, initial ES addendum in September 2014, further ES addendum to refresh the ecological baseline evidence in the August 2016 submission that accompanied the statement of case before the Planning Appeals Commission and further ES addendum submissions in March 2019, August 2019, October 2020 and again in September 2023.
- 5.66 The site has been the subject of repeated suites of habitat and protected species survey work over an extended period.
- 5.67 This ongoing survey effort ensures that the results captured do not represent a snapshot of ecological activity at the site but rather a stable and reliable baseline. Over the period there has been no material changes in the ecological baseline of the site.
- 5.68 Notwithstanding this background further ecological surveys have been carried out in 2023 and reviewed again in September 2024 to update and reaffirm the findings of earlier ES survey data. The April 2025 ES addendum Chapter 9 and related appendices has included a review of the ecological baseline within the quarry site, the proposed widened Boghill Road corridor and the three potential grid connection routes. It also includes an updating the shadow Habitats Regulations Assessment.

- 5.69 Long- and short-term human health and ecological impacts as a result of emissions from the EfW were reassessed using the most recent version of AERMOD and ADMS modelling software, and a more recent meteorological dataset (2019 to 2023). This study comprised a comprehensive assessment of normal and abnormal operations using AERMOD. When compared with the original assessment for the proposed development, the updated modelled outputs at receptors were similar or lower.
- 5.70 For ecological sites there are some increases in the proportion of the criteria as critical loads have become more stringent since the previous assessment, however the contributions are still a very small percentage at the most affected sites, which are locally designated.

### **Visual Impact and Need**

- 5.71 The objection letter makes commentary on visual impact with reference to the Planning Appeals Commissioner decision.
- 5.72 It suggests that the Commissioner ruled that the visual impact of the proposed incinerator would be “unduly prominent” and contrary to policies CTY13 and CTY14 of PPS21.
- 5.73 That is not an accurate description of what the Commissioner’s report says nor does it reflect the very detailed assessment and analysis given to the issue of landscape and visual impact by the Commissioner.
- 5.74 It is important to reference the Commissioner’s assessment in its full context.
- 5.75 The visual impact of the proposed development was considered in detail by the PAC at paragraphs 141 to 153 of its report of 2017. In summary, the Commissioner found that:
- The Hightown Quarry site where the Facility is to be situated lies in an area of countryside unaffected by any environmental or landscape designation and therefore the consideration should be as to whether the proposal will have an acceptable visual impact in the landscape (para 141);
  - The planning system and its policies do not exist to protect the views of individual residents. That is not to say that the impact on wider visual amenity is not a material consideration. In terms of the requirements of policy it is not tenable to argue against the proposal on the grounds that it is incompatible with the character of residential development, within the urban area, a kilometre or so away (para 145);
  - Para 6.10 of PPS11 recognises that waste management facilities vary greatly in scale and their potential impact on landscape. A summary of the Landscape Architects Branch advice is provided, in particular noting that the proposed development includes

significant landscape and visual mitigation measures and an end use which itself serves wider environmental gain (para 148);

- The PAC was not persuaded that the associated road scheme proposed would have a significant detrimental impact on visual amenity as it must be borne in mind that there is already a road in existence (para 149);
- It is clear that a significant amount of design work has gone into mitigating the impact of the buildings. It is proposed to use coloured panelling to external walls to help integrate the buildings into the countryside and there is no doubt that the enclosure that would be provided by the quarry walls would ameliorate visual impact to a degree. A comprehensive scheme of planting at the quarry and along the access road is also proposed. The visual representations and photomontages produced for the applicant demonstrate however that a large portion of the tallest structures will still be visible on the hillside (para 150);
- The impact of the flue (at 95m) would not draw undue attention nor would its visual impact be unacceptable (para 151);
- From more distant viewpoints, the Facility would not have an unacceptable visual impact due to the fact that whilst visible it would blend reasonably well into the hillside and be viewed as one of the many components in a varied landscape including an approved wind farm (para 152);
- The most critical views of the quarry site are from the roads closer thereto. Seen from the Upper Hightown Road and Hydepark Roads (over distances of around 1.2km or more) the buildings would be acceptably integrated into the landscape.
- Seen from closer vantage points on the Boghill Road and Flush Road, due to the scale and mass of the EfW building, it is considered that the proposal would be unduly prominent contrary to PPS21 Policies CTY13 and 14
- Despite concluding that the development would be unduly prominent at the closer vantage points the PAC considered this impact against other factors (para 156) before concluding that Policies CTY13 and 14 should not be fatal to the Application and that there is no conflict with PPS11 WM1 insofar as the visual impact of the proposal would be acceptable in the landscape in the particular circumstances.

- 5.76 As part of the March 2019 ES addendum submission, the existing baseline context was reviewed and revised landscape proposals along Boghill Road were provided in response to Condition No. 25 of the quashed decision notice to account for DfI Roads' comments on the arrangements of vegetation in relation to fencing.
- 5.77 The Northern Ireland Environment Agency's NED Protected Landscapes Team were again consulted on the information provided and concurred that the proportion of the magnitude of adverse change arising from the Facility would be relatively limited and that the presence of constructed wind turbines, pylons and over-ground cable routes and the general increase in such infrastructure around this area would assist with the assimilation of the proposed development.
- 5.78 The DMR prepared by the Directorate recommended to Minister Mallon that planning permission should be granted considered the visual impact of the proposal at paragraphs 3.18 to 3.20 and concurred with the PAC assessment.
- 5.79 As part of the further April 2025 ES addendum that accompanies this planning statement the landscape and visual assessment has been further reviewed to examine reflect the updated air quality modelling requested by NIEA IPRI and specifically the rerunning of this to reflect updated meteorological data over the five year period 2019-2023.
- 5.80 The new data relating to plume visibility from the EfW plant suggests the frequency of plume visibility increases to 48-58% (broadly half the time) with a reduced average mean plume length of 55-60m. The plume length however will be 10m or less for approximately a third of time when the plume is visible.
- 5.81 Using photomontages prepared for the 2014 application, four representative viewpoints have been re-assessed, assuming the greatest potential for visible plume length depending on the angle of the view and assumptions from the data shown on Figure B-2 of the AQA. (Appendix 14.1)
- 5.82 The review reinforces the original ES and ES addenda conclusions previously reached.
- 5.83 On the days when visible plume is evident, there would be a slight increase in the levels of visual change for the short duration that the largest plumes are visible. However, as the plume would cause such a temporary change to the visibility of the proposed development, it is not considered that the presence of the visible plume would lead to an increase in magnitude nor the significance of any of the visual effects identified during the visual assessment.

#### **PAC/Department Consideration of Need**

- 5.84 The Commissioner appointed to conduct the hearing into the planning application, Commissioner Speers, examined the waste management policy considerations in extensive detail at paragraphs 36-69 of his report.
- 5.85 His opening paragraph in considering need sets out:

*“The headnote of PPS11 policy WM2 starts off by stating that “Proposals for the development of a waste collection or treatment facility will be permitted where (a) there is a need for the facility as established through the WMS and the relevant WMP”*

5.86 The Commissioner then continues:

*“I consider the wording of this part of the policy to be significant since it makes clear that if a proposal for a waste collection and treatment facility, other than a waste water treatment works, is under consideration WM2 provides support if need has been established through the WMS and WMP.”*

5.87 He goes on:

*“It is important to recognise that the subject Section 26 process is not a forum for questioning or amending the content of either the WMS or the arc21 WMP”*

5.88 At paragraph 156-159 of the PAC’s report, the presiding Commissioner reaches his conclusions regarding the proposed development.

5.89 He concludes that a need for the proposed development had been established in conformity with Planning Policy Statement 11 and as identified through the government’s Waste Management Strategy and arc21’s WMP. The Commissioner further concluded that the proposal would provide a significant environmental benefit in terms of meeting waste management/treatment targets and assisting in the battle against waste crime.

5.90 At paragraph 62 the Commissioner addressed the issue of need specifically as follows:

*“The arc21 WMP identified a need for the facility and a 210,000 tpa thermal capacity to deal with waste arisings for the area as at 2020. It is clear that merchant capacity and export of RDF cannot be relied upon to address this. While the SIB report and EPD’s considerations mainly concentrate on the wider NI context, it is obvious to me that, given the fact that the arc21 area contains over half the region’s population, a very large proportion of the additional thermal capacity that is likely to be needed to deal with diversion from landfill and illegal waste will have to be provided within it. In all of the circumstances, I am satisfied that the stance taken by arc21, SIB and EPD, is justified. **I accept that a need for the proposal exists.**” (emphasis added)*

5.91 The Commissioner also concluded that the proposal would result in economic benefits and was of “sub-regional importance” (para 156).

5.92 At paragraph 51 of the PAC report the Commissioner noted that there are no facilities, existing or approved, in NI that offer the integrated solution that the proposal could provide, where domestic waste can be taken from its raw state through MBT/recycling, the remnant converted to RDF and the remaining IBA processed for further use. The Commissioner noted that arc21 seeks to secure the combination of treatment processes and surety of controls in an integrated fashion and that *“The proposal would address this situation”*.

5.93 The PAC's conclusions on need were considered and endorsed in the Department for Infrastructure's consideration of the application in recommending that planning permission be granted in September 2017 and again in its updated consideration post the Buick judgement in March 2022.

#### **Departmental consideration of Need**

5.94 In August 2017 the Department officials noted:

*"The Commission accepted that there was an identified need for this sub-regional facility (paragraph 62) based on the stance taken by arc21, the Strategic Investment Board and the Environmental Policy Division (EPD) of DAERA. EPD has also considered the PAC report (see annex 2) and are content that it accurately reflects their strategic and policy positions in relation to waste management. They remain of the opinion that the need for the proposal has been identified through the Waste Management Strategy and the relevant Waste Management Plan. EPD also welcomes the recognition that the proposal would move waste up the waste hierarchy, away from landfill and towards recovery and recycling. Establishing a need for the facility is identified under planning policy (PPS 11) as material in deciding whether to grant permission. The development management group are satisfied that a need for this facility has been demonstrated."*

5.95 In March 2022 the Department officials in re-assessing the application concluded as follows:

*"The arc21 WMP has identified Hightown Quarry as the preferred site for the Sub-Region to contribute to the long-term requirements identified for the area. The proposed development will provide an integrated residual waste treatment facility contributing to the needs of the arc21 Waste Management Group. **A need for facilities of this nature has been established in the WMS and more specifically in the arc21 WMP. This need has also been confirmed by DAERA EPD.**"*

5.96 DAERA EPD has further underscored its confirmation that further waste infrastructure is needed in its latest response to DfI in April 2024.

#### **Noise and odour impact**

5.97 The original ES March 2014 and the March 2019 and September 2023 ES Addendums considered the potential noise and vibration impacts from the proposed development on its surroundings, both during construction and when operational.

5.98 In terms of operational noise, the original ES March 2014 assessed that the noise impact would be of Minor Significance. A re-assessment has been undertaken as part of the April 2025 ES addendum, incorporating updated traffic flows and committed developments and concludes that the operational noise impact remains unchanged.

- 5.99 In terms of construction noise and vibration, the original ES March 2014 assessed the impact of the proposed scheme as having Minor Significance. Construction impacts have not been re-assessed, and the conclusions in ES Chapter 13 Noise remain valid and unchanged.
- 5.100 An odour assessment using IAQM (2018) guidance has demonstrated that the effects of onsite odours at receptors would be negligible (see Chapter 14 Air Quality April 2025 ES addendum). This is largely due to the distance between receptors and the proposed development, meaning pathways for exposure are ineffective. The proposed mitigation measures described in the planning application are intended to prevent unacceptable odours beyond the site boundary.

### **Impact on recycling rates**

- 5.101 The objector letter does not accurately represent the proposals for Mechanical and Biological treatment which is a key component of the proposed infrastructure.
- 5.102 This technology is 'pre-treatment' of waste with the objective to specifically target recyclable material in the waste for extraction and recycling therefore contributing to the region's recycling rates.
- 5.103 The biological element will also reduce the amount of material through moisture loss which will result in less material requiring thermal treatment. Pre-treatment of waste has been a requirement of arc21 since the project's conception and is also a requirement in current short term residual contracts arc21 has with the private sector.
- 5.104 With the introduction of the Emissions Trading Scheme this step in the process is more relevant than ever as pre-treatment in the mechanical treatment facility can target fossil-based material meaning less carbon will be omitted from the EfW facility following thermal treatment.
- 5.105 The objector group's opinion that '*this may create the perception that household recycling is no longer essential*' is not supported by any evidence.
- 5.106 Furthermore the 70% recycling referred to in the Climate Act 2022 does not state municipal waste. The Municipal recycling target is 65% by 2035 as legislated in The Waste (Circular Economy) (Amendment) Regulations (Northern Ireland) 2020.
- 5.107 The arc21 project will directly contribute to this target through pre-treatment of waste and will facilitate waste prevention, reuse and recycling through education and awareness raising initiatives in the proposed visitor and education centre.

### **Impact on local waste management sector**

- 5.108 Oxford Economics prepared an economic impact study of the arc21 project as part of the March 2014 ES and a review of this original study formed part of the March 2019 ES addendum. Each examined the very substantial level of capital investment of £300million in delivering the project. The original report considered the role of displacement and considered that the niche type of project in question was unlikely to draw away workers from other residual waste treatment

projects across Northern Ireland. The assumptions were reviewed and accepted by DoE Economics Branch.

5.109 The delivery of the arc 21 project will generate substantial construction and operational employment (see paragraph 4.11 above). It will bring a net positive economic benefit to Northern Ireland as a whole.

#### **Impact on the public purse**

5.110 The planning process is just one set in a number of statutory processes in the delivery of the project. The separate procurement process for the design, finance, build and operate of the proposed facility has been on hold due to delays in obtaining planning. When relaunched, commercial elements such as gate fees will be presented through a public procurement tender process. At that time councils have the opportunity to scrutinise the proposal and to either accept or reject it.

#### **Large scale cross community opposition to arc21**

5.111 Planning decisions are made on the basis of an assessment of local development plan policy and all other material planning considerations. There have been objections made to the planning applications and there have been letters of support. The objections made during the hearing in front of the Planning Appeals Commission were considered in detail but the substance and nature of their content were assessed (in the evidential context) to be outweighed by the proposed development's compliance with PPS11 Policies WM1 and WM2, by the lack of any objections from consultees. Departmental officials have balanced these matters on four previous occasions in recommending approval.

5.112 It is not uncommon for there to be local objections to large scale infrastructure projects. The EIAR regulations provide a forum for third parties to make representations to the planning authority and it is then for the planning authority to consider these in their determination. Arc21 and the private sector developer have been transparent throughout the planning process and have continually engaged on the objection points raised by the objector group and third parties. The arc21 project has been now been in planning over 10 years. During that time over 70 responses have been received from statutory stakeholders with no objection to the proposed development.

#### **No-arc21 objection to Dfl - 21 June 2024**

5.113 Mr Colin Buick wrote to Dfl on 21 June 2024 on behalf of No-arc21. The applicant's specialist consultant on climate change assessment, Fichtner, has examined the content of this objection as part of Appendix 15.4 of the April 2025 ES addendum submission. That should be referred to accordingly.

## 6. Summary and Conclusions

- 6.1 This statement has set out the planning history of the consideration of this application for full planning permission for residual waste infrastructure that uniquely co-locates an educational visitor centre, pre-treatment MBT; EfW; IBA processing plant and an educational visitor centre on one site at Hightown Quarry.
- 6.2 That sets out how the application has been considered on three previous occasions by Departmental officials and on each they have weighed the local development plan and all other material considerations to conclude that planning permission should be granted. It also explains how the application has also been the subject of assessment by the Planning Appeals Commission who also recommended that planning permission should be granted.
- 6.3 Two judicial review processes have been determined in respect of the planning application.
- 6.4 The first of these was a successful challenge by No-arc21 to the decision to grant planning permission in September 2017. The courts after appeal found this to be unlawful in the absence of it being considered by an Executive Committee.
- 6.5 The second and more recent judicial review proceedings were taken by arc21/Indaver in challenging the decision of the former DfI Minister Mallon in April 2022. This decision was found to have been unlawful on basis that there were no rational reasons to justify the Minister's departure from the professional advice received from her planning officials.
- 6.6 This Statement has provided an up-to-date and comprehensive assessment of local development plan, regional planning policy and legislation and draft strategies and guidance that have been published since March 2022 have become relevant to the decision-making context.
- 6.7 It sets out material planning considerations that weigh in favour of the application being determined positively once again by Departmental officials.
- 6.8 It also assesses the objector submissions made by No-arc21 and its representatives in the period since the last Development Management Report was prepared by planning officials in March 2022 and sets these in the context of the updated EIA evidence base that reinforces previous EIA assessment and a series of addenda that have been consistently endorsed and accepted by all statutory and non-statutory consultees through the duration of this planning application's consideration.
- 6.9 It is concluded that the proposed development will contribute positively towards achieving the aims of the Climate Change Act (Northern Ireland) 2022 targets and a Circular Economy. It is consistent and compliant with the aspirations and strategic objectives of the draft Environmental Improvement Plan.

- 6.10 Further delay in making a decision on this regionally significant planning application will result in further costs and diminishes the prospects of c. £300million of inward investment in publicly owned and professionally managed infrastructure being realised.
- 6.11 Prolonging or abandoning this planning application will harm Northern Ireland's reputation in the sectors aligned with climate change mitigation. This is at a time when the Executive has already committed above and beyond the UK Climate Change Committee's recommendations to reductions in greenhouse gas emissions. This requires the mobilisation of private capital, inward investment into the region and support from regional and central government.
- 6.12 The Department is reminded that arc21, as a local government entity, is subject to democratic oversight and accountability and is mindful of the need to abide by due process.
- 6.13 That being said, the application has been recommended for approval on four occasions, three times by the Department and once by the Planning Appeals Commission following a hearing. A failure to make a prompt redetermination of this application is in itself a 'decision' given the clear consequences identified in this Statement.
- 6.14 Other interested Departments have been consulted as part of the planning process and amendments made by the Executive Committee (Functions) Act (Northern Ireland) 2020 allow the Department or the Minister to make operational planning decisions without recourse to the Executive Committee. The Court of Appeal have confirmed this provision is consistent with Northern Ireland's constitutional arrangements.
- 6.15 As previously summarised by DfI officials in March 2022 in their Addendum to the FDMR, the following points remain pertinent in reaching the conclusion that planning permission should be granted:
- The proposal remains compliant with all relevant local and regional planning policy;
  - The need for the facility has been established by way of the WMS and arc21 WMP (as required by policy) which remain extant. Any forthcoming updates to either the WMS or WMP will not depart from the identified need for infrastructure to deal with our residual waste particularly in light of diminishing landfill capacity, landfill bans, potential phasing out of export, recycling levels and decarbonisation efforts. The proposed development is entirely consistent with the future direction of waste and environmental policy;
  - The proposal will contribute to wider governmental environmental, waste, economic and climate change objectives and statutory obligations;
  - The refreshed survey information provided by way of Further Environmental Information reaffirms that that the proposal will not result in any unacceptable environmental, public health or visual impact;

- Matters raised by third parties have been addressed and/or are inviting the Department to substitute the assessment of need contained within the extant policy documents with its own, for which there is no discretion for the Planning Authority to do so; and
  - Instead the Department should give very significant weight to the contents of the WMP, the PAC's recommendation and the clearly expressed need for the proposed development.
- 6.16 The unique opportunity to capture the benefits that come with creating a suite of co-located waste treatment and reprocessing facilities - that exist nowhere else in Northern Ireland - which can manage materials and energy flows to meet well established legislative environmental imperatives and that aligns with Northern Ireland's economic strategy should not be discarded.
- 6.17 The planning determination process should not deny the proposal's urgently needed contribution to:
- net zero targets (e.g. diversion of biodegradable waste from landfill),
  - circularity (e.g. materials recovery / recycling)
  - sustainability and energy security (e.g. base load electricity generation from an indigenous predominantly renewable fuel that is currently being exported, the potential to serve an existing large local heat demand);
  - better regulation and in reducing criminality (e.g. Mills Report recommendations) and
  - environmental awareness and education (e.g. provision of an visitor centre).
- 6.18 The proposed development has the scope to be a platform for the deployment of a range of decarbonising and circular economy technologies that will be needed for Northern Ireland to have a sustainable future.
- 6.19 For the reasons outlined in this Statement, the determination of the proposal in a timely manner is unquestionably in the public interest and is consistent with the applicable principles and guidance that Senior Officers must have regard to when taking decisions on such a matter. It is a settled point of law that the Department can issue a decision without referral to the Executive.
- 6.20 DfI officials are respectfully asked, for a fourth time, to recommend approval for this full planning application for vital and necessary publicly owned integrated waste infrastructure.