



[2026] IEHC 485

**THE HIGH COURT
PLANNING & ENVIRONMENT**

[H.SP.2008.0000056]

BETWEEN

BROWNFIELD RESTORATION IRELAND LIMITED

PLAINTIFF

**AND
WICKLOW COUNTY COUNCIL**

DEFENDANT

**AND
THE ENVIRONMENTAL PROTECTION AGENCY AND THE MINISTER FOR HOUSING, LOCAL
GOVERNMENT AND HERITAGE**

NOTICE PARTIES

(No. 12)

JUDGMENT of Humphreys J. delivered on Friday 17 July 2026

1. To borrow a term very aptly used by counsel, this matter has had something of a sprawling history. The unauthorised development in this case, a landfill site, began operating at Whitestown in West Wicklow from about 1979 onwards. In the 47 years since then, the situation has led to 25 years of litigation involving 5 sets of proceedings and 20 written decisions including the present one. Matters are now reaching a crucial stage so the purpose of the present ruling is to set out the background and rationale in relation to the order being made at this point.

Judgment history

2. The proceedings generated by this situation are as follows (the present action being in reality the only one remaining live):

- (i) enforcement proceedings (C-494/01) against Ireland by the European Commission initiated on 20 December 2001 and finalised by the CJEU in 2005;
- (ii) waste enforcement proceedings brought by Wicklow County Council against various alleged polluters [2005 No. 89 SP] and now adjourned generally;
- (iii) a defamation action by the council's former authorised officer Donal Ó Laoire against Brownfield [2005 No. 1472P], in respect of which there has been no recorded activity since 2020 (noting that in these proceedings I held in substance that the complained-of utterances were essentially justified);
- (iv) the present waste enforcement proceedings brought by the previous landowner, Brownfield, against the council [2008 No. 56 SP], albeit that there has been some reconstitution of the parties since then; and
- (v) an action for damages and constitutional and other reliefs brought by Brownfield against the council [2020 No. 5730P], which has been adjourned generally.

3. The previous decisions are as follows:

- (i) in the judgment of 26 April 2005, *Commission v Ireland*, C-494/01, ECLI:EU:C:2005:250, [2005] ECR-I 3331, the CJEU ruled that there had been a failure to ensure a correct implementation of the provisions of Articles 4, 5, 8, 9, 10, 12, 13 and 14 of Council Directive 75/442/EEC of 15 July 1975 on waste, by reference to nearly 100 sites of which the Whitestown dump was one;
- (ii) in *Wicklow County Council v. O'Reilly (No. 1)* [2006] IEHC 265, [2006] 2 JIC 0803 (Unreported, High Court, Clarke J., 8 February 2006), the court made orders as to the appropriate defendants in waste enforcement proceedings brought by the council;
- (iii) in *Wicklow County Council v. O'Reilly (No. 2)* [2006] IEHC 273, [2006] 3 I.R. 623, [2006] 9 JIC 0801 (Clarke J.), the court declined to stay the proceedings pending prosecutions arising from the illegal dumping;
- (iv) in *Wicklow County Council v. O'Reilly (No. 3)* [2007] IEHC 71, [2007] 3 JIC 0203 (Unreported, High Court, Clarke J., 2 March 2007), the court directed the trial of a preliminary issue regarding the liability of a director;
- (v) in *Wicklow County Council v. O'Reilly (No. 4)* [2010] IEHC 464, [2010] 12 JIC 0705 (Unreported, High Court, O'Keeffe J., 7 December 2010), the court refused a mistrial application although it decided that the council had not made proper discovery;
- (vi) in *Wicklow County Council v. O'Reilly (No. 5)* (*Ex tempore*, Not circulated, O'Keeffe J., 20 December 2011), after 23 days of hearing, the court decided to adjourn the remediation proceedings on the council's application, pending proposed

- remediation actions by the council;
- (vii) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 1)* [2017] IEHC 310, [2017] 4 JIC 2604 (Unreported, High Court, 26 April 2017) (noted Joseph Richardson BL (2017) 24(2) *I.P.E.L.J.* 56), I granted the council's application for the modular trial of the proceedings;
 - (viii) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 2)* [2017] IEHC 397, [2017] 6 JIC 1201 (Unreported, High Court, 12 May 2017), I decided a number of preliminary issues including the rejection of certain allegations of misconduct against the council;
 - (ix) in *Brownfield Restoration Ireland Ltd. v. Wicklow County Council (No. 3)* [2017] IEHC 456, [2017] 7 JIC 0706 (Unreported, High Court, 7 July 2017) (noted Estelle Feldman (2017) *A. Rev. Ir. Law* 95), I decided in principle to order remediation;
 - (x) in *Brownfield Restoration Ireland Ltd. v. Wicklow County Council (No. 4)* [2017] IEHC 486, [2017] 7 JIC 1907 (Unreported, High Court, 19 July 2017), I made the formal order directing remediation and set out indicative timelines for fifteen steps with a definite final date for completion of full remediation and handover to the landowner; that long-stop date was in effect 19 January 2024;
 - (xi) in *Brownfield Restoration Ireland Ltd. v. Wicklow County Council (No. 5)* [2017] IEHC 487, [2017] 7 JIC 1908 (Unreported, High Court, 19 July 2017), I decided on the question of costs;
 - (xii) in *Wicklow County Council v. O'Reilly* [2019] IECA 257, [2019] 10 JIC 1607 (Unreported, Court of Appeal, Costello J., 16 October 2019), the Court of Appeal dismissed an appeal regarding the timeline allowed for remediation; it partly allowed an appeal regarding costs;
 - (xiii) in *Brownfield Restoration Ireland Ltd. v. Wicklow County Council* [2021] IESCDT 71 (Supreme Court Determination, Not published, 21 June 2021, O'Donnell, MacMenamin and Woulfe JJ.), the Supreme Court refused leave to appeal in relation to the timeline issue;
 - (xiv) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 6)* [2021] IEHC 599, [2021] 9 JIC 3007 (Unreported, High Court, 30 September 2021), I directed that (without prejudice to the long-stop date) the council was to complete the biodiversity surveys required for the preparation of a Natura impact statement by 17 December 2021; and that the matter be listed for mention to deal with the subsequent steps;
 - (xv) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 7)* [2022] IEHC 662, [2022] 12 JIC 0201 (Unreported, High Court, 2 December 2022), I determined the agenda for the hearing on the remediation plan approval, and directed that any approval would be without prejudice to the previous orders;
 - (xvi) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 8)* [2023] IEHC 137, [2023] 3 JIC 2102 (Unreported, High Court, 21 March 2023), I approved the remediation plan in part and determined that certain matters would be addressed at a later stage in a specified way;
 - (xvii) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 9)* [2023] IEHC 250, [2023] (Unreported, High Court, 16 May 2023), I gave directions for the issue of motions and awarded certain costs to the applicant;
 - (xviii) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 10)* [2023] IEHC 712 (Unreported, High Court, 18 December 2023), directions were given regarding the appointment of an expert; and
 - (xix) in *Brownfield Restoration Ireland Ltd v. Wicklow County Council (No. 11)* [2024] IEHC 260, [2024] 5 JIC 0801, Ove Arup were appointed as an independent assessor and certain costs orders were made.

The timeline for remediation

4. The 25 year procedural history somewhat defies summary so the reader will have to be referred to the previous judgments.

5. One crucial issue however is the timeline for remediation.

6. In the No. 4 judgment I set out the following steps by way of remediation, which I can divide into completed as of the No. 8 judgment (bold) and not yet completed as of that point:

1. Prepare a briefing document in respect of the appointment of an environmental consultant –2 months from the order.

2. Invite and receive tenders in respect of the appointment of an environmental consultant –2 months from step (1).

3. Consider tenders and appoint an environmental consultant –2 months from step (2).

4. Preparation of remediation plan, including such measures as the council wishes to include in relation to an Environmental Impact Assessment Report and Natura Impact Statement, to be prepared by the environmental consultant – 6 months from step (3).

5. Circulate draft remediation plan to Brownfield and EPA and allow comments plus consultation and entities that are statutory consultees for EIA/AA purposes – 3 months from step (4).

6. Review by council of draft remediation plan in the light of observations received together with any consultations between parties aimed at resolving disagreement – 2 months from step (5).

7. Circulate the revised draft remediation plan back to EPA and Brownfield plus public consultation and statutory consultees – 3 months from step (6).

8. Review by council of revised draft remediation plan in the light of observations received together with any consultations between parties aimed at resolving disagreement. Prepare final draft of plan and, if disagreement remains between the parties, preparation by the council of a Scott schedule setting out areas of disagreement with the parties' respective positions – 2 months from step (7).

9. Presentation of agreed final draft of remediation plan to court or in the event of no agreement, presentation of council's final draft plan together with identification of areas of dispute; resumed hearing and order of the court receiving or approving the plan as the case may be – to conclude within 6 months of conclusion of step (8).

10. Preparation by the environmental consultant of tendering documentation in respect of the appointment of a contractor to undertake the works permitted under the remediation plan – 3 months from step (9).

11. Invitation and receipt of tenders for appointment of contractor – 2 months from step (10).

12. Consideration of tenders and appointment of contractor – 3 months from step (11).

13. Carrying out of and completion of works permitted under the remediation plan and restoration of the site – 36 months from step (12).

14. A strictly limited period of post-remediation monitoring to confirm no unexpected pollution emissions – 6 months from step (13).

15. Handover of possession of site to plaintiff – forthwith on completion of the time period allowed for the limited monitoring in step (14). The total duration of the process is therefore 78 months.

7. In the No. 8 judgment I varied the steps from step 10 onwards, as follows. Again we can divide this as between completed by this point (bold) and not completed:

10. Preparation by the environmental consultant of tendering documentation in respect of the appointment of a contractor to undertake the works permitted under the remediation plan – 3 months from step (9).

11. Invitation and receipt of tenders for appointment of contractor – 2 months from step (10).

Equates to Issue of Tender Documentation – Restricted Procedure. I might note here that I will leave it to the council as to whether to include provision for its proposed works after the removal of material in Areas A to C, but if it does, the contractual enforceability of such provision must be made conditional on a further order of the court being made, about which there can be no guarantees or representations at this stage.

Plus Tender Response Period Contractors 2 months.

12. Consideration of tenders and appointment of contractor – 3 months from step (11).

To be sub-divided into:

Step 12A - Tender Assessment Period - 10 Weeks (2.5 months)

Step 12B - Tender Standstill Period - 2 Weeks (0.5 months).

13. Carrying out of and completion of works permitted under the remediation plan and restoration of the site – 36 months from step (12).

To be sub-divided into:

Step 13A - Pre-Contractual Negotiations and Mobilisation Period - 2 Months

Step 13B - Site Mobilisation and Set Up - 2 Months

Step 13C - Enabling Works - 2 Months

Step 13D - Zone C Works - 15 Months (less time estimated for post-removal works)

Step 13E - Zone A & B Works - 12 Months (less time estimated for post-removal works)

Step 13F – Council to revert to court for decision on post-removal works, such as in-filling and landscaping (within 40 month pre- monitoring timescale estimated in the draft plan).

Step 13G – carrying out of post-removal works if so approved (within 40 month pre-monitoring timescale estimated in the draft plan). [council estimated 3 months for this step]

14. A strictly limited period of post-remediation monitoring to confirm no unexpected pollution emissions – 6 months from step (13).

To be extended to 12 months (subject to review if the foregoing steps are not completed in a timely manner).

15. Handover of possession of site to plaintiff – forthwith on completion of the time period allowed for the limited monitoring in step (14).

8. Arising from the present order there will be a further variation of the timeline. The timeline that appears to follow from the orders made is set out in the Annex to this judgment.

9. In the event that parties have any issues with the Annex, minor issues can be addressed in the draft judgment process and major issues should be the subject of correspondence inter se and can be addressed on the mention date of 12 October 2026.

10. The eighth affidavit of Mary Cahill provides an update as to works as follows:

"4. As set out in my last affidavit, Priority Construction Ltd. ('Priority') were awarded the main contract to remediate the site on 19 December 2025. Priority took control of the site and carried out a light mobilisation on 20 January 2026. Full mobilisation by Priority commenced on 23 March 2026.

5. Works carried out by PCL since mobilization include the following:

- Established the compound and site accommodation.
- Surfaced and widened the access gate and road.
- Installed a wheel wash and weigh bridge
- Improved boundary fencing to secure the site. (Not complete)
- Completed additional Site Investigation requested by the Independent Expert.
- Completed PFAS sampling which is carried out to very strict protocols to prevent cross contamination.

6. A site investigation in respect of Zone F, requested by the Independent Expert, was completed and the factual report was furnished to Independent Expert on 29 April 2026 I beg to refer to a copy of this report, upon which and marked '8MC1', I have endorsed my name prior to the swearing hereof. My understanding is that the purpose of this site investigation of Zone F was to assist the Independent Expert in reaching a view as to the adequacy of the proposed remediation plan for Zones D, E and F, as set out in the final draft remediation plan that was put before the Court in September 2022 for approval. I further understand that the Independent Expert has concluded that these areas show no evidence of landfilling activity, with no requirements for excavation other than for the establishment of correct boundaries of Zones A, B and C, and further sampling/testing to identify and remove any adjoining contaminated ground.

7. The Independent Expert has requested the installation of two groundwater wells upstream of the site. The first of these was installed on 13 May 2026 and the second on 14 May 2026.

8. PFAS testing was carried out in Zones A and B and on the Capping Layer of Zone C between January and March 2026. PFAS stands for per- and polyfluoroalkyl substances. In plain terms, they are a large family of thousands of man-made chemicals that have been used since the 1940s in everyday products that would find their way into landfills. They attract the nickname of 'forever chemicals'. The chemical bond at their core, a carbon-fluorine bond, cannot be broken down, and once released, they persist and accumulate indefinitely.

9. A 'PFAS Screening Investigations Report Zones A and B' & 'PFAS Screening Investigations Report Zone C - Cap' dated 1 April 2026 was prepared on foot of the PFAS testing. I beg to refer to a copy of the said report, upon which and marked '8MC2', I have endorsed my name prior to the swearing hereof. The testing has confirmed the presence of PFAS above the limits of detection in Zone A and a small area of Zone B but not in the cap of Zone C.

10. The EPA has been formally notified of these findings.

11. Additionally, the landfills designated for accepting waste from Zones A, B, and C were informed about the presence of PFAS. In that regard, Fehily Timoney have also requested ENVA to review the PFAS screening results from Zone A to explore alternative management options, if required. ENVA operates the Walshestown Restoration inert facility in County Kildare and the Council has entered into an agreement with it to accept excavated material from Zones A and B of the site.

12. The EPA has requested that the PFAS testing will consider the requirements set out in its recent position paper entitled 'Regulation 27 Consultation to inform development of Draft Guidance for brownfield soil and stone by-product material, incorporating a PFAS screening tool'. The position paper is intended to inform a rationale for the development of draft guidance for brownfield soil and stone by-product material, including a PFAS screening tool, which could be adaptable to the investigations on this site. Consultation submissions are invited from stakeholder. This position papers set out matters such as land use scenarios and solid soil analysis and use location vulnerability and leachate analysis. The papers also concerns PFAS screening and further sets out that in Ireland there is no limit for PFAS concentration in the soil and that given the emerging and developing challenge of PFAS contamination, there is a need to provide some certainty to industry. I beg to refer to a copy of this position paper, upon which and marked '8MC3', I have endorsed my name prior to the swearing hereof.

13. The advanced site investigation is scheduled to commence in June 2026 and will focus on fulfilling the frequency of WAC testing required by the landfills for waste acceptance. This investigation will also include further PFAS testing, in particular for potentially PFAS contaminated in Zone A and the area where PFAS was found under Zone B and in the waste in Zone C. The results will help determine the best management outlets for waste from each of the zones. After waste excavation in each zone (A, B and C), the subsequent site investigation to confirm 'clean' ground will also include PFAS analysis as part of the testing suite. In addition, the Risk Assessment is currently being updated to reflect the recent PFAS testing results.

MONITORING OF BAT ACTIVITY

14. An Annual Report on the Bat Derogation Licence for 2025 was submitted to the NPWS. I beg to refer to a copy of this report, upon which and marked '8MC4', I have endorsed my name prior to the swearing hereof. The Council has applied to NPWS for a Bat Derogation Licence for 2026. Bat activity has been confirmed in the new bat [roost] constructed in 2025. Bat surveys are continuing on site.

ENVIRONMENTAL MONITORING

15. Ground water and surface water monitoring was completed for Q1 2026. Monitoring will be carried out again in Q2 2026.

ENGAGEMENT WITH THE INDEPENDENT EXPERT

16. The Council and ARUP held Progress Meetings on 16 April, 23 April and 7 May 2026. All information requested by the Independent Expert in relation to Zones, D, E, F & G has been furnished to him by the Council."

Application by the council regarding adjustment of the remediation order

11. The council now apply for approval of the draft remediation plan insofar as it relates to Zones D, E, F and G.

12. The council's latest application to confirm the balance of the plan was heard on 9 July 2026.

13. The State had no objection to the proposal.

14. The council confirmed that it will not be relying on s. 56 of Waste Management Act 1996 as amended, notwithstanding the references in the September 2022 Draft Remediation Plan.

15. The affidavit of the independent expert Sean Mason sworn on 14 May 2026 confirms that the proposals for Zones D, E and F as set out in the final draft remediation plan submitted to the court in September 2022 are appropriate and removal of material in Zones D, E and F is not required subject to the establishment of correct boundaries with the known landfill areas (Zones A, B and C) and further sampling/testing to identify and remove any adjoining contaminated ground and other confirmations provided by the defendant. A further affidavit of the independent expert sworn on 19 June 2026, indicates a similar position with regard to Zone G.

16. In the absence of objection I would be prepared to make the order sought. Doing so involves varying the orders already made, and that perhaps helpfully illustrates the very flexible nature of remedies under the planning and pollution injunctive jurisdiction.

17. There are also some changes required to the remediation plan in view of changed circumstances. Step 15, handing the site back to the plaintiff, no longer arises due to an agreement between the parties.

18. It was also confirmed that there would be a 12-month period of monitoring rather than 6 months as emerged in consultation with the EPA.

19. In view of the various impacts on species, the works already done to protect amphibians on site, and the need for a bat derogation licence, I am adding a requirement for regular ecological reporting to the court and for avoiding impacts on species.

20. The assessor was broadly positive about the order sought, averring as follows:

"1. I am a Technical Consultant of Ove Arup & Partners Ireland Limited (ARUP), 50 Ringsend Road, Dublin 4, D04 T6X0, employed as ARUP representative to the Court and I

make this affidavit for and on behalf of ARUP with its authority and consent, from an examination of its books and records and from facts within my own knowledge. The facts within my own knowledge are true and where not within my own knowledge, I believe same to be true.

2. I have been appointed as the Independent Assessor by the Court in the above matter to examine the remediation plan for the lands at Whitestown Landfill the subject of these proceedings and I beg to refer to the remediation plan herein when produced.

3. I confirm that the proposed remediation plan for Zones D, E and F (part Phase 2) is appropriate, subject to completion of three further commitments as listed in my previous affidavit, as follows:

a. Advanced site investigation and testing ahead of bulk excavation to better define boundaries along Zones D, E, F,

b. Excavation extent at boundaries and base of dig based on advanced testing and visual examination, and

c. Verification sampling and testing to confirm removal of waste and contaminated soil at boundaries and base of the excavations

4. I confirm that the remediation plan for Zones A, B and C (Phase 1) is appropriate, contingent upon the same above activities, and the updated confirmation/clarification of items with WCC relating to:

a. Two additional groundwater monitoring wells have been installed as agreed, with test data from groundwater samples to be provided,

b. Update of detailed quantitative risk assessments and suite of parameter limits for demonstrating compliance,

c. Updates of 'for construction' documentation and contractor technical submissions, and

d. Responses to some minor outstanding queries.

5. I confirm that the remediation plan for Zone G (part Phase 2) is appropriate, contingent upon the same above activities for Zones D, E and F, and the following:

a. Confirmation that ongoing monitoring of the surface water and groundwater within Zone G is maintained throughout the remediation works, with contingency measures identified if required to manage the risk of contaminants entering Zone G during the works.

6. Given that verification of the remediation plan compliance can only be provided as the works progress, we propose to continue reviewing evidence periodically as required over the remediation plan implementation.

7. I will continue to review further information that needs to be provided by WCC in a timely manner for resolution, particularly items that have to be resolved ahead of the commencement of the main bulk excavations."

21. At the end of the hearing I made the order set out below but indicated a written ruling would follow. I would like to record my thanks to all of the lawyers involved for their unfailingly courteous, professional and helpful assistance.

22. On 13 July 2026, a draft of the present judgment was sent to the parties, pursuant to paragraphs 15, 195 to 198 and 204 of Practice Direction HC 137 issued by the President of the High Court, to give an opportunity to address matters such as errors/ambiguities on the basis set out below.

23. Parties are required to:

- (i) Read the draft or have their legal representatives if applicable do so on their behalf.
- (ii) Identify any matters falling within the below.
- (iii) Positively communicate with the court in writing in response to the draft by the deadline specified, such responses to be emailed to the court and uploaded to ShareFile, either stating that they have no comments or setting out the comments.
- (iv) Carry out the foregoing without delay – the draft judgment procedure is a concession which parties can engage with but must do so with immediate dispatch, discipline and focus – it is not the opening of a new phase of the litigation that gives rise to "an entitlement to elaborate procedures at every point" (to use a phrase of O'Donnell C.J. (Dunne, Charleton and Baker JJ. concurring) in *O'Sullivan v. Health Service Executive* [2023] IESC 11 (Unreported, Supreme Court, 10 May 2023) at para. 39); and still less should the procedure invite the perhaps "serious error, to which lawyers are prone, to approach any such case on the tacit assumption that only procedures which approximate to a criminal trial are fair, and anything which departs from that is somehow dubious" (O'Donnell J. (Clarke C.J., McKechnie, MacMenamin, Dunne JJ. concurring) in *O'Sullivan v. Sea Fisheries Protection Authority* [2017] IESC 75, [2017] 3 I.R. 751, [2018] 1 I.L.R.M. 245, 780).

- (v) Keep the draft confidential. Draft judgments are not public domain materials and, while they can be shared between the lawyers concerned and their clients, subject to the following, it is inappropriate for any person to refer to them for any purpose other than to assist the court in relation to the finalisation of the formal judgment. Therefore anyone with information as to the text, content or proposed outcome of any draft is required not to publish or transmit such information to others save solely by way of private transmission for the legitimate purposes of assisting in the finalisation of the judgment and subject to a similar restriction on any recipient. Trial participants should take reasonable steps to keep drafts confidential. On this topic, see *Attorney General v. Crosland (No. 2)* [2021] UKSC 58, [2022] 1 W.L.R. 367, [24/01/2022] T.L.R. 1 (Briggs, Kitchin, Burrows, Rose, Arden SCJJ) which discusses why restriction on publication of draft judgments is in the interests of the administration of justice; see also *Baigent v. Random House Group Ltd* [2006] EWHC 1131 (Ch), [2006] 5 WLUK 45, (2006) 150 S.J.L.B. 603 (Smith J.); *R. (Counsel General for Wales) v. Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 181, [2022] 1 W.L.R. 1915, [2022] 4 All E.R. 599 (Sir Geoffrey Vos MR; Davies and Dingemans LJ. concurring); *Public Institution for Social Security v. Banque Pictet & Cie SA and others* [2022] EWCA Civ 368, [2022] 3 WLUK 291, [2022] B.L.R. 349 (Carr LJ; Jackson and Simler LJ. concurring); *Itkin v. Wood* [2023] JRC 101 (Unreported, Royal Court of Jersey, 22 June 2023).

24. The foregoing constitutes an immediately effective direction of the court to the parties and anyone having notice of the draft judgment with effect from the date of circulation of the draft.

25. The responses should not be to reargue the substance (submissions to that effect will be disregarded) but are confined to matters such as:

- (i) informing the court as to whether the party prefers an alternative to a formal written judgment as proposed, and if the party so considers, whether that party considers that the entire matter or some specified part of it can be disposed of (a) by order without a reasoned judgment, or (b) by *ex tempore* reasons without a written judgment;
- (ii) informing the court, assuming that the court proceeds with a formal judgment, as to whether the party wishes to propose any corrections to the draft such as:
 - (a) any apparent typographical, factual, legal or other errors in the draft;
 - (b) any apparent ambiguity or other matter in the draft that could unnecessarily multiply issues or complicate the further processing of the matter;
 - (c) any redaction of personal or other information that a party wishes to request;
 - (d) in the event that the court proposes to refer to any matter (whether factual, legal (including reference to authorities or other legal material), *obiter* comment or otherwise) not referred to at the hearing, any submission as to why such reference is not relevant or otherwise should not be included or as to why such matter if included should not lead to the proposed conclusion;
 - (e) any other matter in the draft judgment that the party considers should be omitted;
 - (f) any matter not included in the draft judgment that the party considers should be added to it (including where the party considers that procedural, factual or legal points not set out in the judgment should be addressed or where the party considers that reasons for any aspect of the decision are not set out or where an overall ground is disposed of but detail of the ground or sub-ground is not expressly addressed, or where an issue arose the disposition of which would be *obiter* but on which the party concerned considers that there would be a benefit in the court expressing a view); and
 - (g) any other proposals as to the wording (as opposed to substance) of the decision if the proposed wording causes any issue for a party for any identified reason; and
- (iii) assisting the court by providing views on such matters if any on which views are specifically invited in the draft judgment.

26. In particular, parties should draw the court's attention to any apparent error or ambiguity whether they have been successful on the point or not.

27. The rules of engagement in such a situation are that the draft is without prejudice to the right of the court ultimately to issue a judgment in whatever form or with whatever content it considers appropriate. It is then entirely a matter for the court as to whether to give judgment with or without amendment including any amendment that appears appropriate to the court whether arising from submissions or not. Any judgment may be given without further notice following the

expiry of the specified period, whether comments are made or not. That period will not be extended save in exceptional circumstances.

28. The deadline for such comments from the parties was to be 16:00 on Wednesday 15 July 2026. Responses were as follows:

- (i) plaintiff: released from proceedings, not participating further;
- (ii) council: see below;
- (iii) EPA: see below; and
- (iv) State: no comments.

29. The EPA commented as follows. Firstly:

"At para. 12 [of the affidavit of Ms Cahill] it states: [quoted]

As per the recent [affidavit] of Lisa Maher EPA sworn on 24 June 2026- the EPA did not request that the PFAS testing will consider the requirements set out in its recent position paper entitled 'Regulation 27 Consultation to inform development of Draft Guidance for brownfield soil and stone by-product material, incorporating a PFAS screening tool. The EPA requested a submission from WCC which proposes suitable PFAS limits for waste arising from the remediation project and therefore selection of appropriate final waste destination facilities. A number of publications/resources relating to PFAS were provided by the EPA to WCC to aid in the preparation of this proposal."

30. That clarification can be noted at this stage and any differences of emphasis between the council and the EPA that cannot be resolved by discussion can be addressed by way of liberty to apply.

31. The EPA then sought to correct the order as follows:

"As regards the proposed order at para. 29 we suggested the below amendments:

The order made on 9 July 2026 was that: (i) the draft remediation plan in respect of Zones D, E, F and G be approved subject to the establishment of correct boundaries with the known landfill areas (Zones A, B and C), and further sampling/testing to identify and remove any adjoining contaminated ground and further confirmations being provided by the defendant as required ~~in~~ by the independent assessor;

(ii) the remediation plan be varied by the deletion of reference to reliance on s. 56 of the ~~2006~~ 1996 Act; [Waste Management Act 1996 as amended]"

32. These two corrections are being addressed by way of the slip rule.

33. The council commented as follows. Firstly:

"I have considered the draft judgment in the above matter, proposed to be referred to as Judgment No.12, with my client and counsel. Following confirmation from the Court that same would be in order, I also circulated a copy of the draft judgment to Sean Mason, of Ove Arup, the independent expert previously appointed by the Court for any comments that he might have. Mr. Mason's comments are caught within this reply.

I note that the purpose of the facility for commentary on the draft judgment and would bring the following matters to your attention, and to be forwarded to Humphreys J to assist him in finalising the judgment.

Paragraph 15 of the draft judgment states:

The affidavit of the independent expert Sean Mason sworn on 14 May 2026 confirms that the proposals for Zones D, E, F and G as set out in the final draft remediation plan submitted to the court in September 2022 are appropriate and removal of material in Zones D, E, F and G is not required subject to the establishment of correct boundaries with the known landfill areas (Zones A, B and C) and further sampling/testing to identify and remove any adjoining contaminated ground and other confirmations provided by the defendant.

The affidavit of 14 May 2026, deals only with Zones D, E and F. Mr. Mason's subsequent affidavit of 19 June 2026 confirms the position with regard to Zone G. Accordingly, I would respectfully suggest that paragraph 15 should make reference to both affidavits and might state as follows:

The affidavit of the independent expert Sean Mason sworn on 14 May 2026 confirms that the proposals for Zones D, E and F as set out in the final draft remediation plan submitted to the court in September 2022 are appropriate and removal of material in Zones D, E and F is not required subject to the establishment of correct boundaries with the known landfill areas (Zones A, B and C) and further sampling/testing to identify and remove any adjoining contaminated ground and other confirmations provided by the defendant. A further affidavit of the independent expert sworn on 19 June 2026, indicates a similar position with regard to Zone G."

34. This correction has been made above. Next:

"Paragraph 29(i) should read '.... as required by the independent assessor', i.e., the removal of the word 'in' currently before 'by' in the draft judgment.

The reference in paragraph 29(ii) to s.56 of the 2006 Act should read s.56 of the 1996 Act."

- 35.** Those two points coincide with the slip rule corrections already noted.
- 36.** The third point was a correction of a typo in para. 14 of the affidavit of Ms Cahill.
- 37.** The fourth point was:
 "Finally, paragraph 7 of the draft judgment and the annex to the draft judgment (identifying the remaining steps) refer to the requirements for Step 13D to include post-removal in-filling. It is not the intention of the Council to undertake in-filling, following commentary from the NPWS on the original draft remediation plan, which expressed concern about the impact on the neighbouring SAC. This may be something that is more appropriately addressed at a later hearing, but it was considered appropriate that it be drawn to the Court's attention at this time."
- 38.** On that front, in-filling was only indicative because it is preceded by "such as", so it can be deleted from the Annex without injury to the substance of the order, and any issues as to the precise post-removal works can be addressed in due course.

Order

- 39.** The order made on 9 July 2026 was to the effect that:
- (i) the draft remediation plan in respect of Zones D, E, F and G be approved subject to the establishment of correct boundaries with the known landfill areas (Zones A, B and C), and further sampling/testing to identify and remove any adjoining contaminated ground and further confirmations being provided by the defendant as required by the independent assessor;
 - (ii) the remediation plan be varied by the deletion of reference to reliance on s. 56 of the Waste Management Act 1996 as amended;
 - (iii) step 15 of the steps by way of remediation be deleted;
 - (iv) the council be required to take all reasonable steps to identify, protect and minimise disturbance to any species on the site and to confirm this by way of ecology report in advance of future mention dates;
 - (v) there be liberty to apply; and
 - (vi) the matter be listed for mention on 12 October 2026 for an ecologist's report and for any further submissions on refinement of the steps in the Annex to the judgment to be issued on foot of the present order.

ANNEX – REMAINING STEPS TO BE CARRIED OUT BY WAY OF REMEDIATION

Item No.	Step number and description	Actual date for completion
1.	Step 13D - Zone C Works - 15 Months from 9 July 2026 (less time estimated for post-removal works) (15 months can be allowed on the basis that time for post-removal works is to be accounted for under step 13E)	9 October 2027
2.	Step 13E - Zone A & B Works - 12 Months from step 13D (less time estimated for post-removal works) (<i>i.e.</i> , 12 months less allowing for 3 months for landscaping works for zones A to C)	9 July 2028
3.	Step 13F – Council to revert to court for decision on post-removal works, such as landscaping (within 40 month pre-monitoring timescale estimated in the draft plan).	9 July 2028
4.	Step 13G – carrying out of post-removal works if so approved (within 40 month pre- monitoring timescale estimated in the draft plan) [council estimated 3 months for this step]	9 October 2028
5.	Step 14 – A period of post-remediation monitoring to confirm no unexpected pollution emissions – 12 months from step (13)	9 October 2029