



## Board Direction

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**Ref: 01.LQ0001**

The submissions on this file and the Inspector's report were considered at a further Board meeting held on February 22<sup>nd</sup>, 2017.

The file was considered at the same meeting as the associated production area file 01.LS0019.

Generally in accordance with the recommendation of the Inspector, the Board decided to grant leave to apply for substitute consent for the reasons and considerations set out below.

### REASONS AND CONSIDERATIONS

Having regard to:

- (a) the provisions of the Planning and Development Acts, 2000 to 2015, and in particular Part XA and Section 261A(21-24),
- (b) the Regulations pertaining to Environmental Impact Assessment 1989 to 2015 and the Planning and Development Regulations, 2001, as amended, which restates the prescribed classes of development which require an Environmental Impact Assessment (Schedule 5),
- (c) the Department of Environment, Community and Local Government – Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, March 2013,
- (d) Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended,

- (e) the “Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government 2009/2010,
- (f) the provisions of the Carlow County Development Plan 2015-2021,
- (g) all submissions received by the Board in relation to the quarry under subsection 21(b) including the submission from the planning authority,
- (h) the planning history of the site including:
  - the information submitted to the planning authority in relation to the registration of the quarry under section 261 of the 2000 Act, as amended (planning authority register reference numbers QY25)
  - the subsequent planning application lodged to the planning authority under PA Ref. No. 10/130 and ABP. Ref No. PL01.238679, and
  - all other history files referred to in the planning inspector’s report,
- (i) all documentation and submissions on file,
- (j) the extent to which the quarrying activity expanded after the 1<sup>st</sup> day of February, 1990 which exceeded 5 hectares and the overall scale of the extraction area of the quarry,
- (k) the extent to which the quarry activity expanded after the 1<sup>st</sup> day of March, 1997 and the proximity and connectivity of the site to the Nore and Barrow SAC, and
- (l) the report of the Inspector,

the Board determines under S261A(21)(c) of the Act that:

- (m) development was carried out at the quarry after 1 February 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment but that such an assessment was not carried out or made, and

- (ii) development was carried out at the quarry after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

The Board is satisfied, for the purposes of section 261A(24)(a), Planning and Development Act, 2000, as amended, that:

- (i) the quarry commenced operation before 1 October 1964 and permission was granted in respect of the quarry under Part IV of the Act of 1963, and
- (ii) the requirements in relation to registration under section 261 were fulfilled.

In accordance with the requirements of the section, therefore, the Board grants leave to apply for substitute consent.

**Note 1:** As indicated in the Inspector's report the Notice to the applicants advising of the decision should also direct that:

- (a) the application be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and
- (b) the application includes a remedial Environmental Impact Statement and a remedial Natura Impact Statement, and
- (c) the application site area refers to that area identified as 'Indicative Substitute Consent Boundary' and hatched red on Figure 1 attached to the letter of application that accompanied the application for leave to apply for substitute consent.

**Note 2:** The Board noted that the original application lodged to An Bord Pleanála under S.177C (ABP Ref. 01.LS0019) included the production plant area, (i.e. generally that operation formerly the subject of application PA Ref. 12/240, ABP Ref. 01.242648) and that during the process the quarry proper (i.e. generally the quarry operation formerly the subject of PA Ref. 10/130, ABP Ref.01.238679) became a separate associated file, i.e. the

subject ABP Ref.LQ0001, due to the legislative changes under S.261A of the Act. The Board considered that, in this instance, the quarry and the production area (ABP Ref.01.LS0019), while subject to separate application processes, are closely interlinked and, therefore, concluded that a single common remedial EIS and remedial NIS should be submitted with each application (ABP Refs.01.LQ0001 and 01.LS0019) to facilitate the Board's assessments.

Board Member: \_\_\_\_\_ Date: March 2<sup>nd</sup>, 2017  
Nicholas Mulcahy

*Please issue a copy of this Direction with the Board Order.*