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The submissions on this file and the Inspector's report were considered at a further Board meeting held on 30<sup>th</sup> August, 2017.

The Board had regard to all documentation on file. It was noted that there was no response from the National Parks and Wildlife Service to the request for comment issued in June 2017.

The Board decided, by a 2:1 majority, to grant substitute consent for the draft reasons, considerations and conditions set out below.

## **REASONS AND CONSIDERATIONS**

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

- Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended,
- the provisions of the Planning and Development Acts, 2000 to 2017, and in particular Part XA,
- the provisions of the Planning and Development Regulations 2001, as amended,
- the 'Quarries and Ancillary Activities, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government, April 2004,
- the provisions of the Cork County Development Plan 2014 - 2020,

- the remedial Natura Impact Statement submitted with the application for substitute consent,
- the reports and the opinion of the planning authority under section 177I of the 2000 Act, as amended,
- the submissions and observations made in accordance with regulations made under section 177N of the 2000 Act, as amended,
- the report of the Board's inspector,
- the planning history and pattern of existing development in the overall area, and
- The particular planning history of the subject site, including:
  - permissions granted under planning authority reference numbers 99/3410, 99/3411, 01/6604 and 03/4570,
  - the determination of the section 261A Review of the site carried out by the planning authority, under reference number CKQY0106, which concluded that the assessment of the above planning applications did not constitute an appropriate assessment in the context of the EU Habitats Directive (notification of 23rd August 2012)
  - The review of the above notification by An Bord Pleanála (file reference 04.QV0174) which confirmed the determination by the planning authority, with particular reference to planning reference numbers 99/3410, 99/3411, and 03/4570 (Order dated 21st January 2014),
  - The subsequent application for substitute consent made by the owner/ operator on 29th August 2014 (ABP reference 04.SU0117),
  - The application for leave to apply for substitute consent made by the applicant in accordance with section 261A(20), which was granted by ABP in February 2016 (ABP reference 04.LT0001) meaning the undecided application SU0117 was deemed withdrawn,
  - the subject application for substitute consent made under section 177E(2A) of the Act.

### Appropriate Assessment

The Board concurred with the screening analysis carried out during the s261A process (Cork County Council CKQY0106 and ABP file reference 04.LT0001) which identifies the following two Natura 2000 sites as requiring a stage 2 appropriate assessment: Cork Harbour SPA (site code 004030) and Great Island Channel SAC (site code 001058). This screening finding has been confirmed in the applicants Natura Impact Statement.

The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. Having regard to the nature, scale and extent of the subject development, the remedial Natura Impact Statement submitted with the application and the mitigation measures contained therein, the submissions on file and the Inspector's assessment, the Board completed an Appropriate Assessment of the impacts of the development on nearby Natura 2000 sites. Subject to the implementation of the identified mitigation measures the Board concluded that, on the basis of the information available, the development, either individually or in combination with other plans or projects, would not adversely affect or would not have adversely affected the integrity of any European Site, having regard to the conservation objectives of those sites. In reaching this conclusion the Board adopted the report of its planning inspector, save with respect to the issue of an apparent incursion of the quarry onto the foreshore.

### **Conclusions on the Proper Planning and Sustainable Development of the Area**

Having regard to the satisfactory conclusion of the Appropriate Assessment, as set out above, it is considered that, subject to compliance with the conditions set out below, the continued operation of this quarry, in accordance with the terms of the existing planning permissions pertaining to the site, would be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission on the basis of an apparent incursion of the quarry onto the foreshore, the Board's consideration was as follows.

The quarry lies directly adjacent to two European sites, namely Cork Harbour SPA (site code 004030) and Great Island Channel SAC (site code 001058). In the western boundary of the quarry, a specific area has been identified where there is an apparent overlap between the quarry and the boundary of the SPA and SAC.

Having considered the application documentation, and having viewed the historical mapping and historical aerial photography available from the Ordnance Survey (including aerial photography for the years 1995, 2000 and 2005) together with the mapping of the SPA and SAC boundaries, the Board concluded that:

- (a) the quarry activities generally appear to pre-date the designation of both the SPA and SAC;
- (b) the quarry footprint appears in the aerial photography denoted '1995' to be well established, suggesting works were underway in advance of the date of designation of the SPA (November 1994). Furthermore the quarry footprint appears in the aerial photography classified as '1995' and also '2000' to be well established, suggesting works were underway in advance of the date of designation of the SAC (January 2000);
- (c) the overlap between the quarry footprint and the boundaries of the SPA and SAC may be explained by the use of historical *six inch to one mile* mapping during the digitisation of the boundaries of the designated sites, whereas planning applications were made using more up to date OS mapping, and therefore,
- (d) the overlap arises as the result of a mapping discrepancy as opposed to the encroachment of the quarry into or onto the designated sites following designation.

Having reached this conclusion, the Board was satisfied that the inspector's concerns in relation to loss or destruction of habitat in the SAC and SPA were no longer valid, and noting the Inspector's satisfaction with the quarry in all other respects, the Board reached the conclusion as set out under 'Appropriate Assessment' above.

## CONDITIONS

1. (Plan Partic std)

Reason: In the interest of clarity.

2. All mitigation measures identified within the remedial Natura impact statement and associated documentation shall be implemented in full.

Reason: In the interest of the protection of European sites.

**Board Member**

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Conall Boland

**Date:** 22<sup>nd</sup> September 2017