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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: DEC 679**

**WHEREAS** a question has arisen as to whether:

- (a) excavation of land to create a lagoon system, including associated pipe work and mounding to facilitate groundwater lowering and discharge of water from the lands is or is not development or is or is not exempted development, and
- (b) the operation of the quarry at Lismaine (which is an established use under the Planning and Development Act 2000, as amended with the discharge of water from the quarry to land outside the site ownership boundary at lands with a hydrological connection to the River Barrow/River Nore Special Area of Conservation and Inchbeg protected National Heritage Area is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000, as amended,

all at Lismaine, Jenkinstown, County Kilkenny:

**AND WHEREAS** Kilkenny County Council of County Hall, John Street, Kilkenny requested a declaration on these questions from An Bord Pleanála, the 22<sup>nd</sup> day of March, 2022:

**AND WHEREAS** An Bord Pleanála amended and amalgamated the said questions to read as a single question as follows:

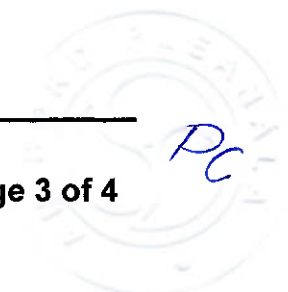
Whether the current operation of a quarry, including the operation of a water management system which includes the construction of a lagoon on-site, to attenuate and discharge water off site, at Lismaine, Jenkinstown, County Kilkenny is or is not development or is or is not exempted development.

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2(1) and 3(1)(a) of the Planning and Development Act 2000, as amended,
- (b) Article 6(3) and Class 3 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (c) Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001, as amended, and
- (d) the planning history of the site,
- (e) Legal judgments in: *Krikke and others v Barranafaddock Sustainable Electricity Ltd* [2022] SC 2021/133; *Waterford County Council v John A Wood Ltd* [1999] 1 IR556; *Dublin County Council v Tallaght Block Company Ltd* [1983] SC282/1981; *Monaghan County Council v Brogan* [1987] IR333; *Roadstone Provinces Ltd v An Bord Pleanála* [2008] IEHC 210; *McGrath Limestone Works Ltd v An Bord Pleanála and Others* [2014] IEHC 382  
and,
- (f) the documentation on file and the report of the Inspector:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) based on the evidence before it of significant additional excavation at the quarry since 2018 into a bedrock of karstified limestone with significant fluctuating water table levels, there has been significant extraction of material below the water table on a consistent basis,
- (b) this significant extraction below the water table, in conjunction with the construction of an associated lagoon water management and the discharge of water off site has given rise to a change of use through intensification that constitutes a material change of use. Quarrying of this nature gives rise to significant planning and environmental considerations and impacts that would not have arisen in relation to the previous operations at the quarry. These include direct impacts on ground water and water table levels over a potentially wide area having regard to the karstic nature of the underlying aquifer; potential impacts on sensitive receptors, including the River Barrow River Nore Special Area of Conservation which have qualifying interests that are particularly sensitive to changes in water quality and local wells and other water resources and potential impacts in relation to the capacity of receiving water bodies,
- (c) there is no exemption for a material change of use of this type, and



- (d) while the construction of the lagoon system, in terms of works, may be deemed to fall within the scope of Class 3 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, the said construction works are also subject to Article 9(1)(a)(viiB) as, on the basis of the information available, it is not possible to rule out likely significant effects on a European Site (River Barrow River Nore Special Area of Conservation Site Code: 002162) and a consequent requirement for appropriate assessment. The lagoon system, therefore, is not exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, as amended, hereby decides that the current operation of a quarry, including the construction of a lagoon water management system and discharge of water off site at Lismaine, Jenkinstown, County Kilkenny is development and is not exempted development.



**Paul Caprani**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

**Dated this 27<sup>th</sup> day of September 2024.**