



An
Bord
Pleanála

Inspector's Report PL.08.248266.

Development

Retention Permission sought for (A) the retention of a quarried area of 1.7ha outside the quarry area permitted under planning reg no. 06/2419, (B) permission for the recommencement and continuation of quarrying activities on the overall site of 3.3ha to include crushing, screening and processing of rock and all ancillary site works, (C) permission for blasting and washing of aggregate, (D) installation of a packaged waste water treatment system and polishing filter.

Location

Farranastack Townland, Lisselton, Co. Kerry

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

16/836

Applicant(s)

Kerry Tarmacadam Manufacturing Ltd

Type of Application

Retention & Permission

Planning Authority Decision

Split decision

Grant permission for the retention of the quarried area of 1.7ha and refusal for the recommencement and continuation of quarrying, refusal for blasting and washing of aggregate, refusal for the installation of a WWTP.

Type of Appeal

First Party

Appellant(s)

Kerry Tarmacadam Manufacturing Ltd

Observer(s)

Inland Fisheries Ireland

Maurice Dunworth

Michael & Helen Moriarty

Earth Science Partnership (on behalf of Elaine Nolan & Glen Wightman)

Hugh & Mary O'Donnell

Date of Site Inspection

22nd June, 2017

Inspector

A. Considine

1.0 Site Location and Description

- 1.1. The subject site is located approximately 10km to the north west of the town of Listowel, and 6km to the east of the town of Ballybunnion, in the townland of Farranastack, Lisselton. The settlement of Lisselton is located approximately 2.5km to the south. The site is bound to the east by the L6012 which connects Lisselton with Ballylongford. The road is a narrow public road and rises from south to north. The site is in an elevated location in the landscape. The wider area is very rural with farm holdings and a number of individual one off houses located on the local roads. There is an existing unoccupied house located immediately to the south west of the site.
- 1.2. The site itself is somewhat screened by existing trees and hedgerows along the boundaries. There is an existing, albeit currently not operating, quarry on the site. There is an excavated area close to the entrance to the site with a larger area of the site stripped and excavated. The roadside boundaries include 2m+ high fences and the gates were padlocked so I could not gain entry into the quarry site on the date of my inspection.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices, as follows:
- (A) Retention permission to retain a quarried area of 1.7ha outside the quarry area permitted under planning reg no. 06/2419,
 - (B) Permission for the recommencement and continuation of quarrying activities on the overall site of 3.3ha to include crushing, screening and processing of rock and all ancillary site works,
 - (C) Permission for blasting and washing of aggregate,
 - (D) Installation of a packaged waste water treatment system and polishing filter.
- 2.2. The planning application was accompanied by the following documents:
- Application form and relevant plans and particulars
 - Environmental Report

- Appropriate Assessment Stage 1 Screening (NIS)
- Site Characterisation Report with completed form
- Letter of consent from landowner

2.3. The Planning & Environmental Report

The P&E report provides a full description of the proposed development and advises that the quarry is to be worked dry, with a working life of 5 years with a proposed annual output of up to 120,000 tonnes. In the 6th year, final restoration of the site will be completed. Given the area of the site, it is concluded that EIA is not required. The Report seeks to consider environmental impacts associated with the proposed development under a number of headings including as follows:

- Flora & Fauna
- Soils & Geology
- Water
- Air Quality
- Noise
- Vibration
- Landscape & Visual
- Cultural Heritage
- Traffic
- Environmental Monitoring Plan

The report includes a number of appendices as follows:

- Appendix A: Fish Habitat Assessment
- Appendix B: Appropriate Assessment: Stage 1 Screening Report
- Appendix C: Assimilative Capacity (AC) Assessment and Mass Balance (MB) calculation
- Appendix D: Biological Water Quality Assessment
- Appendix E: Noise Impact Assessment
- Appendix F: Vibration Impact Assessment
- Appendix G: Landscape & Visual Impact Assessment
- Appendix H: Traffic Impact Assessment.

2.4. Following a request for further information, the first party submitted information as follows:

- The quarry will not be deepened and has already reached its maximum extent therefore it is not anticipated that there will be an increase in (water) discharge volume.
- The response also seeks to deal with noise issues raised.
- A report on the Assimilative Capacity and Mass Balance Assessment for Quarry Discharge is submitted
- An Air Quality Impact Assessment report is submitted.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to issue a split decision in this instance as follows:

Grant permission to retain a quarried area of 1.7ha outside the quarry area permitted under planning reg no. 06/2419, subject to 3 conditions.

Refuse permission for all other elements of the proposed development for the following stated reasons:

1. The Planning Authority is not satisfied that the assimilative capacity of the Kilmulhane Stream is adequate to cater for the discharge of contaminated water from the proposed quarry. Furthermore, the Planning Authority is not satisfied that the proposed discharge from the quarry would not have significant effects on the Lower Shannon cSAC. The proposed development would be likely to cause water pollution and would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the elevated and exposed nature of the site and its proximity to existing residential development, it is considered that the dust levels generated by the proposed quarry would cause nuisance to neighbouring properties. The proposed development would therefore seriously injure the residential amenities of properties in the vicinity and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planning reports detail only the issues for further information and clarification. In preparation of the final decision, a full planning report is presented on the file. The report deals with the planning history of the site, considers the proposal against the Development Plan policies and objectives, details submitted in internal reports and external submissions from prescribed bodies and third party objectors. The assessment considered the proposed development in terms of zoning and location, planning history, visual impact, road safety / traffic, water/ soil / effluent disposal, surface water disposal, residential amenity and third party objections. The report also deals with the responses to the further information request and presents an AA Screening as well as an EIA sub-threshold screening.

The report concludes that the retention of a 1.7ha quarried area outside of a previously permitted quarry area as per Reg. No. 06/2419 is acceptable and can be granted retention permission subject to conditions. It is recommended that full permission for further quarrying of the overall site, area of 3.3ha, be refused.

3.2.2. Other Technical Reports

County Archaeologist: No recorded monuments noted in the immediate area of the proposed development and the site previously disturbed. No mitigation is required.

Listowel Roads Office: Recommends a grant of permission subject to 11 conditions including as follows:

- 1: Loaded goods vehicles shall only use the L-6012 in a south westerly direction.
- 10: Special development contribution of €350,000 in respect of road improvements to the L-1004 and L-6012.
- 11: Annual development contribution.

Environment Section: The report notes that the Environment Section does not intend on commenting on the blasting or flood impacts of the proposed quarry

activity. Concerns raised in relation to water quality and noise and further information with regard to discharge waters, noise impacts and dust required.

Following receipt of the response to the FI request, a further report was submitted by the Environment Section. This report required clarification on issues relating to the assimilative capacity assessment and dust issues.

Following receipt of the response to the clarification request, the Environment Section concluded that strong reservations in relation to the discharge of water from the proposed quarry to the Kilmulhane Stream remain as well as the likely dust impacts from the quarry. The Section is not in a position to recommend approval of the application.

A further email notes that the Environment Section would not object to a grant of retention for the previously worked element of the quarry on the proviso that no further excavation or processing would be undertaken. Recommendation for refusal of the other elements of the planning application still stand.

Biodiversity Officer: The report notes that the quarry will be subject to a discharge licence which has not yet been submitted. The report concludes that it is not possible to complete a screening under Article 6 of the Habitats Directive without more information on the proposed discharge at operating levels. The report also notes that although sub-threshold, the scale of the quarry EIA could be considered. Further information is required in relation to impacts on groundwater, water attenuation and discharge quantity and quality.

Following receipt of the response to the FI request, a further report was submitted by the Biodiversity Officer. This report required clarification on issues relating to the assimilative capacity assessment.

Following receipt of the response to the clarification request, the Biodiversity Officer concluded that possible negative impacts on fisheries habitats / species downstream of the proposed discharge cannot be ruled out. The report concurs with the Environment Section and recommends refusal of the proposed development. In relation to AA, due to lack of specific information on the discharge, and based on the fact that the information provided on the AC of Kilmulhane Stream to take the discharge is deemed unsatisfactory, the AA screening cannot be completed. Significant effects cannot be ruled out.

3.3. Prescribed Bodies

Inland Fisheries Ireland: This submission raises concerns about the proposed development in relation to a number of issues including:

- Significant discharge to adjacent stream and groundwater, both contiguous to an SAC
- Blasting issues
- Limited survey of the receiving watercourse which indicate an extremely good quality but no fisheries assessment was undertaken. Spawning could take place in the stream.
- The stream will not have significant assimilative capacity during low flows.
- It is considered that any and all discharges will require appropriate discharge licence which should be secured before any grant of planning permission.
- Issues relating to dust raised including the necessary water abstraction for dust suppression.
- Other concerns raised include impacts on humans, water supplies / wells, dust and blasting impacts on locals and concerns over potential smells arising from the development.

A further letter was submitted to Kerry County Council from IFI advising that in 2009, the IFI successfully prosecuted 'Farrell Bros Quarry', the previous operators of the quarry for pollution arising from discharges to the adjacent stream. It did not have sufficient assimilative capacity to deal with effluent arising from the quarry operation.

3.4. Third Party Observations

There are five third party observers noted on the planning authority file as follows:

3.4.1. Mr. Frank Dunworth: Issues raised are summarised as follows:

- History of site included the issuing of enforcement notices and prosecution by the Fisheries Board in relation to pollution issues.

- An impartial EIS should be undertaken to assess the effects on domestic wells and water quality
- Independent Ecological Impact Study as to the suitability of the rock formation to blasting and impacts on nearby homes
- Input from local fisheries and environmental board as site may lie within the Shannon Estuary and Cashen Basin preserve
- The road has recently been resurfaced at great expense to the tax payer. The previous operator did not pay any levy for the road, which was substandard for many years. Concerns as to the suitability of the road
- Noise and dust issues
- The area is a quiet and rural area with young families. There has been a lack of communication which is causing undue stress and anxiety to local residents, particularly with regard to the blasting proposals.
- Observer does not want to hinder progress, but there is an entitlement to have a reasonable quality of life.

3.4.2. Elaine Nolan, Glen Wightman, and Residents of Farranastack: Issues raised are summarised as follows:

- Limited information provided in the application and violate specific conditions laid out in 06/2419.
- No noise survey was carried out
- Dust was a chronic problem with the previous quarry
- Vibration from blasting has a detrimental effect on structures. A souterrain is located 850m south / south east of the quarry. An impact assessment of the blast-induced ground vibration is an important prerequisite for future operations of quarries and should be required.
- Visual impacts associated with the quarry is in direct violation of objective ZL-5 of the Kerry County Development Plan.
- Loss of groundwater supplies

- Water pollution and history of prosecution of previous operator for pollution of adjacent water course. A discharge licence is required and application should be refused until such a licence is granted.
- Habitat loss will occur if quarry is granted retention permission. Concerns over rehabilitation given the planning history of the site and non-compliance with previous conditions.
- Traffic generation and adverse impact on the road network and previous non-compliance with conditions.
- No Archaeological Report was submitted in an area where there are over 700 ringforts identified in the adjacent townlands.
- The quarry offers no protection for SACs, SPAs, NHAs and pNHAs. Concerns raised regarding the potential pollution of streams and rivers. A full AA and EIA should be required.
- No Environmental Management System (EMS) was submitted with the application.
- Lack of community consultation.

It is requested that permission be refused.

3.4.3. Mr. & Mrs. Michael & Helen Moriarty: Issues raised are summarised as follows:

- Concerns raised in relation to safety, effect on their health and environmental issues.
- Planning history and non-compliance with conditions
- Independent Environmental and Ecological studies should be carried out
- Roads and traffic issues
- Noise, dust and blasting
- Lack of consultation and impacts on the quiet rural environment.
- Need for development questioned.

3.4.4. Mr. & Mrs. Hugh & Mary O'Donnell: Issues raised are summarised as follows:

- Impacts on wells and water supplies

- Roads and traffic issues
- Noise, dust and blasting
- Impacts on wildlife
- Impacts on the residents enjoyment of the rural area.

3.4.5. Mr. Cillian O'Connor: Issues raised are summarised as follows:

- Past failures to comply
- Inadequate and contradictory information relating to groundwater
- EIA screening issues raised including the fact that the area to be retained is greater than the actual permitted quarry area. It is submitted that the development requires a sub-threshold EIA given the potential environmental impacts associated with the site.
- AA Stage 2 should be required given the proposal to discharge waters to the Kilmulhane Stream – which flows into the Cashen Estuary which forms part of the Lower Shannon SAC.

4.0 Planning History

4.1. The following is the relevant planning history associated with the subject site:

PA ref. 01/1456: Permission granted for the erection of a wind monitoring mast.

PA ref. QY024: Quarry registered in accordance with Section 261. 21 conditions attached to the registration.

PA ref. 06/2419: Permission granted for a batching plant and extraction from existing quarry to upgrade existing access, 1 no. portacabin (office), parking area, treatment unit with percolation area. This permission relates to a site area of 1.6ha (3.96 acres).

The Board will note that no extraction limit was applied to this grant of permission and blasting was omitted by way of a condition of the permission.

PA ref. 08/2093: Permission sought for a quarry – withdrawn

PA ref. 08/2392: Permission sought to retain extension to quarry – deemed incomplete.

PA ref. 09/364: Permission refused for a plant machinery storage shed, weighing bridge, a wheel wash, an office / canteen / staff facilities served by wastewater unit and percolation are, an on-site water reservoir, access road, stone washing plant, stockpile area for the stockpiling of excavated stone and other excavated material namely topsoil, permission to carry out blasting and drilling works within the quarry boundaries and retention permission of extended quarry works. Opening hours of operation extend from 7am to 7pm Monday to Sunday and all necessary ancillary site works. The reasons for refusal were as follows:

1. It is considered that the road network serving the quarry site does not have sufficient capacity to handle the traffic associated with the proposed development. The proposed development would therefore, endanger public safety by reason of traffic hazard and an obstruction to road users, and would consequently be contrary to the proper planning and sustainable development of the area.
2. Having regard to the soil conditions on site and on the basis of the information submitted with this application, this Planning Authority is not satisfied that the effluent arising from the proposed development can be adequately disposed of on site. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

The Board will note that the quarrying activity referred to in this application extended into an area of the land to the west of the permitted quarry site, permitted under PA ref. 06/2419, which was not included in the authorised area of the quarry. This application sought to address the unauthorised area in addition to the intensified extraction and related ancillary uses. The Planning Officers report referred to the EIA requirements and noted that while the total area of the quarry was 7.4ha the extraction area was given as 3.53 ha which falls below the statutory threshold for EIA.

The Board will further note that the current appeal before them relates primarily to an extension to the original 2006 permitted quarry into the area of the 2009 application site which was identified as the stockpiling area of the wider 7.4ha site. The area of the current site is indicated as 3.3ha.

PA ref. 15/927: Permission was sought (by the current applicant) for (A) recommencement and continuation of quarrying activities on the overall site of 3.3ha to include crushing, screening and processing of rock, and all ancillary site works, (B) permission for blasting and washing of aggregate, (C) retention permission to retain a quarried area of 1.7ha outside of the quarry area permitted under PI. Ref 06/2419, (D) installation of a packaged waste water treatment system and polishing filter. Further information and clarification was sought in relation to this application. The file was withdrawn.

4.2. **Unauthorised Development:**

Ref. UD32/07: This is an Unauthorised Development file which dealt with a number of enforcement issues including opening of land outside of the area included in the application made under Ref. 06/2419. Enforcement was deferred until after the section 261A process.

4.3. **Section 261 Registration:**

The site was registered under Section 261 with conditions attached (Kerry Co. Co. Ref. QY024). There was no appeal to An Bord Pleanála. The total quarry area is stated in the registration documentation as 2.18 ha with the total extraction area of the quarry 1.38 hectares. There were 21 conditions attached which included: 25 year operation, extraction only within the marked area (map in pouch) and no more than 20 tonnes per calendar year.

ABP ref QV08.0043 (PA ref. EUQY024): Determination under subsection (2)(a)(i) and (ii) of Section 261A of the P&D Act, 2000, as amended. The PA determined the following under subsection (2)(a)(i) and (ii) of Section 261A:

- (i) Development was carried out after 1 February 1990 which would have required, having regard to the Environmental Impact Assessment Directive, a determination as to whether an Environmental Impact Assessment was required, and such a determination was not made;
- (ii) Development was carried out after 26 February 1997, which would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

Following the determination under subsection (2)(a) the Planning Authority decided pursuant to subsection (3) of Section 261A that:

The quarry commenced operation before 1 October 1964 and permission was granted in respect of the quarry under Part III of the 2000 Act; and

The requirements in relation to Registration under Section 261 were fulfilled.

The Reason for the Decision was as follows:

The Planning Authority is satisfied that the quarry commenced operation before 1 October 1964, was granted Planning Permission under Part III of the Planning and Development Act 2000 and the requirements in relation to registration under section 261 were fulfilled;

On review to the Board, the Board, in exercise of its powers conferred on it under section 261A of the Planning and Development Act, 2000, as amended, decided:

Based on the Reasons and Considerations marked (1) set out below, **to set aside** the determination of the planning authority in respect of this development made under section 261A(2)(a)(i) of the Planning and Development Act 2000, as amended, and based on the Reasons and Considerations marked (2) set out below, **to set aside** the determination of the planning authority in respect of this development made under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended.

5.0 Policy Context

5.1. National Guidelines

Quarry and Ancillary Activities, Guidelines for Planning Authorities, DoEHLG, 2004:

- 5.1.1. These guidelines note the economic importance of quarries and the demand for aggregates arising from the needs of the construction industry with particular reference to house building and infrastructure provision. It is further noted that aggregates can only be worked where they occur and that many pits and quarries tend to be located within 25km of urban areas where most construction takes place.

- 5.1.2. Chapter 2 identifies appropriate development plan policies and objectives with regard to the development of quarries.
- 5.1.3. Chapter 3 identifies the potential environmental issues associated with the development of the extractive industry / quarries and recommends best practice / possible mitigation measures in respect of:

- Noise and vibration
- Dust deposition / air quality
- Water supplies and groundwater
- Natural heritage
- Landscape
- Traffic impact
- Cultural heritage
- Waste management

The Guidelines also recommend Environmental Management Systems (EMS) as a quality assurance system to measure a company's operations against environmental performance indicators.

- 5.1.4. Chapter 4 refers to the assessment of planning applications and Environmental Impact Statements. It provides guidance on the information to accompany an application and the inclusion of possible planning conditions.
- 5.1.5. Chapter 5 refers to the implementation of the registration procedures set out in Section 261 of the Act.

Environmental Management Guidelines, Environmental Management in the Extractive Industry (Non-Scheduled Minerals), EPA, 2006:

- 5.1.6. These guidelines are intended to complement existing national guidance and to be of assistance to operators, regulatory authorities, and the general public (They are also complemented by the 'Environmental Management in the Extractive Industry – Guidelines for Regulators'). The guidelines provide general advice and guidance in relation to environmental issues to practitioners involved in the regulation, planning, design, development, operation and restoration of quarry developments and ancillary facilities.
- 5.1.7. These environmental management guidelines also represent a summary of current environmental management practices for quarries and ancillary facilities (including manufacturing of concrete and bituminous mixes/asphalt products, and processing of

dimension stone). They are based on a review of current environmental management practice in Ireland, the UK and Europe. Under each of the key environmental issues, good environmental practice is summarised together with recommendations for the use of environmental management systems (EMSs), and emission limit values (ELVs), where appropriate.

Guidelines on the Information to be contained in Environmental Impact Statements' EPA, 2002:

- 5.1.8. These guidelines provide developers, competent authorities and the public at large with a basis for determining the adequacy of Environmental Impact Statements within the context of established development consent procedures and also serve to address a wide range of project types and potential environmental issues. The accompanying 'Advice Notes on Current Practice (in the preparation of Environmental Impact Statements, 2003') subsequently provide further detail on many of the topics covered by the Guidelines and offer guidance on current practice for the structure and content of Environmental Impact Statements. The Board will note that the subject site is a sub-threshold development.

South West Regional Planning Guidelines, 2010-2022:

- 5.1.9. These guidelines are designed to steer the future growth of the region over the medium to long term and to implement the strategic planning frameworks set out in the National Spatial Strategy (NSS), 2002 and National Development Plan, 2007-2013 (*N.B.* These Guidelines will be superseded by the Regional Spatial and Economic Strategy and the National Planning Framework on the completion of same).

5.2. Development Plan

- 5.2.1. The Kerry County Development Plan 2015-2021 is the relevant policy document.
- 5.2.2. The subject site is located within an area of the county which is described as being a stronger rural area in terms of settlement location and rural general in terms of rural landscape type. Chapter 3 of the CDP deals with such zoning and Section 3.3.2.1 states that 'these areas constitute the least sensitive landscapes throughout the County and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.'

5.2.3. Chapter 8 of the CDP deals with Natural Resources, and Section 8.2 deals with Extractive Industry: General Extractives Objectives. The following policies are considered relevant:

NR – 1: Maximise the economic potential and development of natural resources in a sustainable manner while ensuring no significant adverse effect on the environment including the integrity of the Natura 2000 Network through the implementation of the objectives and the Development Management Guidelines and Standards of this Plan.

NR-2 Maximise the employment potential of the natural resources within the County in a sustainable way through the promotion of associated industries at appropriate locations.

NR-3 Ensure that the development and exploitation of natural resources does not result in any significant adverse effects on the local community.

Section 8.2 of the Plan deals with Extractive Industry and the following policies are considered relevant:

NR-4 Facilitate the sustainable development of the extractive industry and seek to ensure the ongoing availability of an adequate supply of aggregates for the construction industry, while ensuring environmental protection, through the implementation of the objectives and Development Management, Guidelines and Standards of this Plan.

NR-5 Ensure all extractive development proposals comply with the objectives of this plan as they relate to development management standards, flood risk management requirements and the protection of landscape, biodiversity, infrastructure, water and air quality, built and cultural heritage and residential amenity.

NR-6 Ensure that quarrying and mining proposals are not permitted in areas where the visual or other impacts of such works would significantly adversely injure the amenities of the area or create significant adverse effects on the road network in the area.

NR-7 Ensure that development for aggregates / mineral extraction, processing and associated concrete production will be prohibited in Prime Special

Amenity Areas and will not generally be permitted in other open or sensitive landscapes.

5.2.4. Chapter 10 of the Plan deals with Natural Environment & Flood Risk Management. In this regard, the following objectives are considered relevant:

NE-1: Work with all stakeholders in order to conserve, manage and where possible enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County.

NE-2: Ensure that the requirements of relevant national and EU legislation, including the Habitats Directive (92/43/EEC), the EU (Birds) Directive (79/409/EEC), the Environmental Impact Assessment Directive (85/337/EEC), the Water Framework Directive (2000/60/EC), and the Flood Directive (2007/60/EC), are met by the Council in undertaking its functions.

NE-4: Promote best practice with regard to natural heritage conservation and management.

NE-5: Ensure that the cumulative impacts are taken into account when evaluating the impacts of a particular proposal on biodiversity, particularly in relation to habitat loss and wildlife disturbance.

NE-9: Liaise with the OPW on all issues involving river drainage and flood relief, especially when dealing with any development consent applications in the vicinity of important drainage channels.

5.2.5. Section 10.2 of the Plan deals with Environmental Designations:

NE-11: Ensure that all projects likely to have a significant effect on a Natura 2000 / European site will be subject to Habitats Directive Assessment prior to approval.

NE-12: Ensure that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites having regard to their conservation objectives, shall be permitted on the basis of this Plan (either individually or in combination with other plans or projects) unless imperative reasons of over-riding public interest can be established and there are no feasible alternative solutions.

NE-13: Maintain the nature conservation value and integrity of all Natural Heritage Areas (NHAs), proposed Natural Heritage Areas (pNHAs), Nature Reserves and Killarney National Park. This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies.

In addition to the above, the following sections of the Plan are considered relevant:

Section 10.3: Water Quality

Section 10.14: Environmental Impact Assessment

- 5.2.6. Chapter 12 of the Plan deals with Zoning & Landscape. While the subject site lies within an area identified as Rural General, it is the stated objective of the Council at ZL-1, to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives. The plan further states that 'Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.'

Section 12.4 of the Plan deals with Views and Prospects and the Board will note that the road to the west of the site is identified as having views and prospects in the direction of the subject site. In this regard, the following policy objectives are considered relevant:

ZL-5: Preserve the views and prospects as defined on Map nos 12.1, 12.1a-12.1u.

ZL-6: Facilitate the sustainable development of existing viewing points as identified by Fáilte Ireland along the route of the Wild Atlantic Way, while ensuring the protection of environmental attributes in the area through the implementation of environmental protection objectives, standards and guidelines of this Plan.

5.2.7. Chapter 13 of the Plan deals with Development Management – Standards & Guidelines. Section 13.13 deals with Extractive Industry Standards and Guidelines and notes that ‘extractive industries are resource and location based and the resource is often located in visually and environmentally sensitive areas and in close proximity to residential areas.’ The Plan advises that ‘developments will therefore be assessed on the potential impact of the development on the designation/zoning. Particular constraints will be exercised in areas of archaeological importance, areas where views and prospects are listed, recorded monuments and environmental designated areas such as Designated Tourism Areas, Natura 2000 sites and Natural Heritage Areas (NHAs)/proposed Natural Heritage Areas (pNHA).’ In addition, the PA will require proposals to comply with legal provisions and guidelines.

5.3. **Natural Heritage Designations**

There is no designated site within the proposed development site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. This is a first party appeal against the decision of the Planning Authority to issue a split decision for the proposed development. The appeal is against the decision of Kerry County Council to refuse permission for the following elements of the proposed development

- Recommencement and continuation of quarrying activities on the overall site of 3.3ha to include crushing, screening and processing of road, and all ancillary site works
- Permission for blasting and washing of aggregates
- Installation of a packaged wastewater treatment system and polishing filter.

6.1.2. The appeal notes that the element for retention, being the retention of an area of 1.7ha of stripped lands located outside the quarry area, was permitted. It is submitted that in the same planning decision, Kerry County Council have managed

to both grant and refuse similar development on the same parcel of land for contradictory reasons. The grounds of appeal are summarised as follows:

6.1.3. Refusal Reason no. 1: AC of Kilmulhane Stream and impacts on Lower Shannon cSAC:

- If the PA considered that the proposed development would have likely significant effects on the Lower River Shannon cSAC then rather than refuse they should have requested a full Natura Impact Statement was carried out before refusing.
- An assimilative capacity assessment was carried out and results show that there is available assimilative capacity in the receiving waters of the Kilmulhane Stream. The Council did not state why they were not satisfied in this regard.
- As part of the planning application amendments are proposed to the existing permitted water management system at the site.
- These existing and proposed mitigation measures will ensure that all water discharged from the site will be treated before being discharged and in the case of a storm event the water will also be attenuated.
- No contaminated water will be discharged off site. The discharge from the site will be subject to a discharge licence.
- There will be no direct discharge to the Lower Shannon cSAC, which is at a distance of 6.5km downstream of the discharge point.

6.1.4. Refusal Reason no. 2: Dust levels and impacts on residential amenities:

- The proposed development is for an extension to an existing established quarry.
- The existing quarry and proposed extension areas are surrounded by screening berms on the southern and western boundaries. The existing and proposed quarry extension area sit into the landscape and would not be considered exposed.

- Dust monitoring results indicate that the dust deposition levels for the existing quarry area comply with the DoEHLG (2004) / EPA (2006) recommended dust deposition limit of 350mg/m²/day.
- Mitigation measures as submitted to the PA will ensure that fugitive dust generated by the proposed quarry development will not result in any significant impact on residential amenity or property in the vicinity of the quarry.

6.2. Applicant Response

The applicant submitted a response to the third party observations. The submission is summarised as follows:

- Section 35 of the P&D Act:
 - In relation to the submission of substantial non-compliance and unauthorised development at the site and that planning permission should not be granted for the development, the applicant submits that the current applicants have not carried out any development works at the site.
 - The quarry development was carried out by another operator with no connection to the current applicant.
 - Section 35(7) defines the 'person to whom this section applies'. The current applicant does not fall within this definition.
- Appropriate Assessment:
 - In terms of AA, the screening report identified that the only potential source-pathway-receptor link between the site and any Natura 2000 site would be via the hydrological pathway through the discharge to the Kilmulhane Stream which flows into the Cashen Estuary, which forms part of the Lower River Shannon SAC.
 - The AA screening report concluded that the quarry has the potential to expose the SAC to the hazard from changes in water quality. The discharge will be consented under a discharge licence.

- In terms of changes in water quality, there has to be a real risk and not a hypothetical risk and for a full NIS to be undertaken there has to be 'likely significant effects' and not just an effect.
- There are no hen harriers within proximate SPAs
- There is no connectivity to any pear mussel catchments
- Ecological Assessment:
 - A method statement will be produced for a derogation licence for the newts population using the existing ponds in the quarry site.
- Hydrological Assessment:
 - The Local Authority Services National Training Group (WSTG) guidelines quoted in third party submissions relate to discharge licence applications and not planning applications.
 - In terms of the AC assessment carried out, the methodology and scope were agreed with Kerry County Council.
 - It is not proposed to deepen the quarry and there will be no significant increase in groundwater volumes at the site which would result in an increase in discharge from the quarry.
- Local Wells:
 - An estimation of the potential zone of influence of the drawdown for the quarry was calculated and submitted with the application.
 - The assessment of the groundwater cone of drawdown around the site indicates that the quarry will have no impact on the well located c.70m to the west of the proposed extraction area.
- Water Treatment System
 - In relation to the sizing of the water treatment system 24 hour retention of discharge water is required to settle out particles >0.004mm in order to ensure compliance with the recommended emissions limit value of 35mg/l with respect to suspended solids as set out in the EPA guidelines.

- The settlement lagoon (550m²) is of adequate size to ensure compliance with an emissions limit of 35mg/l.
- Following the prosecution of the previous quarry operators for discharge of water from the quarry with elevated concentrations of suspended solids, it is advised that the water treatment system at the quarry was upgraded.
- Additional amendments to the water treatment system are proposed as part of this application.
- Air Quality:
 - A dust emissions assessment was submitted with the application and a number of site specific and good practice mitigation measures were identified.
 - The assessment concluded that the development will not have a dust deposition impact on assessed receptors.
 - It is the opinion of the applicant that plume dispersion modelling is an unsuitable tool to assess the potential impact of the dust deposition as there are no industrial emission points / point sources in the proposed activities.
 - The application is not a scheduled development.
- Noise:
 - The sound predictions in the noise model submitted used a proprietary software-based noise model, CadnaA, which implements the full range of UK noise calculation methods.
 - The cumulative long-term noise impact within the application site from plant associated with the stone extraction were assessed to be negligible at all noise sensitive receptors.
- Vibrations:
 - A Vibration Impact Assessment report has been carried out and submitted with the application.

- The conclusion of the assessment is that the development will be within the limits specified in the environmental guidelines for the industry.
- Landscape:
 - A landscape and visual impact assessment was undertaken and concluded that overall, the proposed development will have moderate / minor impact on the general landscape character within the study area and minor impact on individual landscape elements.
 - The proposed restoration of the fill area to natural habitat and the proposed planting along the access road will reduce the landscape and visual impact further and provide a contribution to the biodiversity of the area.
- Traffic:
 - A transport assessment report was prepared for the development.
 - There were previous issues relating to the condition of the road due to non payment of the required levy. It is noted that upgrade works have been carried out.
 - Kerry County Council Roads Department have recommended conditions be imposed on any grant of planning permission.

The submission concludes that the proposed development would be in accordance with the proper planning and sustainable development of the area. Based on the response, the Board is requested to overturn Kerry County Council's decision and grant planning permission for the proposed development.

6.3. Planning Authority Response

None.

6.4. Observations

There are 7 observations noted in relation to the subject appeal.

6.4.1. Mr. Peter Sweetman & Associates:

- The application is for retention permission. Case C-215/06 states that retention permission is not permitted for projects which are within the scope of Council Directive 85/337/EEC, which this development clearly is.

6.4.2. Mr. Maurice Dunworth:

6.4.3. Mr. & Mrs. Michael & Helen Moriarty:

Both of the above observers submitted a very similar observation and so both are summarised hereunder:

The comprehensive submission presents arguments under a number of headings. It is submitted that undue stress and anxiety is being caused to local residents due to lack of consultation. It is also submitted that residents have already seen the devastating effects of the quarry in 2008/2009. It is hoped that their voice will be heard. The issues raised are summarised as follows:

Site History:

- While reference is made to an operational quarry, it is submitted that rock was excavated by means of a hydraulic excavator (not rock breaking) and tractor and trailer loads were supplied to the locality.
- In the Section 261 application form, the owner indicated that the quarry operated periodically. The registration conditions provided that no more than 20 tonnes of excavated material may be removed in a calendar year.
- In 2007, Kerry County Council granted permission for extraction of material s for a 1.6ha site, subject to conditions. It is questioned if the quarry is operational, why are conditions not complied with. No commencement notice was submitted and in September, 2008 operations commenced in the quarry.
- Water was discharged during this time without a discharge licence to the local surface water stream via a land drain. The operator was successfully prosecuted by Inland Fisheries Ireland.
- Also during this time, the road infrastructure deteriorated and unravelled.

Roads:

- The assessment of the applicant of the local road infrastructure did not assess the foundations of the local road L-6012.
- The road, which is stated to have a carriageway varying in width from 4.5-5.5m has in reality, a width of 2.58-3.4m (yellow line to yellow line) with an average width of 2.96m.
- Two way traffic is only possible using verges and private accesses as pull in areas.
- The council have not acquired the land to widen the road and no change in ownership has occurred. In this regard, the applicants or Kerry County Council cannot CPO private land to facilitate the quarry development.
- The road is inadequate to accommodate the traffic generated by a quarry development. Save for substantial HGV activity during 2008/2009, the only road traffic associated with the quarry has been tractors and trailers.
- The use of the public road was restricted during the 2008/2009 period of quarry operation due to the traffic hazard and safety impacts for residents and children.
- The applicant is a larger producer of tarmac and bituminous based products with a facility in Banemore, Listowel. The proposed washing of aggregates is not a requirement for any other use other than to supply clean aggregates to a tarmac plant. Economies of scale and the necessity to maintain the material in a dry state will result in increased traffic volumes on the public road. Traffic movements will not be uniform and the Traffic Chapter of the assessment submitted has not addressed this issue.
- Issues raised in relation to the predicted traffic movements.
- In the section of the Planning & Environmental report relating to alternatives, there is an existing quarry within 3.5km from the applicants asphalt plant, rather than the 17.2km to the subject site, where the road network is more suitable.

- The location of the subject site as an appropriate location for the quarry is questioned. Also the quality of the rock at Bolands quarry has not been documented.

Dust:

- Concern regarding impacts of dust on the health of local residents raised and the implications of harmful dusts have not been appropriately assessed. Throughout the PAs assessment of the proposed development, the applicant has avoided acquiring more data, stating that the data submitted is sufficient.
- Mitigation measures which include avoid working in adverse / windy conditions is an unworkable situation and unrealistic.

Noise:

- Issues raised in relation to the noise chapter of the submitted report in terms of the background measurements, the lack of reference to a screener (which is louder than a crusher), to aggregate washing plant or electricity supply to the site, which may include a generator.
- The noise modelling is implausible and not reflective of an operational quarry.

Water:

- It is considered implausible that percolation for toilets can be achieved next to two unlined silt ponds which hold water.
- Lack of information presented in terms of the type or volume of silt which would be contained within the surface water run-off, the wheel wash or the washing plant water.
- There is no information in terms of engineering data pertaining to the site of the settlement lagoons needed. While KCC requested further information, the applicant failed to adequately assess the matter.
- With regard to the relocation of the population of smooth newts under licence, no information has been provided. The impacts on water quality on the SAC is also repeated as a concern.

- While reference is made to the necessity to get a discharge licence, the applicants suggest that the quarry is active without one. KCC should not have accepted the application given the current non-compliant status of the site.
- Impacts of the development on wells is raised as a concern due to lack of information provided.

General Amenity:

- A grant of planning permission will drastically change the amenity of the area. The site is located in an elevated and exposed area. The proposed quarry would be contrary to the CDP policy NR-6 as it would radically alter the character of the area and the landscape.

There are enclosures with this observation.

6.4.4. Earth Science Partnership (Ire) Ltd. on behalf of Elaine Nolan & Glen Wightman:

This observation includes a submission from Elaine Nolan & Glen Wightman who identify the grounds for objection to the proposed development as follows:

- | | |
|---|--|
| • Noise | • Archaeological importance & Recorded Monuments |
| • Dust | • Protection of SACs, SPAs and NHAs |
| • Vibration | • Lack of a proper Environmental Management System |
| • Loss of ground water | • No community consultation. |
| • Water pollution | |
| • Loss of habitat | |
| • Traffic generation & adverse impact to road network | |

Further to the above, a report from Earth Science Partnership (Ire) Ltd is presented. This report is presented in terms of an introduction, planning history, an evaluation of the application and presents conclusions. The document seeks to address the proposed development under a number of headings and is summarised as follows:

- The conditions attached to the Section 261 registration supersede the conditions attached to the 06/2419 permission given the dates of the two decisions.

- The quarry is substantially non-compliant and an additional 1.7ha of land has been knowingly been extracted outside the permitted area of 1.38ha.
- It is considered that the application should be rejected under Section 35 of the Planning & Development Act.

Issues raised in terms of the following:

- The description of the development is inadequate
- The proposal does not comply with County Development Plan policies
- The need for the development is questionable

In terms of the Environmental Assessment, there are issues raised in relation to the following:

- Inadequate assessment in relation to the colony of smooth newt resident on the site
- Inadequate consideration of the previous prosecution in relation to discharge water
- In terms of AA, significant effects to Natura 2000 sites cannot be ruled out. Within 15km there is evidence of freshwater mussel and hen harrier which have not been considered.
- Inadequate information or assessment presented by the applicant in terms of the potential impacts of the quarry on water. Flow measurements relied on by the applicant are inadequate and do not follow accepted guidelines. No conclusion regarding the assimilation capacity of the Kilmulhane Stream can be made with the information presented and therefore, it cannot be scientifically proven or concluded that there will be no significant adverse impact on the downstream SAC.
- No assessment was made on existing wells in the area.
- In terms of air quality, only 2 locations were used for dust monitoring. The application fails to adequately measure and predict dust emissions from the proposed development or provide meaningful mitigating measures to reduce dust levels.

- There is insufficient information provided in the noise section of the report submitted as part of the application for an accurate assessment to be made.
- During the years that the quarry was in operation, there has never been any blasting allowed, and is specifically prohibited by way of conditions attached to Section 261 and other relevant planning permission. Any intensification of use will highly impact on the amenity of the residential development which is in close proximity to the site.
- The development will contravene the CDP objective in relation to policy NR-7 where it is stated that the development of aggregate / mineral extraction, processing and associated works will be prohibited in prime special amenity areas and will not generally be permitted in other open sensitive landscapes. The subject site is exposed.
- The submitted traffic impact assessment report appears to underestimate the volume of traffic relating to the proposed development. The conclusions of the report are incorrect and there are a number of outstanding issues.

6.4.5. Purtill Solicitors on behalf of Mr. & Mrs. Hugh & Mary O'Donnell:

The observation seeks to reiterate the concerns raised during the PAs assessment of the proposed development and are summarised as follows:

- Impacts on well
- Impacts associated with dust on properties over 200m from the site.
- Concerns raised in relation to discharge to Kilmulhane Stream.
- Impacts on property values and potential damage to property and health.

6.4.6. Inland Fisheries Ireland:

IFI seek to advise concern regarding the development and in particular, its potential impact a small watercourse.

6.4.7. An Taisce;

- The observation notes that the site is in an area of proximity to Kilmulhane Stream which drains into the Lower Shannon SAC.
- This is a significant breach of permitted development.

- Intensification of quarrying on this site may result in amenity conflict with houses in the proximity of the subject site.

6.5. Further Responses

None.

7.0 Assessment

7.1. Introduction

Having regard to the nature of the proposed development, the details submitted with the planning application and appeal documents, together with my site inspection, I conclude that issues arising for consideration should be addressed under the following headings:

- The principle of the proposed development & compliance with policy
- Roads & traffic issues
- Environmental issues
- General & residential amenity issues
 - Residential amenity
 - Visual
 - Noise
 - Vibration & Blasting
 - Air
- Environmental impact assessment
- Appropriate assessment
- Other issues
 - Previous instances of non-compliance
 - Hours of operation
 - Development Contributions

7.2. The principle of the proposed development & compliance with policy:

- 7.2.1. National and Regional Guidance, including the South West Regional Planning Guidelines, 2010-2022, and the Quarries and Ancillary Activities, Guidelines for Planning Authorities, DoEHGLG, 2004, recommend that local authorities identify and protect important strategic mineral reserves in development plans while also acknowledging the economic importance of the quarry industry in supplying the construction sector with aggregates and stone. It is accepted that major infrastructure projects will create a demand for aggregates that will support the continuing economic and social development of the country and maintain Ireland's international competitiveness. In addition, the South West Regional Planning Guidelines, 2010-2022, also acknowledge that the mineral resources of the region, especially aggregates, contribute largely to the economy and operational aspects of the construction industry (buildings and infrastructure).
- 7.2.2. In terms of compliance with the current Kerry County Development Plan, 2015, the Board will note that the Plan recognises the importance of the extractive industry in economic and employment terms to the county through the production of aggregates and the associated manufacture of products, such as pre-cast concrete blocks and ready-mix concrete, for use in the wider construction sector. The Plan further states that the industry is necessary for continual economic growth; which is an integral requirement for the implementation of the National Development Plan, Transport 21 and private sector development. It is the stated objective of the Plan, Objective NR-1 refers, to 'maximise the economic potential and development of natural resources in a sustainable manner.....'.
- 7.2.3. The policy objectives relating to the extractive industry seek to promote such uses in appropriate locations and where such developments do not result in significant adverse effects on the environment, designated sites or local communities. The Plan also seeks to ensure that all extractive development proposals comply with the objectives of the plan as the relate to development management standards, flood risk management requirements and the protection of landscape, biodiversity, infrastructure, water and air quality, built and cultural heritage and residential amenity, Objective NR-5 refers.

- 7.2.4. The subject site is located within an area of Co. Kerry which has been designated as Rural General and there is a long standing history of quarrying at the site. The site is located in a rural area with a number of residential properties within 500m. The access to the site is via a local road where the surface has been recently upgraded. The road itself is narrow and can accommodate two cars passing very slowly. The speed limit of the road is 80km/ph. The site is not located within a Prime Special Amenity Area where extraction, processing and associated concrete production are prohibited, Objective NR-7. The objective also provides that such uses 'will not generally be permitted in other open or sensitive landscapes.' I propose to deal with landscape and visual impacts further later in this report.
- 7.2.5. In terms of the above, together with the planning history associated with the subject site, and the site having been used for quarrying for many years, I am satisfied that in principle, the proposed development can be considered as being acceptable and in general compliance with national, regional and local policies. Site specific issues will be dealt with further below.

7.3. **Roads & Traffic:**

- 7.3.1. The subject site is located in a rural area in north Co. Kerry and is accessed over a network of local roads. The planning history of the subject site would suggest that in the past the public road was deemed inadequate to accommodate the traffic generated by a quarry development without significant improvements to the road. The previous permission pertaining to the site sought a development contribution to be paid specifically for the upgrading of the public road and the Board will note from all submissions on the file, that no contribution was paid by the previous operator of the quarry. Indeed, I also note that the area engineer recommended refusal of any further development at the site due to the lack of capacity of the roads network serving the site. The previous report also noted that the contribution was not paid. In terms of this previous application, PA ref 09/364, the quarry development was refused for the following stated reason:

1. It is considered that the road network serving the quarry site does not have sufficient capacity to handle the traffic associated with the proposed development. The proposed development would therefore, endanger public safety by reason of traffic hazard and an obstruction to

road users, and would consequently be contrary to the proper planning and sustainable development of the area.

- 7.3.2. Since the above decision issued, it is clear that the public road has been resurfaced by the Local Authority. The current application file contains an unsigned Roads Report (2 copies) which sets out a number of conditions to be attached to any grant of planning permission which includes a number of standard conditions as well as a development contribution in the amount of €350,000 for road improvements to the L-1004 and the L-6012. An annual contribution is also required.
- 7.3.3. In support of the proposed development, the Planning & Environmental Report, submitted with the application, contains, at appendix H, a Traffic Impact Assessment. The TIA seeks to address all roads issues arising in terms of the operation of the quarry at the site. The report notes that there has been an existing quarry at the site for many years and the current proposal will entail the removal and exportation of approximately 120,000 tonnes per annum of quarried material. The report acknowledges the recent strengthening and resurfacing of the roads, including new yellow edge of carriageway road markings and concludes that the road surface and condition are very good. The report considers that there are no Traffic / Transportation issues that would prevent a positive determination of the application.
- 7.3.4. The report advises that it has been prepared in accordance with the requirements of the NRAs Traffic & Transport Assessment Guidelines, 2014, and seeks to assess the impact of the development based on a 50 week working year, 5.5 days working per week with a 10 hour working day. The local road at the site is described as an unrestricted single carriageway road carrying 2-way traffic with an 80km/ph speed limit. It is narrow, varying from 4.5 to 5.5m in width. The road is lightly trafficked and the report notes that the passage of larger vehicles necessitates the use of existing access gateways as pull in areas to allow smooth passage. Total HGV traffic only constitutes less than 1% of the current traffic volume using the local road. Traffic survey, carried out over a single afternoon, revealed that a weekday afternoon peak hour 2-way flow of 21 PCUs (Passenger Car Units) adjacent to the subject site.
- 7.3.5. In terms of the proposed development, the TIA concludes that a maximum of 2-3 HGV truck movements per hour at peak times in addition to employee traffic, approximately 2-3 car trips during the commuter period, will arise. This translates to

a total of 6-9 PCUs per hour, or 60-90 PCUs over the working day. It is submitted that this should be considered light given that the site has operated a quarry until recently and the previous significant traffic flow associated with the quarry. The traffic impact associated with the proposed development is indicated at one HGV per 20 minutes which is expected to have a negligible impact. It is further submitted that no adverse safety impacts were reported in terms of accidents during the previous operation of the quarry. The report concludes that there are no traffic or transportation issues arising from the proposed development.

- 7.3.6. The Board will note the submissions from local residents and the concerns raised in relation to the traffic issues arising from the operation of a quarry of the scale proposed at this location. Having undertaken a site visit, I can confirm that the condition of the public road is good with clear evidence of recent upgrading / resurfacing. The narrow nature of the road however is a concern given the intended use of HGVs to transport the quarried materials from the site. There is not enough room for a car and HGV to pass and certainly two HGVs could not pass each other. It is also clear from the submissions that the previous operation of the quarry was the cause of real concern for local residents.
- 7.3.7. There is no verified information provided in relation to the volume of material extracted on an annual basis during the previous operation of the quarry, but I also acknowledge that the last operation of the quarry was done so in contravention of set conditions of planning permission. I also would question whether the extraction of 120,000 tonnes per annum is an appropriate volume when the previously permitted extraction limit would appear to have been 20,000 tonnes per annum. While I accept that the estimated volume of traffic that would be generated by the proposed development can be considered low in terms of a quarry development, it would represent almost a 50% increase in the existing traffic movements on the road. Given the nature and carrying capacity of the existing local road, together with its narrow width, I do not consider that the level of extraction proposed and the traffic movements generated by it, can be accommodated without endangering public safety by reason of traffic hazard and resulting in an obstruction to road users.
- 7.3.8. I would recommend that permission should be refused for the proposed development but should the Board be minded to grant planning permission in this instance, I

would consider that the volume of extraction should be limited to below 60,000 tonnes per annum in order to reduce the traffic associated with the development.

7.4. Environmental Issues:

Water:

- 7.4.1. The subject site is located at the lower edges of the Knockanore Mountain and the surface water system in the area drains in a southerly direction towards the Casheen River. Surface waters from the subject site drain into the Kilmulane Stream which ultimately drains to the Lower River Shannon cSAC via the Casheen Estuary. The Board will note that the SAC is located approximately 6km to the south of the subject site and the SCA supports a number of qualifying interests which are dependent on the fresh water quality of the SAC. While I will deal with matters relating to Appropriate Assessment later in this report, I consider it pertinent to raise the matter here. The Board will also note that the applicant will require a discharge licence and that an Assimilative Capacity assessment and Mass Balance calculation were undertaken to assess the potential impact of the discharge waters from the quarry on the receiving waters of the Kilmulhane River.
- 7.4.2. The existing site has been used as a quarry in the past and it is submitted that the proposed extraction area, covering approximately 2.1ha, generally comprises stripped bare ground of low ecological and nature conservation value. The applicant proposes that the quarry will be worked dry and therefore, the existing floor level of the quarry will not be altered. The applicant submits that surface water runoff from the quarry floor flows directly into the settlement lagoon via a pipe beneath the berm around the lagoon. The proposed development will remove this pipe and will create a dedicated sump on the quarry floor to collect water to pump to the settlement lagoon. Water discharge from the quarry will include quantities of clean shallow groundwater, storm surface water runoff, treated water from the washing plant and run off from the refuelling area. Water from the refuelling area will be treated through a proposed hydrocarbon separator and all water from the site will be treated prior to discharge off site.
- 7.4.3. I have considered all of the information submitted in support of the proposed development, together with the reports from the County Council Environment section

and Biodiversity Officer. Given the nature of the proposed development, together with the history of the site, it is difficult to go against the findings of the Councils experts in relation to the potential impacts on water. However, I do acknowledge that the proposals for water treatment differ from the previous systems on the site and in terms of the proposed treatment of surface waters prior to discharge from the site. I also acknowledge that a discharge licence will be required for the proposed development. Should the Board be minded to grant permission in this instance, I recommend that a condition be attached precluding any works taking place at the site until said discharge licence has been secured.

- 7.4.4. It is proposed that the development will be serviced by a waste water treatment system which is to be installed on site. The Board will note the previous refusal for the installation of a WWTP for the site for the following reason:

Having regard to the soil conditions on site and on the basis of the information submitted with this application, this Planning Authority is not satisfied that the effluent arising from the proposed development can be adequately disposed of on site. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

- 7.4.5. In terms of the proposed development, the Board will note the Site Suitability Assessment which was submitted. The trial holes were dug to a depth of 0.6m in the quarry floor – there is no subsoil present, and no *P or *T tests were carried out on site. A bedrock infiltration rate of 0.465m/day was calculated. It is submitted that a tertiary treatment system will be installed, designed to cater for a PE of 3 and the hydraulic design flow from the WWTP is indicated at 200litres per day. Effluent will be pumped to a sand polishing filter prior to discharge to ground via a 300mm layer of suitable imported free draining soil, before discharging to ground. The necessary percolation area is calculated at 0.473m². In addition, it is proposed to install a surface water interceptor drain up-gradient of the sand polishing filter to divert rainfall runoff. Given the difficult circumstances pertaining at the site, I accept that the proposed system might be considered appropriate.
- 7.4.6. Water supply to the site is indicated as being via a private well which is located approximately 70m to the west of the site. A number of third parties have raised

concerns in terms of the potential impact of the development on existing wells in the area. An assessment of the impact of the quarry on this well was undertaken by the applicant and concluded that the development would have no impact. It is considered that impacts on groundwater beyond this distance would be negligible. I am generally satisfied that a grant of permission in this instance would not significantly impact on local wells.

7.5. General & residential amenity issues

Residential Amenity:

7.5.1. There are a number of residential properties located in proximity to the subject appeal site. The majority of the third party observations submitted cite the impact on residential amenity as concern, and particular reference is made to the previous operation of the quarry, particularly during 2008/2009. I refer the Board to objective NR-3, of the CDP which states that it is the policy of the Council to 'ensure that the development and exploitation of natural resources does not result in any significant adverse effects on the local community.' The operation of a quarry represents a difficulty in that it is a necessary and vital resource for future development of the area but where that operation gives rise to concerns where residential, environmental, and visual considerations have to be weighed against economic, employment and development considerations. It is required that the Board consider whether or not the operation of the quarry results in any significant adverse effects on the local community.

7.5.2. There are a number of elements of the proposed development which have the potential to negatively impact the existing residential and general amenities of the area including the visual impacts associated with the proposed quarry, as well as operational impacts in terms of noise, vibration, blasting and dust. These issues are dealt with below.

Visual:

7.5.3. Given the nature of the proposed development, the visual impacts can be significant. In terms of the subject site, the Board will note its elevated nature in the landscape. The site is also affected by a designated view as provided for in the County Development Plan. When viewed from the north, south and east, overall, I am

satisfied that there are limited views into the site. This is due to the fact that the existing site boundaries preclude direct views into the site. In terms of the views over the site from the west, and over the protected views in accordance with the County Development Plan, I am satisfied that there is little impact. Overall, I am satisfied that the proposed development is acceptable in terms of visual impact.

Noise

- 7.5.4. The subject site is located in a very rural and quiet area. The process of quarrying will generate a variety of noises which will have potential to impact on the residential amenity of local residents. The proposed development is seeking permission for blasting and the washing of aggregates at the quarry which will be new processes at this quarry. In addition, other noises associated with quarry operations include mobile crushing, screening and processing of rock and the use of an articulated dump truck amongst other machinery.
- 7.5.5. Appendix E of the submitted Planning & Environment Report presents a Noise Impact Assessment. This report seeks to describe the receiving environment and notes that noise surveys were carried out at four locations during the morning of the 15th January, 2016. All monitoring locations appear to have been adjacent to the local public road where the noise climate description for each advising that the measured ambient noise levels were mainly dominated by road traffic noise sources, and overall appear high given the quiet rural location, ranging from 56.8-58.9dB_{LAeq,T}. In terms of background noise levels, the Board will note that the measured dB_{LA90} value is typically used as it accounts for the influence of peripheral noises such as passing traffic, dogs barking etc. at the monitoring locations. The measured noise levels recorded are indicated at between 29.1-30.4dB_{LA90}.
- 7.5.6. For the purposes of assessment, the applicant adopted a reduction of -20dB(A) for full noise screening by the existing quarry walls and existing quarry berms. In addition, the applicant applied the ambient noise figures in the assessment. The issue of noise was raised as a concern by the PA during their assessment of the proposed development.
- 7.5.7. In terms of the noise modelling, the first party used the calculation algorithms set out in British Standard 2558:2009 'Code of practice for noise and vibration control on construction and open sites, Part 1: Noise'. In addition, the first party, in response to

the PAs FI request details the factors the model assumes in its calculations. The first party concludes that the proposed development will accord with the EPA Guidance on Quarries and Ancillary Activities suggested noise limit values of 55dB(A) and 45dB(A) for daytime and night-time respectively. The guidelines advise that in areas of higher background noise levels, the EPA recommends that ideally, if the total noise level from all sources is taken into account, the noise level at sensitive locations should not exceed a Laeq (1 hour) of 55 dB(A) by daytime and a Laeq (15 minutes) of 45 dB(A) by nighttime. These guidelines acknowledge that most quarries are situated in areas of low background noise and that it is appropriate to consider this when setting noise limits. It is further stated that complaints can be expected where the noise levels from quarrying operations are between 5 to 10dB above background noise levels.

- 7.5.8. By its nature, the operation of a quarry generates noise. I am unsure of the robustness of the noise impact assessment presented in support of the current appeal and I would not consider that the worst case scenario has been presented. It is noted that while permission has been granted in the past for the quarry operation at the subject site, it was not operational during the current noise monitoring assessment and therefore did not contribute to the background noise levels. I am further concerned that the proposed 20dBA reduction has been applied. That said, I am satisfied that appropriate conditions could be attached to any grant of planning permission, should the Board be minded to grant permission in this instance, to control noise emissions from the site in order that the development will not have a detrimental effect on the general and residential amenity of the area by reason of noise.

Vibration & Blasting:

- 7.5.9. The proposed development is seeking permission to blast at the quarry which will be a new process at this quarry. The Board will note that conditions of previous planning permission specifically excluded blasting. Concerns have been raised by local residents with regard to the impact of blasting and associated vibration on surrounding properties and the possibility of damage. The EPA guidelines, 'Quarries and Ancillary Activities, Guidelines for Planning Authorities' recommends that in order to avoid any risk of damage to properties in the vicinity of a quarry, the vibration levels from blasting should not exceed a peak particle velocity of 12mm /

sec as measured at a receiving location when blasting occurs at a frequency of once per week or less. In cases of more frequent blasting it is recommended that the peak particle velocity should not exceed 8mm/sec. Similarly, the Guidelines recommend that blasting should not give rise to air overpressure values (i.e. pressure waves transmitted through the air) at the nearest occupied dwelling in excess of 125dB(Lin)max. peak with a 95% confidence limit.

7.5.10. Appendix F of the Planning & Environmental Report, submitted in support of the proposed development, presents a Vibration Impact Assessment. The assessment advises that it is not proposed to deepen the quarry floor and that proposed future extraction will extend westwards. The working life of the extraction is scheduled to be approximately 5 years, depending on output. There will be a requirement for 1-2 blasts per month. The noise associated with the blast is described a clap of thunder and will have a shorter impact on the surrounding receptors than the previous method of extraction which used a rock breaker to extract material.

7.5.11. In terms of the proposed development, mitigation measures are proposed and it is advised that blasting will be carried out between the hours of 09:00 hours to 18:00 hours, Monday to Friday, with no blasting at weekends or public holidays. Blasting will be carried out by a qualified 'shotfirer'. The ground borne vibration levels from blasting will not exceed a peak particle velocity of 12mm/sec, measured at the nearest inhabited dwelling and air overpressure values will not exceed a maximum limit of 125dB (Lin) with a 95% confidence limit. In principle, I am satisfied that the proposed development is acceptable in this regard, subject to compliance with appropriate conditions relating to blasting and vibration, should the Board be minded to grant permission in this instance. With regard to the health and safety implications of blasting, the Board will note that such matters are the responsibility of the Health and Safety Authority (HSA).

Air:

7.5.12. The Planning Authority refused permission for the recommencement of quarrying at the site citing issues in relation to dust causing nuisance to neighbouring properties. The first party has sought to deal with this issue and has submitted a dust emissions assessment in support of the proposed development. This assessment concludes that the development will not have a dust deposition impact on assessed receptors.

Given the elevated nature of the site, the Environment Section of Kerry County Council has advised strong reservations in relation to the likely dust impact from the proposed quarrying, and conclude that the development may result in a nuisance to neighbouring properties.

Conclusion:

7.5.13. Overall, I consider that the proposed recommencement of quarrying at this site will have an impact on the existing residential amenities of properties in the vicinity, as well as the general amenities of the area. However, I am satisfied that the potential issues arising could be appropriately dealt with by way of conditions of planning permission should the Board be minded to grant permission in this instance.

7.6. Environmental Impact Assessment

7.6.1. An Environmental Impact Statement was not submitted as part of the planning application in support of the proposed development. The proposed development refers to a proposed extraction area of approximately 2.1ha within an overall application site of 3.3ha. Retention permission is sought for a quarried area of 1.7ha, and permission is sought to continue quarrying, blasting and washing as well as the installation of a WWTP to service the site. The Board is advised as follows:

- Schedule 5 of the Planning & Development Regulations, 2001 details development for the purposes of Part 10.
- A mandatory EIS is not required under Article 109(1) as the proposed development is for below the stated threshold in the regulations which provides for 'quarries and open-cast mining where the surface of the site exceeds 25 hectares.'
- In terms of sub-threshold development, Part 2(2)(b) of Schedule 5 of the Planning & Development Regulations, 2001 as amended, is considered relevant in that it provides for 'Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.'
- The development is therefore, a sub-threshold development and Article 109 of the P&D Regulations is considered relevant. Having regard to the information presented in support of the proposed development, together with the third party

submissions and my assessment above, the Board will note that the site is not located on or in, or will have the potential to impact on:

- A European Site
- An area the subject of a notice under the Wildlife (Amendment) Act, 2000
- An area designated as a NHA
- An area designated as a nature reserve
- An area designated for the protection of flora / fauna
- A place, site or feature of ecological interest in a development plan or local area plan

And would be unlikely to have a significant effect on the environment (Article 109(3) of the Regulations refers).

- The development is unlikely to have a significant effect on the environment (Article 109(2) of the Regulations refers).
- It is submitted by the applicant that a Discharge Licence will be required for water discharging from the quarry to the adjacent watercourse.

7.6.2. In light of the above, and in terms of the Planning and Development (Amendment) Act, 2010, the Board will note the requirements in terms of granting permission for retention applications. In 2008, following the Derrybrien landslide case, (case C-215/06, *Commission -v- Ireland*), the European Court of Justice decided that Ireland was in breach of EU law in permitting retention permission to be granted for projects that require an Environmental Impact Assessment. The Board will also note the submission of an observation to this effect in the appeal file. Following the Derrybrien decision, the Minister for the Environment issued a Circular to local authorities and An Bord Pleanála directing that retention permission for developments requiring EIA should not be granted. The 2010 Act sought to regularise the position in respect of EIA development by providing for a "substitute consent" procedure.

7.6.3. In terms of the subject site, ABP ref QV08.0043 (PA ref. EUQY024) is relevant. Determination under subsection (2)(a)(i) and (ii) of Section 261A of the P&D Act, 2000, as amended. The PA determined the following under subsection (2)(a)(i) and (ii) of Section 261A:

- (i) Development was carried out after 1 February 1990 which would have required, having regard to the Environmental Impact Assessment Directive, a determination as to whether an Environmental Impact Assessment was required, and such a determination was not made;
- (ii) Development was carried out after 26 February 1997, which would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

Following the determination under subsection (2)(a) the Planning Authority decided pursuant to subsection (3) of Section 261A that:

- o The quarry commenced operation before 1 October 1964 and permission was granted in respect of the quarry under Part III of the 2000 Act; and
- o The requirements in relation to Registration under Section 261 were fulfilled.

The Reason for the Decision was as follows:

The Planning Authority is satisfied that the quarry commenced operation before 1 October 1964, was granted Planning Permission under Part III of the Planning and Development Act 2000 and the requirements in relation to registration under section 261 were fulfilled;

- 7.6.4. On review to the Board, the Board, in exercise of its powers conferred on it under section 261A of the Planning and Development Act, 2000, as amended, on the 25th of July, 2013 decided:

based on the Reasons and Considerations marked (1) set out below, **to set aside** the determination of the planning authority in respect of this development made under section 261A(2)(a)(i) of the Planning and Development Act 2000, as amended, and based on the Reasons and Considerations marked (2) set out below, **to set aside** the determination of the planning authority in respect of this development made under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended.

REASONS AND CONSIDERATIONS (1)

Having regard to:

- (a) the submissions on file, including the documentation on the review file (planning authority register reference number EUQY024), aerial photography and the report of the Inspector, and
- (b) the determination by the planning authority based on a report made in association with an application for permission (planning register reference number 09/364) which concluded that an environmental impact assessment was not required,

the Board, therefore, sets aside Kerry County Council's determination respect of this development made under section 261A(2)(a)(i) of the Planning and Development Act 2000, as amended.

REASONS AND CONSIDERATIONS (2)

Having regard to:

- (a) the nature and limited scale of the development, and
- (b) the distance separating the quarry site and the nearest European Site (the Lower River Shannon Special Area of Conservation 002165), the Board, therefore, sets aside Kerry County Council's determination in respect of this development made under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended.

7.6.5. Overall, I am satisfied that the preparation of a mandatory EIS, or that a sub-threshold EIS is not required in this regard. I am further satisfied that a grant of planning permission, should the Board be so minded, would not be contrary to the requirements of the Planning and Development (Amendment) Act, 2010.

7.7. Appropriate Assessment

7.7.1. The subject site is located within 6km of the Lower River Shannon SAC, Site Code 002165 and 7km from the River Shannon and River Fergus Estuaries SPA Site Code 004077. In this regard, the Board will note that it is the policy of the planning authority, as set out in Chapter 10 of the Kerry County Development Plan, 2015, to

conserve, manage and, where possible, enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County.

7.7.2. Furthermore, Objective NE 12 of the Plan states that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites, having regard to their conservation objectives, will be permitted (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

7.7.3. The qualifying interests for the SAC include a mix of marine and freshwater habitats and a number of species which would be considered sensitive to changes in water quality including freshwater pearl mussel, brook lamprey, river lamprey and salmon. Detailed conservation objectives for the site have been prepared with the overall objective being to maintain or restore the favourable conservation status of habitats and species of community interest so as to contribute to the overall maintenance of favourable conservation state of those habitats and species at a national level.

7.7.4. AA Screening:

1. Description of the project and local site: This is an application to retain a quarry and to recommence quarrying activities at the site. The subject site, while not located within the SAC or SPA, is hydrologically connected to a Natura 2000 site via the proposed discharging of waters from the quarry into the Kilmulhane Stream, which flows into the Cashen Estuary and forms part of the Lower Shannon SAC.
2. Is the proposed development directly connected with or necessary to the nature conservation management of a Natura 2000 site: No.
3. Identification of relevant Natura 2000 sites, within 5km of the subject site:

- Lower River Shannon SAC, Site Code 002165
 - River Shannon & River Fergus Estuaries SPA, Site Code 004077
4. Key Natura 2000 sites with regard to the subject site and proposed development are as indicated above.
 5. Existing expert reports, advice or guidance: The Board will note the reports on the Planning Authority file from the Environment Section of Kerry County Council and the Biodiversity Officer, as well as the reports submitted on behalf of the applicant in support of the proposed development. In addition, I also note the submission from Inland Fisheries Ireland and the concerns raised in relation to the impact of the discharge on the quality of the waters, and in turn, on the species supported by the stream and rivers.
 6. The potential for significant impacts on Natura 2000 sites, having regard to potential significance indicators and to qualifying interests and conservation objectives for the site. Where doubt exists, it should be assumed that effects could be significant. In terms of the relevant Natura 2000 site in this instance, the Conservation Objectives for Lower River Shannon SAC, Site Code 002165 states as follows:

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected:

- [1029] *Margaritifera margaritifera*
- [1095] *Petromyzon marinus*
- [1096] *Lampetra planeri*
- [1099] *Lampetra fluviatilis*
- [1106] *Salmo salar* (only in fresh water)
- [1110] Sandbanks which are slightly covered by sea water all the time
- [1130] Estuaries
- [1140] Mudflats and sandflats not covered by seawater at low tide

- [1150] * Coastal lagoons
- [1160] Large shallow inlets and bays
- [1170] Reefs
- [1220] Perennial vegetation of stony banks
- [1230] Vegetated sea cliffs of the Atlantic and Baltic coasts
- [1310] Salicornia and other annuals colonizing mud and sand
- [1330] Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)

Potential significance indicators¹:

Any impact on an Annex I habitat:

- Causing interference with, reduction, erosion or fragmentation of the Natura 2000 site: Not likely
- Causing direct or indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site: Likely, but not clear. This issue is contested by both the proponents of the development as well as the Planning Authority and prescribed bodies.
- Causing serious or ongoing disturbance to species or habitats for which the Natura 2000 site is selected (e.g. increased noise, illumination and human activity): Not likely.
- Causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site: Not likely
- Interfering with mitigation measures put in place for other plans or projects: Not likely.
- Causing the introduction or spread of exotic or invasive species: Not likely.
- Causing a cumulative impact and other impacts: Possible.

¹ Using the Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities, DoEHLG, 2009 I consider that the potential significant indicators should include as presented. There is no defined list of indicators, with each site potentially generating a different list.

7. Assessment of likely effects - direct, indirect and cumulative – undertaken on the basis of available information as a desk study or field survey or primary research as necessary: Having considered the above potential significance indicators, I consider that there is potential for the development, if permitted, to have an impact on the Natura 2000 site.
- 7.7.5. The Board will note that the Planning Authority undertook AA screening and I refer to the reports of the Planning Officer and the Biodiversity Officer, which also refers to the previous application for retention. The Biodiversity Officer determined that significant effects could not be ruled out based on the lack of information provided with the application on the quality and quantity of discharge proposed from the quarry at operational stage. Concern is also raised in relation to the assimilative capacity of the Kilmulhane Stream to take the discharge. The report concludes that downstream impacts could occur.
- 7.7.6. In response to the refusal, the first party appeal seeks to counter this conclusion and submits that if the PA had reservations, they should have requested a full NIS. In terms of the assimilative capacity issue, it is submitted that the AC assessment carried out indicated that the receiving waters had available assimilative capacity for the parameters BOD, MRP and Ammonia. The transitional waters of the Cashen and Upper Feale estuaries to which the Kilmulhane Stream outflows are of good status and this status will be maintained.
- 7.7.7. Screening Statement with conclusions: The safeguards set out in Article 6(3) and (4) of the Habitats Directive are triggered not by certainty but by the possibility of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an appropriate assessment on the basis that it is not certain that there are significant effects. Having considered all of the available information, I would acknowledge the historical incidents at the subject site which would give rise to serious reservations as regards the likely impacts arising from the retention and recommencement of quarrying at this site. However, consideration must be given to the mitigation measures proposed by the applicant in terms of the treatment of waters prior to discharge from the site, together with the separation distance between the site and the SAC. It is also noted that a discharge licence will be required for the proposed development.

As such, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Lower River Shannon SAC, Site Code 002165, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.8. Other Issues

Non Compliance history:

- 7.8.1. With regard to the issues of past failures by the quarry owner / operator to comply with the conditions attached to previous grants of planning permission for the quarry, and indeed the successful prosecution by Inland Fisheries Ireland, I would note that the Board has no function in terms of enforcement. In this regard, all issues of non-compliance would require referring to the Planning Authority. Third parties have submitted that permission should be refused under Section 35 of the Planning and Development Act, 2000, as amended, on the basis of past failures to comply. The Board should note that all matters of non-compliance or enforcement relate to a previous operator of the quarry and not the current applicant. I note that the Planning Authority did not consider it necessary or appropriate to invoke the provisions of Section 35 of the Planning and Development Act, 2000, as amended.

Hours of operation:

- 7.8.2. The Board will note that the quarry does not appear to be operating at present. The last grant of permission associated with the subject site, PA ref 06/2419 condition 7 refers, provided that the onsite operations of the quarry shall take place only between 08:00 hours and 18:00 hours Mondays to Saturdays only. There shall be no quarrying or manufacturing operations on Sundays or public holidays. The reason states in the interests of orderly development and residential amenity. The subject application proposes operations between the hours of 07:00 and 19:00, Monday to Saturday.

7.8.3. In terms of hours of operation, the Board is referred to Section 4.7 of the 'Quarries and Ancillary Activities, Guidelines for Planning Authorities, 2004' which states the following:

'It is recommended that normal operations should be confined to the hours between 07:00 and 18:00, Monday to Friday inclusive (excluding Bank Holidays) or as may be agreed with the planning authority, and between 07:00 and 14:00 on Saturdays, with no quarrying, processing or associated activities being permitted on Sundays or public holidays. Where market conditions to the nature of particular ancillary processes (such as concrete batch manufacture) would require greater flexibility of working hours, it is imperative that such flexibility be discussed with the planning authority at the pre-application stage, and addressed in the planning application'.

7.8.4. Given the location of the quarry, together with the nature of operations proposed under this planning application and the previous conditions of planning permission pertaining to the site, I consider that the proposed additional two hours per day Monday to Friday should not be permitted, should the Board be minded to grant permission in this instance. In this regard, and notwithstanding the fact that the application is for a 5 year period to extract the onsite resources, I consider that the local residents should be afforded appropriate peace in the evening times, and on Saturday afternoons. In this regard, I would recommend that the hours of operation should be restricted to 08:00 to 18:00 hours Monday to Friday and 08:00 to 14:00 on Saturdays.

Development Contributions:

7.8.5. The development is a class of development which is identified in the General Development Contribution Scheme and proposes to produce material in excess of 10,000 tonnes per annum and therefore is liable to pay a development contribution. This development contribution, in accordance with the General Development Contribution Scheme is payable annually. In this regard, should the Board be minded to grant planning permission, a condition to this effect should be included.

7.8.6. Notwithstanding my concerns in relation to roads and traffic issues, the Board will note the report of the Roads Office of Kerry County Council which requires the payment of a Special Development Contribution of €350,000 in respect of road

improvements to the L-1004 & L-6012. Given the planning history of the subject site, together with the nature of the public road network in the vicinity of the site, I am satisfied that should the Board be minded to grant planning permission for the proposed development, that the special development contribution would be necessary to ensure that the road network can accommodate the proposed development and the type and level of traffic generated by the quarry works.

- 7.8.7. The Planning Authority has required that a Bond be provided in the amount of €10,000 to ensure the satisfactory restoration of the site on completion of the quarry operation. I am satisfied that this is appropriate in the event of a grant of planning permission.

8.0 Recommendation

- 8.1. Having regard to the information submitted in support of the proposed development, together with the third party submissions and reports from Kerry County Council, and my consideration and assessment of same, I recommend that planning permission be refused for the proposed development for the reasons and considerations below.

9.0 Reasons and Considerations

It is considered that the road network serving the quarry site does not have sufficient capacity to handle the traffic associated with the proposed development. The proposed development would therefore, endanger public safety by reason of traffic hazard and an obstruction to road users, and would consequently be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector

05th July, 2017