



An  
Bord  
Pleanála

## Inspector's Report - Addendum ABP-308792-20

### Question

Whether or not the extraction and quarrying at site WH3226 is or is not development and is or is not exempted development.

### Location

WH3226, Annascannon, County Westmeath.

### Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-17-19

Applicant for Declaration

Eco Advocacy.

Planning Authority Decision

No declaration

### Referral

Referred by

Eco Advocacy.

Owner/ Occupier

Keegan Quarries.

Observer(s)

Estate of Patrick Cooney, Keegan Quarries.

Date of Site Inspection

28<sup>th</sup> April 2021.

Inspector

Deirdre MacGabhann

## Contents

1.0 Introduction .....	4
2.0 Site Location and Description.....	4
3.0 The Question .....	4
4.0 Planning Authority Declaration.....	5
4.1. Declaration .....	5
4.2. Planning Authority Reports.....	5
5.0 Planning History.....	5
6.0 Policy Context.....	8
6.1. Development Plan.....	8
6.2. Natural Heritage Designations.....	8
7.0 The Referral .....	8
7.1. Referrer's Case .....	8
7.2. Responses .....	10
7.3. Further Responses .....	11
8.0 Statutory Provisions.....	14
8.1. Planning and Development Act, 2000 .....	14
8.2. Planning and Development Regulations, 2001 .....	15
9.0 Assessment.....	16
9.5. Is or is not development.....	16
9.6. The benefit of planning permission .....	17
9.7. Is or is not exempted development. ....	18
9.8. Environmental Impact Assessment. ....	18
9.9. Appropriate Assessment.....	19
9.10. Export of material and import of waste. ....	19
10.0 Recommendation .....	20



## **1.0 Introduction**

- 1.1. This Addendum Report 2 updates the previous Addendum Report dated 26th August 2021. It is made on foot of the Board's decision to defer consideration of the case and issue a Section 132 notice to the referrer regarding further information, required in order for the Board to make a declaration in the case.

## **2.0 Site Location and Description**

- 2.1. The c.90ha subject site is situated c.2.5km to the south east of Killucan and c.3.5km north west of Kinnegad, in the townland of Annascannon, County Meath. Entrance to the site is from a minor county road and via a wide internal haul road. The haul road has embankments on each side of it and, like the quarry, is largely not visible from the surrounding public road network.
- 2.2. At the time of site inspection, the site is split into three areas.
- i. To the east of the site is a quarry, with entrance, small office, weighbridge and processing machinery. The land has been extensively quarried with material removed below water level, leaving a series of large ponds/lakes throughout the site. There was no evidence of the quarry having been worked recently.
  - ii. To the south west of the site is a recycling centre for inert waste. It is an active development, with a portacabin office controlling entry to the site. Working is progressive in a northerly/north-easterly direction filling the void left by previous quarrying activity.
  - iii. To the north of the landholding is a worked area, also now filled with water (photograph 9).

## **3.0 The Question**

- 3.1. The questions asked of the Board are:
- Whether or not the use and operation of quarry, PA ref. EUQY39 (folio WH3226) is or is not exempted development.
  - Whether the extraction of material from below the water table is or is not exempted development.

- Whether loading operations and exportation of material from the site is or is not exempted development.
- Whether the processing and export of materials off the site to various other sites in the control of the operator is or is not exempted development.
- Whether a Stage 2 NIA is required (which would exclude any exempted development).
- Whether EIA or screening for EIA is required for the activities on site (which would exclude any exempted development).
- Whether the import of material for the purposes of remediation (WFP-WH-2018-0102-00) is compatible with unauthorised extraction of material for export off site and whether the latter can be exempted development in such circumstances.

## **4.0 Planning Authority Declaration**

### **4.1. Declaration**

- None.

### **4.2. Planning Authority Reports**

- None.

## **5.0 Planning History**

### **5.1. The following are relevant to the subject site:**

- PA ref. 275/77 (11<sup>th</sup> July 1977) – Permission granted for extraction and processing of sand and gravel, subject to two conditions (maintenance of silt ponds, landscaping proposals). Application documents refer to a site area of 26 acres (see file), which equates to 10.52ha.
- PA ref. QY39 (17<sup>th</sup> April 2007) – Quarry registered under section 261. Conditions imposed include:
  - Condition no. 1 - Confining the extraction area to that outlined in red on Drawing No. QY/39/07 (QY39 history file). This refers to an area of

c.22ha (compare Drawing No. QY/39/'07 and Drawing no. KIL/002 'Killucan Sand and Gravel Pit, land ownership, proposed extraction boundary and existing operational area outside of red line, in QY history file). (NB Other documentation on file refers to the section 261 extraction area as 10.61ha, see section 261A Planning Quarry Assessment report, dated 1<sup>st</sup> August 2012).

- Condition no. 6 - Requires a 1 metre buffer zone of undisturbed material above the top groundwater level.
- PA ref. EUQY39 (19<sup>th</sup> September 2012) – Determination under section 261A that:
  - Environmental impact assessment/screening for environmental impact assessment is not required (development registered under section 261, pre-64 status, permission granted under PA ref. 77/275, no time limit imposed, development pre-dated the directive, development had not extended beyond the boundaries established under PA ref. 77/275).
  - Appropriate assessment is not required (same reasons as above).
- PA ref. 01/590 and PL25.127710 – Permission refused for residual landfill site with a capacity of 175,000 tonnes per annum of non-hazardous waste for 10 years, with ancillary facilities. Grounds (1) contravene regional waste management plan (excessive volume of waste and extended catchment area), (2) inadequate assessment of alternatives, (3) impact on amenities and property values, (4) traffic hazard (increased volume in HGV traffic on LP01015 and inadequate nature of the road and presence of level crossing), and (5) traffic hazard (inadequate stopping sightlines).
- PA ref. WFP-WH-2018-0102-00 – Waste permit granted by Westmeath County Council for importation of inert waste to lands at Annascannon Quarry. Volume not to exceed 24,900 tonnes/per annum, waste recovery activity to be restricted to application boundary.
- Warning letter, dated 10<sup>th</sup> June 2019, issued under Section 152 of the Planning and Development Act 2000 (as amended) regarding unauthorised development on lands within the quarry (extraction of sand and gravel). Parties requested to identify the location of current works on the site and confirm if these are in accordance with the conditions attached to the section

261 registration, including C1 (extraction area), C6 (1 metre buffer zone above groundwater & groundwater quality monitoring), C7 (slope stability), C8 (wheelwash and maintenance of public road), C10 (weighbridge), C11 (reinstatement and landscaping) and C12 (site management details).

- Subsequent warning letter to parties (23<sup>rd</sup> March 2020) – Stating that it has come to the attention of the PA that unauthorised development was being carried out at the quarry i.e. that sand and gravel extraction had extended beyond that previously authorised under PA ref. 77/252.

### Referrals

- Application to planning authority by Eco Advocacy (4<sup>th</sup> April 2019) for section 5 declaration, on whether or not activities being carried out at the quarry in January 2019 were exempted development. On the 1<sup>st</sup> of May 2019, the planning authority advised that there was insufficient information provided to enable the authority to make its decision and that a section 5 referral needed to be accompanied by a completed section 5 application form.
- Application to planning authority by Eco Advocacy (8<sup>th</sup> May 2012) for section 5 declaration re-submitted with section 5 application form. On the 14<sup>th</sup> of May 2019, the planning authority advised that there was insufficient information to enable the planning authority to issue a declaration.
- Application to planning authority by Eco Advocacy (19<sup>th</sup> August 2019) for section 5 declaration, as above. On the 13<sup>th</sup> of September, the planning authority advised that there was insufficient information to enable the planning authority to issue a declaration. Application submitted to the Board for appeal in October 2019.
- In October 2019, the Board invalidated the referral, ABP-305655-19 on the grounds that it was not accompanied by a completed section 5 application form. The decision was quashed by the Courts and remitted back to the Board for fresh determination.

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. Westmeath County Development Plan 2014 to 2020 recognises the essential contribution aggregates make to the construction industry. Policies seek to ensure that the resources can be accessed without significant damage to the environment and amenities.

### 6.2. Natural Heritage Designations

- 6.2.1. The subject site lies c.750m to the south of the Royal Canal, proposed Natural Heritage Area (site code 002103) and c. 1km to the north west of Mount Hervey Bog proposed NHA and Special Area of Conservation (SAC), site codes 001584 and 002342, respectively (see attachments).

## 7.0 The Referral

### 7.1. Referrer's Case

- 7.1.1. The referrer submits the following arguments to the Board:
- *Context.* Stream of large trucks hauling sand and gravel into unauthorised operation at Clonard, County Kildare, for processing, were coming from the subject quarry (January 2019). The subject quarry was assessed in 2012, under section 261A, and it was determined that no further quarrying should take place at the location. The quarry was disused at the time. There are now lakes on the site.
  - *Operation at the site.* There is no permission for extraction/intensification or industrial operations at the site. Understand from the PA '*quarry owner is deceased & quarry has not operated for many years; financial costs for remediation a possible factor. Site remediation is currently underway*'.
  - *Breach of water table.* Extraction of material from below the water table, not for agricultural use within the landholding or in connection with the current permission, is development and not exempted development. Conditions imposed under section 261, require 1m buffer above top groundwater level.



Extraction below the water table could have a significant impact on the environment and requires EIA and cannot be exempted development.

- *Loading operations.* Significant loading operations are taking place on the site. These operations and intensification are not regulated by way of any planning permission.
- *Exportation.* Material having been processed on site is systematically being exported off the site to various other sites in the control of the operator.
- *NIA threshold.* No development on the site can be exempted if a Stage 2 NIS is required.
- *EIA.* Folio WH3226, on which the development is situated, has an area of 89.91ha. It is unclear what area of this land is being quarried. The EIA sub-threshold determination level for extractive developments is 50% of the mandatory EIA threshold i.e. 2.5ha. From roadside observation it would appear that the development is in excess of 2.5ha and probably 5ha. This needs to be established as a matter of fact. If the site requires a determination for EIA or EIA, no works can be exempted development.
- *Remediation.* Material is being imported to the site for remediation under waste licence WFP-WH-2018-0102-00. Are the remediation works compatible with unauthorised extraction for export off site.

7.1.2. Submitted with the referrer's case are the following:

- Details of waste permit granted by Westmeath County Council (WFP-WH-2018-0102-00).
- The registration of the quarry under QY39 (2007) and conditions imposed on the operation of the quarry.
- Notice under section 261(A) (2012).
- Warning letters sent to parties on the 11<sup>th</sup> of June 2019 and 23<sup>rd</sup> March 2020 under section 152 of the Planning and Development Act 2000 (as amended).

## 7.2. Responses

7.2.1. There is one response to the referral on file. It is made by the Estate of Patrick Cooney (deceased), of Annascannon House, a property which lies c.450m north of the quarry. It makes the following observations:

- The information in the referral is 16 months out of date. This timelapse, plus the limited evidence submitted in support of the referral, make it difficult for the Board to adjudicate on the case.
- The referral states that the applicant is 'Keegan Quarries'. There is no reference to this party in the referral except for Keegan quarry trucks observed leaving the quarry. If Keegan Quarries are not the applicant, referral must be invalid.
- Under section 5(2) of the Planning and Development Act 2000 (as amended), a planning authority may require any person who made a request for a declaration under section 5 to submit further information to enable the planning authority to issue a declaration. The section 5 application form did not include the information required by the planning authority and did not state the applicant's interest in the site. Had this information been received, those with an interest in the lands and in the interest of natural justice could have input to the application process. Absence of this information denied the planning authority of the opportunity to ensure a complete and valid application to consider.
- The motive of the referral is questionable and may be vexatious and affect the property rights of the observer.
- There is no meaningful evidence, facts or information submitted with the Referral to allow assessment and declarations to be made by the Board. The range of questions posed are very general. There is no quarrying or processing on site currently, or has been for some considerable time. The applicant did not submit information to support or evidence of:
  - The conclusions in respect of the section 261A process.
  - Any link between the truck activity and other site operations, or reason for removal of material from one site to another.

- Where water bodies were breached, or if they were permitted under planning permission/conditions under section 261.
- Of complaints about alleged unauthorised activity.
- Of alleged loading operations (the referrer acknowledges that he has never been on site).
- No explanation of the act of 'development' that occurs with transport off site.
- Insufficient evidence of incompatibility of land uses (alleged extraction, processing and transport of materials and importation).
- The purpose of section 5 is to deal with particular cases, not to establish broad principles.
- Screening for appropriate assessment can only undertaken for a specific development.
- No evidence is provided to support assertion that EIA is required.

### **7.3. Further Responses**

7.3.1. On the 29<sup>th</sup> October 2021, the Board required the referrer to submit further information in respect of the 7 no. questions set out in the original submission to the Board (see file).

7.3.2. On the 15<sup>th</sup> November 2021, the referrer submitted the following response:

- Question 1 (use and operation of the site) – Significant extraction of sand and gravel from below water table was being conducted. Fleet of trucks was transporting the material to another site at Ballyownan, Clonard, Co. Kildare where it was stockpiled and processed. Latter site is unauthorised. Kildare County Council is investigating, and a case has been listed at Naas Circuit Court. Photographs attached (courtesy of Westmeath County Council). These show diggers on site, moving material. Aerial photographs indicate lagoons on the site.
- Question 2 (area to which extraction of material below water table refers, level of water table and level of extraction) – Referrer has not had access to site and cannot supply information. Refer the Board to Westmeath County Council and to attached photographs.

- Question 3 (details on loading operations) – Material excavated from the site was loaded onto trucks and transported to site at Ballyownan. Trucks were from Keegan Quarries and third parties. Trucks loaded material intermittently, once excavator had sufficient material stockpiled to keep trucks going for a couple of days. Each truck would typically conduct 7 to 8 round trips.
- Question 4 (nature of material being processed, nature of processing and location on site) – Sand and gravel was excavated from below the water table.
- Question 5 (development to which appropriate assessment obligations apply) – Development was of a very large scale (see photographs) with very large water body indicating extraction below water table. No access to site to have it surveyed or measured.
- Question 6 (extent of area being quarried and location of area within the site, for determination in respect of EIAR) – No access to site and not in a position to have it surveyed.
- Question 7 (details of the nature, extent and location of extraction activity for materials exported off site) – See above and attached photographs.

7.3.3. The referrers response was circulated to Westmeath County Council, Peter Thomson (Estate of Patrick Cooney) and Keegan Concrete Ltd. Responses were made by Peter Thomson and Keegan Concrete Ltd.

Peter Thomson

- Landowner entered a legal agreement with Keegan Quarries Ltd which permitted quarrying at the site. The agreement provides that Keegan Quarries Ltd obtain planning permission to carry out quarry activity. The obligations of Keegan Quarries Ltd to comply with the agreement have now passed to the legal personal representatives of the Estate.
- Ms Olivia Cooney, daughter of the late Patrick Cooney, provides the following information on the questions asked by the Board:
  - Q1 (use and operations) – A large amount of the water shown on the referrers photographs is less than 10 inches deep. Improvements to drainage would alter the profile of the site (attempts made). More of the quarry base was under water in April 2014 than in 2018 and 2019.

Surface water fluctuates and is not the result of significant quarrying. In drier months surface water is largely gone. Alleged unauthorised development is irrelevant to the subject site. No evidence provided of material being transported off site.

- Q2 (area of extraction below water table) – No evidence provided to support the referrers assertion that extraction has taken place below the water table. No details provided on level of water table or level of extraction.
- Q3 (loading operations) – Condition no. 2 of section 261 notification confirms that loading at the site is authorised. No evidence provided by referrer in response to request. Photographs appear to be from Council records, dated 16<sup>th</sup> May 2019 and show machinery, which would be expected at a working quarry.
- Q4 (nature of materials being processed/exported) – Quarry is a sand and gravel quarry. Information on transport of material (to site in Kildare) was not requested and is irrelevant to section 5 referral.

#### Keegan Concrete Ltd

- The quarry at Annascannon has full planning permission to operate as a sand and gravel production site, as per the conditions of the 261 and 261A registration and/or previous permissions (section 261A Westmeath County Council Quarry Assessment attached).
- Q1 (use and operation) – There is permission to extract at the site as per the original findings of the planning authority during 261 and 261A process. Extraction has not taken place below the water table. Material leaving the site is as per the permitted use.
- Q2 (extraction below water table) – There were various water bodies on site prior to Keegan Quarries entering it. These were used for supplying water to the washing and processing plants.
- Q3 (loading operations) – Loading operations are being carried out on site in line with the permitted use. Trucks are loaded between 8am and 5.30pm. All destinations are legitimate, with export to sites or other Keegan Quarry sites for manufacture of concrete products.

- Q4 (nature of processed material) – Material is exported from the site to building sites, road projects or other infrastructure projects and for the manufacture of concrete products. The site at Ballyonan, Clonard has full planning consent.
- Q5 (appropriate assessment) – A full planning history was carried out by the planning authority during the 261 and 261A process. It was determined that post 3<sup>rd</sup> July 2008 development did not take place that in itself required EIA or AA. Sand and gravel are prone to seasonal flooding. No extraction has taken place below the water table.
- Q6 (EIA) – No extraction has taken place outside of the boundary of the 261 and 261A sites.
- Q7 (location extraction activity on site) - As per response to Q4.
- Referrer objects to all operations by Keegan Group. No basis for referral as the planning status of the quarry has been long settled. All on-going operations are in line with permitted operations.

## 8.0 Statutory Provisions

### 8.1. Planning and Development Act, 2000

- 8.1.1. Sections 2 and 3 of the Planning and Development Act, 2000 (as amended) define development as *‘the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’*. Works are defined as *‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’*.
- 8.1.2. Exempted development is dealt with in section 4. Provisions include that the Minister may make regulations to provide for any class of development to be exempted development for the purposes of the Act, subject to safeguards (section 2(a)). Section 4(4) states that notwithstanding provisions in respect of exempted development, development shall not be exempted if it requires environmental impact assessment (EIA) or appropriate assessment (AA).

- 8.1.3. Part 10 of the Planning and Development Act deals with environmental impact assessment. Section 172 requires EIA to be carried out in respect of development which:
- Falls within Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended) (the Regulations) where the development would equal to or exceed the relevant threshold or where there is no limit specified, or
  - For development falling within Part 2, where the development is sub-threshold but likely to have a significant effect on the environment.
- 8.1.4. Appropriate assessment is dealt within Part XAB of the Act. It requires the competent authority carry out screening for appropriate assessment and appropriate assessment of development prior to consent being given (section 177U). Further under section 177V, the competent authority may only grant consent for a proposed development only after having determined that the development shall not adversely affect the integrity of a European site.

## **8.2. Planning and Development Regulations, 2001**

- 8.2.1. Article 6 of the Regulations deals with exempted development. These include under article 8C exemption for land reclamation works (other than the reclamation of wetlands) consisting of recontouring of land, including infilling of soil (but not waste material) within a farm holding.
- 8.2.2. Schedule 5 sets out the following classes of development for the purpose of EIA:
- Part 1:
    - Class 19. Quarries and open cast mining where the surface of the site exceeds 25ha.
    - Class 22. Any change to or extension of projects listed in the Annex, where such a change or extension in itself meets the thresholds set out in the Annex.
  - Part 2:
    - Class 2 (Extractive industry). Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.

- Class 13 (Changes, extensions, development and testing). Any change or extension of development already authorised, executed or in the process of being executed which would result in the development being of a Class listed in Part 1 or Class 1 to 12 of Part 2 and result in an increase in size greater than 25% or an amount equal to 50% of the appropriate threshold.

## 9.0 **Assessment**

- 9.1. Section 5 of the Planning and Development Act, 2000 (as amended) enables the Board to make a declaration in respect of whether a development, which is referred to them, is or is not development and is or is not exempted development. These matters and the specific questions raised by the referrer are addressed below.
- 9.2. In response to the referral, the Estate of Patrick Cooney questions the validity of the referral on the grounds of incorrect applicant, no stated interest in the site and inadequate information to support the section 5 application.
- 9.3. On file, the applicant's name in the section 5 application form is stated to be Eco Advocacy and the applicant's interest in the land is stated to be '3<sup>rd</sup> party – environmental NGO'. I am satisfied therefore that the application form is correct in this regard.
- 9.4. The section 5 referral submitted to the Board is not supported by detailed information. In particular there is little information on the specific location or area of the site of the alleged activity, the intensity of activity (e.g. extraction, loading) or the extent of the area which has been worked below water table. The referrer's response to the Boards letter of the 29<sup>th</sup> October 2021 adds little further information in this regard. I would accept therefore that there is limited information to support the section 5 application. However, I consider that it is possible to draw in principle conclusions, which I set out below.
- 9.5. **Is or is not development.**
  - 9.5.1. The referrer refers to the following activities and asks the Board to determine whether or not these are exempted development:
    - Use and operation of the quarry,
    - Extraction of material below water table,



- Loading, processing and export of materials from the site

- 9.5.2. At the time of site inspection, no quarrying activities were evident on the appeal site i.e. no use or operation of the quarry, no extraction, loading, processing or export of materials. However, the western part of the site was in use as a landfill site for inert material. As stated, the referrer provides little specificity of information on the activities referred to the Board e.g. where alleged extraction took place, area, depth, context (in terms of permissions granted/section 261 process). As such that the questions before the Board are in effect somewhat hypothetical and the matters raised are addressed in this context.
- 9.5.3. The Planning and Development Act, 2000 (as amended) defines development as *'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. Works are defined as *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'*.
- 9.5.4. In principle, the extraction of material from the site would comprise an act of 'excavation' and processing would comprise an act of 'alteration', both therefore comprising development. The act of loading and export of material would follow from the use of the land and would comprise development if they arose from a change in the use of land i.e. from agriculture to quarrying.

## 9.6. The benefit of planning permission

- 9.6.1. The quarry at Annascannon has the benefit of permission granted in 1977 under PA ref. 275/77, as modified by the conditions imposed under PA ref. QY39. This permits extraction from an area of up to c.22ha (see planning history above). From the history documents, aerial photography (see attached OSI aerials 1995, 2000, 2005, 2005-2012 and 2013-2018) and site inspection, it is evident that quarrying remains largely within the confines of the QY39 boundary (with some quarrying outside of the boundary to the west of the site). Parties to the referral (Estate of Patrick Cooney, Keegan Quarries) argue that the lagoons on site are shallow, are present in part as a consequence of impeded and fluctuating natural drainage and/or are water bodies used for supplying water to a closed circuit system for washing and processing material.

- 9.6.2. There is no evidence submitted by these parties to support the assertions which are made. Further, aerial photography indicates (historically) a lagoon system in the south western part of the site but elsewhere, the progressive working of the site at depth, below the water table. From this I would conclude that the development exceeds the limit of working set out in condition no. 6 of QY/39.
- 9.6.3. It is not clear from the information on file, from any party, what area of the site was the subject of alleged quarrying in 2019/2020. However, it is evident from the warning letters issued under section 152 that the planning authority were concerned that activities were taking place beyond the scope of the permission granted under PA ref. 77/725 & QY39. In response to the referral, Keegan Quarries asserts that the activity taking place at the time was in accordance with the terms of the permissions granted in respect of the quarry.
- 9.6.4. However, as stated it would appear that the quarry has been worked substantially (in area) below a 1 meter buffer zone of undisturbed material about the top groundwater level, as per condition no. 6 of PA ref. QY/39. I would infer from this that any quarry activity, by way of further extraction, processing or loading would therefore be associated with a principle use which has strayed outside the terms of the permission granted and which is therefore unauthorised.
- 9.6.5. I would conclude, therefore, that use and operation of the quarry, extraction of material from below water table, loading operations and export of materials off site on the subject site, is development which falls outside of the scope of works permitted under PA ref. 77/725 & QY39.

**9.7. Is or is not exempted development.**

- 9.7.1. Article 6, 8 and 9 of the Planning and Development Regulations, 2001 (as amended) provide no exemptions in respect of quarrying.

**9.8. Environmental Impact Assessment.**

- 9.8.1. Schedule 5 of the Regulations requires EIA for any change or extensions to quarries where the increase in area would be greater than 25% of the permitted development (c.10h) or 50% of the appropriate threshold (5ha) i.e. c.2.5ha (both scenarios).

- 9.8.2. As stated it is implied by the planning authority's warning letters, that the activity in 2019/2020 was outside of scope of the 275/77 & QY39 permission. Further, I have also concluded above that quarrying activity that is associated with the site is likely to have strayed beyond the scope of the existing permissions, given the extent of work that has been carried out below water table. Any on-going working of the quarry is therefore likely to trigger a requirement for EIA, or at least screening for EIA, given that it is also associated with a change or extension to the permitted development in excess of 2.5ha i.e. working below water table over an area of greater than 2.5ha.

## **9.9. Appropriate Assessment**

- 9.9.1. The subject site is situated c.1km of Mount Hervey Bog Special Area of Conservation. This is an active raised bog which is dependent on mean water levels being near or above the surface for most of the year (site synopsis).
- 9.9.2. The subject site and SAC are situated in the same groundwater body, with the likelihood of connectivity between the sites. Similarly, the two sites lie within the same river sub-basin (although river flow is away from the bog towards the site, see attachments). Having regard to extent of area worked below ground, the proximity of the subject site to the European site and potential pathway between the sites, an appropriate assessment screening report is likely to have been required for any works not benefiting from planning permission.

## **9.10. Export of material and import of waste.**

- 9.10.1. In 2018 the planning authority issued a waste permit for the importation of inert material to the appeal site under PA ref. WFP-WH-2018-0102-00. The permit is subject to a number of conditions (see file). There is no information available on file, or on the planning authority's website regarding the extent of area covered by the permit or reference to any planning permission for the activity.
- 9.10.2. Notwithstanding this, at the time of inspection, import of material to the site was limited to the western part of the appeal site within the confines of the PA ref. 725/77 & QY39. In response to the referral, Keegan Quarries states that materials which are exported from the site are transported for use direct to building sites, road projects, other infrastructure projects or in the manufacture of concrete products. The inert material which is imported to the site comprises inert waste e.g. concrete,

bricks, soil and stones, construction and demolition waste. In principle, the export of construction materials and import of inert waste is not incompatible i.e. with extraction of construction materials creating the void and inert waste filling the void.

## 10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

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

- Whether or not the use and operation of quarry, including the extraction of material from below water table, processing and loading operations and exportation of material from the site is or is not exempted development.
- Whether stage 2 appropriate assessment is required (which would exclude any exempted development).
- Whether EIA or screening for EIA is required for the activities on site (which would exclude any exempted development).
- Whether the export of material off site is compatible with the import of material for the purpose of remediation.

At Annascannon, Killucan, Co. Westmeath.

**AND WHEREAS** Eco Advocacy requested a declaration on this question from Westmeath County Council and the Council did not issue a declaration in respect of the matter:

**AND WHEREAS** Eco Advocacy referred this declaration for review to An Bord Pleanála on the 14<sup>th</sup> day of October, 2019:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(a) and (4) of the Planning and Development Act, 2000, as amended,
- (d) article 6, 8 and 9 of the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) the absence of current quarrying activity at the subject site,
- (g) the working of the site below water table, and
- (h) the pattern of development in the area:

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

- (a) Use and operation of quarry, including extraction below the water table, processing and loading operations and exportation of material from the site, falls outside the scope of the permission granted under PA ref. 77/275 & QA39, and would comprise works and/or a change of use and constitute development.
- (b) Quarrying, including extraction below water, processing and loading operations and exportation of material, does not benefit from any exempted development provisions and does not therefore comprise exempted development.
- (c) Extension of quarrying beyond the scope of the permitted development, would trigger the requirement for environmental impact assessment and appropriate assessment and would require screening.
- (d) The export of material off site is not incompatible, in principle, with the import of material for the purpose of remediation.

(e) **NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(b) of the 2000 Act, hereby decides that use and operation of the quarry, extraction of material below water table, processing and loading and exportation of materials, outside the scope of PA ref. 77/275 & QY39 is development and is not exempted development.

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Deirdre MacGabhann

Planning Inspector

11<sup>th</sup> January 2022