



An
Bord
Pleanála

Inspector's Report

ABP-310989-21

Development

Use of pit floor for open storage of aggregate stockpiles following expiry of permission, spreading of existing site won soils to result in return to agricultural use. Associated civil works which includes grading of pit floor and banks, and the re-commissioning and use of the wheelbath. A term of 5 years is sought for the development

Location

Graney East, Castledermot, Co. Kildare

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

201586

Applicant(s)

Kilcarrig Quarries.

Type of Application

Planning Permission.

Planning Authority Decision

Grant Permission.

Type of Appeal

First Party

Appellant(s)

Kilcarrig Quarries.

Observer(s)

No Observers.

Date of Site Inspection

22nd day of March 2023.

Inspector

Elaine Sullivan

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1.0 Site Location and Description

1.1. The site is located in a rural area, c. 4km to the east of Castledermot and 13km to the southwest of Baltinglass, Co. Wicklow. Access to the site is from the L4016, which forms the northern boundary of the site and connects the R448 (c. 4km to the west) with the N81 (c. 5km to the east). The overall site area is stated as being 4.9 hectares.

1.2. The site is surrounded by agricultural land on all sides and the River Graney flows along the southern boundary. There are some dispersed houses along the L4016 and in proximity to the site. The nearest houses are located approximately 260m to the north and 230 m to the south-west. Evidence of the previous quarrying activity on the site is still in place with mounds of aggregate located along the site boundaries to the north and south as well as the open pit floor and wheel wash. Tree lines and hedges form the site boundaries on all sides.

1.3. There are a number of quarries in the immediate area and along the L4016. The 'Sancom Quarry' is located approximately 1.4km to the north west of the site and is currently subject to a First Party appeal, (ABP 310216/21), which, at the time of writing had yet to be decided.

2.0 Proposed Development

2.1. Planning permission is sought to retain the use of part of the pit floor (0.35ha) for the open storage of aggregate stockpiles following the expiry of permission PL. 09.251775, PA Ref. 05/586, to date. Permission is also sought for the restoration of the former pit through the importation and deposition of inert soil and stones on an area of 2.9 ha, the spreading of existing site won soils on an area of 0.17ha, to enable a return to agricultural use. The applicant is also seeking the re-commissioning and use of the existing wheelwash.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted by the Planning Authority, (PA), subject to 26 planning conditions, 7 of which are being appealed by the applicant. The following conditions are subject to the appeal,

Condition No. 2 –

(a). This permission shall apply for a period of 5 years from the date of commencement.

(b). The annual intake of inert soil and stone waste shall not exceed 20,000 tonnes

Reason: In the interest of clarity and proper planning and sustainable development.

Condition No. 17 –

Prior to commencement of the development, the developer shall ensure that a 50-70 mm depth of AC20 is laid across the width of the carriageway, from Castledermot to the Kildare County boundary with Wicklow. The developer shall also ensure that Surface Dressing is laid with a 6mm pad coat followed by a double surface dressing 14mm/16mm (Design Summary 3) In accordance with IAT Guidelines for Surface Dressing in Ireland from Castledermot to the Kildare County boundary with Wicklow.

Reason: in the interest of road safety.

Condition No. 21 –

Prior to the use of the facility, the developer shall have a Stage 2 and 3 Road Safety Assessment (RSA) carried out by an independent, approved, Road Safety Auditor. The developer shall ensure that mitigation measures identified in the RSA are put in place prior to commencement of operations.

Reason: In the interest of road safety.

Condition No. 23 –

The Developer shall ensure that the works are carried out in accordance with the Traffic Management Plan submitted on 10/06/2021 and that any further subsequent mitigation measures, requested by the Municipal District Office, are put in place.

The Developer shall restrict the Hours of Operation, as follows: from Mondays to Fridays between 9am and 6pm; on Saturdays between 9am and 2pm; no working on Sundays or Bank Holidays.

Reason: To mitigate the impact of traffic on neighbouring residents.

Condition No. 24 –

As some of the hours of operation maybe at dusk or darkness in wintertime; prior to the commencement of development, the Developer shall provide full design details and specifications of the lighting system, necessary to serve the development, and submit this for the written agreement all of the Planning Authority and the Public Lighting Engineer's Office. The proposed lighting system shall comply with the requirements set out in Kildare County Council's Street Online Lighting Technical Specification. At the new junction at main road, the Developer shall examine the public lighting for 100 meters on either side of the new entrance.

The developer shall ensure that the approved lighting is fully commissioned prior to use of the facility.

Reason: In the interest of road safety

Condition No. 25 –

The developer shall comply with any future requirements of the Planning Authority in relation to; adjusting the floodlight, aiming or fitting appropriate additional louvers, to deal with remaining glare issues and that may arise for road users/ nearby residents/ rural habitat and may only become apparent when the installation is commissioned.

Reason: To protect the amenities of the area.

Condition No. 26 –

The Applicant/ Developer to pay to Kildare County Council the sum of €43,500.00 being the appropriate contribution to be applied to this development in accordance with that Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish water.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of 'the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The decision of the PA was informed by two reports by the Planning Officer, (PO). The first report dated the 15th of February 2021 recommended that further information be requested with regard to 12 points which included details of the restoration plans and Ecological Management Plan, environmental impacts such as noise, dust etc. traffic management, drainage, operational details and an Archaeological Impact Assessment.
- The second report of the PO dated the 1st of July 2021 reviewed the further information submitted by the applicant, which included a Quarry Restoration and Ecological Management Plan, Ecological Assessment and Landscaping Plan, Archaeology Report, Reports on Noise and Dust, a Traffic Management Plan, Falling Weight Deflectometer Survey and additional drawings that included the proposed sightlines and Wheelwash.
- The PO reviewed the information and the internal reports from the various departments of the PA and recommended that planning permission be granted subject to conditions.

3.2.2. Other Technical Reports

- Roads, Transportation and Public Safety Dept. – Report dated the 12th of February 2021 recommended that further information be requested. The report dated the 29th of June 2021 had no objection to the proposal subject to planning conditions. In a note addressed to the planner, the report states that, '*Condition 2 in the roads report for File 20-1586 is similar to Condition 10 of the planning permission granted by KCC for the adjoining development by*

Sancom Ltd. Ref. 20-639, which has been appealed to ABP by Sancom Ltd. in relation to certain conditions including Condition 10. We agree with the Athy MD Engineer that there is scope for the two Developers to talk and liaise with one another in relation to this condition with the option to pay KCC a financial contribution towards the cost of the resurfacing works and for the Athy MDO to carry out the resurfacing works’.

- Environment Dept. – Report dated the 4th of February 2021 recommended that further information be requested regarding proposed mitigation measures to protect the River Graney, a noise report, dust report and waste authorisation. The report dated the 24th of June 2021 had no objection to the development.
- Environmental Health Officer – Report dated the 4th of February 2021 has objection subject to conditions.
- Heritage Officer – Report dated the 30th of June 2021 recommended that conditions regarding the Quarry Restoration and Ecological Management Plan be attached to any grant of permission.

3.3. Prescribed Bodies

- Development Applications Unit, (DAU) – Department of Sport, Tourism, Culture, Arts, Gaeltacht, Sport and Media – The response dated the 19th of February 2021 states that the Stage 1 Screening assessment did not take into account the impact of the proposal on otter which is a qualifying interest of the River Barrow and River Nore SAC. Further information is required on whether invasive species are present on the site and how the importation of such species will be prevented during operation. The restoration plan submitted should be revised to incorporate the current ecological baseline. The impact of the proposal on biodiversity is questioned and it is recommended that an Ecological Impact Assessment be carried out.,

3.4. Third Party Observations

- None received.

4.0 Planning History

On the subject site -

ABP PL09.215775, (PA Ref. 05/586) – Planning permission granted on the 22nd of December 2006 for the development of a concrete batching plant including 6 no. aggregate storage bins, (9.7m high approximately), conveyors, a mixer house (11.6m high approximately), 2 no. cement silos, extension and deepening of existing sand and gravel pit. Wheelwash, 1 no 2-bay water recycler, 1 no. bunded fuel tank, vehicle parking areas extension to existing access road, landscaping and ancillary works. Retention permission is also sought for the existing washing and screening plant comprising a logwasher, 2 no. dewaterers, 2 no. wet screeners, a dry screener, a feed hopper, conveyors, 4 no. settlement lagoons and existing access road.

ABP QV09.QV0275, (PA Ref. QRA-40-004) – On the 22nd of January 2014, the Board set aside the PA's determination under Section 261A(2)(a)(ii) and considered that, development had not been carried out at the site that would have required having regard to the Habitats Directive and appropriate assessment.

98/617 – Planning permission granted by the PA on the 5th of August 1998 for the extraction of sand and gravel along with washing and screening, a new entrance and haul road on a site of 11.9 acres, (4.8ha).

In proximity to the site and of relevance to the appeal –

ABP 310216-21, (PA Ref. 20/639) – Appeal currently before the Board relating to conditions attached to a planning permission granted by Kildare County Council on the 16th of April 2021 for a material recovery facility at a worked-out quarry which would involve the importation of uncontaminated soil and stone from construction sites to backfill and restore the quarry as well as secondary activities to process C&D waste for resale. The appeal relates to Condition No's. 3, 6(a), 10, 12, 13, 18 and 20. Of particular note are Condition No's 10, 13, 18 and 20 which are similar in nature to those in the subject appeal and state the following,

Condition 10 - Prior to commencement of the development, the Developer shall ensure that a 5070 mm depth of AC20 is laid across the width of the carriageway, from Castledermot to the Kildare County boundary with Wicklow. The Developer

shall also ensure that Surface Dressing is laid with a 6mm pad coat followed by a double surface dressing 14mm/6mm (Design Summary 3) in accordance with IAT Guidelines for Surface Dressing in Ireland from Castledermot to the Kildare County boundary with Wicklow.

Reason: In the interest of road safety.

Condition 13 - Prior to use as a Material Recovery Facility, the Developer shall carry out a Road Safety Assessment (RSA) Stage 3, by the independent accredited Road Safety Auditor, to examine the internal haul route. The Developer is requested to include agreed recommendations from the RSA in the amended constructed works for both the internal development and the new junction with L4016.

Reason: In the interest of road safety.

Condition 18 –

(a) Prior to commencement of development, the Developer shall provide full design details and specifications of the lighting system, necessary to serve the access route to the quarry, and submit this for the written agreement of the Planning Authority and the Public Lighting Engineer's Office. The proposed lighting system shall comply with the requirements set out in Kildare County Council's Street Online Lighting Technical Specification.

(b) At the new junction at the main road, the Developer shall examine the public lighting for 100 metres on either side of the new entrance.

(c) The Developer shall ensure that the approved lighting is fully commissioned prior to use of the facility.

(d) The Developer shall comply with any future requirements of the Planning Authority in relation to: adjusting the floodlight aiming or fitting appropriate additional louvers, to deal with remaining glare issues that may arise for road users/nearby residents/rural habitat and may only become apparent when the installation is commissioned.

Reason: In the interest of road safety and to protect the amenities of the area.

Condition 20 - The Applicant/Developer to pay to Kildare County Council the sum of €202,500.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County

Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

5.0 Policy Context

5.1. National and Regional Policy

5.1.1. The following plans, policies and guidelines are of relevance to the proposed development and have been considered in the assessment.

- **Climate Action Plan 2023**
- **A Waste Action Plan for a Circular Economy – Ireland’s National Waste Policy 2020-2025**
- **National Planning Framework – Project Ireland 2020**
- **Eastern and Midland Regional and Spatial Economic Strategy,**
- **Eastern Midland Waste Management Plan 2015-2021**
- **Quarries and Ancillary Activities - Guidelines for Planning Authorities 2004**

5.1.2. The following guidance is of relevance to the appeal,

Development Management Guidelines for Planning Authorities, (2007).

Chapter 7 – Drafting Planning Conditions

Planning conditions should be:

- Necessary – i.e., whether, without the condition, either permission for the development would have to be refused, or the development would be contrary to the proper planning and sustainable development in some identifiable manner.
- Relevant to planning – the requirements of a condition should be directly related to the development to be permitted or the condition may be ultra vires and unenforceable.
- Relevant to the development permitted.
- Enforceable – conditions should be effective and capable of being complied with.
- Precise – every condition should be precise and understandable.
- Reasonable - a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

5.1.3. OPR Practice Note PN03 – Planning Conditions

- The OPR practice note on planning conditions was issued in October 2022 and contains information and guidance for planning authorities on how to draft standard planning conditions.

Section 3.12 – Conditions Relating to Other Codes Where a Licence from the EPA is required.

- In general, conditions should not be imposed covering issues for which another consent or licence is required e.g., conditions controlling emissions from activities for which an Industrial Emissions Licence, an Integrated Pollution Control (IPC) Licence or a Waste Licence from the Environmental Protection Agency (EPA) is required.
- Conditions regulating emissions from the licensable activities or wastewater discharges authorised by the EPA are not permissible in the planning

decisions on such cases and conditions dealing with these matters should not be imposed.

5.2. Kildare County Development Plan

- 5.2.1. The subject site is located within the administrative boundary of Kildare County Council and the Kildare County Development Plan 2023-2029, (KCDP), is the operative Development Plan for the county.
- 5.2.2. The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023, which was the operative Development Plan at the time.
- 5.2.3. On review of the contents of both plans I note that there are no material changes between the 2017 County Development Plan and the 2023 County Development Plan as they relate to the appeal site and the current proposal
- 5.2.4. The subject site is located outside of any settlement boundary, on unzoned land in a rural area. There are no specific designations or protections that relate to the site and the surrounding lands. The following sections of the Kildare County Development Plan, (KCDP), 2023-2029 are of relevance to the proposed development.

Chapter 6 – Infrastructure and Environmental Services

Section 6.8.1 – Waste Management

Policy -

IN P6 – It is a policy of the Council to - Implement European Union, National and Regional waste related environmental policy, legislation, guidance, and codes of practice, in order to support the transition from a waste management economy towards a circular economy.

Objectives –

IN O39 - Encourage a just transition from a waste economy to a green circular economy in accordance with 'A Waste Action Plan for a Circular Economy 2020-2025 and the Whole of Government Circular Economy Strategy 2022-2023 'Living More, Using Less'.

IN 040 - Provide, promote, and facilitate high quality sustainable waste recovery and disposal infrastructure / technology in keeping with the EU waste hierarchy to cater for anticipated population growth and the business sector in the County.

Section 6.8.2 – Pollution Control – Water, Air, Noise and Light

Objectives –

IN 065 - Ensure that noise levels caused by new and existing developments throughout the county do not exceed normally accepted standards.

IN 068 - Require the design of external lighting schemes to minimise the incidence of light spillage or pollution into the surrounding environment having regard to the residential amenity of surrounding areas and the need to mitigate adverse impacts on sensitive fauna and protected species.

Chapter 9 – Our Rural Economy

Section 9.9.1 – Post Closure of Extractive Industry

Objectives –

RD 046 - Require road re-instatement work to be on-going during operations, in the interests of road and traffic safety. Works undertaken to re-instate/improve the public road should be undertaken by the quarry developer or paid by them and completed by the Council

RD 050 - Ensure the satisfactory and sensitive re-instatement and/or re-use of disused quarries and extraction facilities, where active extraction use has ceased. Future uses should include amenity, recreation and biodiversity areas shall be informed by an assessment of the specific site/lands and shall be subject to an ecological impact assessment or other environmental assessments as appropriate. Where it is proposed to reclaim, regenerate, or rehabilitate old quarries by filling or re-grading with inert soil or similar material, or to use worked-out quarries as disposal locations for inert materials, the acceptability of the proposal shall be evaluated against the criteria set out in Section 15.9.6 of this Plan. The Council will resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling/ reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and / or not give rise to adverse impacts.

Chapter 12 – Biodiversity & Green Infrastructure

Policy –

BI P1 – Integrate in the development management process the protection and enhancement of biodiversity and landscape features by applying the mitigation hierarchy to potential adverse impacts on important ecological features (whether designated or not), i.e. avoiding impacts where possible, minimising adverse impacts, and if significant effects are unavoidable by including mitigation and/or compensation measures, as appropriate. Opportunities for biodiversity net gain are encouraged.

Chapter 13 – Landscape, Recreation & Amenity

The subject site is located in the Eastern Transition Landscape Character Area as defined in the Landscape Character Assessment in the KCDP 2023-2029. This area is categorised as having a Class 2 – Medium Sensitivity rating. These areas have the capacity to accommodate a range of uses without significant adverse effects on the appearance or character of the landscape having regards to localised sensitivity factors and also have a high compatibility for uses related to extraction.

Objectives –

LR O14 - Maintain the visual integrity of Eastern Transition Lands which have retained an upland character.

Chapter 15 – Development Management Standards

15.10 – Waste Disposal and Recovery

Section 15.10.1 sets out the requirements of the PA for planning applications for Waste Recovery/ Disposal Facilities.

Section 15.10.2 notes that Construction & Demolition waste management is now a priority objective under the new National Waste Management Plan for a Circular Economy.

5.3. Natural Heritage Designations

5.3.1. No designations apply to the subject site.

5.4. EIA Screening

- 5.4.1. The proposed development is for the restoration of a worked-out pit through the importation of inert waste, (soil and stone), and the use of existing site-won material currently stored on the site. The application states that it is proposed to import 100,000 tonnes of inert material over a 5-year period with a proposed annual throughput of 20,000 tonnes per annum. This development does not meet the threshold for mandatory EIA under Schedule 5, Part 2, 11(b) of the Planning and Development Regulations 2001 (as amended). The relevant threshold for the development is set out in Part X, Section 176 of the Planning and Development Act 2000 (as amended) and would be *Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.*
- 5.4.2. I have reviewed the development proposal and having regard to.
- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 11 – ‘Other Projects’ of the Planning and Development Regulations 2001 (as amended),
 - The previous planning history for the site and it’s current use,
 - The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
 - The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
 - The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and,
- 5.4.3. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal relate to planning conditions attached to the grant of permission and include the following,

- The proposed development is principally for the importation and spreading of inert soil and stones, likely to mainly be waste class LOW 17 0504, to restore the main pit floor or a worked-out, authorized pit. Some site-won soils from the original development will be spread on the higher banks to complete the restoration.
- The maximum amount of soil per annum proposed is below the threshold for EIA and the cumulative tonnage is substantially less than the EPA licence threshold.
- Planning permission for the previous gravel pit on the site expired during the recession. Retention permission is required for a small element which comprised historic stockpiles from the pit.
- Condition No. 2 seeks to restrict the annual tonnage to 20,000. The Board is requested to amend to allow for a maximum of 24,000 tonnes per annum.
- The limit applied in the condition would restrict the total input to 100,000 tonnes over the life of the planning permission, (i.e., 5 years). This restriction appears arbitrary given the scale of the recently approved Sancom development, (PA Ref. 20/639), which allows for a maximum intake of 1.8 million tonnes over 25 years. (Note to the Board – this permission is subject to a First Party appeal to An Bord Pleanála, ABP-312216-22. A decision had not been made at the time of writing). The restricted figure would not achieve the required level of restoration.
- Condition No. 17 requires road resurfacing works to be carried out from Casteldermot to the Wicklow County boundary. The applicant requests that Condition 17 is deleted based on the negligible contribution to traffic from the proposed development and the failure of the PA to justify the condition.

- The justification for the works has not been provided by the PA and the same condition was attached to the Sancom development at West Graney, (ABP-312216-22, PA Ref. 20/639). The Falling Weight Deflectometer (FWD) survey carried out for the Sancom application found that only a small length of road required strengthening. The results of the survey were referenced by the applicant under their own analysis, which had similar results.
- The proposed development is a fraction of the size of the Sancom development, and it is unfair to request the same level of works from developments of such different scale. Furthermore, the condition is contrary to the spirit and intention of Section 48, which requires development contributions for the upkeep of roads and infrastructure.
- Condition No. 21 requires that a Stage 2 and Stage 3 Road Safety Assessment be carried out by an independent Road Safety Auditor. The applicant requests that Condition No. 21 be deleted as it is unjustified, disproportionate, and arbitrary.
- The applicant contends that this requirement is not justified given the size and scale of the development. During the further information stage details were submitted to the PA showing adequate sightlines in the direction of Casteldermot as requested.
- Condition No. 23 restricts the hours of operation from Monday to Friday from 9am to 6pm and from 9am to 2pm on Saturdays, with no working permitted on Sundays or Bank Holidays. The applicant requests that the Board amend Condition No. 23 to allow opening hours of operation from 8.00 to 19.00 Monday to Friday from the period of April to October and 8.00 to 16.00 from November to March and on Saturday from 8.00 to 14.00 all year round.
- Developments of this nature require an early opening time, such as 8am, to receive materials loaded on construction sites from the previous day's work. The EPA Guidelines for Management in the Extractive Industry 2006 and the DECLG Quarry Guidelines 2004, allow for the operation of extractive sites in rural areas from 7am to 8pm in certain circumstances.

- Conditions No 24 and 25 require that public lighting be provided. The applicant requests that the Board delete these conditions in their entirety as they are unreasonable and disproportionate to the scale of the development.
- Condition No. 26 seeks a payment of €43,000 under the fixed contributions provisions of Section 48 of the Planning and Development Act 2000, as amended, under the Kildare Development Contribution Scheme 2015.
- The applicant is satisfied that the amount as calculated is correct with respect to the area to be recovered with soil, (2.9ha).
- This solely relates to the prospective development of soil importation and restoration. However, it should only relate to soil recovery and not to Article 27¹ material, which may also be soil by-product, and which will not require a Waste Facility Permit.
- The area of the site which ultimately is restored using Article 27 material can only be determined annually and/or at completion. The applicant states that provision should be made for reductions in the calculated area where Article 27 material is used.
- Additionally, Section 12(f) of the Kildare County Development Contribution Scheme allows for a reduction of 50% in the case of temporary permissions of five-year term such as this permission. Due to the absence of any real depth of overburden in the original pit, this development is required to give effect to the restoration of the past authorised development which is required.
- The Board is requested to apply a 50% reduction to the contributions as calculated and to provide for a complete exemption where Article 27 non-waste material is used. It is requested that this contribution be retrospectively calculated on provision of evidence.

¹ Article 27 (1) of the European Communities (Waste Directive) Regulations 2011 sets out the conditions whereby a substance may be determined as a by-product rather than a waste product. The EPA are the competent authority in this matter.

6.2. Planning Authority Response

A response from the PA was received on the 1st of September 2021 and includes the following,

- Regarding Condition No. 2, this allows for an intake of 20,000 tonnes per year over a five-year period which 100,000 tonnes as summarised –

20,000 tonnes per year -

= 800 HGV's (one way movement) / year assuming average 25 tonnes per HGV load.

= 1,600 HGV's (two-way movement) / year

= 36 HGV's (two-way movement) / week, assuming 45 working weeks / year

= 6 HGV's (two-way movement) / day assuming 5.5 working days / week.

The applicant is seeking the Condition to be amended to allow for the annual intake of 24,000 tonnes / year over a 5-year period which is 120,000 tonnes and is summarised below,

24,000 tonnes per year -

= 960 HGV's (one way movement) / year assuming average 25 tonnes per HGV load.

= 1,920 HGV's (two-way movement) / year assuming average load

= 43 HGV's (two-way movement) / week assuming 45 working weeks / year

= 8 HGV's (two-way movement) / day assuming 5.5 working days / week

- The Kildare County Council Roads, Transportation and Public Safety Department has examined the appeal submission and in view of the projected HGV movements per day, has no objection to Condition 2 being amended to allow for a maximum of 24,000 tonnes per year which equates to 120,000 tonnes over a 5-year period.
- Regarding Condition No. 17, the Kildare County Council Roads, Transportation and Public Safety Department reviewed the appeal submission and in light of the additional HGV traffic volumes and traffic loading that will be

generated by the development and the Sancom development over a 25-year period the PA recommends that remains unchanged.

- The PA notes that Condition No. 17 is similar to Condition No. 10 of PA Ref. 20-639 which is currently on appeal to An Bord Pleanála and they are of the opinion that there is scope for both developers to liaise with each other regarding the condition. There is also an option to pay a financial contribution towards the cost of the resurfacing and for the Athy Municipal District Office to carry out the surfacing works.
- Regarding Condition No. 21, the PA does not agree with the appeal submission on and are satisfied that Stage 2 and Stage 3 Road Safety Assessments are required to ensure the safety of all road users at this location from the additional HGV traffic generated by the development.
- Condition No. 23 specifies the hours of operation. The PA are satisfied that the hours of operation as set out in the appeal submission are not unreasonable and there is no objection to Condition No. 23 being amended as requested.
- With regard to Conditions 24 and 25, the PA recommends that these conditions remain unchanged. The PA is satisfied that public lighting is required to serve the development and to ensure the safety of all road users at this location from the additional HGV traffic generated by the development.

6.3. Observations

- No observers.

6.4. Further Responses

A further response was received from the applicant on the 27th of September 2021 and includes the following,

- The applicant notes the agreement of the PA regarding the proposed annual and cumulative volumes in relation to Condition No. 2.
- Regarding Condition No. 17, the applicant states that the Sancom application, (ABP 310216-21, PA Ref. 20/639), constitutes a small portion of the total HGV

traffic on the road, even though it is for large tonnage (c. 100,000 tonnes per annum for 25 years). The subject development is a fraction of the scale of the Sancom development and would constitute c. 25% all for the annual tonnage add 20% of the duration of that development. This means that traffic from the subject site will not be noticeable during the operational life of any upgraded road, which presumably requires a 25-year design life.

- The applicant contends that no developer should be held responsible for the total cost of the proposed works, as most of the traffic is unrelated to either development. It is argued that the subject development must be viewed on its own merits and that additional traffic would be a tiny fraction of total road traffic. The applicant requests that the board delete this condition.
- Regarding Condition No. 21 the proposed development includes temporary road signage only and no surface or road alignment works are proposed. It is the applicant's opinion that's the proposed development does not involve any work that requires a road safety audit. Therefore, Condition No. 21 does not appear to be justified and the applicant requests that the board delete it in full.
- The agreement of the PA regarding the operating hours specified in condition No. 23 is noted.
- Regarding Conditions 24 and 25, the requirement for public lighting is entirely based on operation of the site in hours of darkness which has not been proposed and is expressly dealt with in the operating hours proposed under Condition No. 23. Therefore, the applicant contends that these conditions are irrelevant and requests that the board delete them in their entirety.

7.0 Assessment

- 7.1. This is a first-party appeal against Condition No's 2, 17, 21, 23, 24, 25 and 26 attached to the Planning Authority's decision to grant permission.
- 7.2. Having regard to the nature and scale of the proposed development, which is for the restoration of a former sand and gravel pit through the importation of inert soil and stones on an area of 2.9ha and the spreading of existing site-won soils on an area of 0.17ha to return the site to agricultural use, it is considered that the determination by

the Board of the application, as if it had been made to it in the first instance, and that a *de novo* assessment would not be warranted. Therefore, I recommend that the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

7.3. Condition No. 2 states the following –

(a). This permission shall apply for a period of 5 years from the date of commencement.

(b). The annual intake of inert soil and stone waste shall not exceed 20,000 tonnes

Reason: *In the interest of clarity and proper planning and sustainable development.*

- 7.3.1. The applicant questions the logic behind this condition and contends that the PA provided no justification for restricting the annual intake to 20,000 tonnes. The grounds of appeal state that, *'application was principally for the importation and recovery of 24,000 tonnes per annum for five years, i.e., a total of 120,000 tonnes...'*, and requests that the condition is amended to allow for a maximum of 24,000 tonnes per annum. It is also argued that the restriction is disproportionate given the scale of the Sancom development, (permitted under PA Ref. 20/639 and currently on appeal under ABP-310216-21), which is of a much larger scale and would allow for importation of up to 72,000 tonnes per annum.
- 7.3.2. Although the applicant objects to the limit applied in Condition No. 2, this is the figure that was included in the plans and particulars lodged with the application. The Planning Submission clearly states that it is proposed to import 100,000 tonnes of inert material over a 5-year period with a proposed annual throughput of 20,000 tonnes per annum, and the Environmental Report assessed the potential impacts based on this quantum. This figure is also repeated in the Traffic Management Plan submitted in response to the further information request, which states that, *'It is anticipated, modelling on a worst-case scenario, the soil importation operations will have a throughput of 20,000 tonnes per annum, likely using 2-3 trucks with 6-7 roundtrips per truck per day'*.
- 7.3.3. I am satisfied that the figures used in Condition No. 2 were not applied in an arbitrary manner and were based on the information submitted by the applicant, which clearly

states that the maximum amount of material to be imported would be 100,000 tonnes over a five-year period. A response to the appeal was submitted by the PA and states that the Roads, Transportation and Public Safety Department examined the first party appeal, and in view of the projected HGV movements per day and have no objection to Condition 2 being amended to allow for a maximum of 24,000 tonnes per year which equates to 120,000 tonnes over a 5-year period.

7.3.4. Should Condition No. 2 be amended to allow for an annual intake of 24,000 tonnes, this would represent an increase of c. 20% on what was originally applied for. I note that both quantities are sub-threshold for mandatory Environmental Impact Assessment under Schedule 5, Part 2, 11(b) of the Planning and Development Regulations 2001 (as amended). Under Part X, Section 176 of the Planning and Development Act 2000 (as amended) the following development would require a mandatory Environmental Impact Assessment; *Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.*

7.3.5. I do not agree with the applicant that the figure of 20,000 tonnes per annum was applied by the PA in an arbitrary manner as the application details, including further information, state that this is the proposed quantum of material for importation on an annual basis. The request to increase the quantity to 24,000 tonnes would represent an increase of 20% on the quantity originally applied for. Although this would still represent sub-threshold development the impacts of the proposal on traffic, noise and dust were assessed under the lower figure of 20,000 tonnes per annum which was stated in the Environmental Report. I am not satisfied that the request to amend the original quantum can be addressed on appeal without any information supporting this request and any further assessment of the impacts of the increase would have on the receiving environment. Therefore, I recommend that Condition No. 2 be retained as is.

7.4. Condition No. 17 states the following –

Prior to commencement of the development, the Developer shall ensure that a 50-70 mm depth of AC20 is laid across the width of the carriageway, from Castledermot to the Kildare County boundary with Wicklow. The Developer shall also ensure that

Surface Dressing is laid with a 6mm pad coat followed by a double surface dressing 14mm/16mm (Design Summary 3) in accordance with IAT Guidelines for Surface Dressing in Ireland from Castledermot to the Kildare County boundary with Wicklow.

Reason: *in the interest of road safety.*

- 7.4.1. The applicant requests that this condition be deleted on the basis that the proposed development would have a negligible contribution to the total traffic on the road in question and that fixed development contributions applied under Condition No. 26 relate to the developments only burden on the PA, i.e., the use of the L4016 for 5 years.
- 7.4.2. Under a request for further information, the applicant was requested to carry out a Falling Weight Deflectometer, (FWD), Test on the L4016 from Castledermot to the County Boundary with Wicklow, and to submit a condition survey on the existing pavement based on the results of the FWD. The applicant was also requested to identify remediation measures to ensure the pavement construction is appropriate to serve the development. The results of the FWD indicated that some sections of the road would require upgrading whether the development went ahead or not.
- 7.4.3. The survey found that the carriageway had good load spreading ability in the upper levels except for some sections of the L4016 to the east and west of the site entrance. To the east these sections were between Chainage 2500-4025 and to the west they were between Chainage 5650-5900, (as per Appendix A of the FWD Survey). Some sections of the carriageway were found to require upgrading with a 30-70mm overlay even if the development did not go ahead, i.e., the ‘Do-Nothing’ scenario. The sections of the road that did not require upgrading under the ‘Do-Nothing’ scenario would not be significantly impacted should the development go ahead but may need an overlay of approximately 10mm per section. (Table 5 of the FWD).
- 7.4.4. The application was assessed under the Kildare County Development Plan 2017-2023, which was the operational plan at the time. Policy EI 11 was contained in Section 10.7 – Extractive Industries and states the following, *‘Ensure that the full cost of road improvements, including during operations and at time of closure, which are necessary for the quarrying of sand and gravel, shall be borne by the industry itself and that the industry shall also contribute to the recreation and amenity of the*

county'. The re-instatement of quarries is addressed in Section 9.9.1 of Chapter 9 of the KDP. Objective RD 046 of this chapter states that it is the objective of the PA to to, *'Require road re-instatement work to be on-going during operations, in the interests of road and traffic safety. Works undertaken to re-instate/improve the public road should be undertaken by the quarry developer or paid by them and completed by the Council*'.

7.4.5. Guidance on the application of planning conditions is contained in the Development Management Guidelines for Planning Authorities, (2007), and in the Office of the Planning Regulator, (OPR), Practice Note PN03, (2022). Section 3.8 of the OPR guidance states that, *'Conditions requiring development to be carried out on lands outside the control of the applicant prior to the commencement of development, or prior to the occupation of the development, cannot be complied with by the developer and so are not enforceable. Such conditions should not be imposed*'. The Development Management Guidelines also set out six specific requirements for planning conditions and state that planning conditions should be,

- Necessary – i.e., whether, without the condition, either permission for the development would have to be refused, or the development would be contrary to the proper planning and sustainable development in some identifiable manner.
- Relevant to planning – the requirements of a condition should be directly related to the development to be permitted or the condition may be ultra vires and unenforceable.
- Relevant to the development permitted.
- Enforceable – conditions should be effective and capable of being complied with.
- Precise – every condition should be precise and understandable.
- Reasonable - a useful test of reasonableness may be to consider whether a proposed condition can be complied with by the developer without encroachment on land that he or she does not control, or without otherwise obtaining the consent of some other party whose interests may not coincide with his/hers.

- 7.4.6. The PA has applied the same condition to two separate developments and has advised the developers to liaise with each other with a view to undertaking an agreement on compliance with the condition. On this basis, I consider Condition No. 17 to be overly onerous and unreasonable.
- 7.4.7. I note that Condition No. 26 of the permission requires the applicant to pay a development contribution of €43,500 in accordance with the Kildare County Council Development Contribution Scheme, which was prepared under Section 48 of the Planning and Development Act 2000 (as amended). This contribution relates to the public infrastructure and, as per Section 6 of the Contribution Scheme, includes the provision of roads and the refurbishment, upgrading, enlargement and replacement of roads. I am satisfied that, under Condition No. 26, a development contribution has been applied for the upkeep of the public roads. Should the PA wish to apply an additional condition for the development, the correct mechanism to do so would be under Section 48(2)(c) which allows for a special contribution to be applied and which states the following;

‘A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development’.

- 7.4.8. In terms of the application of the Section 48(2)(c), the sub-section allows for the provision of a special contribution in respect of,

(a) a particular development, in circumstances where,

(b) specific exceptional costs are incurred, and where,

(c) these costs are not covered by a scheme made under this section.

- 7.4.9. With reference to these criteria, I consider that in this instance, a special contribution for the resurfacing of the public road from Castledermot to the Kildare County boundary with Wicklow would not be appropriate as the costs incurred are not exceptional insofar as they relate to the development proposal, which is in area where a number of extractive industries operate or have operated. Furthermore, I consider that any application of any special contribution under Section 48(2)(c)

would result in a duplication of contributions. Therefore, I recommend that Condition No. 17 be removed from the permission.

7.5. Condition No. 21 states the following –

Prior to the use of the facility, the developer shall have a Stage 2 and 3 Road Safety Assessment (RSA) carried out by an independent, approved, Road Safety Auditor. The developer shall ensure that mitigation measures identified in the RSA are put in place prior to commencement of operations.

Reason: *In the interest of road safety.*

- 7.5.1. The grounds of appeal state that the requirements of Condition No. 21 do not seem justified given the scale of the development and notes that there is no report from the Roads Design Section that justifies this requirement. A response to the appeal was received from the Roads, Transportation and Public Safety Department Traffic of the PA and states that they are satisfied that Stage 2 and 3 Road Safety Assessments are required to ensure the safety of all road users at this location from the additional HGV traffic generated by the proposed development. The PA requests that Condition 21 remain unchanged.
- 7.5.2. Section 15.7.4 of the KDP addresses the Development Management requirements for the Road and Street Network and requires that the design of development proposals must address the functionality and safety of the road through Road Safety Impact Assessment or RSA. It states that a '*Road Safety Audit (RSA) involves the evaluation of road schemes during design, construction, and early operation to identify potential hazards to all road users. RSA is to be carried out on all new national road infrastructure projects and on any schemes/proposal which results in a permanent change to the layout of a national road. (Refer to TII standard: GE-STY-01024 Road Safety Audit, 2017 and GE-STY-01027 Road Safety Audit Guidelines, 2017)*'.
- 7.5.3. Section 2.1 of the TII Road Safety Audit guidance document, (GE-STY-01024), sets out the types of development that are subject to RSA. The categories of scheme that require RSA are a 'Road Scheme' and a 'Development Scheme', which '*results in a change to the road or roadside layout that is initiated and/or executed for*

commercial or private development'. The document also states that, *'No Audit is required on like-for-like repair or replacement of existing road infrastructure'*.

Appendix A of the TII guidance also sets out the types of development or road infrastructure that requires RSA. A new junction or access onto the road requires a Stage 1, 2 and 3 Audit.

- 7.5.4. The proposed development will use an existing access point from the L4016, which was permitted under ABP PL.09.215775, (PA Ref. 05/586) and 98/617. Under 05/586, the application documents projected 50 two-way traffic movements per day with 46 of these trips comprising HGV movements. The Traffic Management Plan submitted with the subject application allows for a maximum of 20 HGV movements per day with an additional 2-4 van movements per day. The plan also detailed traffic movements within the site and signage to be provided at the entrance and on the public road. Drawings submitted as further information show that sightlines of 146m in both directions, from a point 3m back from the carriageway, can be provided if a section of hedgerow were to be moved. Sightlines of 90m can be achieved without the hedgerow removal.
- 7.5.5. No changes are proposed to the existing access point to the site, which is set back from the roadway by 3m in accordance with TII Publication DN-GEO-03060, (Drawing No. J466-PLF108-001). I am satisfied that the existing entrance was designed to cater for a higher level of traffic than that proposed under the subject application, and that the historic access was permitted on that basis. The applicant has also demonstrated that sufficient sightlines can be achieved from the entrance and the PA accepted the provisions contained in the Traffic Management Plan.
- 7.5.6. In consideration of the planning history for the site, the requirements of the Development Plan and the guidance contained in the TII document GE-STY-01024 Road Safety Audit, I am satisfied that the proposal to use an existing commercial entrance, which was originally assessed and permitted for a larger level of HGV movements, does not require a Stage 2 and 3 RSA. I recommend that the Board remove this condition in full.

7.6. Condition No. 23 states the following –

The Developer shall ensure that the works are carried out in accordance with the Traffic Management Plan submitted on 10/06/2021 and that any further subsequent mitigation measures, requested by the Municipal District Office, are put in place. The Developer shall restrict the Hours of Operation, as follows: from Mondays to Fridays between 9am and 6pm; on Saturdays between 9am and 2pm; no working on Sundays or Bank Holidays.

Reason: *To mitigate the impact of traffic on neighbouring residents.*

- 7.6.1. The applicant requests that the Board amend Condition No. 23 to allow opening at 8am and closing at 7pm, Monday to Friday during the period of April to October (summer time), and 8am to 4pm from November to March, (winter time). It is requested that Saturday operating hours are allowed from 8am to 2pm throughout the year. The applicant contends that the site will not operate in darkness if these hours are permitted and will not be unreasonably restricted in the morning. The grounds of appeal also state that development of this nature require early opening hours to receive loads from construction sites that need to be cleared first thing.
- 7.6.2. The plans and particulars submitted by the applicant set out the proposed operating hours as within the hours of 8.30am to 6pm and always within daylight. The Traffic Management Plan submitted as further information states that the hours of restoration will be from 9am to 6pm Mondays – Fridays and 9am to 2pm on Saturdays with no working on Sundays or Bank Holidays.
- 7.6.3. A response to the appeal was received from the Roads, Transportation and Public Safety Department Traffic of the PA and states that there is no objection to Condition No. 23 being amended to the hours of operation put forward in the appeal.
- 7.6.4. I consider the operating hours put forward by the applicant to be reasonable and I am satisfied that they would not result in any undue disturbance to nearby residential development. I recommend that the Board amend Condition No. 23 to allow for an increase in operating hours.

7.7. Condition No. 24 states the following –

As some of the hours of operation maybe at dusk or darkness in wintertime; prior to the commencement of development, the Developer shall provide full design details and specifications of the lighting system, necessary to serve the development, and submit this for the written agreement all of the Planning Authority and the Public Lighting Engineer's Office. The proposed lighting system shall comply with the requirements set out in Kildare County Council's Street Online Lighting Technical Specification. At the new junction at main road, the Developer shall examine the public lighting for 100 meters on either side of the new entrance.

The developer shall ensure that the approved lighting is fully commissioned prior to use of the facility.

Reason: *In the interest of road safety*

- 7.7.1. The applicant requests that the Board delete Condition No's 24 and 25 in their entirety as they are unreasonable and disproportionate to the scale of the proposed development and to the commitment to operate within the hours suggested under Condition No. 23, i.e., always within the hours of daylight.
- 7.7.2. A response to the appeal was received from the Roads, Transportation and Public Safety Department Traffic of the PA and states that they are satisfied that public lighting is required to serve the development and to ensure the safety of all road users at this location from the additional HGV traffic generated by the proposed development and, in particular during hours of darkness.
- 7.7.3. I am satisfied that the proposed development does not require public lighting to be installed along the public road. The proposed development is in a rural area which has no public lighting and is surrounded by agricultural fields. It would appear that the previous development operated without public lighting as there was no lights or remnants of lighting at the site entrance on the occasion of the site inspection. The applicant has also demonstrated that sightlines of 146m can be achieved in both directions from the entrance. I would agree with the applicant that if the operating hours set out in Condition No. 23 are amended, that there is no requirement for public lighting. Should the Board accept my recommendation to amend the operating hours under Condition No. 23, I am satisfied that this will negate the

requirement for public lighting as the site will operate during daylight hours. I recommend that Condition No. 24 be removed from the permission.

7.8. Condition No. 25 states the following –

The developer shall comply with any future requirements of the Planning Authority in relation to; adjusting the floodlight aiming or fitting appropriate additional louvers, to deal with remaining glare issues and that may arise for road users/ nearby residents/ rural habitat and may only become apparent when the installation is commissioned.

Reason: *To protect the amenities of the area.*

- 7.8.1. Condition No. 25 does not relate specifically to public lighting but seems to relate to any general lighting within the site. The operation of the internal site, including lighting, will be subject to the provisions of the Health and Safety Authority guidance and legislation for a facility of its type. As noted above, I am satisfied that should the operating hours be restricted to daylight hours, (as per Condition No. 23), public lighting and internal lighting should not be required. However, there may be situations whereby lighting is required. As the wording of the condition relates to any future situations where lighting may have to be adjusted for road users, residents of the rural habitat, I consider this to be reasonable and not overly onerous. Therefore, I recommend that it be retained.

7.9. Condition No. 26 states the following –

The Applicant/ Developer to pay to Kildare County Council the sum of €43,500.00 being the appropriate contribution to be applied to this development in accordance with that Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.

Reason: *It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.*

- 7.9.1. The applicant requests that the Board review and amend Condition No. 26 to allow for a reduction in the amount of the development contributions. The grounds of appeal states that the amount calculated is correct as it relates to the area, (2.9ha), to be recovered with soil. However, the applicant is of the opinion that the contribution should relate to soil recovery and not to material which may also be soil by-product, (as defined under Article 27), and which will not require a Waste Facility Permit. The area of the site which is recovered using Article 27 material can only be determined annually and / or at completion. Therefore, provision should be made in the calculated area where Article 27 material is used. The applicant also notes that Section 12(f) of the Kildare Development Contribution Scheme 2015 allows for a reduction of 50% in the case of temporary permissions of five-terms such as the subject proposal.
- 7.9.2. Section 48(10)(b) of the Planning and Development Act 2000, (as amended), allows for an appeal to be brought to the Board where the applicant considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the PA.
- 7.9.3. The Development Contributions for the development were calculated and applied under the Kildare County Council Development Contribution Scheme 2015-2022, which was in place at the time of the application. Since the appeal was lodged, the Kildare County Council Development Contribution Scheme 2023-2029 was adopted and is the relevant and operative scheme for the appeal. I have reviewed both schemes, and the provisions of each scheme as it relates to the subject development, remain the same. Development contributions were calculated under Section 8(viii) of the 2015 scheme, which is now comparable to Section 8.2.3 of the 2023 scheme. Both Schemes require the same contribution for the subject proposal, which is €15,000 per hectare or part thereof.
- 7.9.4. Section 8.2.3 of the Scheme makes no distinction between the type of materials to be considered when applying the contribution for 'Land Filling / Reclamation'. Under Section 10.1 of the 2023 Scheme an exemption of 50% of the normal rate for

temporary permissions of up to 5 years can be applied. Section 9 states that no exemptions or waivers shall apply to any developments subject to retention permission.

- 7.9.5. The argument put forward by the applicant regarding exemptions for Article 27 by-products would require the input of a third party to declare or determine what material constituted a by-product and would require retrospective payments of contributions. Section 13 of the Development Contribution Scheme does not include any provisions for retrospective payments and Section 8.2.3 does not make any distinctions between materials used in land filling / reclamation. On this basis, I am satisfied that Section 8.2.3 of the Development Contribution Scheme 2023 has been applied correctly regarding the area of the works to be carried out, and that no provision applies in the Scheme which allows for a reduction in the contributions based on whether Article 27 material is used in the development.
- 7.9.6. Section 10.1 of the Contribution Scheme allows for a reduction of 50% of the normal rate of contributions for temporary permissions up to 5 years. The applicant contends that under the terms of the Scheme a reduction of 50% should be applied to the subject development as the permission is temporary with a stated time frame of 5 years. The plans and particulars submitted with the application state that permission is sought for a temporary use for a period of 5 years. Condition No. 2 (a) of the permission states that the permission shall apply for a period of 5 years from the date of commencement. I am satisfied on this basis that the 50% reduction can be applied as the planning permission applied for was for a specified period of 5 years.
- 7.9.7. Based on the information submitted with the application and the provisions of the Kildare Development Contribution Scheme 2023-2029, I recommend that Condition No. 26 should be amended to allow for a 50% reduction in the Development Contributions.

7.10. **Appropriate Assessment**

- 7.10.1. A Stage 1 Screening for Appropriate Assessment was submitted with the application. The Screening report concluded that, *‘during the development and ongoing use of the site, the proposed modifications, will not have a likely significant, adverse impact*

on the freshwater pearl mussel population and salmon spawning habitat of the River Barrow and therefore on the qualifying interests of the SAC, nor on the integrity of the River Nore River Barrow SAC or on the conservation objectives of this Natura 2000 site'. The conclusion of the Screening Report was considered following onsite review, desktop studies and consultation with agencies and individuals.

- 7.10.2. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is screening.
- 7.10.3. The proposed development is for the restoration of a worked-out pit to agricultural land through the importation and deposition of inert soil and stones on an area of 2.9ha and the spreading of existing site-won soils on an area of 0.17ha. Associated works include the grading of the pit floor and existing banks as part of the restoration works and the recommissioning and use of an existing wheel bath.
- 7.10.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- 7.10.5. The closest designated sites to the subject site are the River Barrow and River Nore SAC, (Site Code 002162), which is c. 7km to the north-west of the site as the crow flies. There is an indirect hydrological connection from the subject site to the SAC via the River Graney which flows along the southern boundary of the site and is a tributary of the River Lerr which flows into the River Barrow. The hydrological separation distance between the subject site and the SAC is c. 9km.

7.10.6. The overarching conservation objective of the River Barrow and River Nore SAC is to maintain or restore the favourable conservation status of habitats and species of community interest and the qualifying interests which are,

- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Reefs [1170]
- Salicornia and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]
- European dry heaths [4030]
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]
- Petrifying springs with tufa formation (*Cratoneurion*) [7220]
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- *Vertigo moulinsiana* (Desmoulin's Whorl Snail) [1016]
- *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]
- *Austropotamobius pallipes* (White-clawed Crayfish) [1092]
- *Petromyzon marinus* (Sea Lamprey) [1095]
- *Lampetra planeri* (Brook Lamprey) [1096]
- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Alosa fallax fallax* (Twite Shad) [1103]
- *Salmo salar* (Salmon) [1106]
- *Lutra lutra* (Otter) [1355]

- *Trichomanes speciosum* (Killarney Fern) [1421]
- *Margaritifera durrovensis* (Nore Pearl Mussel) [1990]

7.10.7. The potential impacts on the qualifying interests of the SAC would arise from the contamination of the watercourse from surface water run-off and sediment from the development. The project description states that the restoration would start at the southern end of the site and work backwards towards the road. There is an existing natural berm with established trees and hedgerow along the southern boundary and between the river and the pit floor. This forms a natural barrier that will be retained.

7.10.8. The proposed development is unlikely to cause any significant impact on the quality of the existing watercourse as,

- the natural topography of the site forms a physical barrier to the river,
- there is no surface water within the site,
- the proposed works will involve the importation of inert material only,
- the infilling will be confined to dry periods only, and,
- the site is not prone to flooding.

7.10.9. Whilst an indirect hydrological connection exists though the River Graney and the River Lerr, I consider that the distance between the sites would be sufficient to prevent any significant impact on the SAC. I have reviewed the qualifying interests and conservation objectives of the nearest European sites and, having regard to the nature and scale of the proposed development and the separation distance to the nearest European site, no Appropriate Assessment issues arise. It is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that,

- Condition No. 2 is retained.
- Condition No. 17 is removed.
- Condition No. 21 is removed.

- Condition No. 23 is retained and amended.
- Condition No. 24 is removed.
- Condition No. 25 is retained.
- Condition No. 26 is retained and amended.

9.0 Reasons and Considerations

9.1. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended:

9.2. To **RETAIN** Condition No. 2 as follows for the reasons and considerations set out hereunder:

Condition No. 2 states that: (a). This permission shall apply for a period of 5 years from the date of commencement.

(b). The annual intake of inert soil and stone waste shall not exceed 20,000 tonnes.

Reason: *In the interest of clarity and proper planning and sustainable development.*

Reasons and Considerations (1)

The proposal to increase the amount of material specified in Condition No. 2 (b) to 24,000 tonnes per annum would represent an increase of 20% on what was originally stated in the application. An increase of this level cannot be addressed on appeal without any further assessment of the impacts of the increase would have on the receiving environment.

9.3. To **REMOVE** Condition No. 17 for the reasons and considerations set out hereunder:

Reasons and Considerations (2)

It is considered that Condition No. 17 is not in accordance with the guidance contained in the Development Management Guidelines, (2007), and in the OPR

Practice Note PN03 – Planning Conditions, as it overly onerous and unreasonable and it requires the applicant to engage with a third party whose development was subject to the same condition. It is also considered that the application of a Section 48(2)(c) contribution in this instance would not be appropriate as it would result in a duplication of contributions.

9.4. To **REMOVE** Condition No. 21 for the reasons and considerations set out hereunder:

Reasons and Considerations (3)

It is considered that, given the nature and scale of the proposed development, and the use of an existing and previously permitted entrance, that a Stage 2 and 3 Road Safety Assessment is unwarranted in this instance.

9.5. To **RETAIN and AMEND** Condition No. 23 as follows for the reasons and considerations set out hereunder.

Condition No. 23 should be amended as follows,

(a) The Developer shall ensure that the works are carried out in accordance with the Traffic Management Plan submitted on 10/06/2021 and that any further subsequent mitigation measures, requested by the Municipal District Office, are put in place.

(b) The Developer shall restrict the Hours of Operation, as follows:

From April to October-

- *Monday to Friday from 8.00 to 19.00*

From November to March –

- *Monday to Friday from 8.00 to 16.00*

From 8.00 to 14.00 on Saturdays throughout the year, and,

Not at all on Sundays and Bank Holidays.

Reason: *To mitigate the impact of traffic on neighbouring residents.*

Reasons and Considerations (4)

It is considered that the alterations to the operating hours will not result in any undue negative impact on the residential amenity of nearby houses, would accommodate intake of materials, and would ensure that the site operate during daylight hours only throughout the year.

- 9.6. To **REMOVE** Condition No. 24 for the following reasons and considerations.

Reasons and Considerations (5)

Condition No. 23 restricts the operating hours of the development to daylight hours only. Therefore, the provision of public lighting on a local road in a rural area is not required.

- 9.7. To **RETAIN** Condition No. 25 for the following reasons and considerations.

Condition No. 25 states that: The developer shall comply with any future requirements of the Planning Authority in relation to; adjusting the floodlight aiming or fitting appropriate additional louvers, to deal with remaining glare issues and that may arise for road users/ nearby residents/ rural habitat and may only become apparent when the installation is commissioned.

Reason: *To protect the amenities of the area.*

Reasons and Considerations (6)

Condition No. 25 is reasonable as it seeks to address a situation which may occur as a result of the development, and which may impact on road users or residents of the rural area.

- 9.8. To **AMEND** Condition No. 26 for the following reasons and considerations.

Condition No. 26 should be amended as follows,

The Applicant/ Developer to pay to Kildare County Council the sum of €21,750 being the appropriate contribution to be applied to this development in accordance with that Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with section 48 of the Planning and Development Act

2000 as amended. Payments of contributions are strictly in accordance with section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish water.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of 'the Planning Authority.

Reasons and Considerations (7)

It is considered that the terms of the Kildare County Council Development Contribution Scheme 2023-2029 have been properly applied regarding Sections 8.2.3 and 13 of the Scheme which relate to the level of contributions applicable to the scheme and to the payment of contributions under the Scheme. However, Section 10.1 of the Scheme was not applied and allows for a reduction of 50% for temporary permissions of up to 5 years.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Elaine Sullivan
Planning Inspector

14th of April 2023