Inspector's Report
ABP-311893-21

Development	Application for substitute consent relating to the regularisation of sand and gravel extraction operations.
Location	Maplestown, Rathvilly, Co. Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	N/A
Applicant(s)	Mark Phelan
Type of Application	Substitute Consent
Observer(s)	Gerry Osborne
Date of Site Inspection	12th February 2025
Inspector	Emer Doyle

Contents

1.0 Introduction

1.1. The subject application is an application for substitute consent for a quarry for sand and gravel extraction and for restoration to agricultural use of a section of the quarry. The application involves a total area of 15.21 hectares, but the main area of work during the unauthorised period was a 4.18 hectare section to the east of the quarry.

1.2. The quarry had permission under PL01.221741 which expired in July 2012. Unauthorised extraction and infill activities were carried at the quarry between July 2012 and September 2021. The quarry ceased operating in September 2021 following enforcement by Carlow County Council. The application for Substitute Consent was lodged with the Board in November 2021.

1.3. The original application under PL01.221741 sought permission for 10 years and a 2 year restoration period. Site investigations indicated a resource of 700-950,000 tonnes with an annual extraction rate of up to 95,000 tonnes per annum. During the 9 year period of unauthorised development, a total of 192,240 tonnes of material (included in this figure is 75,060 tonnes of overburden) was extracted from the quarry.

1.4. The applicant intends to restore the remainder of the quarry and it is stated that this will be subject to a future application on the lands.

1.5. I have assessed the subject development under the Carlow County Council Development Plan 2022-2028. The Board may wish to consult with the applicant on the new development plan, however, given the limited material change in policy, I am satisfied that the recirculation of the application is not warranted.

2.0 Site Location and Description

2.1. The site is located in the townland of Maplestown, located in the north-east of County Carlow, close to the borders of Kildare and Wicklow. The town of Baltinglass, Co. Wicklow is located approximately 4.5km from the site. The nearest main road is the N81, c. 2km to the east, linked to the site by a third class road (L-8097).

2.2. The stated area is 15.21 hectares. The landownership as outlined in blue on the planning documentation submitted is 42.85 hectares. The quarry consists of a

processing area in the centre with areas of sand/gravel storage. There are a number of items of machinery in the centre of the quarry but these appear to have been abandoned. There are 3 No. settlement lagoons to the south of the site. Part of the area of the site has been restored to the east and this is currently in agricultural use. There are no permanent buildings on the site. A metal container provides for site welfare facilities.

2.3. The site is bounded to the west by the county road. The northern and southern site boundaries mainly comprise mature trees and hedgerow. The nearest dwellings to the site are on the opposite side of the road c. 24 and 38m to the west. Bigstone National School, community hall and ball alley are located c. 285m to the south of the site

2.4. During my site inspection on the 12th of February 2025, the quarry was not operational and I note from the documentation submitted that the quarry ceased operating in September 2021.

3.0 Proposed Development

3.1. As set out in the public notices, the application consists of substitute consent seeking permission for the regularisation of an existing development described as follows:

- Sand and gravel operations and associated ancillary development over an area of 15.21 hectares to include the extraction of mineral (sand and gravels) and processing activities, the loading of materials and the transportation of the extracted minerals from the site since the expiry of planning permission Reg. PL01.221741 in 2012. In addition, the regularisation of use and/or operation of existing welfare facilities, 3 No. settlement lagoons, one bunded fuel storage tank, a wheel wash and material handling equipment, processing equipment including washing/ rinsing plant, a dry screener and the restoration of sections of the exhausted quarry as approved under planning permission Reg. PL01.221741.
- The unauthorised quarrying post 2012 comprised of the extraction of ‘approximately 192,240 tonnes of material (included in this figure is 75,060 tonnes of overburden) from an area of c. 4.18 hectares in the central part of

the site. This area was then restored in 2018 using overburden from the quarried areas and now is used for agriculture.

- The application is accompanied by a remedial Environmental Impact Assessment and a remedial Natura Impact Statement
- The initial drawings submitted with the application (dated 8th of November 2021) indicated an area outlined in cyan which is the 4.18 hectare section where the main quarrying took place and which was subsequently restored. The total site area is outlined in red on Drawing No. P-01 with a stated area of 15.21 hectares. Revised drawings submitted to the Board dated 6th of December 2021 clarify that the total site area is 15.21 hectares and provide for cross sections of the site. The rEIAR confirms that the entire quarry area measuring 15.21 ha was used during the unauthorised period.
- It is stated that the long term proposal for the site includes restoration of the quarry and this will be subject to a separate planning application.

4.0 Relevant Planning History

PPA 06/842 ABP PL01.221741

Permission granted to Sandcom Ltd. to extract and process sand and gravel and to retain new entrance and existing sand and gravel pit on site.

QY36/ ABP Ref. 01.QV.0147

Section 3(a) Notice issued by Planning Authority directing the landowner (Sheila Corrigan) and the operator (Doyle Concrete Ltd.) to apply to An Bord Pleanála for substitute consent with a Remedial Natura Impact Statement. The Board decision set

aside the determination of the Planning Authority under Section 261 of the Planning and Development Act 2000 and determined the following:

Reasons and Considerations (1)

It is considered that there is no evidence that the unauthorised works on the site prior to the grant of permission in An Bord Pleanála appeal reference PL01.221741 would have had a significant impact on the conservation objectives of a European site by way of the small scale of works, the level of attenuation between the site and the designated area, the absence of any direct impact on groundwater, and the distance between the site and any watercourse. It is considered that the assessment in the Environmental Impact Statement in An Bord Pleanála appeal reference PL01.221741 satisfied the requirements for a Natura Impact Statement.

Reasons and Considerations (2)

The registration requirements under section 261 of the Planning and Development Act 2000, were fulfilled and it is considered that there were no significant impacts from the works prior to the grant of planning permission under An Bord Pleanála reference PL01.221741. It is considered that the Environmental Impact Statement submitted with this appeal satisfied the requirements of the Habitats Directive.

QV36 ABP Ref. 01.QV.0150

Section 5(a) Notice also issued by Planning Authority notifying the landowner (Sheila Corrigan) and the operator (Doyle Concrete Ltd.) that the Planning Authority intends to issue an Enforcement Notice in relation to the quarry under Section 154 of the Planning and Development Act 2000 (as amended) in relation to quarrying that took place post 03/07/08 without planning permission and appropriate assessment. The

5(a) Notice was the subject of a review to An Bord Pleanála, who subsequently set aside the determination and decision of the Planning Authority.

PA 19/403

Permission refused for the importation of clean topsoil and subsoil into the subject site in order that the site can be restored in compliance with condition 17 of the grant of permission PL01.221741.

Enforcement UD 21/40

Enforcement Notice issued to cease all activity at the quarry site and discontinue all site operations facilitating same by 17.09.21. Ongoing works at the quarry were considered in conjunction with there being no live permission in place, as previous permission Reg. Ref. 06/842 / PL01.221741 had expired.

ABP Ref. ABP 306956

Application for Leave to Apply for Substitute Consent granted by the Board.

5.0 Policy Context

5.1. Carlow County Development 2022-2028

Section 14.16 .1 Aggregates – Stone, Sand and Gravel: It is stated that the operation of quarries can give rise to land-use conflicts and environmental issues which require to be mitigated and controlled through the planning system… The Council's considerations on quarrying matters will have regard to *"Quarries and Ancillary Activities", Section 28 Guidelines* issued in 2004. The detailed matters which will be taken into consideration in the assessment of planning applications for extractive and processing developments are set out in Chapter 16, Development Management Standards.

Chapter 16, Development Management Standards

Section 16.16.3 Extractive Industries:… The restoration of disused pits and quarries to productive agricultural use will be encouraged where appropriate having regard to all appropriate environmental considerations. Other possible post closure uses may be considered such as recreational facilities and natural habitat areas.

Section 16.16.4 Land Reclamation: The Council recognises in certain circumstances the need for land reclamation for the improvement of agricultural purposes. Any proposal for land reclamation developments will be required to include the following information:

- A rationale and justification for the improvement of agricultural land;
- Quantities of materials in tonnes having regard to Mandatory EIA Thresholds;
- The relationship of the site with any European Sites and sites of ecological importance. The development shall not create any adverse effect on the integrity of the conservation objectives of any European Sites or protected species;
- Potential impact on species protected under EU or national legislation, outside of protected sites;
- Details of potential impacts on groundwater and surface waters;
- Visual impact – cross-sections of existing and proposed ground levels. The development shall not interfere with the character of the surrounding landscape;
- Details of the type and quantity of material to be imported. Only clean, inert material will be allowed;
- A traffic management plan including haulage routes and daily/weekly truck movements;
- Details of how noise, dust and emissions will be managed;
- Residential amenity – an assessment shall be carried out on the potential impact of the development on any residential properties in the vicinity of the lands; and
- A phasing programme for the duration of the works.

- Any development will be required to have the requisite waste authorisation in place in accordance with the stipulations of the Waste Management Act 1996 or any subsequent updated guidance or legislation.

Appendix 2b VII contains a **Landscape Character Assessment**. The site is located in Central Lowlands which is deemed to be moderately sensitive to development. (I note that similar provisions applied in the previous Development Plan (2015-2021) in that the site was also located in landscape designated as 'Central Lowlands.)

5.2. National Policy and Guidance

5.2.1. Climate Action Plan 2024

The Government of Ireland's Climate Action Pan was first published in June 2019 by the Department of Communications, Climate Action and Environment. The Climate Action Plan 2024 (CAP24) is the third annual update to Ireland's Climate Action Plan 2019. This plan is prepared under the Climate Action and Low Carbon Development (Amendment) Act 2021, and following the introduction, in 2022, of economy-wide carbon budgets and sectoral emissions ceilings.

5.2.2. Climate Action and Low Carbon Development (Amendment) Act 2021

This Act amends the Climate Action and Low Carbon Development Act 2015. It sets out the national objective of transitioning to a low carbon, climate resilient and environmentally sustainable economy in the period up to 2050. The Act commits us, in law, to a move to a climate resilient and climate neutral economy by 2050.

An Bord Pleanála is a relevant body for the purposes of the Climate Act. As a result, the obligation of the Board is to make all decisions in a manner that is consistent with the Climate Act.

5.2.3. Ireland's 4th National Biodiversity Action Plan 2023–2030

Ireland's 4th National Biodiversity Action Plan (NBAP) sets the national biodiversity agenda for the period 2023-2030 and aims to deliver the transformative changes required to the ways in which we value and protect nature. The NBAP will continue to implement actions within the framework of five strategic objectives, while addressing new and emerging issues:

- Objective 1 - Adopt a Whole of Government, Whole of Society Approach to Biodiversity,
- Objective 2 - Meet Urgent Conservation and Restoration Needs,
- Objective 3 - Secure Nature's Contribution to People,
- Objective 4 - Enhance the Evidence Base for Action on Biodiversity
- Objective 5-Strengthen Ireland's Contribution to International Biodiversity Initiatives.

5.2.4. **National Planning Framework (Project Ireland 2040) and National Development Plan 2018-2027**

These joint documents set out a vision for the future development of the country and in particular, to support the sustainable development of rural areas by encouraging growth.

Section 5.4 Planning and Investment to Support Rural Job Creation

Aggregates and Minerals Extractive industries are important for the supply of aggregates and construction materials and minerals to a variety of sectors, for both domestic requirements and for export. The planning process will play a key role in realising the potential of the extractive industries sector by identifying and protecting important reserves of aggregates and minerals from development that might prejudice their utilisation. Aggregates and minerals extraction will continue to be enabled where this is compatible with the protection of the environment in terms of air and water quality, natural and cultural heritage, the quality of life of residents in the vicinity, and provides for appropriate site rehabilitation.

National Policy Objective 23 seeks to facilitate the development of the rural economy through supporting, amongst other sectors, a sustainable and economically efficient extractive industry sector, whilst at the same time noting the importance of maintaining and protecting the natural landscape and built heritage, which are recognised as being vital to rural tourism.

Draft First Revision to the National Planning Framework July 2024

The updated Draft Revised NPF published 5th November 2024, references the Circular Economy and Miscellaneous Provisions Act 2022 and the National Circular

Economy Strategy 2022, and that the Circular Economy as playing a much more significant role. The updated Draft Revised NPF published in November also sets out new upward targets for housing.

National Policy Objective 42 seeks to target the delivery of housing to accommodate approximately 50,000 additional homes per annum to 2040.

National Policy Objective 76 seeks to 'sustainably manage waste generation including construction and demolition waste, invest in different types of waste treatments and support circular economy principles, prioritising prevention, reuse, recycling and recovery, to support a healthy environment economy and society'.

5.2.5. **Regional Spatial and Economic Strategy**

This strategy came into effect on 28th June 2019 and builds on the foundations of Government policy in Project Ireland 2040. It seeks to determine at a regional scale how best to achieve the shared goals set out in the National Strategic Outcomes of the NPF and sets out 16 Regional Strategic Outcomes (RSO's) which set the framework for city and county development plans. The RSO's are underpinned by the Regional Policy Objectives, (RPO's). It supports the circular economy to make better use of resources and become more resource efficient.

Regional Policy Objective (RPO) 6.7: Support local authorities to develop sustainable and economically efficient rural economies through initiatives to enhance sectors such as agricultural and food, forestry, fishing and aquaculture, energy and extractive industries, the bioeconomy, tourism, and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage.

5.2.6. **Quarries and Ancillary Activities Guidelines for Planning Authorities (2004), DOEHLG**

These Guidelines were issued to offer guidance to planning authorities and An Bord Pleanála for the quarrying industry through the Development Plan and determining planning applications for planning permission for quarrying and ancillary activities and for the implementation of Section 261 of the Planning and Development Act, 2000.

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

Section 3.2 notes that extractive industries are associated with many noise-generating activities including the removal of topsoil and overburden, excavation with machinery, drilling and blasting of rock, crushing and screening of aggregates, transport of raw materials and finished products within the site and on public roads.

The Guidelines set out a recommended standard of 55dB(A) L_{Aeq} (1 h) for daytime noise and 45 dBA L_{Aeq} (1 h) for night-time at the nearest sensitive receptor. The guidelines also note that it may be appropriate to permit higher noise Environmental Limit Values (ELVs) for short-term temporary activities such as construction of screening bunds, etc, where these activities will result in a considerable environmental benefit.

Section 3.3 sets out a number of best practice mitigation measures to prevent dust creation at source, one such measure includes paving road surfaces.

Section 3.6 notes the development plan will indicate areas of high landscape quality, together with proposed geological Natural Heritage Areas, where quarrying will not normally be permitted. While Quaternary landscape features such as eskers and moraines comprise valuable sediments, they also represent non-renewable records of past climate and environmental change and should be afforded some protection.

Section 3.7 notes in relation to traffic impact best practice/possible mitigation measures: Some related mitigation measures (e.g. in relation to noise and dust) have been outlined above. Specific traffic-related measures may include:

- The improvement of sightlines at the site entrance;
- The strengthening/widening of local roads;
- Limiting HGV traffic to specified routes to and from the site;
- Queuing of vehicles with engines running at quarry sites in the early morning can impact on residential amenity, and must be avoided;
- Provision of footpaths/pedestrian refuges as well as passing bays for vehicles on rural roads in the vicinity of the site.

Section 4.9 states that when considering whether a further permission should be granted, the planning authority should have regard (inter alia) to the extent of the remaining mineral resources and the extent of existing capital investment in infrastructure, equipment, etc.

5.2.7. **Supplementary Guidelines for Planning Authorities July 2012 DOEHLG**

These guidelines support and clarify the legislative arrangements relating to the control of quarries through the planning system following the enactment of Section 261A of the Planning and Development Act. 2000 and related provisions.

5.2.8. **Environmental Management in the Extractive Industry, Environmental Protection Agency, 2006**

The guidelines provide a summary of environmental management practices for quarries and ancillary facilities. Key environmental management issues have been identified and addressed.

Section 3.5 notes that noise and vibration are present in many normal everyday activities. In relation to quarry developments and ancillary activities, it is recommended that noise from the activities on site shall not exceed the following noise ELVs at the nearest noise-sensitive receptor: Daytime: 08:00–20:00 h LAeq (1 h) = 55 dBA Night-time: 20:00–08:00 h LAeq (1 h) = 45 dBA.

In relation to blasting activities within quarry development, it is recommended that the following vibration and air overpressure ELVs are adopted and applied at the nearest vibration and air overpressure sensitive location (e.g. a residential property): Ground-borne vibration: Peak particle velocity = 12 mm/s, measured in any of the three mutually orthogonal directions at the receiving location (for vibration with a frequency of less than 40 Hz). Air overpressure: 125 dB (linear maximum peak value), with a 95% confidence limit.

5.3. **Natural Heritage Designations**

The appeal site is not located within or adjacent to a designated site. The Slaney River Valley SAC is located c. 4.2km to the east of the site and the River Barrow and Nore SAC is located c. 6km to the west of the site.

5.4. **EIA Screening**

5.4.1. Schedule 5, Part 2, 2(b) of the Planning and Development Regulations 2001, as amended and Section 172(1)(a) of the Planning and Development Act 2000, as amended provides that an Environmental Impact Assessment (EIA) required for: -

2. Extractive Industry (b) Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.

5.4.2. The application for Substitute Consent comprises the retrospective extraction of sand/gravel with an extraction area greater than 5ha. Given the area of extraction exceeds the 5ha. threshold, a mandatory EIA is required in this instance.

5.4.3. An rEIAR was submitted with the application. Article 102 of the Planning and Development Regulations, 2001 (as amended) requires that 'w*here a planning application for sub-threshold development is accompanied by an EIAR, the application shall be dealt with as if the EIAR had been submitted in accordance with section 172(1) of the Act'.*

6.0 Legislative Context

6.1. Section 177K(1)(J) of the Planning and Development Act 2000 as amended, provides that the Board may grant leave to apply for substitute consent where exceptional circumstances apply, as set out in section 7 of this report.

6.1.1. Of particular importance is the need for the applicant to demonstrate that exceptional circumstances apply. This is set out in Section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 Act, which amends Section 177K of the 2000 Act.

6.1.2. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) came into effect on the 16th day of December 2023.

6.1.3. Section 30 of the 2022 Act amends Section 177K of the 2000 Act as follows:

by the insertion of the following subsection after subsection (1) (i):

"(1J) In considering whether exceptional circumstances exist under subsection (1A) (a) the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised.

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.

(g) such other matters as the Board considers relevant."

7.0 Exceptional Circumstances Assessment

7.1. The applicant was granted leave to apply for substitute consent under ABP 306956-20 on the 16th of June 2021. The Board Order considered that exceptional circumstances exist.

7.1.1. The Board in a letter dated 10th July, 2023, invited the applicant to submit information in relation to exceptional circumstances. Following this request, the applicant submitted information to the Board in relation to exceptional circumstances in a letter dated the 18th of July 2023. No further submissions were made to the Board following the applicant's response. Taking the tests undertaken in turn, my assessment is as follows:

(a) Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive

7.1.2. The applicant's response sets out that the development is unauthorised by nature of the time limit of a previously permitted development. This permitted development was accompanied by an Environmental Impact Statement at application and appeal stage. As the original application was for a 10 year permission, this EIS assessed the operation of the facility over a period of 10 years and therefore it can be concluded that it has been assessed previously.

7.1.3. The application is accompanied by a rNIS and an rEIAR. This rNIS and rEIAR provide the opportunity for the purpose and objectives of the Habitats Directive and the Environmental Impact Assessment Directive to be upheld. Therefore, I conclude that this application for substitute consent which includes a rNIS and carrying out of AA would not circumvent the objectives of the Habitats Directive.

7.1.4. Taking a balanced approach, I do not consider that the regularisation of the development would circumvent the purpose and objectives of the EIA or Habitats Directives.

(b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised

7.1.5. The circumstances set out in the applicant's response to the Board outline the following:

- *'The applicant applied for a 10 year permission in the first instance plus a 2 year restoration period.*

- *The planning authority addressed this in the original grant and restricted it to a 6 year permission.*
- *ABP Inspector re-examined this decision of the PA and recommended a 10 year grant plus a 2 year restoration period.*
- *ABP Inspector recommended a specific condition (Condition 2 of PL01.221741) to address this issue and the inconsistency in relation to the phasing plan by virtue of the 6 year timeline granted by the planning authority.*
- *There was no specific condition in the Board Order in relation to the length of permission.*
- *The applicant became the owner in April 2019 and no issues were identified in terms of the length of permission. This matter only was raised c. November 2019.'*

7.1.6. These circumstances were previously outlined to the Board in the Leave to apply for Substitute Consent application under 306956-20. The Board Order considered that the permission granted for a quarry under An Bord Pleanála appeal reference number PL 01.221741, subject to 25 number conditions*, 'was sufficiently ambiguous that the owner had reasonable grounds for considering that the operations could extend beyond 10 years from the grant of permission and this constitutes exceptional circumstances.'*

7.1.7. I am satisfied that having regard to the circumstances set out above, the applicant could reasonably have had the belief that the development was permissible.

(c) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.

7.1.8. The original application (PA Reg. Ref. 06/842 and ABP Ref. PL01.221741) was accompanied by an EIS and the current application is accompanied by a rEIAR and an rNIS. With the submission of the rNIS and rEIAR the ability to carry out an appropriate assessment and an assessment of the environmental impacts has not been substantially impaired. Furthermore, the lodgement of the current application and its accompanying rNIS and rEIAR has afforded the opportunity for the public to

be formally consulted when the application was lodged and advertised accordingly. I note that one observation has been submitted to the Board and consider that there has been no impairment of public participation in this particular application.

(d) The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.

7.1.9. The rNIS states that there was no potential for significant adverse effects on the River Barrow and River Nore SAC or any other European Site. Mitigation measures that were carried out are outlined in Section 6.3 of the rNIS to avoid possible impacts. I am satisfied that there are no adverse effects on the integrity of a European site resulting from the existing development.

(e) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

7.1.10. It is stated by the applicant there are currently no known significant effects on a European Site. As such, no remediation of a European Site is required.

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.

7.1.11. The applicant unknowingly carried out unauthorised development by continuing operation after 2012, the year the permission ceased. The circumstances are set out in Section 7.1.5 above. The applicant acquired the site in 2019. Since the applicant has become aware of the status of the development, they have sought to regularise the situation. I conclude that the applicant is making appropriate efforts to regularise this development by engaging in the substitute consent process.

(g) Other such matters that the Board considers relevant.

7.1.12. The response from the applicant does not bring any other matters to the attention of the Board. I am not aware of any other matters that are relevant in this case.

8.0 Submissions

8.1. Third Party

8.1.1. One third party observation was submitted to the Board from Gerry Osborne which can be summarised as follows:

- Main concerns raised relate to noise and dust.
- It is stated that the applicant is the son of the previous owner, Sheila Corrigan, and should have been fully aware of the timeframe on the planning permission.
- The Board should not grant permission as the applicant did not comply with the conditions of the previous permission including landscaping, noise assessment, dust assessment and environmental auditing every year.

8.2. Planning Authority

8.2.1. The Planning Authority submitted a S1771 report to the Board. The report outlines the planning history of the site and planning policy context as it related to the CDP 2015-2021. It points out that it should be a requirement of the rEIAR and the rNIS to consider construction stage impacts as relating to the relevant infrastructure on site, including wheelwash, water supply, settlement lagoons etc.

8.2.2. Board should only consider granting substitute consent if it is confirmed that further works at the quarry have ceased and subject to the following conditions:

- Restricting a grant to development that has already been carried out on site.
- Providing clarity, where required that future or further development is not authorised by a grant of substitute consent.
- Requirement for mitigation measures in rNIS and rEIAR to be implemented in full.
- The provision of a detailed restoration and landscaping plan and a timescale for its implementation.
- The provision of an aftercare programme, to include details on decommissioning of plant/ machinery, maintenance, the implementation of

public health and safety measures and measures to prevent surface and groundwater pollution.

- The provision of a comprehensive closure plan.
- The lodgement of a cash deposit or bond to the Planning Authority to secure the provision and satisfactory restoration of the site.
- It should be a requirement of the rEIAR and the rNIS to consider construction stage impacts as relating to the relevant infrastructure on site, including wheelwash, water supply, settlement lagoons etc.

Environment Section notes that there is no record on file of compliance with conditions. Unauthorised quarrying activities have continued on this site since 2012. No environmental reporting or EMS on file. Notes that infrastructure which is not located in the cyan area and not included in the rNIS and rEIAR was used during the unauthorised extraction and filling of the 4.18 hectares.

Transport Section: No objection subject to conditions.

Municipal District Office: No objection subject to conditions.

Water Services Report:

- Nearest Irish Water Asset Trunk Water Export Main is c. 2km from quarry and it is considered that the Trunk Water Export Main is not likely to be impacted.
- The site is located c. 300m from the Graney river which is a sub-tributary of the River Barrow and 80m from the Broadstone stream. It is recommended that the applicant be requested to demonstrate that the mitigation measures referred to in the rNIS were carried out since 2012 and continue to be undertaken.

8.3. **Prescribed Bodies**

Transport Infrastructure Ireland

- The authority has no specific comments to make in relation to the subject site.

Irish Aviation Authority

- No observations on this application.

An Taisce

- The legal basis and justification for the applicant in seeking Substitute Consent needs to be determined as a preliminary matter having regard to relevant European and National Court judgements.

HSE

- Conditions 6 (noise levels), 11 (dust monitoring) and 21 (annual audit and topographical survey) of the parent permission ABP 221741 should inform the rEIAR and the results should be reported in the rEIAR. The rEIAR has not demonstrated that authorised activities were within the predicted limits to protect health with regard to noise or dust or protection of ground and surface water and therefore has not demonstrated that the unauthorised development operated within the health protection standards.
- No reference in Chapter 8 Air Quality and Climate to the actual impacts on Air Quality from activities up to 2012.
- The use of the historic EIS is not retrospectively assessing the impacts from the unauthorised development as stated in Section 8.2.1 of the rEIAR.
- For the rEIAR, the baseline environment is not that of the original EIA, but is the baseline environment after 5 years of authorised activities.
- In terms of dust, there is insufficient information to determine the impacts on sensitive receptors including Bigstone National School and the dwelling of Mr. Osborne.
- The statement on page 233 that no noise complaints were made during the duration of operations on site is contradicted by the submission made to ABP.
- The rEIAR does not include any noise monitoring results during the authorised activities.
- It does not appear that any monitoring data is available or reported in the rEIAR in relation to groundwater monitoring.
- The HSE is of the opinion that the assessment has not demonstrated that the unauthorised activities operated within standards that protected public health.

- There is no evidence that health protection standards were met either during the time of authorised activities or during the time of unauthorised activities. There was a requirement to monitor such impacts by the parent permission.

Department of Housing, Local Government and Heritage

- There is no evidence of compliance with Conditions 10, 20 or 21 of the parent permission (PL01.221741) including any historic water sampling or any evidence of monitoring, inspection and maintenance of water quality mitigation measures which would indicate they were in good working order during the period that the unauthorised quarry was in operation. The Department advises that the effectiveness of water quality mitigation measures must be demonstrated, using evidence of compliance with the above planning conditions.
- Given the 'At Risk' water quality status of the nearby river water body and the lack of topsoil in the area, the Department advises that the rNIS should include an assessment of the impacts of restoration and afteruse for agriculture on water quality.
- The rNIS states that a total of 41,700m^3 of overburden was removed and set aside for reuse in the restoration of the 4.17ha plot of land using only overburden that had been retained on site and from permitted development. Evidence that infill was solely site won and did not include material outside the site should be provided.
- Evidence of compliance with conditions 7 and 8 of the parent permission in relation to protection of groundwater should be provided.

8.4. Further Responses

Applicant

Three separate letters were submitted in response to the comments of (1) the Planning Authority, (2) the observer - Gerry Osborne, and (3) the HSE and the Department (addressed in the same letter). There is some overlap and I have summarised all the comments below:

- No potential for in combination effects as each of the quarries in the area would have received a grant of planning permission which is contingent on ensuring that there is no impact on water quality.
- The construction impacts were assessed in the Environmental Impact Statement in the 2006 planning application and construction activities did not form part of the unauthorised activities taking part at the site after 2012 and were therefore not considered in the AA Screening, rNIS or rEIAR. Potential operational phase impacts occurring since 2012 during the period of unauthorised activities are addressed in the AA Screening, rNIS and rEIAR.
- The applicant wishes to clarify that substitute consent is sought for a total area of 15.21 hectares as shown in revised drawings submitted to ABP on the 6th of December 2021.
- The applicant notes the Planning Authorities comments in relation to restoration of the quarry. The applicant is committed to ensuring the compliant restoration of the former quarry and will commit to providing a comprehensive Closure, Restoration and Aftercare Management Plan (CRAMP) and obtaining all necessary consents required to facilitate the restoration of the quarry and will comply with any condition of substitute consent in that regard. The applicant would be satisfied to accept the conditions as recommended by the Planning Authority.
- The property of the observer is 185m to the south of the site rather than 150m as stated in the observer's submission.
- The applicant complied with the Planning Authority Enforcement Notice dated the 12th of August 2021 and all activities ceased by 5pm on the 17th of September 2021.
- As activities have ceased there is no nuisance associated with dust or noise at present. Any future activities that may give rise to potential nuisance would be subject to a separate application.
- The original EIS assessed the proposed development over a 12 year period.
- The rEIAR has retrospectively assessed the impact of the development as comprehensively as possible with all available information. To the knowledge

of the applicant, no complaints in relation to noise or dust were submitted to Carlow County Council during the operation of the quarry.

- The applicant only acquired the quarry in 2019 and had no involvement with the quarry prior to that. He does not have any access to monitoring that may have been carried out at the quarry during its period of operation.
- There is no evidence of any failure in the implementation of any of the mitigation measures proposed in the EIS.
- The rEIAR confirms that it is unlikely that any significant noise or dust impacts were caused as a result of quarry operations using noise calculations.
- The predicted dB level at 100m is 62.59 dB. Machinery would only have been used intermittently on site and it is unlikely that all 7 items of plant and equipment were ever operational concurrently. The rEIAR concluded that when taking account of local terrain, predicted noise levels at the closest NSLs are expected to have been lower than what is outlined in Table 9.5. It is not expected that actual noise levels did exceed the recommended criteria of 55dB.
- The machinery and equipment associated with the quarry have now been decommissioned and therefore there are no residual noise impacts remaining on the site.
- No complaints were made to the Local Authority regarding dust or noise. No known non-compliance or enforcement notices were issued to the operator when the facility was operational.
- The applicant does not have any evidence of compliance with Conditions 10, 20, or 21 as requested by the Department as he is the new owner of the site. However, upon examination of the EPA River Q Values, there does not appear to be any reduction in water quality monitoring station (RS14GO70200), located on the Graney (Lerr) stream approximately 2.8km downstream. There is no significant reduction or fluctuation in water quality before, during or after extraction works. Therefore it can be assumed that surface water mitigation implemented during the works were effective in protecting local water quality.
- The groundwater elevation beneath the existing quarry was measured between 111.5mOD and 112.5mOD on the 22nd October 2021. With the exception of the

authorised sump used to supply the washing and screening plant, excavation works at the existing quarry were undertaken above the existing groundwater level with no requirement for dewatering and no impact on the local groundwater resource and groundwater flow regime.

Planning Authority

The Planning Authority note the contents of the submission and that same outlines a number of pertinent issues and concerns which the Board should take into account in their assessment of the application. In particular, the planning and operational history of the quarry, including non-compliance with planning conditions and potential noise and dust impacts on third parties.

Observer

- The observer would like to take the opportunity to vigorously reiterate the chronic impact that the development has had on all aspects of his life, that of his family, the family income both past and present and on his equine business.
- The activities at the quarry have broken all proposed planning conditions to date and violate the key legal principle of the 'polluter pays.'

9.0 Planning and Sustainable Development Assessment

9.1. Introduction

9.1.1. The basis for substitute consent is set out in Part XA (Section 177K (1J)) of the Planning and Development Act 2000 (as amended). This section of the Act states that when making its decision in relation to an application for substitute consent, the Board shall consider the proper planning and sustainable development of the area having regard to a number of matters, listed as (a) to (g), within Section 177K(1J), regarding exceptional circumstances. I have dealt with this under Section 7 of my report. The assessment will concentrate on the relevant planning and environmental issues.

9.1.2. I note that the quarry had originally sought permission for an operational life of 10 years plus a period of 2 years for restoration. The original EIS considered the

impacts over a 12 year period. There has been no quarrying at the site since September 2021 according to the response submitted by the applicant. The period of substitute consent was between the years 2012 and 2021. The current application seeks substitute consent for works which occurred during the period from July 2012 to September 2021. Over the 9 years of operation without permission, a total of 192,240 tonnes of sand and gravel was extracted from the site. Given that the original EIS in the parent application indicated a resource of 700-950,000 tonnes with an annual extraction rate of up to 95,000 tonnes per annum, I consider that the total extraction over a 9 year period appears to be relatively modest and significantly less than what was previously permitted per annum.

9.1.3. It is intended that there will be a future application for restoration and remediation of the remainder of the quarry and the applicant will commit to providing a comprehensive closure, restoration and aftercare management plan for this former quarry in this regard. Any future application for development at the quarry site will be assessed on its own merits. The information submitted in terms of restoration in the rEIAR relates to restoration of a 4.18ha section of land as outlined in the documentation submitted.

10.0 Planning Assessment

10.1. Principle of Development

10.1.1. The site is located in an unzoned rural area. Permission was previously granted for a quarry at this location and the permission expired in 2012. Quarrying continued after 2012 mainly in the eastern part of the site. It is estimated that post 2012, 192,240 tonnes of material (included in this figure is 75,060 tonnes of overburden) was extracted from an area outlined on the drawings submitted as c. 4.18 ha. This area was subsequently restored during 2018 using overburden from quarried areas. No material was imported onto the site. This area is currently in agricultural use. It is a longer term plan to restore all of the quarry to agricultural use but this does not form part of this application. The current application seeks to regularise the unauthorised development as outlined above.

10.1.2. I observed on the site inspection that quarrying has ceased for a considerable period of time. Information submitted with the application indicates that quarrying ceased

following enforcement action from the Planning Authority in September 2021. Having regard to the planning history of the site and Section 14.16.1 of the Carlow County Council Development Plan 2022-2028, I consider that the principle of development is acceptable.

11.0 Environmental Impact Assessment

11.1. Historic Development

11.1.1. The historic development did not go outside the footprint that was environmentally assessed in the EIS submitted with the parent permission. Following an enforcement notice under Section 154 of the Planning and Development Act 2000 as amended, all activities on the site ceased on the 17th of September 2021.

11.1.2. There was no construction of permanent buildings. The construction phase under the parent permission involved the excavation of 3 No. settlement lagoons, a stockpiling area, truck and plant parking area and site access.

11.1.3. The operational phase mainly occurred on an area of land of 4.18 ha illustrated in cyan on the submitted drawings. A total of 192,240 tonnes of sand and gravel was extracted from the site. Included in this figure is 75,060 tonnes of overburden.

11.1.4. Upon completion of the extraction, the area of 4.18 ha was restored to previous ground level using overburden removed from this area during quarrying and stockpiles of overburden that had been retained on site from permitted development.

11.1.5. During the operational phase, existing infrastructure, machinery, and land within the 15.21 hectare site was used and as such the application relates to the 15.21 hectare site at this location. The entire quarry area was used for the processing and stockpiling of excavated soil and water for washing of aggregates was sourced from the existing sump to the south of the quarry.

11.2. Statutory Provisions

11.2.1. Schedule 5, Part 2, Class 2(b), requires EIA for Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares. The historic development comprises the retrospective extraction of a stone and gravel quarry with an extraction area greater than 5 hectares. Therefore, an rEIAR is required.

11.3. EIA Structure

11.3.1. This section of the report comprises the environmental impact assessment of the proposed development in accordance with Planning and Development Act 2000 (as amended) and the associated Regulations, which incorporate the European directives on environmental impact assessment (Directive 2011/92/EU as amended by 2014/52/EU). Section 171 of the Planning and Development Act, 2000 (as amended) defines EIA as:

> a. consisting of the preparation of an EIAR by the applicant, the carrying out of consultations, the examination of the EIAR and relevant supplementary information by the Board, the reasoned conclusions of the Board and the integration of the reasoned conclusion into the decision of the Board, and
>
> b. includes an examination, analysis and evaluation, by the Board, that identifies, describes and assesses the likely direct and indirect significant effects of the proposed development on defined environmental parameters and the interaction of these factors, and which includes significant effects arising from the vulnerability of the project to risks of major accidents and/or disasters.

11.3.2. Article 94 of the Planning and Development Regulations, 2001 and associated Schedule 6 set out requirements on the contents of an EIAR.

11.3.3. This EIA section of the report is, therefore, divided into two sections. The first section assesses compliance with the requirements of Article 94 and Schedule 6 of the Regulations. The second section provides an examination, analysis and evaluation of the development and an assessment of the likely direct and indirect significant effects of it on the following defined environmental parameters, having regard to the EIAR and relevant supplementary information:

- population and human health,
- biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Birds Directive,
- land, soil, water, air and climate,
- material assets, cultural heritage and the landscape,
- the interaction between the above factors, and

- the vulnerability of the proposed development to risks of major accidents and/or disasters.

11.3.4. The assessment provides a reasoned conclusion and allows for integration of the reasoned conclusions into the Boards decision, should they agree with the recommendation made.

11.4. Issues Raised in Respect of EIA

11.4.1. The third party raised a number of concerns in relation to noise and dust and the absence of compliance with conditions in the parent permission.

11.4.2. The DoEHLG raised concerns regarding compliance with historic water quality and environmental conditions.

11.4.3. The HSE raised a number of concerns regarding the rEIAR. These are addressed under each of the relevant chapters. The main concern is that the rEIAR has no information in relation to environmental monitoring during the period the quarry was operating. It was considered that such results would have provided better baseline information and informed the rEIAR. It was considered that the rEIAR has not demonstrated that activities were within predicted limits to protect health with regard to noise, dust, surface or groundwater.

11.5. Compliance with the Requirements of Article 94 and Schedule 6 of the Regulations 2001

11.5.1. Compliance with the requirements of Article 94 and Schedule 6 of the Regulations is assessed below.

Article 94 (a) Information to be contained in an EIAR (Schedule 6, paragraph 1)	
A description of the proposed development comprising information on the site, design, size and other relevant features of the proposed	The proposed development is comprehensively described in Chapter 2 of the rEIAR and depicted in the associated drawings. Information is included on the site, design, size

development (including the additional information referred to under section 94(b).	and features of the development. The rEIAR also details the history of the quarry and describes the operation and restoration phases of the development. I am satisfied that adequate historic and contemporary detail has been provided to enable decision making.
A description of the likely significant effects on the environment of the proposed development (including the additional information referred to under section 94(b)).	A description of the likely significant effects on the environment are included in each of the technical chapters of the rEIAR. I am satisfied that the rEIAR has provided adequate information on the likely direct, indirect, and cumulative effects of the of the historic development on the receiving environment.
A description of the features, if any, of the proposed development and the measures, if any, envisaged to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment of the development (including the additional information referred to under section 94(b).	These are included in each of the technical chapters of the rEIAR and the associated appendices and are brought together in Chapter 15 of the rEIAR.
A description of the reasonable alternatives studied by the person or persons who prepared the EIAR, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the proposed development on the environment (including the additional information referred to under section 94(b))	Chapter 2 of the rEIAR considers alternatives in respect of alternative locations, designs, layout and processes. Having regard to the context of the development and having regard to the fact that the development has already taken place, I am satisfied that the information submitted is satisfactory.

Section 94(b) Additional information, relevant to the specific characteristics of the development and to the environmental features likely to be affected (Schedule 6, Paragraph 2)	
A description of the baseline environment and likely evolution in the absence of the development	A detailed description of the baseline environment is included in each of the technical chapters of the EIAR and I am satisfied, is sufficient to enable the assessment of likely effects and to enable decision making. The baseline information relies heavily on the information previously submitted in the parent EIS, however, it also outlines changes in the intervening period where relevant.
A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information, and the main uncertainties involved.	A description of forecasting methods is identified in each technical chapter. Section 1.14 states that no exceptional difficulties were experienced in compiling the necessary information.
A description of the expected significant adverse effects on the environment of the proposed development deriving from its vulnerability to risks of major accidents and/or disasters which are relevant to it.	Likely significant effects of the development on the environment, arising from its vulnerability to risks of major accidents and/or disasters is addressed in Chapter 13 Risk Management.
A summary of the information in non-technical language.	A non-technical summary of the EIAR is provided by the applicant and satisfactorily describes the likely environmental effects of the development.
Sources used for the description and the assessments used in the report.	Sources used for the description and assessment of environmental effects are included in each technical chapter of the EIAR.

A list of the experts who contributed to the preparation of the report.	Experts and relevant qualifications are identified in Table 4-3: 'rEIAR Project Team'- Section 1.10.

11.6. **Compliance**

11.6.1. I am satisfied that the information provided in the rEIAR is sufficiently complete and up to date and that the rEIAR has been prepared by competent experts to ensure its completeness and quality. I am therefore, satisfied that the information contained in the rEIAR adequately describes the direct, indirect and cumulative effects of the proposed development on the environment.

11.6.2. I am satisfied that the information contained in the rEIAR, and supplementary information provided by the developer is sufficient to comply with Article 94 of the Planning and Development Regulations 2001 (as amended).

11.7. **Alternatives**

11.7.1. The issue of alternatives is addressed in Chapter 2 of the rEIAR. I note that Article 5(1)(d) of the 2014 EIA Directive requires:

"(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;"

11.7.2. Annex IV of the Directive (Information for the EIAR) provides more detail on 'reasonable alternatives':

"A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects."

11.7.3. Section 5.8 of the rEIAR outlines 4 no. alternatives considered by the applicant. These are outlined below:

- Alternative Locations
- Alternative Uses
- Alternative Designs and Layout
- Alternative Process

11.7.4. The details submitted relate to alternatives considered in the original EIS for the parent permission. Having regard to the nature of the substitute consent application and the previously permitted quarry at this location, I am satisfied that sufficient information has been provided in this instance.

11.8. Assessment of Likely Significant Effects

11.8.1. In accordance with section 171A of the Act, this assessment includes an examination, analysis and evaluation of the application documents, including the rEIAR, the associated drawings, documents / appendices and the submissions received, and identifies, describes and assesses the likely direct and indirect significant effects, including cumulative effects, of the development on the environmental parameters set out in the Regulations and the interaction of these. Each topic section is therefore structured under the following headings:

- Issues raised in the appeal.
- Examination of the EIAR.
- Analysis, Evaluation and Assessment: Direct and Indirect effects
- Conclusion.

11.9. Population and Human Health

Issues Raised

11.9.1. Issues raised in respect of population and human health relate to impacts on residential amenity, including those arising from dust, noise and effects on health and wellbeing.

Examination of the EIAR

Context

11.9.2. Chapter 4 of the EIAR addresses Population and Human Health, with regard to potential impacts on population and socio-economic status. Other environmental issues with the potential to impact on population and human health, such as air and climate, noise and vibration, landscape and visual impacts, water and traffic are addressed separately in the relevant chapters of the EIAR and the relevant sections of this report. The chapter outlines the methodology used, sources of information and the assessment criteria.

Baseline

11.9.3. The appeal site is located in the townland of Maplestown, Co. Carlow. The existing quarry at this location ceased operating in 2021. It is within a rural area, with a linear pattern of low-density residential development along the surrounding road network. The nearest houses are c. 24m and 38m from the western boundary.

11.9.4. The quarry is located within the Electoral Divisions (ED) of Rahill and Rathvilly. Baltinglass is the closest large town, Between 2006 and 2016, the population increased by 6,583 or 13.1%.

11.9.5. Table 3-7 provides a breakdown of employment by industry for Baltinglass including figures for unemployed. Tables 4-10 and 4-11 show commuting patterns for Baltinglass at work by industry for Ardcath ED and Table 5.3 provides a comparison of the live register figures for the State, Meath and Drogheda. Even though there is a high level of unemployment in the area, the historic and unauthorised development created more local jobs which resulted in a negligible impact on commuter flows.

Potential Effects

11.9.6. Likely significant effects of the development as identified in the EIAR are summarised in the table on the following page.

Table 1: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	The existing quarry would be underutilised and there may be a negative impact on employment.
Construction	No significant effects envisioned.
Operation	Slight short term impact on view from the local road serving the quarry (L8097) – two weeks per year. Slight, medium term impact from increased traffic.
Restoration	No significant effects envisioned.
Cumulative	No significant effects envisioned.

Mitigation

11.9.7. Potential impacts to human health and relevant mitigation measures were addressed in Sections 9.5 (dust), 10.5 (noise), 8.7 (traffic), 11.6 (visual amenity), 7.5 (flora and fauna), 6.7 (water), 5.7 (soils), 12.9 (archaeological heritage) of the original EIS. It is considered that was no adverse impact on local residents or on the local environment due to these mitigation measures. Mitigation measures which took place during the operation of the quarry are also outlined in the various technical chapters of the rEIAR which in will discuss in the relevant sections.

11.9.8. Residual Impacts

11.9.9. Residual Impacts are not considered to be significant in terms of the effect on human beings.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.9.10. I have examined, analysed and evaluated Chapter 4 of the rEIAR and all of the associated documentation and submissions on file in respect of population and human health. I am satisfied that the information submitted in the rEIAR adequately demonstrates an understanding of the potential impacts and provides suitably comprehensive range of mitigation and monitoring measures to reduce any potential impacts.

11.9.11. The information submitted indicates that employment was created in the area during the operational phase of the historic and unauthorised development. I consider that the employment created was low and the impact on the local economy during the operational phase is considered to be neutral.

11.9.12. The potential for significant effects on human health from noise and vibration, air quality (dust) and water quality during the construction, operation and restoration phases are addressed in the relevant chapters of the rEIAR. I have assessed these relevant chapters and am satisfied that these effects can be avoided, managed and mitigated by measures outlined both in the original EIS and in the rEIAR. Serious risks to human health and safety within the quarry are not envisaged as the quarrying activity would continue to be managed in accordance with all applicable legislation and guidelines, including Safety, Health and Welfare at Work (Quarry) Regulations 2008.

Conclusion

11.9.13. Having regard to the examination of environmental information provided in respect of population and human health, in particular in Chapter 4 of the rEIAR it is not considered that there were significant environmental effects on population and human health.

11.10. **Biodiversity**

Issues Raised

11.10.1. The Department of Housing, Local Government and Heritage (DoEHGH) raised an issue regarding water quality and potential risks caused to QI's/SCI's of the River Barrow and Nore SAC. I will address this issue in Section 11.3 - Water.

Examination of EIAR

Context

11.10.2. Chapter 5 of the rEIAR examines biodiversity. The information provides a baseline ecological environment pre extraction in 2006 and post extraction and post infill works in 2012.

11.10.3. The assessment of effects on biodiversity had regard to legal requirements and European, national and industry best practice guidelines.

The assessment included the following:

- Desk study carried out in August 2021
- Habitat surveying mapping and evaluation carried out in May 2006 and August 2021
- Bird surveys carried out in May 2006 and August 2021
- Mammal surveys carried out in August 2021

Baseline

11.10.4. The Baseline information is set out in Section 5.3 of the rEIAR. Table 5-6 provides details of habitat evaluation in 2006 and Table 5-7 provides details of habitats post extraction and infill works in 2021. The habitats and vegetation that occur within the site in both surveys are of low botanical value and local importance. Table 5-8 presents details of the rare and protected flora species obtained from the FPA Bryophytes database. Table 5-9 presents details of 5 species of flora within 10km of the site that are considered to be invasive. No invasive plant species were recorded at the site during the site surveys of 2006 or 2021. Table 5-10 presents records for terrestrial mammals within 10km of the site. No rare or protected mammal species were recorded during site surveys in 2006 or 2021.

11.10.5. Records for 5 species of bat within the grid squares which encompass the site. These species are outlined in Table 5-11.

11.10.6. During the field surveys in 2006, 5 No. species of bird were recorded. During field surveys in 2021, a total of 14 No. species of bird were recorded.

Potential Effects

11.10.7. Likely significant effects of the development are summarised in Table 2 below. Potential effects have regard to the detailed species/ habitat surveys carried out. I note that the assessments carried out did not identify any significant limitations.

Table 2: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	Should the historic extraction and infill works not have proceeded, the lands would have remained in agricultural use.
Construction	The permitted development did not require the construction of permanent buildings. The unauthorised development made use of existing infrastructure.
Operation	Habitat: As extraction and infill works primarily occurred on improved grassland habitat and did not affect hedgerows or treelines, this would not have led to a loss of significant bird habitat and may have led to the creation of habitat for Sand Martin in the exposed cliff faces. Aquatic species: The likelihood of potential significant impacts on aquatic species as a result of historic extraction and infill works was imperceptible due to the mitigation measures which were carried out. Mammals: The historic extraction did not influence hedgerow or treeline habitat and as such, mammals such as hedgehog, hare, and pygmy shrew would not have occurred. The loss of agricultural grassland may have resulted in the loss of a small area of foraging ground however given the availability of this habitat in the wider area the impact of this would have been negligible. Bats: As extraction and infill works were carried out on improved grassland habitat and did not affect hedgerows or treelines, this would not have led to a loss of roosting or commuting habitat for bats. Birds: Historic extraction and infill activities since 2012 occurred primarily on the improved grassland habitat at the centre of the site. The loss of grassland habitat would not have resulted in significant habitat loss for birds.
Restoration	The area was restored using silt and topsoil overburden from the subject site. No material was imported onto the site. As such, it can

	be determined that historic infilling did not have impacts on biodiversity.
Cumulative	No significant effects envisioned.

Mitigation

11.10.8. Section 5.6 of the rEIAR states that mitigation measures were implemented as part of the permitted development. These included mitigation by avoidance- operation of machinery in allocated areas, the containment of extraction and infill activities in a central area of the site, a buffer zone of at least 5m from the drip line of mature trees, and the storage of topsoil in a low-lying area on the site away from the stream. Mitigation by reduction included the containment of fuels within specially constructed bunds, preventative measures to prevent dust blow to areas outlined the delimited preparation areas on dry windy days, and the progressive use of excavated topsoil from an excavated area for the reinstatement of the subsequent phase until the final phase was completed. Remedial measures include the reseeding areas of lost grassland once pit operations were stopped and infilled.

Residual Impacts

11.10.9. Residual Impacts are outlined in Table 5-15 of the rEIAR and are classified into either no impact, imperceptible, negative- localised medium term, imperceptible.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.10.10. I have examined, analysed and evaluated the information provided in Chapter 5 and all the associated documents and submissions on file in respect of Biodiversity. I am satisfied that the information submitted in the rEIAR adequately demonstrates that a comprehensive range of mitigation measures were put in place to reduce any potential impacts both during the period of permitted development and during the period of unauthorised development after 2012.

Conclusion

11.10.11. Having regard to the examination of environmental information in respect of Biodiversity, in particular Chapter 5 of the rEIAR, it is considered that there were no significant environmental effects on biodiversity. Section 5.6 outlines various mitigation measures which were put in place during the operation of the quarry. I am satisfied that the 4.18ha section of the quarry which was worked during the unauthorised development stage was progressively restored using topsoil and overburden from the site. Silts extracted from the settlement lagoons were also used during the restoration process. There was potential for cumulative effects having regard to other quarries in the area, however there is no evidence that there were significant adverse ecological impacts in this regard. Therefore, I am satisfied that subject development did not give rise to significant direct, indirect, or cumulative effects on Biodiversity of the site.

11.11. **Land, Soil, Water, Air and Climate**

11.11.1. The format of my assessment follows the headings as set out in the Planning and Development Act, 2000 (as amended). Having regard to the information provided in the applicant's rEIAR, the following sub-headings are used:

- Soils and Geology
- Water (Surface and Groundwater)
- Air and Climate
- Noise and Vibration

11.12. **Soils and Geology**

Issues Raised

11.12.1. None.

Examination of the EIAR

Context

11.12.2. Chapter 6 addresses the impact on Soils and Geology and considers any direct or indirect effects on these resources arising from the unauthorised development. The site investigation and monitoring locations are shown on Figure 6-2 and the trial pit and borehole logs are provided in Appendix A.

Baseline

11.12.3. The baseline receiving land, soil and geology environment has been established based on site conditions in 2004, prior to the commencement of quarrying activities on the site. The results of previous investigations (EIS, 2004) described the soil follows:

'The site investigations showed that the thickness of topsoil on the site varies from between 0.3 and 0.5m, with between 0.5 to 1m of subsoil on the higher ground. The soils cover a thick deposit of sand and gravel with the thickness of this deposit reaching 6m in places. On the lower ground to the South East of the site, a thick layer of marl was encountered beneath the topsoil and the sandy subsoil layers.'

Site investigations were carried out in 2021 which were broadly consistent with the findings presented in the 2004 EIS. The soils encountered in TP5, TP9 and TP10 are summarised as brown, slightly gravelly, silty fine to medium grained sand with frequent rootlets between 0.1mbGL and 0.3mbGL. The soils encountered in the restored area of the site are described as Made Ground (reworked soils) a maximum depth of 2.8mbGL that comprised of brown sand and silt with varying sand, gravel and cobble content. Detailed descriptions of the soils encountered in the trial hole and borehole logs from this area are in Appendix A.

Typical subsoil deposits are shown in Photograph 6-3. Detailed descriptions of Bedrock described as white granite was encountered during borehole drilling of MW3 at a depth of 16.2mbGL. Borehole logs with details of drilling depths and strata encountered are included in Appendix A.

Potential Effects

11.12.4. Likely significant effects of the development are summarised in Table 3 below.

Table 3: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	Should the historic extraction and infill works not have proceeded, the lands would have remained in agricultural use.
Construction	No construction phase and therefore no identified potential impacts.
Operation	Short term loss of agricultural land but this area has now been restored. Quarrying and associated restoration phase completed and the observed site condition concluded the quarrying and restoration phase resulted in an overall 'neutral, imperceptible and permanent impact on land.' Potential for slope failure within the quarry but investigations carried out in 2021 identified no evidence of instability or subsistence.
Restoration	Restoration of a 4.18 ha section of the quarry took place. No materials were imported into this area and the land is now used for agriculture. Future restoration on the remainder of the quarry excluding this 4.18 ha will be subject to a future application.
Cumulative	Table 6-3 identifies a number of historical quarries mapped by the GSI within 2km of the site. There are no operational quarries mapped by the GSI in this radius and no EPA licenced facilities currently. The most notable cumulative impact is loss of agricultural land resulting from quarrying in the area. However, as the unauthorised works include restoration of the quarry, it is considered that once restoration activities have been completed there will be no overall cumulative impact associated with the unauthorised development.

Mitigation

11.12.5. Mitigation measures are outlined in Section 6.6. It is stated that the impact to land and land stability has been already mitigated with the restoration using surplus stripped topsoil and overburden to ensure that the lands have been restored to suitable agricultural lands. It is proposed that the remaining quarry will be restored as part of the development at the site using imported soil that has been verified to be geochemically suitable soil as per EPA guidelines. It is stated that there are no identified impacts to soil quality or degradation of soils associated with the unauthorised development.

Residual Impacts

11.12.6. Once extraction activities have ceased, the site will be subject to a long-term restoration plan which will be subject to an additional planning application therefore resulting in a neutral or imperceptible impact.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.12.7. The unauthorised quarrying activities within the substitute consent area has resulted in the loss of a geological resource and the temporary loss of land for agricultural purposes. However, the area has since been restored and the lands within the restored area are now used for agricultural purposes. The quarrying and restoration activities that have taken place to date are unlikely to have resulted in significant impacts on lands, soils and geological environmental factors. I concur with the rEIAR that there has been an unavoidable loss of sand and gravel from the site associated with the extraction of sand and gravel and the permanent removal of up to 192,000 tonnes of sand and gravel from the site. This is described as a negative, significant and permanent impact.

Conclusion

11.12.8. Having regard to the examination of environmental information in respect of Soil and Geology, I am satisfied that existing development will not give rise to significant direct, indirect, or cumulative effects on Soils and Geology of the site.

11.13. **Water (Surface and Groundwater)**

Issues Raised

11.13.1. The HSE and the DoHLGH both note that there is no evidence of compliance with the conditions in relation to water quality and groundwater monitoring of the parent permission.

Examination of the EIAR

Context

11.13.2. Chapter 7 addresses the impact on Water and considers any direct or indirect effects on this resource. A desktop study was carried out of the site. In addition, a walkover survey, site investigations and monitoring were carried out on the 14th, 18th and 21st and 22nd of October 2021. The site investigations and monitoring locations are indicated in Figure 7-2.

Baseline

11.13.3. The baseline receiving hydrological and hydrogeological environment was established on site conditions in 2004. The baseline receiving environment has also been established for the current receiving environment.

11.13.4. The closest water feature to the site is recorded on the EPA database as the River Graney and is located c.0.6km north of the northwest portion of the site and 0.17km west of the western boundary of the site. The River Graney flows west before discharging to the River Lerr approximately 5.76km west and downstream of the site. The River Lerr continues to flow west, discharging to the River Barrow approximately 13.3km west of the site.

The Broadstown Stream is recorded on the EPA database approximately 0.07km south of the site. The Broadstown Stream flows west before discharging to the River Graney approximately 0.27km west of the site. There are land drains installed on the site and adjoining lands that discharge to the open drain at the eastern boundary of the existing quarry that subsequently discharges to the Broadstone Stream. The local surface water features within a 2km radium are presented in Figure 7-5 and Figure 7-9 of the rEIAR. The EPA surface water quality monitoring data ratings for 'Bridge in Graney', the closest monitoring station downstream is presented in Table 7-12.

11.13.5. Flooding: There are no historical records of fluvial, coastal/tidal, pluvial and/or groundwater flooding at the site.

11.13.6. Aquifer Vulnerability Rating: The aquifer beneath the site is mapped as a locally important bedrock aquifer which is moderately productive only in local zones.

11.13.7. The GSI Groundwater Vulnerability Map is presented in Figure 7-11. The GSI has assigned a groundwater vulnerability rating of 'High' for the groundwater beneath the site.

11.13.8. Likely significant effects of the development are summarised in Table 4 below.

Table 4: Summary of Potential Effects

Project Phase	***Potential Direct, Indirect and Cumulative Effects***
Do Nothing	Quarrying activities would have ceased in 2012 and the potential positive impact on the groundwater vulnerability in the restored area of the quarry would not have occurred.
Construction	No construction phase for unauthorised development.
Operation	At the time of the site walkover in 2021, all quarrying related operations had ceased. Progressive restoration of the quarry occurred using any surplus material on site and not suitable for sale. It is considered that this had a 'positive' impact on the groundwater vulnerability of the underlying aquifer. Groundwater monitoring and sampling were undertaken from on-site groundwater monitoring wells in October 2021. There were no impacts on groundwater identified. There is no change in the WFD classification for the New Ross GWB between 2007 and 2018.
Restoration	The sump would be removed and the water level in the void would return to its natural level, which is estimated to be c. 125m OD. There would be no drainage / discharge from the site. No significant effect is expected. The restoration of the existing quarry will have an overall 'positive', 'slight' and 'permanent'

	impact on underlying groundwater and receiving surface water environment.
Cumulative	There were no cumulative impacts identified as a result of the unauthorised development.

Mitigation

11.13.9. Mitigation measures set out include:

- Water for washing of aggregates was sourced from the existing sump at the southern section, which was excavated to below the water table as authorised by the parent permission ABP Ref. PL01.221741. Water was pumped from this sump to the screening and washing plant. Wash water from the washing and screening plant was directed to 3 No. existing interlinked man made settlement lagoons. The cleaned processed water was then directed back to the sump by gravity.
- Water for the wheel wash and dust suppression was sourced from the onsite groundwater sump used for authorised quarry development.
- All trucks exiting the development site were required to pass through the existing wheel wash at the entrance. It was regularly cleaned out by a vac-tanker and transported off-site by a suitably licenced waste contractor.
- Water was not extracted from surface water courses.
- There were no direct discharges to ground or surface water from the quarry operations.
- Storage of fuel within bunded diesel tanks.
- Buffer of 0.7m between stockpiled materials on site and surface water receptors.

Residual Impacts

11.13.10. The assessment concludes that the existing development had no significant effects on hydrology and hydrogeology.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.13.11. I have examined, analysed and evaluated the information provided in Chapter 7 and all the associated documents and submissions on file in respect of Water.

11.13.12. It is considered that groundwater beneath the site is hydraulically connected with the Broadstown stream. Groundwater monitoring and sampling was undertaken in October 2021. With the exception of ammonia, which is attributed to off site impacts (agriculture), the groundwater analytical results were observed to be less than the applicable SW EQS and hence there was no potential impacts to surface water identified as a result of unauthorised activities.

11.13.13. I note that the report from the HSE states that there does not appear to be any monitoring data in the rEIAR. There is no evidence that the applicant has complied with water monitoring conditions of the parent permission. The report from the Department of Housing, Local Government and Heritage makes a similar point and notes that there is no evidence of compliance with conditions 10, 20 and 21 including any historic water quality sampling or evidence of monitoring, inspection and maintenance of water quality mitigation measures. This information was circulated to the applicant and a response has been submitted to the Board. It is stated that the applicant has only recently acquired the site and had no involvement with the site during its time of operation (prior to 2019) and has no access to any monitoring that may have been carried out. It is stated that having regard to EPA Q values (enclosed with response and available on EPA website), there has been no significant reduction or fluctuation in water quality before, during, or after extraction works. Therefore, it can be assumed that surface water mitigation measures implemented during the works were effective in protecting local water quality.

11.13.14. I share the views of the HSE and Department of Housing, Local Government and Heritage and consider both that the rEIAR would have been better informed if such information was available, and that there is no evidence that the previous quarry operator complied with the water quality conditions of the parent permission. I note that the observation stated that the original landowner was the applicant's mother. Notwithstanding this information, the response to the Board makes clear that this information is not available. The applicant purchased the site in 2019 which was towards the end of the unauthorised period.

11.13.15. I consider that it is very regrettable that historic water monitoring results are not available, however I would tend to concur with the applicant that the recent sampling carried out in 2021 and the results available from the EPA water monitoring station 2.6km downstream from the site, indicates that there was no adverse overall impact on water quality during a very long period of time both when the quarry was authorised and when the quarry operated without permission.

11.13.16. I note that there was no change in the WFD classification for the New Ross GWB between 2007 and 2021. The groundwater elevation between the existing quarry was measured at between 111.5mOD and 112.5mOD on the 22nd of October 2021. With the exception of the authorised sump permitted under the parent permission, which was used to supply water to the washing and screening plant, excavation works did not extend below 115mOD. Therefore all works were undertaken above the existing quarry level with no requirement for dewatering and no impact on the local groundwater and groundwater flow regime. The design and finished floor level of the lagoons and sump were such that treated wash water during processing of aggregates were gravity fed back to the sump. The rEIAR considers that any potential impacts on the groundwater resource and groundwater flow regime were within a very localised zone and I concur with this.

Water Framework Directive

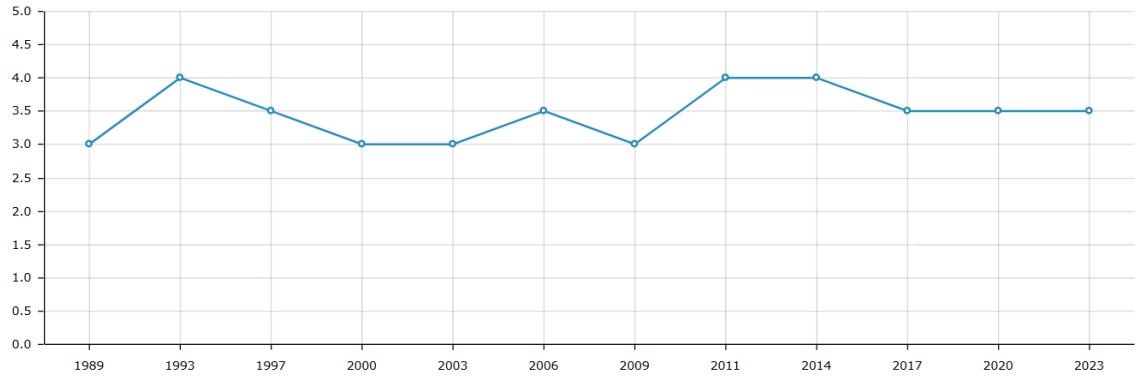
11.13.17. Surface Water

The quarry is located within the Graney (Lerr)_010 waterbody for surface waters which has a WFD rating of 'At Risk' in WFD Cycle 3. Monitoring data from monitoring station RS14G070200, the closest downstream station is as follows:

Monitoring Station: RS14G070200

Code	**RS14G070200**	Monitoring Type	**RIVER_STATION**
Station	**Br in Graney**	Easting	**281718.78**
Station Type	**Operational**	Northing	**183957.33**

Q Value - Chart



	1989	1993	1997	2000	2003	2006	2009	2011	2014	2017	2020	2023
Result	3	4	3.5	3	3	3.5	3	4	4	3.5	3.5	3.5

Whilst it is evident from the above graph that there has been some fluctuation during the last number of years with a change in WFD status in Cycle 2 from 'Not at Risk' to 'At Risk' in Cycle 3, the overall trend shows that the results have been relatively stable since monitoring began in 1989. The identified pressures for Cycle 3 are agriculture, hydromorphology and extractive industry. The EPA information available in relation to Cycle 3 identifies that the EPA surveying biologist noted significant cover of Cladophora, and presence of Leptodictium riparium, which are indicative of nutrient enrichment. There is intensive dairy and tillage farming in the vicinity of the site which could explain the high levels of algae and elevated nitrate and the deterioration of the water quality relating to agriculture in this cycle. I note that siltation is considered to be a minor issue. I note that no blasting occurred at the site either during the permitted period or the period of unauthorised development which would have had a beneficial impact on water quality in terms of a reduction of sediment typically associated with quarries and the potential deterioration of water quality. Having regard to the overall trends both during the period when the quarry had permission and during the period the quarry was operating without permission, I

am satisfied that the historic development will not impede the objective of achieving good status of surface water body.

Groundwater

The quarry in question is located within the New Ross groundwater waterbody. This achieved good status in both WFD Cycle 2 (2013-2018) and WFD Cycle 3 (2016-2021) and was not at risk in either of the cycles.

The information presented in the rEIAR considered that any potential impacts on the groundwater resource and groundwater flow regime occurred within a very localised zone and there was no significant impact on groundwater from the unauthorised activities from 2012-2021. There has been no diminution of quality or quantity of ground water or impact on the 'good' ecological status in my view from an examination of both the EPA data and the information presented in the rEIAR. I note that all works were undertaken above the existing quarry level with no requirement for dewatering and no impact on the local groundwater and groundwater flow regime. The design and finished floor level of the lagoons and sump were such that treated wash water during processing of aggregates were gravity fed back to the sump.

In conclusion, whilst there is some fluctuation in terms of the surface water quality over a long number of years, I do not consider that the unauthorised development has resulted in any significant changes to water quality during the review period. Similarly, there has been no significant impact on groundwater quality and quantity from the quarrying activities at the site in question during the review period.

Conclusion

Based on the above and taking into account the mitigation measures put in place, I consider that it is reasonable to conclude that the historic quarrying activities are unlikely to have resulted in adverse impacts or surface or groundwater.

11.14. **Air and Climate**

Issues Raised

11.14.1. The third party has raised concerns regarding the impacts of dust on his equine business. The HSE raised concerns regarding the absence of monitoring and compliance with conditions of the parent permission. Further, it considered that the rEIAR would have been better informed had monitoring information been included.

Examination of the EIAR

Context

11.14.2. Chapter 8 of the EIAR assesses the likely impacts of the existing development on air quality and climate. The chapter outlines the methodology used, sources of information, and the assessment criteria.

Baseline

11.14.3. Air quality and climate baselines were established as part of the Environmental Impact Statement which was compiled for the existing quarry. The investigation also explored potential impacts relating to air quality arising from the unauthorised works. No monitoring in the vicinity of the site was routinely undertaken for air pollutants regulated under the Air Quality Standard Regulations. Table 8-2 indicates existing baseline air quality for the area in which the site is located and is characterised as being of good quality with no exceedances of the Air Quality Regulations limit value of specific pollutants.

Potential Effects

11.14.4. Likely significant effects of the development are summarised in Table 5 below.

Table 5: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	Unauthorised activity has already occurred. The site would continue to exist in its current physical capacity with no restoration.
Construction	No construction activity during unauthorised works.

Operation	Figure 8-4 indicates sensitive receptors within 100m of the site. No dust nuisance is predicted to have occurred as a result of the operation of the facility to the nearest residential receptors. The assessment has concluded a negligible impact on all sensitive receptors. It is likely that combustion activities from onsite machinery and traffic derived pollutants of CO_2 and N_2O were emitted during the operation phase of unauthorised development. Due to the overall size and magnitude of site activities, and the mitigation measures, no significant increases in greenhouse gas emissions occurred.
Restoration	No significant impacts.
Cumulative	Potential cumulative impacts of dust in combination with other quarries in the area.

Mitigation

11.14.5. Section 8.5 states that as the operational phase has ceased, no future mitigation measures are proposed.

Residual Impacts

11.14.6. The impact on air quality and climate are not significant and no residual impact is anticipated.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.14.7. I have examined, analysed and evaluated the information provided in Chapter 8 and submissions on file in respect of Air and Climate.

11.14.8. The main issues identified in the submission from the HSE are that the applicant did not submit information in relation to monitoring of dust activities during the authorised operation, 2007 to 2012 which would have shown compliance with the conditions of the parent permission and informed the rEIAR. Concern is also raised that there is very little information submitted for the period after the unauthorised activity took place – i.e post 2012.

11.14.9. The third party objection raised concerns in relation to excessive dust and states that he has an equine business and his horses have respiratory problems due to dust. I observed the location of the dwelling in the ownership of the third party on the site inspection and note that it is not the dwelling mapped on the map attached to the observation. It is located on the opposite side of the road c. 185m from the closest point of the lands outlined in red on the site layout map submitted with the application.

The response submitted on behalf of the applicant indicates that the applicant has only recently acquired the lands c. 2019 and has no access to monitoring which may have been carried out at the quarry during its time of operation. I note that minimal information is provided in the rEIAR regarding mitigation measures carried out during the period of unauthorised activity. Notwithstanding this, I note that the objector's dwelling is a considerable distance (c.185m) from where unauthorised activities took place. I am satisfied that the map submitted to the Board in the response from the applicant dated the 9th of February 2022 is accurate in this regard. Having regard to the distance between the objector's property and the road and trees and hedgerow between both properties, I am satisfied that the impact of dust on this property is not significant.

11.14.10. I share the views of the HSE and consider firstly that the rEIAR would have been better informed if dust monitoring was available, and secondly, that there is no evidence that the previous quarry operator complied with the dust monitoring or environmental audit conditions of the parent permission. I consider that it is very regrettable that historic dust monitoring results are not available. The response to the Board on behalf of the applicant points out that no known non-compliance or enforcement notices relating to dust or any other environmental impacts were issued to the operator when the facility was operational and no complaints were made to the Council. The rEIAR notes that in the absence of quantitative data, there is no evidence to support or disprove that there may have been some generation of dust emissions in the past.

11.14.11. I have reviewed the information submitted and whilst there are inadequacies in the information provided as outlined above, there is no evidence available that significant dust impacts were caused as a result of quarry operations. There is potential for CO_2 emissions associated with vehicles generated by the quarrying activity to impact

climate however, there would have been a marginal change in traffic volumes as a result of unauthorised activities.

Conclusion

Air Quality

11.14.12. Having regard to information available to me, I consider that it is reasonable to conclude that the previous quarrying activities within the substitute consent area, the subject of this application were unlikely to have resulted in significant impacts on air quality.

Climate

11.14.13. The marginal change in traffic volume and movements associated with the unauthorised development were unlikely to have resulted in significant impacts on climate.

11.14.14. Therefore, I am satisfied that subject development will not give rise to significant direct, indirect, or cumulative effects on air quality or climate.

11.15. Noise and Vibration

Issues Raised

11.15.1. Concerns are raised by the third party regarding noise from the quarrying activities. Concerns were also raised by the HSE that the rEIAR does not include noise monitoring results carried out during the unauthorised operational activities. It is also considered that the baseline information is incorrect as it is based on data from 2002/2003 when the original EIA was carried out.

Examination of the EIAR

Context

11.15.2. Chapter 9 of the rEIAR retrospectively assesses the impacts of the existing and unauthorised development on Noise and Vibration. The chapter outlines the methodology used, sources of information, and the assessment criteria.

Baseline

11.15.3. The location of the quarry was screened to determine if it is located in or near an area that could be considered a 'Quiet Area' in open countryside according to EPA criteria. It did not meet the criteria set out in EPA Guidance, NG4 as it is within 390m of Keatley Concrete Ltd. and 2.7km from the N81.

11.15.4. There are a number of noise sensitive receptors within the vicinity of the site. Figure 9-2 identifies a total of 11 noise sensitive locations within 250m of the site. As part of the original EIS noise measurements were carried outside the houses to the southwest corner, to the west and northwest of the site and outside the school to the south west corner. A traffic and access assessment were carried out as part of the original EIS and this assessment concluded that although the development would cause an increase in traffic movements, there would be no significant negative traffic impacts.

Potential Effects

11.15.5. Likely significant effects of the development are summarised in Table 6 below.

Table 6: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	The quarry would have ceased operations in 2012. Noise and vibration levels would not have given rise to any noise disturbance.
Construction	Construction phase was already complete by 2012.
Operation	Table 9-5 indicates plant and equipment associated with historical activities and corresponding noise values. No blasting carried out. The modelling indicates that noise levels would sometimes exceed the criterion of 55dB $L_{Aeq, 1hr}$ set out in Condition 6 of the parent permission of PL 01.221741. It is stated that there are a number of treelines and hedgerows along the boundaries of the site and on intervening lands between the site and the nearest noise sensitive locations. Taking account of local terrain, predicted noise levels at

	the closest noise sensitive locations are expected to be lower than actual noise levels outlined in Table 9-5.
Restoration	No details submitted.
Cumulative	There is an operational sand and gravel quarry located c. 390m to the west of the development. Section 9.5.3 concluded that noise from facility operators will not cause adverse impacts at nearby sensitive receptors. Therefore, there was no potential for cumulative effects to arise.

Mitigation

11.15.6. Section 9.6 outlines mitigation measures as follows:

- Selection of plant with low inherent potential for generating noise.
- Siting of plant as far away from sensitive receptors as permitted by site constraints.
- Avoidance of unnecessary revving of engines and switch off plant items when not required.
- Plant, machinery and vehicles were adequately maintained and serviced.
- Proper balancing of plant items with rotating parts occurred.
- Internal routes were well maintained and avoid steep gradients.
- Drop heights for materials were minimised where possible.
- Alternative reversing alarm systems on plant machinery used where possible.
- Limited the hours during which site activities likely to create high levels of noise are permitted.

Residual Impacts

11.15.7. No residual impacts were identified.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

I have examined, analysed and evaluated the information provided in Chapter 9 and all the associated documents and submissions on file in respect of Noise and Vibration. I have inspected the site and the surrounding area. I also had regard to relevant policy and objectives of the Carlow County Development Plan 2022-2028.

11.15.8. Section 3.2 of the Quarry Guidelines notes that extractive industries are associated with many noise-generating activities including the removal of topsoil and overburden, excavation with machinery, drilling and blasting of rock, crushing and screening of aggregates, transport of raw materials and finished products within the site and on public roads. The Quarry Guidelines and the EPA's Environmental Management in the Extractive Industry set out a recommended standard of 55dB(A) LAeq (1 h) for daytime noise and 45dBA LAeq (1h) for night-time at the nearest sensitive receptor. The guidelines also note that it may be appropriate to permit higher noise ELVs (Environmental Limit Values) for short-term temporary activities such as construction of screening bunds, etc, where these activities will result in a considerable environmental benefit.

11.15.9. This substitute consent case relates to activity from 2012 to c. 2021. Condition 6 of the parent permission required that noise levels attributable to the operation of the entire quarry complex, when measured at the nearest noise sensitive locations, shall not exceed 55dB(A) LAeq (1h) during permitted operating hours and shall not exceed 45 dB(A) (15 minute LAeq) at any other time. The information submitted indicates that during the period of unauthorised activity, noise levels did sometimes exceed 55dB(A) LAeq (1h). There are a number of dwellings within 100m where the majority of the exceedance occurred, but these are located close to a local road and a significant distance from the area where the majority of the quarrying and restoration activity occurred post 2012.

11.15.10. I note that the objectors dwelling is c. 185m from the quarry boundary. The activities post 2012 would have been closest to his farm and equine business. I note that the rEIAR states that the actual noise levels are expected to be lower than shown in Table 9-5 due to treelines and hedges along the boundaries and on intervening lands between the site and the closest noise sensitive locations. On the site inspection I

noted that there was considerable tree coverage in the area together with a local road between the objectors dwelling and the site.

11.15.11. Taking into account the noise emissions set out in Table 9-5, for both 150m and 200m (the closest distances to 185m) the levels were generally either below or only slightly exceeded 55dB(A) LAeq (1h) as set out in condition 6 of the parent permission.

11.15.12. I note that condition 6 of the parent permission required a quarterly noise survey and assessment programme be undertaken to assess the impact of noise emissions arising from the operation of the entire quarry complex. The rEIAR does not provide any evidence of compliance with this condition.

11.15.13. The response to the Board submitted on behalf of the applicant states that the applicant only recently acquired the quarry and had no involvement with the quarry while the facility was operational. The applicant does not have any access to monitoring that may have been carried out while the facility was operational. The original EIS predicted that there would be no significant noise impact at the nearby receptors. The rEIAR confirms that it is unlikely any significant noise or dust impacts were caused as a result of the quarry operations using noise calculations. It is further stated that no noise complaints were made to Carlow County Council during the period of operation.

11.15.14. It is very regrettable that noise monitoring results are not available to the Board. This would no doubt have greatly aided the rEIAR. The applicant has indicated that no complaints were received by Carlow County Council regarding the impacts of noise or vibration and the report from the Council has not indicated any issues with noise or vibration. It is noted that there was some impact from noise on the objector's property but having regard to the separation distance from the property and the mitigation measures carried out, this would not have been significant in my view.

Conclusion

11.15.15. I am satisfied that the information submitted in the rEIAR adequately demonstrates an understanding of the potential impacts on noise within the appeal site. Overall, I am of the opinion that it is reasonable to conclude that the unauthorised activities within the site did not result in any significant noise or vibration impacts and that no significant

adverse impact arose for sensitive receptors from the operations within the substitute consent area in relation to noise and vibration.

11.16. Material Assets, Cultural Heritage and the Landscape

11.16.1. The format of my assessment follows the headings as set out in the Planning and Development Act, 2000 (as amended). Having regard to the information provided in the applicants EAIR the following Sub-headings are used:

- Material Assets – Traffic
- Material Assets – Waste Management
- Archaeology and Cultural Heritage
- Landscape and Visual Assessment

11.17. Material Assets – Traffic

Issues Raised

No issues raised by any party to the substitute consent application in respect of traffic.

Examination of the EIAR

Context

11.17.1. Section 12.1 of the rEIAR deals with Traffic. It assesses the impact of operational traffic generated by the existing development on the receiving environment. The chapter outlines the methodology used, sources of information and the guidance documents that have informed the assessment.

Baseline

11.17.2. The unauthorised development is located to the east of the L8097 at Maplestown, Co. Carlow. The site is accessed via a priority-controlled junction with the L8097 to the west of the site. The site access junction measures c. 8.5m wide, with the existing site access gate set back c. 22m from the road edge. The internal site layout is characterised by a series of unpaved internal haul roads, providing access to various parts of the quarry.

11.17.3. The road network surrounding the quarry has a poor vertical and horizonal alignment and a narrow carriageway. A number of photographs – Figure 12-4, Figure 12-5 and Figure 12-6 indicate the condition of the road network surrounding the site.

11.17.4. Road collision statistics set out in Section 12.1.4.4 indicate that data from the Road Safety Authority shows that no collisions occurred during the period 2005- 2016 inclusive.

11.17.5. Traffic counts were carried out to determine baseline traffic conditions on the road network adjacent to the site on the 5th of August 2021. The survey junctions and results are illustrated in Figure 12.7. To account for COVID 19 pandemic and restrictions in place at the time, the results were factored upwards based on traffic counts from a permanent Transport Infrastructure Ireland counter in the area. These adjusted results are reflected in Table 12-3. Based on the recorded 24 hour traffic flows, weekly average daily traffic and adjusted result to account for COVID restrictions, a baseline of traffic levels in the area is set out in Table 12-5.

Potential Effects

11.17.6. Likely significant effects of the development are summarised in Table 7 below.

Table 7: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	No change to traffic in the area.
Construction	No construction phase.
Operation	The original EIS considered that whilst there would be an increase in traffic as a result of the sand and gravel pit, the junctions that are significantly affected would operate well within their capacity. In considering the conclusions of the original EIS along with the accident statistics for the surrounding road infrastructure and the existing condition of the adjoining road infrastructure it is concluded that the unauthorised development did not result in any permanent negative traffic related impacts.

Restoration	The quarry would no longer operate and therefore would not generate any vehicular trips.
Cumulative	No cumulative impacts are envisioned.

Mitigation

11.17.7. Prevention and mitigation measures are provided in Section 12.6 of the EIAR. They included:

- Junction improvement works identified in the original EIS were carried out since the original EIS.
- No remedial measures were undertaken or are proposed to be undertaken by the applicant with respect to unauthorised development.

Residual Impacts

11.17.8. Marginal increase in both light vehicles and HGV's due to the operation of the development. Overall, the impact on traffic capacity is considered to be imperceptible.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.17.9. I have examined, analysed and evaluated the information provided in Chapter 12 and all associated documents. I am satisfied that the information submitted in the rEIAR adequately demonstrates an understanding of the potential impacts on the surrounding road network. I am satisfied that there is no potential direct, indirect or cumulative impacts as a result of this substitute consent application.

Conclusion

11.17.10. The local road network appears to have accommodated traffic associated with the quarry during the time of unauthorised development. There were no particular issues identified with traffic during the original EIS and in the meantime, a number of quarries in the area have closed and junction improvements have been made to a particular junction serving the site. No issues have been raised by any party to the application in

respect of traffic. Having regard to the location of the site in a rural environment and the negligible increase in HGV and other traffic generated, I am satisfied that there is no potential for any significant direct, indirect or cumulative effects on material assets as a result of the existing development.

11.18. ***Material Assets – Waste Management***

Issues Raised

11.18.1. No issues raised by any party to the substitute consent application in respect of waste.

Examination of the rEIAR

Context

11.18.2. Section 12.2 of the rEIAR addresses Waste Management.

Baseline

11.18.3. Prior to the development of a sand and gravel quarry, the site was a greenfield site and had no waste management requirements. A small quantity of non hazardous canteen waste was generated by historic operations and collected by an appropriately authorised waste collector prior to being sent for recycling, recovery, or disposal to a suitably licensed or permitted waste facility.

Potential Effects

11.18.4. Likely significant effects of the development are summarised in Table 8 on the following page.

Table 8: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	Impacts of 'Do Nothing' Scenario' not considered having regard to the nature of the substitute consent application which relates to existing development.
Construction	No construction works occurred during the substitute consent period.
Operation	Minimal waste produced which was less than 1 tonne per year of non-hazardous canteen waste. This was stored on site in wheelie bins and collected by an authorised waste collector.
Restoration	The topsoil that was excavated from the site was stored on site and used for reinstatement purposes.
Cumulative	No cumulative impacts envisioned

Mitigation

11.18.5. No mitigation measures are identified, and no remedial measures are outlined.

Residual Impacts

11.18.6. Residual impacts are not envisioned.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.18.7. I have examined, analysed and evaluated the information provided in Chapter 12 and all the associated documents and submissions on file in respect of Waste Management. I am satisfied that the information submitted in the rEIAR adequately demonstrates an understanding of the potential impacts and illustrates that there are no potential impacts and no mitigation measures or remedial mitigation measures are required.

Conclusion

11.18.8. Having regard to the examination of environmental information in respect of Waste Management, and the minimal levels of waste produced on the site, I am satisfied that the subject development will not give rise to significant direct, indirect, or cumulative effects on Waste Management.

11.19. **Archaeology and Cultural Heritage**

Issues Raised

11.19.1. No issues raised by any party to the substitute consent application in respect of archaeology or cultural heritage.

Examination of the EIAR

Context

11.19.2. Chapter 11 of the rEIAR retrospectively addresses Archaeology and Cultural Heritage. The assessment involved a desktop study/ paper survey which considered all available archaeological, architectural, historical, and cartographic sources.

The information was used to assess any potential impact on the receiving environment and to identify measures to ensure the conservation of any monuments or features.

Baseline

Archaeological Heritage

11.19.3. Archaeological and historical sources were investigated as part of the EIS which was compiled for the existing quarry. The investigation found that no recorded monuments within the site. There are 3 No. ringforts and 6 No. enclosures located within a 2km radius of the unauthorised development. These are indicated in Figure 11-1.

Architectural Heritage

11.19.4. There are no protected structures or buildings listed on the NIAH within the study area. The site does not lie within the vicinity of any Architectural Conservation Area. The National Inventory of Architectural Heritage was reviewed in order to identify any buildings/ features or architectural significance within 2km of the site. There are 2 No. buildings of architectural significance located within 2km of the site, a school 200m south of the site and a farm house, 1.4km west of the site.

Cultural Heritage

11.19.5. There are no specific cultural heritage sites situated within the study area.

Potential Effects

11.19.6. Likely significant effects of the development are summarised in Table 9 below.

Table 9: Summary of Potential Effects

Project Phase	Potential Direct, Indirect and Cumulative Effects
Do Nothing	Impacts of 'Do Nothing' Scenario' not considered having regard to the nature of the substitute consent application which relates to existing development.
Construction	No construction works occurred during the substitute consent period.
Operation	Since no known archaeological, architectural or cultural heritage remains were found during the desk top survey or quarrying, no operational impacts occurred.
Restoration	No impacts identified.
Cumulative	No impacts are anticipated.

Mitigation

11.19.7. No mitigation measures are identified, and no remedial measures are outlined.

Residual Impacts

11.19.8. No residual impact on archaeology, architectural or cultural heritage.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.19.9. I have examined, analysed and evaluated the information provided in Chapter 11. Since no known archaeological, architectural, or cultural heritage remains were found during the desk top survey or during quarrying or restoration of lands, I am satisfied that there is no potential for any significant direct, indirect or cumulative effects on biodiversity as a result of the substitute consent development.

Conclusion

11.19.10. Having regard to the examination of the information in Chapter 11 in respect of Archaeology and Cultural Heritage, I am satisfied that the substitute consent development will not give rise to significant direct, indirect, or cumulative effects on Archaeology and Cultural Heritage.

11.20. **Landscape and Visual Assessment**

Issues Raised

11.20.1. No issues raised by any party to the substitute consent application in respect of landscape and visual impacts.

Examination of the EIAR

Context

11.20.2. Chapter 10 of the rEIAR comprises a Landscape and Visual Impact Assessment (LVIA). It describes the landscape context of the appeal site and assesses the likely impacts of the scheme on the receiving environment. The chapter outlines the methodology used, sources of information and the assessment criteria. It includes photographs of 6 viewpoints in the area. The location of these viewpoints is indicated on Figure 10-8.

Baseline

11.20.3. The Landscape Character Assessment as set out in the Carlow County Development Plan identifies the site as being located within a Landscape Character Area designated as 'Central Lowlands'. This landscape is primarily rural with medium to quiet large fields defined by low hedges and occasional to frequent hedgerow trees. It has the capacity to absorb most types of development subject to the implementation of appropriate mitigation measures.

11.20.4. A Landscape Sensitivity Map within the Landscape Character Assessment of the Development Plan indicates that the site has a sensitivity of 4. According to the Land Use Capacity Matrix, the unauthorised development lies on lands that have a 'moderate' capacity to accommodate extractive industry. There are no scenic routes or scenic views within the vicinity of the site.

11.20.5. The LVIA considers that the historic development will not negatively impact the central lowlands area retrospectively as it has respected the natural amenity and character of the area.

Potential Effects

Table 10: Summary of Potential Effects

Project Phase	**Potential Direct, Indirect and Cumulative Effects**
Do Nothing	The area of improved agricultural grassland would have remained in agricultural use.
Construction	No construction of permanent buildings undertaken.
Operation	Imperceptible visual impact on nearby receptors.
Restoration	Imperceptible visual impact on nearby receptors.
Cumulative	No cumulative impacts were identified.

Mitigation

11.20.6. Section 10.6 states that as the landscape and visual impacts of the unauthorised development did not cause any significant long-term impacts on the surrounding

environment or visual amenities, it is not foreseen that any avoidance, remedial or mitigation measures will be required for the unauthorised development.

Residual Impacts

11.20.7. The unauthorised development is not considered to give rise to any significant residual impacts.

Analysis, Evaluation and Assessment: Direct and Indirect Effects

11.20.8. I have examined, analysed and evaluated the information provided in Chapter 10. I have inspected the site and the surrounding area. I am satisfied that the applicants submitted viewpoints within Chapter 10 allow for a realistic visualisation of the impact of the existing development. I have had regard to the new Development Plan- Carlow County Council Development Plan 2022-2028. There are no significant changes as the Landscape Character Assessment in Appendix 2b VII identifies that the lands are similarly located in Central Lowlands which is deemed to be moderately sensitive to development.

11.20.9. The surrounding landscape is rural undulating landscape with large fields and low hedgerows. There is mounding around the site at the front. The quarrying and restoration activities took place within a clearly defined and well screened area of the site. There is good tree cover in the area and other than very minimal views from the road to the south and from the quarry entrance itself, it is difficult to view the quarry in the area.

11.20.10. Quarrying was permitted in this location previously and the unauthorised development continued the use of the quarry after the permitted period. Lands were restored back to agricultural use after the quarrying ended.

11.20.11. I agree with the LVIA that, given the existing quarry on the site, the significance of the impact of the unauthorised development would be imperceptible.

Conclusion

11.20.12. I have had regard to the examination of environmental information in respect of Landscape and Visual Impact, in particular the rEIAR including the viewpoints submitted by the applicant. No concerns have been raised by any party regarding visual or landscape impacts. Having regard to the established use of the lands as a quarry and the restoration of part of these lands to agricultural use, and the existing topography and landscaping in the area, I am satisfied that there is no potential for any significant direct, indirect or cumulative effects on landscape or visual amenity as a result of the existing development.

11.21. ***Interaction and Cumulative Effects***

Issues Raised

11.21.1. None.

Examination of the rEIAR

Context

11.21.2. Chapter 14 of the rEIAR addresses the main interactions between the various aspects of the environment that may have been affected as a result of the quarry development. It is stated that interactions between impacts on different environment factors is address throughout the rEIAR. The principal interactions requiring information exchange between the environmental specialists and the design team are summarised in Table 14-2 to Table 14.10 (by topic).

Potential Effects

11.21.3. Quarrying can give rise to inevitable and unavoidable impacts on the environment and many of these interact with each other. The main areas of concern identified in the tables relates to the effects of the extraction and processing works on population and human health, hydrology and hydrogeology, and the interaction with soils and geology and surface water processes and biodiversity.

11.21.4. As the development is unlikely to have had a significant effect on the environmental factors assessed above, there are no other significant effects on the environment

that are likely to arise from the development due to the interaction between those factors.

Residual Effects

Any potential interactive negative impacts have been identified and are addressed by the mitigation measures included in the relevant sections of the rEIAR, with residual effects as presented in each relevant chapter.

Mitigation

11.21.5. Chapter 15 of the rEIAR provides a summary of environmental mitigation and monitoring measures. I am satisfied that the mitigation measures provided represent best practice to avoid or minimise potential impacts. It is noted that no remedial mitigation or monitoring measures are required.

Assessment/ Conclusion

11.21.6. I have examined, analysed and evaluated Chapter 15 of the rEIAR and the associated chapters of the rEIAR. I am satisfied that the applicant has identified the key interactions arising for the subject development.

11.22. **Risk Management**

Issues Raised

11.22.1. None.

Context

11.22.2. The EIS prepared for the historic development did not examine this issue as there was no requirement at the time. Chapter 13 of the rEIAR seeks to assess the expected effects of the project to risk of major accidents and disasters relevant to the project. In terms of methodology, Section 13.1.3 outlines the criteria used. The assessment reviewed:

- *The vulnerability of the project to major accidents or disasters.*

- *The potential for the project to cause risks to human health, cultural heritage and the environment, as a result of that identified vulnerability.*

11.22.3. A methodology has been used which includes the following phases:

Phase 1 Assessment: The DOD Consolidated List of National Hazards was used to identify a preliminary list of potential major accident and disasters.

Phase 2 Screening: The list was screened and major events such as volcanoes were not included given the unlikely event of one occurring.

Phase 3: Mitigation and Evaluation: In the event that mitigation measures included did not mitigate against the risk, then, the potential impacts on receptors are identified in the relevant chapter. Table 13.2 lists the major accidents and disasters reviewed.

Residual Effects

11.22.4. The residual impacts are considered to be negligible as there were no emergencies or disasters recorded during the operational phase of the unauthorised development.

Assessment/ Conclusion

11.22.5. The risk assessment concluded that the vulnerability of the historic sand and gravel quarry to major accidents and or disasters is not significant. There were no emergencies or disasters during the operational period. Whilst future unplanned events and accidents cannot be ruled out at, such incidents would be dealt with in their own right outside of the planning process. As such, I agree with the conclusion reached in this regard.

Reasoned Conclusion on the Significant Effects

11.22.6. Having regard to the examination of environmental information set out above, to the rEIAR and other information provided by the developer, and to the submissions from the planning authority, prescribed bodies and the third party in the course of the application, it is considered that the main significant direct and indirect effects of the historic development on the environment are as follows:

- ***Biodiversity***: Historic extraction and infill activities would have led to the loss of improved grassland habitat. This would not have resulted in significant habitat loss for birds and may have led to the creation of habitat for Sand Martins in exposed cliff faces of the quarry. The likelihood of potential significant impacts on aquatic species was imperceptible due to mitigation measures carried out. Overall, it is considered that the potential impacts on biodiversity have been avoided managed and mitigated, such that no significant adverse impacts arise.

- ***Land, Soils, Water, Air and Climate:*** In terms of water, there was potential for a deterioration of water quality to the River Graney (Lerr)_010 waterbody arising from silt, dust and sediment pollution. Having regard to the information on file, including details of the mitigation measures undertaken, there is no evidence that adverse impacts of this nature arose on the receiving environment during the period of the historic development. Therefore, no significant adverse direct, indirect or cumulative effects on the water environment, water quality or Water Framework Directive (WFD) have arisen as a consequence of the existing development.

  In terms of impacts on air quality, it has been demonstrated that the risk of dust nuisance on human health during the operational phase has been identified as having no significant direct, indirect or cumulative effects as a consequence of the existing development.

  Having regard to the marginal change in traffic volumes and movements during the operational phase, the effect of the existing development on national GHG emissions was insignificant under the Kyoto Protocol. Therefore the existing development has not had a considerable impact on climate.

- ***Material Assets, Cultural Heritage and the Landscape:*** While the quarrying activities altered the landscape locally, the extraction and infill activities were within a clearly defined and well screened area of the site and it is considered that the historic development will not give rise to significant direct, indirect, or cumulative impacts on the receiving landscape***.***

Conclusion

The rEIAR has considered the main significant direct and indirect effects of the subject development on the environment. The assessments provided in the individual chapters are satisfactory to enable the likely significant environmental effects arising as a consequence of the subject development to be identified, described and assessed. I conclude that subject to the mitigation measures set out in the remedial Environmental Impact Statement, the effects on the environment of the development that has taken place on the environment has been, and would be acceptable.

12.0 Appropriate Assessment

12.1. Screening Determination (Stage 1) See Appendix 1 for Appropriate Assessment Screening

12.1.1. In accordance with section 177U(4) of the Planning and Development Act 2000 as amended, and on the basis of objective information, having carried out Appropriate Assessment screening (Stage 1) of the project, it has been determined that likely significant effects on the River Barrow and River Nore SAC (Site Code: 002162) cannot be excluded in view of the site's conservation objectives and qualifying interests. An Appropriate Assessment (Stage 2) is therefore required of the implications of the project on the qualifying interests of the River Barrow and Nore SAC in light of its conservation objectives. The possibility of likely significant effects on other European sites has been excluded on the basis of the nature and scale of the project, separation distances between the appeal site and any other European site.

12.1.2. No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

12.2. Appropriate Assessment (Stage 2) See Appendix 1 for Stage 2 Appropriate Assessment

12.2.1. The project has been considered in light of the assessment requirements of sections 177U and 177V of the Planning and Development Act 2000, as amended. On the

basis of objective information, I have assessed the implications of the project on the River Barrow and River Nore SAC (Site Code 002162) in view of the site's conservation objectives. I have had regard to the applicant's remedial Natura Impact Statement and all other relevant documentation and submissions on the case file. I consider that the information included in the case file is adequate to allow the carrying out of an Appropriate Assessment.

12.2.2. Following the Appropriate Assessment (Stage 2), it has been concluded that the project, individually or in-combination with other plans or projects did not adversely affect the integrity of the River Barrow and River Nore SAC (Site Code 002162) in view of the site's conservation objectives and qualifying interests.

12.2.3. This conclusion is based on:

- An assessment of all aspects of the project including evidence of water quality in relation to the conservation objectives of the River Barrow and River Nore SAC (Site Code 002162).
- An assessment of in-combination effects with other plans and projects including historical and current plans and projects.

12.2.4. No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC (Site Code 002162).

13.0 Recommendation

13.1. Having regard to the provisions of Section 177K(1A) and 177 K(1J) of the Planning and Development Act 2000, (as amended), which provides that the Board shall only grant permission for substitute consent where Appropriate Assessment is required and that it is satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the regularisation of development by permitting an application for substitute consent, I am satisfied that such exceptional circumstances exist in this case, and therefore recommend that substitute consent be permitted.

14.0 Reasons and Considerations

Having regard to the following:

(a) the provisions of the Planning and Development Acts, 2000, as amended, and in particular Part XA, and the provisions of the Planning and Development Regulations, 2001, as amended.

(b) the Climate Action Plan 2024

(c) the National Planning Framework (Project Ireland 2040)

(d) the 'Quarries and Ancillary Activities, Guidelines for Planning Authorities', issued by the Department of the Environment, Heritage and Local Government, April 2004,

(e) the Supplementary Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government, July 2012

(f) the applicable national, regional and local planning policy provisions including the Carlow County Development Plan 2022-2028,

(g) the remedial Natura Impact Statement and the remedial Environmental Impact Assessment Report submitted with the application for substitute consent, and documentation on file generally,

(h) the report and the opinion of the planning authority under section 177I of the Planning and Development Act 2000, as amended,

(i) the submissions received from prescribed bodies,

(j) the planning history of the site, as detailed in the Inspectors Report,

(k) the pattern of development in the area,

(l) the nature, scale, characteristics and location of the historic development, the subject of this application for substitute consent including in relation to potential significant effects on the environment and on the integrity of European sites in the area,

it is considered that notwithstanding the nature, scale and extent of the development, and to the acceptability of the environmental effects and noting that

the integrity of European Sites were not adversely affected, in view of the sites' conservation objectives, as set out above, and subject to compliance with the conditions set out below, the Board is satisfied that to grant substitute consent for the development is therefore in accordance with the proper planning and sustainable development of the area.

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars lodged with the application amended by further plans and particulars received by An Bord Pleanála on the 6th of December 2021 except as may otherwise be required to comply with the following conditions.

   (b) The grant of substitute consent relates only to past quarrying activities that have been undertaken as described in the application and does not authorise any structures or any future development, including any further quarrying or any further excavation on site. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority and the development shall be in accordance with the agreed particulars.

   Reason: In the interest of clarity and conservation of the environment.

2. A detailed plan for the revegetation and rewilding of the subject site, based solely on the extent of quarry extraction that has taken place to date, shall be submitted to, and agreed in writing with, the planning authority within twelve months of the date of this Order, unless, prior to that time, a planning permission has been granted for the further quarry development within the area covered by this grant of substitute consent.

   Reason: In the interest of visual amenity and in order to enhance ecological value and to ensure public safety.

3. Unless permission is granted for the further quarry development within the area covered by this grant of substitute consent has been granted prior to that date, the developer shall lodge with the planning authority, within 12 months of the date of this Order, a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory restoration/revegetation of the site, coupled with an agreement empowering the local authority to apply such security or part

thereof to the satisfactory restoration/revegetation of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory restoration of the site.

4. A programme and timescale for ongoing monitoring of water quality shall be submitted to and agreed in writing with the Planning Authority. It shall include proposals for monitoring to be undertaken to establish a baseline for the period during the restoration/revegetation works and that reports on the findings should be submitted to the Planning Authority.

Reason: To ensure protection of water quality.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 6 months of the date of this permission or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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.

Emer Doyle
Planning Inspector

28th March 2025

Appendix 1

Screening for Appropriate Assessment
Screening Determination

Description of the project

I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The existing development comprises the extraction of sand and stone from a quarry from an area of land c. 4.18 and the restoration of same as agricultural land. Substitute consent is sought for a total area of 15.21 hectares at this location as during the operational phase, existing infrastructure, machinery and land within the quarry site of 15.21 hectares was used. The entire quarry area was used for the processing and stockpiling of excavated soil and water for washing of aggregates was sourced from the existing sump to the south of the quarry. Permission was previously granted by An Bord Pleanála but quarrying continued between the years from 2012 to 2021. It is estimated that over this time the total tonnage excavated from the unauthorized development was 192,240 tonnes of material. A detailed description is set out in Section 2 of my report.

The Broadstone stream is located on the southern site boundary and is mapped by the EPA as flowing in a westerly direction for approximately 0.6m before joining the Graney (Lerr) River which flows in a south westerly direction for approximately 8.9km before entering the River Barrow and Nore SAC (Site Code 002162). Having regard to the characteristics of the development and the location of the appeal site, I can confirm that the only European Site relevant for consideration is the River Barrow and Nore Special Area of Conservation.

The application has included an Appropriate Assessment Screening Report and a Remedial Natura Impact Statement.

As this is a substitute consent application, the Planning Authority did not undertake appropriate assessment of the project.

Submissions

Submissions to the Board made by the Department of Housing, Local Government and Heritage and Carlow County Council relevant to Appropriate Assessment can be summarized as follows:

<u>Department of Housing, Local Government and Heritage:</u>

- The rNIS does not provide any evidence of compliance with Condition 10, 20 or 21 of the original permission (PL01.221741) including any historic water quality sampling or any evidence of monitoring, inspection and maintenance of water quality mitigation measures which would indicate that they were in good working order during the period the quarry was in operation.

- The rNIS should include an assessment of the impacts of restoration and afteruse for agriculture on water quality.
- Evidence that infill was solely site won and did not include material from outside the site.
- Evidence of compliance with original planning permission conditions in relation to the protection of groundwater.

Carlow County Council

- The Graney River is hydrologically linked to the River Barrow and Nore SAC via the Lerr River.
- There does not appear to be a hydrological link between the application site and any other European Site.
- The rNIS should consider construction stage impacts as relating to relevant infrastructure on the site including wheelwash, water supply, settlement lagoons and washing plant etc.
- The rNIS does not adequately consider potential in-combination impacts that may have cumulatively impacted on water quality.

Applicant's Response to points summarized above:

- The applicant has only recently acquired the lands at Maplestown Quarry and had no involvement with the quarry whilst it was operational.
- The applicant does not have any access to monitoring which may have been carried out during that time.
- However, upon examination of the EPA River Q Values, there does not appear to be a reduction in water quality of the receiving waters between the period before extraction had started, during extraction or after extraction had ceased. A table is attached to the response from the closest water monitoring station (RS14G070200) located on the Graney (Lerr) stream approximately 2.6km downstream of the site. It is stated that this table illustrates that there was no significant reduction or fluctuation in water quality before, during or after extraction works.
- The EPA water quality monitoring data indicates that there is no apparent impact from restoration of the site and reuse for agricultural purposes on water quality.
- The applicant confirms that the infill was solely site won and did not include material from outside the site.

- Construction activities did not form part of the unauthorized activities taking place after the expiry in 2012 and were therefore not considered in the Appropriate Assessment.
- There was no potential for in-combination effects as whilst there were other quarries in the vicinity of the site, each of these quarries would have been required to demonstrate that there was no potential for negative water quality impacts either alone or in-combination with other developments. As each quarry will not have alone or in-combination effects on water quality, no potential exists for cumulative effects on water quality.

Assessment of Submissions:

The main concerns raised are in relation to the absence of monitoring of water quality during the operational period. This aspect has been raised with the applicant during the course of the application and it is stated that he purchased the quarry in 2019 and has no access to any monitoring which took place prior to this. I consider that this is very regrettable, however there is no evidence available that the project resulted in a deterioration in water quality during the operational period having regard to EPA monitoring at the closest downstream monitoring station from the site.

In terms of restoration, the applicant has stated that overburden and surplus soil were stored within the quarry and then used for the restoration of a 4.18 ha section of the site. The applicant's response to address this aspect did not provide any evidence in this regard however it is stated that there is no deterioration in water quality and I am satisfied that this is the case.

I will address in-combination aspects later in this report.

I am satisfied that there is adequate available within the AA Screening and rNIS to determine the impact on the integrity of European Sites. Whilst the whole quarry of 15.21 hectares was used during the operational period of unauthorized development, there are no permanent buildings on the site and construction of the settlement lagoons and other infrastructure occurred many years prior to the historic development which occurred during the years 2012-2021.

Potential impact mechanisms from the project

The site of the subject development is not located in or immediately adjacent to a European Site. The Broadstone stream is located on the southern site boundary and is mapped by the EPA as flowing in a westerly direction for approximately 0.6m before joining the Graney (Lerr) River which flows in a south westerly direction for approximately 8.9km before entering the River Barrow and Nore SAC (Site Code 002162).

As the quarry is already established, there would have been no construction stage impacts. The operational stage would have generated noise, dust, and surface water emissions. There would have been a possibility of sediment run-off generated during the operational stage that may have reached the Broadstone stream and the River Barrow and River Nore SAC downstream. There is potential for past pollution events (fuel spills) entering the stream and leading to a reduction in the water quality within the River Barrow and Nore SAC.

European Sites

The AA Screening Report describes the existing development, its receiving environment and relevant European Sites in the zone of influence of the development. The existing development 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 any European sites. Section 3.4 identifies seven European sites within 15km of the project. The screening report concludes that the only site with a hydrological connection is the River Barrow and River Nore SAC and I agree with this conclusion. Carlow County Council in their response have not considered any other European sites.

Having regard to the characteristics of the project in terms of the site's features and location, and the project's scale of works, I consider the following impacts and effect mechanisms require examination for implications for a likely significant effect on the following European site:

- River Barrow and Nore SAC (site code: 002162)

Deterioration of water quality as a result of pollutants, dust, sediment, oil/hydrocarbon, hard surface run off etc., during operational phase.

Table 1 European Sites at risk from impacts of the proposed project

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Surface water pollution	Impact via a hydrological pathway	River Barrow and River Nore SAC (Site Code 002162)	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410]

				Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-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 (Twaite Shad) [1103] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355] Trichomanes speciosum (Killarney Fern) [1421]

Table 2A: Could the project undermine the conservation objectives 'alone'

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?		
		Construction Surface water pollution	Operational Surface water pollution	
River Barrow and River Nore SAC (002162)	https://www.npws.ie/protected-sites/sac/002162			
Estuaries	To maintain the favourable conservation condition	N	N	
Mudflats and sandflats not covered by seawater at low tide	To maintain the favourable conservation condition	N	N	
Salicornia and other annuals	To maintain the favourable conservation condition	N	N	

colonising mud and sand				
Atlantic salt meadows	To restore the favourable conservation condition	N	N	
Mediterranean salt meadows	To restore the favourable conservation condition	N	N	
Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation	To maintain the favourable conservation condition	N	N	
European dry heaths	To maintain the favourable conservation condition	N	N	
Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels	To maintain the favourable conservation condition	N	N	
Petrifying springs with tufa formation	To maintain the favourable conservation condition	N	N	
Old sessile oak woods with Ilex and Blechnum in	To restore the favourable conservation condition	N	N	

the British Isles				
Alluvial forests with Alnus glutinosa and Fraxinus excelsior	To restore the favourable conservation condition	N	N	
Desmoulin's Whorl Snail	To maintain the favourable conservation condition	N	N	
Freshwater Pearl Mussel	To restore the favourable conservation condition	N	Y	
Nore freshwater pearl mussel	To restore the favourable conservation condition	N	N	
White-clawed Crayfish	To maintain the favourable conservation condition	N	Y	
Sea Lamprey	To restore the favourable conservation condition	N	Y	
Brook Lamprey	To restore the favourable conservation condition	N	Y	
River Lamprey	To restore the favourable conservation condition	N	Y	
Twaite Shad	To restore the favourable conservation condition	N	Y	
Atlantic Salmon	To restore the favourable conservation condition	N	Y	
Otter	To restore the favourable conservation condition	N	Y	
Killarney Fern	To maintain the favourable conservation condition	N	N	

Appropriate Assessment: Stage 1 – Screening Determination

In accordance with section 177U(4) of the Planning and Development Act 2000 as amended, and on the basis of objective information, having carried out Appropriate Assessment screening (Stage 1) of the project, it has been determined that likely significant effects on the River Barrow and River Nore SAC (Site Code: 002162) cannot be excluded in view of the site's conservation objectives and qualifying interests.

An Appropriate Assessment (Stage 2) is therefore required of the implications of the project on the qualifying interests of the River Barrow and Nore SAC in light of its conservation objectives.

The possibility of likely significant effects on other European sites has been excluded on the basis of the nature and scale of the project, separation distances between the appeal site and any other European site.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

Appropriate Assessment

Stage 2

Aspects of the Proposed Development

Potential impacts could arise in particular from any deterioration in water quality as a result of the uncontrolled or unmitigated release of pollutants, including sediments, invasive species to the Broadstown stream on the southern boundary of the site which flows westwards to the Graney (Lerr) and Lerr waterbodies which ultimately flow onwards to the River Nore and River Barrow SAC. This in turn could have adverse impacts on qualifying interests.

Potential Impacts

Section 6.2 of the rNIS states that a potential impact was identified as a result of possible discharges of surface waters containing sediment or silt into the Broadstown stream. Similarly given that both the unauthorised development and the Broadstown stream are located on an area of high groundwater vulnerability, there was potential for operational phase activities to lead to a contamination of groundwater waterbodies which may have reached the River Barrow and Nore SAC.

I concur with this and consider that the key potential impacts are as follows:

- An increase in siltation and pollution of water with hydrocarbons could have a significant negative impacts on the fish and invertebrate populations of the River Barrow and River Nore.
- Any pollution of groundwater could also lead to impacts on the SAC/ SPA to water quality sensitive habitats.
- The most likely source of pollution during the operation is oil from machinery and/ or silt contaminated surface water run-off from the site.

Having regard to the limited scale of the existing development and the enclosed nature of the development site, and the distance between the site and the SAC, I consider that the scale of the impacts identified above would be likely to be relatively low.

Mitigation Measures

Section 6.3 of the rNIS details that a range of mitigation measures were implemented for the permitted development and remained in place for the duration of the unauthorised development.

Section 6.3.1 identifies the mitigation measures that formed part of the original EIS.

Section 6.3.1 also identifies standard operational measures that were used to protect surface waters during the operational phase of the permitted and historic development as follows:

- Run-off from the working site or any areas of exposed soil was channelled and intercepted at regular intervals for discharge to lagoons.
- Any oil and lubricant changes and maintenance generally took place offsite.
- All open water bodies adjacent to areas of proposed works was to be protected by berms or fencing including settlement ponds.
- Temporary soil (overburden) storage areas were to be located at least 50m from any surface water features/ drainage ditches etc. and were protected by a berm to prevent suspended solids entering surface water from these materials.
- All containment and treatment facilities were regularly inspected and maintained.
- If required, refuelling of plant during the operational phase was only carried out at designated refuelling station locations on site. Each station was fully equipped for spill response.
- Only emergency breakdown maintenance was to be carried out on site. Drip trays and spill kits were to be available on site to ensure that any spills from vehicles are contained and removed off site.
- All personnel working on site were trained in pollution incident control response.
- Portaloos and/or containerised toilets and welfare units were to provide facilities for site personnel. All associated waste was removed from the site by a licensed operator.
- There were no instream works.

Direct watercourse protection measures carried out during the operational phase of the works are also identified as follows:

- To ensure the protection of the Broadstown stream during extraction and infill works a berm was installed along the southern boundary of extraction and infill area.
- The berms were monitored to ensure they remained functional throughout the operational phase.
- Overburden that was stored on site was stored on a low lying area away from the stream, so as to prevent soilds entering the stream during periods of high rainfall.

Overall, I am generally satisfied that the mitigation measures are proportionate to the scale of development and address the identified risks from the operation of the quarry.

<u>In-combination effects</u>

I note that Carlow County Council expressed concern that in-combination effects had not been adequately addressed in the rNIS.

In-combination effects is dealt with in Section 7.1.2 and 7.1.3 of the rNIS. These sections detail the planning history in the vicinity of the site which includes a number of small agricultural developments and horse riding stables. It is stated that there are a number other smaller quarries located within a 1km of these sites, however there is no direct link between the site and the other quarries. It is stated that these quarries would be subject to the same assessment as the Maplestown site. It is stated that the core strategy, policy and objectives of the County Development Plan have been developed to anticipate and avoid the need for developments that would significantly affect the integrity of any European site. It is concluded that there is no possibility for any significant in-combination effects to European sites involving the historic proposed development.

I have examined the Carlow County Council, Kildare County Council and An Bord Pleanála website to ascertain other plans or projects in the area. The vast majority of developments in the area relates to one off housing or small agricultural developments. There are approximately 6 No. historic quarries within a 3km radius of the site. I noted that there was only one operational quarry on the day of inspection. I note that the Boards website includes details of ABP 310989-permission granted for use of a pit for open storage of aggregate stockpiles following expiration of permission and spreading of existing site won soils to result in agricultural use and a withdrawn application for leave to apply for substitute consent with respect to a gravel pit under ABP 313234.

I consider that the main in-combination impacts would be from the future restoration of the historic quarries particularly if such quarries are restored using inert materials brought onto the site. Any future development of this type would need to be go through the appropriate AA channels.

Following a search of all permitted plans and projects in the immediate area and having regard to Section 7.1.2 and 7.1.3 of the rNIS, I am satisfied that the interaction between the unauthorised development and any other plan or project is unlikely to give rise to significant effects on any Natura 2000 Site.

Table 2B: Could the project undermine the conservation objectives in combination with other plans or projects?

European Site and qualifying feature	**Conservation objective**	**Could the conservation objectives be undermined (Y/N)?**	
		Construction **Surface water pollution**	**Operation** **Surface water pollution**
River Barrow and River Nore SAC (002162)	www.npws.ie/protected-sites/sac/002162	N	N

Appropriate Assessment: Stage 2 – Conclusion

The project has been considered in light of the assessment requirements of sections 177U and 177V of the Planning and Development Act 2000, as amended. On the basis of objective information, I have assessed the implications of the project on the River Barrow and River Nore SAC (Site Code 002162) in view of the site's conservation objectives. I have had regard to the applicant's remedial Natura Impact Statement and all other relevant documentation and submissions on the case file. I consider that the information included in the case file is adequate to allow the carrying out of an Appropriate Assessment.

Following the Appropriate Assessment (Stage 2), it has been concluded that the project, individually or in-combination with other plans or projects did not adversely affect the integrity of the River Barrow and River Nore SAC (Site Code 002162) in view of the site's conservation objectives and qualifying interests.

This conclusion is based on:

- An assessment of all aspects of the project including evidence of water quality in relation to the conservation objectives of the River Barrow and River Nore SAC (Site Code 002162).
- An assessment of in-combination effects with other plans and projects including historical and current plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC.