



An
Bord
Pleanála

Inspector's Report ABP-312324-21.

Development	Licence for the discharge of groundwater and surface water to Kilmulhane Stream, a tributary of the Casheen River from quarry.
Location	Farranastack Townland, Lisselton, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	W207
Applicant(s)	McSweeney Bros. Quarries Ltd
Type of Application	Permission for Discharge Licence
Planning Authority Decision	Refuse permission for licence
Type of Appeal	First Party Appeal under Local Government Water Pollution Act, 1977 to 2007
Appellant(s)	McSweeney Bros. Quarries Ltd
Observer(s)	Maurice Dunworth Elaine Nolan & Glen Wightman
Date of Site Inspection	23 rd June, 2022
Inspector	A. Considine

1.0 Introduction

- 1.1. An application for a Licence for the discharge of groundwater and surface water to Kilmulhane Stream, a tributary of the Casheen River from the quarry located at Farranastack Townland, Lisselton, Co. Kerry, was received by Kerry County Council from McSweeney Bros. Quarries Ltd on 7th July 2020. The local authority sought further information in relation to the application on the 1st September 2020. Following receipt of the response to the request for FI, submitted on the 5th October 2021, Kerry County Council refused permission for the Licence on the 6th December, 2021. Under the provisions of Section 8 of the Local Government (Water Pollution) Act, 1977 as amended, the applicants submitted an appeal against the decision of Kerry County Council to refuse the Discharge Licence.

2.0 Site Location and Description

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

3.0 Application Details

3.1. Permission is sought, as per the public notices, for a Discharge Licence to discharge treated trade effluent (groundwater and surface water) arising from the quarry void from their premises at Farranastack Townland, Lisselton, Co. Kerry, following treatment to the Kilmulhane Stream (EPA River ID: IE_SH_23I100800) which is a tributary of the River Feale.

3.2. The Licence application was accompanied by the following documents:

- Application form and public notices
- Water Quality results
- Assimilative Capacity Assessment and Mass Balance Results for Receiving Waters – Kilmulhane Stream
- Appropriate Assessment Screening Report
- EPA Hydrotool for ungauged catchments Kilmulhane Stream
- Site Characterisation Form and Wastewater Treatment System.

3.3. The information submitted indicates that currently, the quarry is worked dry above the groundwater table and therefore no dewatering is required at the site¹. Surface water runoff across the site is managed on-site and either infiltrates naturally to the ground or is directed to the clear water pond on the quarry where it may be used on-site. However, there is now a requirement to discharge clean water from the site. Water discharged from the quarry will include small quantities of clean shallow groundwater, storm surface water run-off, treated water from the washing plant and runoff from the refuelling area which will have been treated through the proposed hydrocarbon separator. The Discharge Licence application is part of the overall compliance for the quarry, which includes the proposed lodging of a planning application for the following:

- Retention permission to retain a quarried area of 1.7ha outside the quarry area permitted under planning reg no. 06/2419,

¹ The Board will note that there has been no quarrying at the site for a number of years. The last quarry operations were between 2007-2009.

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

4.0 Planning Authority Decision

4.1. Decision

The Planning Authority decided to refuse permission for the Discharge Licence. It is noted that no reasons for the refusal were issued with the decision to refuse, but following correspondence between the parties, the reasons for the refusal are noted as follows:

- The initial discharge licence application included an accumulative capacity study based on a 95%ile flow of 0.0005m³/sec which was taken from the EPA Hydro tool. In response to the further information request, the applicants' agent also carried out six instream flow measurements at SW3 on the receiving water downstream of the proposed discharge. We note that four of these instream flow measurements were lower than the 95%ile flow used in the initial assessment.
- We note that the analysis of a number of samples taken from the proposed receiving waters and submitted by way of further information showed elevated levels of ammonia and Molybdate Reactive Phosphorus.
- A biological assessment of the receiving waters was carried out in 2016 as part of a previous planning application 16/836. The receiving waters was found to have a Q3/4 biological status.

In relation to the Water Framework Directive, the receiving waterbody closest to the proposed discharge is identified as the Island-Sac Little_10. This waterbody is currently classified as unassigned and under review. In that context, the water quality status of the receiving waterbody is currently unknown and, therefore, it is unclear whether this particular waterbody is at risk of not achieving the required

Water Framework Directive quality status. We also note that a biological assessment of the receiving waters was carried out in 2016 as part of a previous planning application (Planning Reg. No. 16/836). The receiving waters was found to have a Q3/4 biological status.

In addition to the above, the proposed receiving waterbody is a tributary of The Cashen, a transitional waterbody, which is currently classified as being of poor water quality status and is at risk of not achieving the required Water Framework Directive quality status.

Given all the above, the Environment Department has serious concerns about the potential for water quality related issues to arise in relation to this proposed discharge licence application. The Environment Department cannot be satisfied that the proposed discharge will not negatively impact on both water bodies' ability to achieve the relevant water quality status required under the Water Framework Directive. In that context we are not in a position to grant this discharge licence application.

4.2. Planning Authority Reports

4.2.1. Environment Report 07/08/2020

The report notes that it is unclear whether the water management plan measures outlined are required in order to avoid significant effects / impacts on Natura 2000 sites. It is considered that a Stage 2 AA is required.

The applicant should be required to submit a Natura Impact Statement for the proposal, to assess the potential for impact on the Lower River Shannon SAC, which is located downstream of the proposed discharge point.

4.2.2. Email Correspondence following Request for Further Information

The Board will note that there was a request for an extension of time to respond to the further information request.

In addition, there was discussion regarding the number of samples required as there was a delay in taking the samples due to Covid restrictions in place. 6 samples were required by the Environment Section of Kerry County Council and this was achieved in June 2021.

4.2.3. **Environment Report 26/12/2021**

The scope of this report is restricted to the consideration of potential for significant effects and adverse impacts on Natura 2000 sites only. The report notes the planning history of the site and the detail of the proposed development in terms of the proposal to recommence quarrying at the site. The report presents the Councils AA report and concludes that potential for impact on qualifying interest habitats and species associated with the Lower River Shannon SAC can be ruled out with certainty.

In terms of the intervening Kilmulhane Stream, it is noted that this is a small, modified spate stream fed by a number of land drains and small tributary streams. The river has some potential for fish and as it is located upstream of the SAC, may have some role in supporting Atlantic Salmon and Otter populations in the SAC. However, given the scale and characteristics of the Kilmulhane Stream, including the water quality status, the significance of such supporting role is likely to be limited in importance.

The AA report concludes that the proposal by themselves and in combination with other plans and projects are not likely to adversely affect European Natura 2000 sites, in view of the said sites' conservation objectives, provided the proposed water management plan measures outlined in the proposals are adhered to.

4.2.4. **Final Environment Report 01/12/2021**

The final Environment report notes the detail of the further information submitted by the applicant, and in particular, the following is highlighted:

- Four of the six instream flow measurements were lower than the 95%ile flow used in the initial assessment.
- The analysis of a number of samples from the proposed receiving waters show elevated levels of ammonia and Molybdate Reactive Phosphorus.
- A biological assessment of the receiving waters was carried out in 2016 and found that the waters to have a Q3/4 biological status.

As the receiving waterbody, the Island-Sack Little_10, is currently unclassified as unassigned and under review, the water quality status is currently unknown and therefore, it is unclear whether this particular waterbody is at risk of not achieving the

required WFD quality status. The proposed receiving waterbody is also a tributary of The Cashen transitional waterbody, which is classified as being of poor water quality status and is at risk of not achieving the required WFD quality status.

Given all the above, the Environment Department has serious concerns about the potential for water quality related issues to arise in relation to this proposed discharge licence application. The Department cannot be satisfied that the proposed discharge will not negatively impact on both water bodies' ability to achieve the relevant water quality status required under the WFT and in this context, permission for the discharge licence cannot be granted.

4.3. Prescribed Bodies

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

- The 3 samples from 2016 and a single 2020 sample are an inadequate basis for the establishment of baseline conditions in the Kilmulhane Stream.
- The limited sample suite is also unsuitable for the analysis of assimilative capacity.
- The river must be able to assimilate the maximum value that will be discharged.
- Water quality monitoring must continue for the operational lifetime of the quarry.
- Further information required with regard to the retention times in the lagoon and whether this will provide adequate settling of solids.
- The installation of a turbidity monitor at the settlement pond will provide advance warning of any potential release of water with high sediment loads to the stream.
- Any hydrocarbon interceptor shall have a maintenance contract to ensure its efficient operation.

Following the submission of the response to the FI request, IFI submitted a further report advising that the workings for the Mass Balance and Assimilative Capacity calculations should be provided and that the impact on the Kilmulhane Stream should be quantified at low flows, as a significant proportion of the water in the stream will arise from the quarry discharge. Should permission for the licence be granted, turbidity monitoring should be in place on the inflow to the settlement pond and an inspection chamber or accessible sampling point should be in place.

4.4. Third Party Observations

4.4.1. There are 4 third party objections noted on the discharge licence application file. Issues raised are summarised as follows:

- The application is invalid as there is no valid planning for any works in this quarry.
- The Planning Authority has already determined that the assimilative capacity of the Kilmulhane Stream is not adequate to cater for the discharge of contaminated water from the proposed quarry.
- Potential impacts on the Lower Shannon SAC.
- The proposal seeks to continue to use the existing settlement lagoon and clear water pond, which are not adequate. These were in use when the previous operator was successfully prosecuted by the Shannon Regional Fisheries Board.
- It is not clear how long the proposed temporary attenuation area will be in place and there are no specifications on the volume it can hold.
- It is not clear which water will be directed to the pond.
- Inadequate information on the file to consider the size of the proposed hydrocarbon interceptor proposed.
- The submitted AA Screening Report should have determined that the quarry will have adverse effects on the integrity of the Lower River Shannon SAC.

- The proposal contravenes conditions of the previous permission for the original site with regard to surface water management and discharge.
- With regard to the Assimilative Capacity Assessment, the report is incomplete and is based on minimal data.
- There is uncertainty with regards to the quality of the quarry discharge water and the flow data used.
- The submission of the Discharge Licence is the first step by the applicants to lodging a planning application for the quarry.
- Issues raised with the redirection of a natural watercourse.
- The stream cannot cope with more water being introduced.

4.4.2. Following receipt of the response to the FI request, there were 3 additional third-party submissions to Kerry County Council. The issues raised are summarised as follows:

- The tests carried out verify that the existing downstream quality of water is very good. It is noted however, that the quarry was not operational at the time of sampling. The suspended solids limit of 35mg/L for the quarry, taking into consideration the low flows in the receiving waters, is not acceptable.
- Given the limited capability of the assimilated capacity of the stream and the existing good conditions of both the discharge water and the receiving water it will be difficult to ensure that the quarry will not have a negative impact on waters and therefore, the SAC downstream.
- The presumptions made in calculating the quantities of groundwater likely to arise within the quarry are vague and do not have sufficient substance to justify the quantities.
- The information provided shows that the operational quarry impacted on the ground water quality and in particular the ammonia level. No mitigation measures are provided to ensure that ammonia levels are not elevated as a result of blasting.

- The discharge feeds into the catchment of the Lower River Shannon SAC where the Freshwater Pearl Mussel is listed as a QI. This is not addressed in the application.
- The information submitted suggests that there is insufficient volume in the stream during dry weather flow to accommodate the proposed discharge volume from the quarry.
- It appears that the calculation of the 100-year storm only takes into consideration 1.9ha of the quarry area, which has a total area of 3.3ha.
- The submitted NIS is flawed.
- The absence of current WFD status assignment has implications for assessment by the applicant by the Council.
- The Assimilation Capacity Assessment (ACA) was not updated following the submission of the new data.
- The proposed discharge is not in compliance with the conditions attached to the previous planning permission at the site.
- The proposed development may impact on existing wells in the area.

5.0 Planning History

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

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

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

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

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

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

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

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

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

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

The Board will further note that the current appeal before them relates primarily to an extension to the original 2006 permitted quarry into the area of the 2009 application

site which was identified as the stockpiling area of the wider 7.4ha site. The area of the current site is indicated as 3.3ha.

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

PL08.248266 (PA ref: 16/836): Permission was refused following a first party appeal against the decision of Kerry County Council to issue a split decision to retain a quarried area of 1.7ha outside the permitted quarry (06/2419) and to continue quarrying, blasting and washing and new WWTP at the site. The Board refused permission for the development for the following stated reason:

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

PA ref. 20/895: Planning permission was sought for the same development which is the subject of the current first party appeal. It is noted that the application also sought permission to retain a quarried area of 1.7ha outside the quarry area permitted under ref: 06/2419. The PA granted permission for the retention of this 1.7ha quarried area and refused permission for the remaining elements for the same reasons as detailed above in Section 3.1 (page 5 of this report).

ABP-315502-22 (PA ref: 21/1199): Permission sought for the recommencement of quarrying at the site as per the above refused application. This application is currently on appeal with the Board.

5.2. **Unauthorised Development:**

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

5.3. **Section 261 Registration:**

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

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

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

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

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

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

The Reason for the Decision was as follows:

The Planning Authority is satisfied that the quarry commenced operation before 1 October 1964, was granted Planning Permission under Part III of the

Planning and Development Act 2000 and the requirements in relation to registration under section 261 were fulfilled;

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

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

6.0 Statutory Context

6.1. Local Government (Water Pollution) Act 1977, as amended

6.1.1. Section 4

(1)(a) Subject to subsection (2), a person shall not, after such date as may be fixed for the purpose of this subsection by order made by the Minister, discharge or cause or permit the discharge of any trade effluent or sewage effluent to any waters except under and in accordance with a licence under this section.

(b) A licence under this section may be granted—

(i) in the case of a discharge to waters in the functional area of a local authority, by that local authority, and

(ii) in any other case, by a local authority in whose functional area any premises, works, apparatus, plant or drainage pipe from which the effluent is discharged is situated ...

(3)(a) A local authority may at its discretion refuse to grant a licence under this section or may grant such a licence subject to such conditions as it thinks appropriate and specifies in the licence.

6.2. European Communities Environmental Objectives Surface Water Regulations 2009 (SI 272 of 2009)

The Surface Water Regulations 2009 seek to give effect to the environmental objectives set out in the Water Framework Directive (Directive 2000/60/EEC). The Regulations set out: -

- Measures for the protection of surface waterbodies whose status is determined to be higher good.
- Measures for establishing environmental quality standards in relation to waters seeking to achieve good status and high status.
- Measures set out to identify the ecological potential of bodies of surface water in accordance with the provisions of the Directive.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. This is a first party appeal against the decision of the Planning Authority to refuse the discharge licence. The grounds of appeal are summarised as follows:

- Flow measurements in receiving waters are as far as possible representative of the flows –
 - 6 rounds of flow measurements were taken as agreed with Kerry County Council and measurements range from 39.6 l/s (December 2020) to 1.1 l/s (April 2021).
 - The measurements represent flow from the top part of the catchment only.
 - It is considered that the flow measurements taken on the Kilmulhane Stream and submitted to Kerry County Council on the 5th of October 2021 are representative flows.
 - It is not clear why the figures were not accepted or why this is considered a reason for refusal.
- Background water quality in the catchment is a function of land use practices-

- 6 rounds of surface water quality sampling were taken between December 2020 and June 2021, at a point upstream and downstream of the quarry site. In addition, the discharge from the quarry was also sampled.
- The average water quality results indicate that the water in the Kilmulhane Stream is below the SW EQS for Ammonia, BOD and MRP both upstream and downstream of the quarry.
- The monitoring results indicate a downstream improvement in the surface water quality for the measured parameters, except for Nitrate and Orthophosphate, both of which are most likely related to agricultural land uses in the catchment. The quarry has not been active for a number of years and there is no source of pollutants on the site. Any exceedances could not be related to the quarry.
- The baseline discharge average water quality results from the quarry indicate that the water from the site is of good quality with low suspended solids, ammonia, nitrate, orthophosphate, BOD and MRP. The discharge water quality is better than the receiving waters, with the exception of Nitrate which is slightly higher and MRP which is the same in the discharge as at SW2.
- It is expected that the future discharge quality from the quarry will continue to be as good quality if not better than the receiving water quality in the Kilmulhane Stream, except possibly for suspended solids which will increase when operations commence.
- Settlement lagoons will be used to treat waters from the site and as such, the discharge will not have a negative impact on water quality in the receiving waters.
- There has been no elevated ammonia concentration in the discharge water sampled since May 2016 and it is considered that this exceedance was most likely due to agricultural land use in the area. An elevated MRP value in 2016 may also be due to catchment land use practices in the vicinity of the quarry.
- In terms of background catchment water quality, it is submitted that the sampling undertaken between December 2020 and June 2021 did not

indicate any elevated Ammonia or MRP in the Kilmulhane Stream or discharge water from the quarry site. The applicant is not responsible for remediating background levels of Ammonia and MRP that originate upgradient and off-site from the quarry.

- The discharge of water from the quarry to the Kilmulhane Stream does not change the existing hydrological system of the area. The 2020-2021 discharge water samples from the quarry indicates that the quality of water is of better quality than the Kilmulhane Stream water quality and therefore, the discharge is not making the water quality worse in the stream but is actually improving the quality of the stream.
- Unassigned nature of the island-Sack Little_10 waterbody under the WFD –
 - The status of the Island-Sack Little_10 waterbody is currently unassigned in terms of its status and is currently under review.
 - A biological assessment of the Kilmulhane Stream was undertaken in 2016 in support of a previous application and indicated that the water body at the sample locations had a Q4/4 biological status. This is the only indication of the waterbody status in the absence of an assessment under the WFD.
 - The Island-Sack Little_10 waterbody and catchment is not identified as Priority Area for Action within the overall Feale Catchment by the LA Water Programme.
- Potential impact of proposed discharge on receiving both water bodies' ability to achieve the relevant water quality status required under the WFD -
 - The Cashen transitional waterbody is approximately 7.3km downstream of the site and is currently classified as being of poor status under the WFD for the current assessment round from 2013 to 2018.
 - Given that the River Feale catchment to The Cashen transitional waterbody is over 1,000km² in area, it is considered both unlikely and improbable that the proposed activities at the site and the discharge of treated water would have a negative impact on the water quality status of the Cashen transitional waterbody.

- It is not considered that the treated discharge would be responsible for the transitional waterbody being at risk of not achieving the required WFD quality status.

7.1.2. It is considered that the operation of the quarry and associated discharge of treated water to the Kilmulhane Stream will not have an adverse impact on water quality and by extension, will not be responsible for the Cashen transitional waterbody being at risk of not achieving the required WFD quality status. It is further considered the Environment Section of Kerry County Council has not adequately demonstrated what their concerns are in relation to the Cashen transitional waterbody being at risk of not achieving the required WFD quality status.

7.1.3. It is requested that the Board grant a discharge licence for the proposed development.

7.1.4. The appeal includes a number of enclosures including reports and assessments

7.2. Planning Authority Response

Kerry County Council submitted a response to the appeal noting that the Environment Section of Kerry County Council carried out a detailed assessment of the discharge licence application prior to making a decision to refuse the discharge licence. The observations have been studied and there are no observations or submissions to make.

7.3. Observations

There are 2 observations noted in relation to the subject appeal, and the issues raised in the observations are summarised as follows:

7.3.1. Maurice Dunworth:

- The observation sets out the planning history associated with the subject site and note that the only current permission on the site is for its restoration in accordance with the partial consent granted under 20/895.
- The applicant has failed to demonstrate that the discharge of water from the quarry can occur without serious impact to the receiving environment.

- The flow conditions in the Kilmulhane Stream at the point of proposed discharge are very small and indicate that there is limited assimilation capacity in the stream for a large portion of time.
- Suggesting a suspended solids limit of 35mg/L for the quarry is irresponsible, irrespective of EPA guidance. The discharge limits should be based on the receiving waters' ability to assimilate the proposed discharge.
- The proposed limit would mean that the receiving water would very likely have a poor water quality going forward.
- Details of the proposed hydrocarbon interceptor are unclear.
- The proposed discharging of waters is non-compliant with conditions of previous grant of permission 06/2419.
- The proposal to use existing settlement ponds to treat discharge water were in operation when the previous operator was successfully prosecuted by IFI in 2009 for polluting the Kilmulhane Stream, proving a lack of effectiveness.

7.3.2. Elaine Nolan & Glen Wightman:

- Ms. Nolan and Mr. Wightman engaged the professional services of Earth Sciences Partnership Ltd. (ESP) who are specialist consultants for the quarry industry to address the concerns.
- The quarry was inactive during the period of water sampling and therefore does not reflect conditions of the discharge water during quarry operations.
- The licence should be set so that the future development and operation of the quarry does not adversely impact on the receiving waters.
- Given the limited capability of the assimilated capacity of the stream and the existing good condition of both the discharge water and the receiving water, it is incumbent on the applicant to prove that the quarry will not have a negative impact on the receiving waters and SAC downstream. This has not been demonstrated.
- The presumptions made in calculating the quantities of groundwater likely to arise within the quarry are vague and do not have sufficient substance to justify the quantities.

- It is clear from information provided that the operational quarry in 2009 clearly impacted on the ground water quality and in particular the ammonia level. It is now intended to use explosives in the quarry and measures to ensure ammonia levels are not elevated as a result of blasting have not been addressed.
- Issues with the design of the settlement pond design.
- The development should outline details and measurements to collect, process, monitor and discharge all water falling within the quarry, ensuring strict compliance with the terms of the relevant guidance.
- It appears that there is insufficient volume in the stream during dry weather flow to accommodate the proposed discharge volume from the quarry.
- Issues raised in terms of the calculation of the 1 in 100-year storm.
- Questions raised regarding the time lapse from the FI request and the submission of the response.

It is requested that permission for the licence be refused.

8.0 Assessment

8.1. Introduction

- 8.1.1. The Board will note that this is a first-party appeal against the decision of Kerry County Council to refuse permission for a discharge licence relating to a proposal to recommence quarrying at the site in Farranastack Townland, Lisselton, Co. Kerry, and to discharge groundwater and surface water from the site to the Kilmulhane Stream, a tributary of the River Feale. The Kilmulhane Stream ultimately drains to the Lower River Shannon SAC via the Casheen Estuary.

8.2. Background and Nature of Proposed Development

- 8.2.1. The Board will note the extensive planning history associated with this quarry, and in particular, I note the conditions attached to the original grant of planning permission, PA ref: 06/2419 refers, whereby permission was granted for a batching plant and extraction from existing quarry to upgrade existing access, 1 no. portacabin (office),

parking area, treatment unit with percolation area. This permission relates to a site area of 1.6ha (3.96 acres) and excluded blasting. In addition, Condition 34 states that 'No wastewater shall be discharged to a watercourse without the prior issue of a discharge licence from Kerry County Council. This is the first time a discharge licence has been sought.

- 8.2.2. It is submitted that, currently, surface water runoff from the quarry floor flows directly into the settlement lagoon via a pipe beneath the berm around the lagoon. The Board will note that in 2009, and while the quarry was operating, Inland Fisheries Ireland successfully prosecuted the previous operators of the quarry for pollution arising from discharges from the quarry to the adjacent Kilmulhane stream. It was noted that the Kilmulhane Stream did not have sufficient assimilative capacity to deal with effluent arising from the quarry operation.
- 8.2.3. The proposed development will remove the existing pipe beneath the berm and around the settlement lagoon which directs surface water runoff from the quarry floor to the lagoon and will create a dedicated sump on the quarry floor to collect water to pump to the settlement lagoon. The development will discharge clean water from the site which is identified as predominantly storm surface water runoff with some small volumes of groundwater, as well as treated water from the washing plant and run off from the refuelling area. The proposed water management plan for the site includes a number of elements including using the existing settlement lagoon and clear water pond for polishing on the site, and the introduction of a new sump, storm runoff attenuation area, a hydrocarbon separator, infiltration area and a wastewater treatment system to the site, and all water from the site will be treated prior to discharge off site.
- 8.2.4. The Board will note that under the previous application (and appeal to the Board (PL.08.248266 (PA ref: 16/836) refers), concerns were raised by both the IFI and the Environment Section of Kerry County Council, notwithstanding the information furnished, regarding the discharge of water from the proposed quarry to the Kilmulhane Stream and the in particular, the assimilative capacity of the stream to accept the quarry discharge. Concerns about the potential for water quality related issues arising and the negative impact on the ability of the Island Sack Little and The Cashen transitional waterbodies' ability to achieve the relevant water quality status required under the Water Framework Directive were also raised at the time.

8.2.5. In terms of the samples taken after the settlement ponds at the site, the applicant submits that these are the baseline results from the quarry discharge, and notes that the water quality of the discharge is better than the water quality in the receiving waters of the Kilmulhane Stream in terms of lower values for suspended solids, COD, Orthophosphate, Ammonia and BOD. The only exceptions are Nitrate which is very slightly higher in the discharge waters and the MRP is the same as at the upstream sample at SW2. It is noted that there were no quarry operations being carried out during the monitoring period, and that the discharge water from the site had been treated via the existing settlement lagoons at the site. It is therefore accepted that suspended solids may be slightly higher when quarrying is in operation.

8.3. Reasons for Refusal of Discharge Licence:

8.3.1. The Board will note that Kerry County Council refused permission for the discharge licence for reasons relating to the following:

- Assimilative capacity of the stream
- Elevated levels of ammonia and Molybdate Reactive Phosphorus in a number of samples taken from the proposed receiving waters.
- A biological assessment of the receiving waters carried out in 2016 found them to have a Q3/4 biological status.

8.3.2. The Council concluded that it could not be satisfied that the proposed discharge from the quarry activities would not negatively impact on water bodies in the area and their ability to achieve the relevant water quality status required under the Water Framework Directive (WFD). The receiving waterbody closest to the proposed discharge is identified as the Island-Sack Little_10, which is currently classified as unassigned and under review. In this regard the water quality of this body is not known and as such, the risk to the water quality in terms of the WFD is unclear. Issues relating to the assimilative capacity of the Kilmulhane Stream were also noted.

8.4. Assessment

- 8.4.1. The applicant/appellant has sought to address the concerns of the PA and undertook six rounds of surface water quality sampling and flow measurements. It is noted that monitoring results indicate a downstream improvement in the surface water quality for the measured parameters, except for Nitrate and Orthophosphate, both of which are most likely related to agricultural land uses in the catchment. The quarry has not been active for a number of years and the applicant submits that there is no source of pollutants on the site. Any exceedances could not be related to the quarry, and it is expected that the future discharge quality from the quarry will continue to be as good quality if not better than the receiving water quality in the Kilmulhane Stream, except possibly for suspended solids which will increase when operations commence.
- 8.4.2. I would note that the applicant has not made any reference to the previous IFI prosecution for pollution arising from discharges to the stream which was identified as not having sufficient assimilative capacity to deal with effluent arising from the quarry operation. While I acknowledge the content of the first party appeal, it is clear that four of the submitted instream flow measurements submitted following the request for further information, were lower than the 95%ile flow used in the initial assessment. As such, I would consider that the assimilative capacity of the receiving waters remains questionable.
- 8.4.3. With regard to the quality of the discharge, it is noted that the applicant submits that the discharge waters is better than the receiving waters with the exception of Nitrate and no elevated ammonia concentration since May 2016. It is submitted that the discharge is not making the water quality worse in the stream but is improving same. It is anticipated that the level of total suspended solids will increase during the operation of the quarry and the applicant has sought that the EPA quarry guideline limit of 35mg/l is applied as part of the discharge licence. In the context of the assimilative capacity concerns associated with the Kilmulhane Stream, I would consider this to be excessive and that the applicant has not presented adequate evidence to suggest that this level could be accommodated in the receiving waters, without negatively impacting on the water quality, particularly during low flow periods.

- 8.4.4. With regard to the concerns raised in terms of the Water Framework Directive, the Board will note that there are two waterbodies and catchments identified as being potentially at risk. The Island-Sack Little_10 waterbody is currently unassigned in terms of its status and is currently under review. The appellant submits that the waterbody and catchment is not identified as Priority Area for Action within the overall Feale Catchment by the LA Water Programme. In addition, The Cashen transitional waterbody is currently classified as being of poor status under the WFD for the current assessment round from 2013 to 2018.
- 8.4.5. The ultimate objective of the WFD is to achieve good status of all surface water bodies, by preventing deterioration and enhancing water quality. These obligations were designed to attain the qualitative objectives pursued by the EU legislature, namely the preservation or restoration of good status, good ecological potential and good chemical status of surface waters. EU Member States are therefore required to refuse permission for any project where it may cause a deterioration of the status of the body of surface water or where it jeopardises the achievement of good surface water status or good ecological potential, as well as good surface water chemical status as detailed in the Directive. In this regard, for example, given the lack of clarity around the actual impacts associated with increased suspended solids, I cannot conclude that the proposed discharge will not negatively impact on the ability of both mentioned waterbodies to achieve the relevant water quality status required under the WFD.
- 8.4.6. In acknowledging the information available to me, and having regard to relevant case law, in particular, *Weser*² and *Bradán Beo Teoranta*³, it is noted that when permission is sought for a project that will impact upon a surface water body, permission must be refused if the project will cause a deterioration of the status of the body of surface water or if it would jeopardise the achievement of good surface water status, having regard to the existing status of the water body as designated in accordance with the Directive. The subject receiving water does not have an existing status and as such, in line with the *Bradán Beo Teoranta* decision, there can be no analysis of deterioration having regard to the benchmark set by the status analysis. The baseline information submitted by the applicant in support of the application,

² Case C-461/13 Bund für Umwelt und Naturschutz Deutschland ECLI:EU:C:2015:433

³ [2021] IEHC 16

which might be considered a determination of the current status of the surface water body, does not appear to have been carried out by the EPA in accordance with the detailed methodology required by Article 5 of the WFD. As such, where no status has been assigned to the subject surface water body, the Board is not in a position to ensure compliance with Article 4(1) of the Directive.

- 8.4.7. Having regard to the above, I am satisfied that the decision of the Planning Authority should be upheld and the discharge licence should be refused on the basis of non-compliance with the provisions of the Water Framework Directive.

9.0 Environmental Impact Assessment

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

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

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

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

- The development is unlikely to have a significant effect on the environment (Article 109(2) of the Regulations refers).
- It is noted that a concurrent application has been submitted for the recommencement of the quarry for which this Discharge Licence to the adjacent watercourse. The application for same is also the subject of a current appeal with the Board.

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

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

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

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

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

The Reason for the Decision was as follows:

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

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

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

REASONS AND CONSIDERATIONS (1)

Having regard to:

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

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

REASONS AND CONSIDERATIONS (2)

Having regard to:

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

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

10.0 Appropriate Assessment

10.1. Introduction

10.1.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.

- 10.1.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. The Board will note that a Natura Impact Statement (NIS) was submitted as part of documentation for permission for the proposed development to assess the likely or possible significant effects, if any, arising from the proposed development on any European site.
- 10.1.3. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.
- 10.1.4. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:
- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
 - Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.
- 10.1.5. Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

10.2. **AA Screening Report**

- 10.2.1. An Appropriate Assessment Screening, dated September 2021, prepared by SLR, was submitted in support of both applications associated with this site and is included in Section 5.0 of the submitted NIS. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:
- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and

- b) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.

The submitted report assesses whether effects to the Natura 2000 network are likely to occur as a result of the project. The report sets out the methodology employed and provides a description of the project proposed as well as including a description of the existing habitats present on the site.

- 10.2.1. The AA Screening Report submits that the zone of influence extends to 10km from the boundary of the development. The report identifies the two relevant Natura 2000 site within the identified zone of influence as being the Lower River Shannon SAC (Site Code: 002165) and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077). The report notes that there will be no direct loss or fragmentation of habitats within the SAC due to the separation distance. Surface water arising within the proposed quarry development is proposed to be discharged to the Kilmulhane Stream. An application for the recommencement of quarrying at the site was submitted to Kerry County Council and is also currently on appeal with the Board. While the Screening Report prepared by the applicant concludes that the proposed development does not pose a risk of likely significant effects on Natura 2000 sites, a Stage 2 NIS was prepared to assess further, the potential for impact on the Lower River Shannon SAC, which is located downstream of the proposed discharge point.

10.3. **Natura Impact Statement**

- 10.3.1. The application was accompanied by a Natura Impact Statement (NIS, dated September 2021) which seeks to scientifically examined the potential impacts of the proposed development on the following European Sites which are located within the zone of influence:

- Lower River Shannon SAC (Site Code: 002165) – 6km to the south-west
- River Shannon and River Fergus Estuaries SPA (Site Code: 004077) – 7km to the north-east

- 10.3.2. In addition to the above sites, the NIS notes the following Natura 2000 sites which are located within 15km of the subject site:

- Kerry Head SPA (Site Code: 004189) – approximately 11.2km to the south-west
- Moanveanlagh Bog SAC (Site Code: 002351) – approximately 11.6km to the south-east.

10.3.3. Having reviewed the NIS and supporting documentation, together with relevant submissions, and having undertaken a site inspection, I am satisfied that the following identified sites can be screened out in the first instance, as they are located outside the zone of significant impact influence because the ecology of the species and / or the habitats in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, it is concluded that no significant impacts on the following sites is reasonably foreseeable based on the sites Conservation Objectives, Qualifying and Special Qualifying Interests. I concur with the applicants' determination in relation to the following Natura 2000 sites:

- River Shannon and River Fergus Estuaries SPA (Site Code: 004077) – 7km to the north-east
- Kerry Head SPA (Site Code: 004189) – approximately 11.2km to the south-west
- Moanveanlagh Bog SAC (Site Code: 002351) – approximately 11.6km to the south-east.

10.3.4. The Board will note that the applicants AA Screening Report concludes that the proposed development is not considered likely to result in any effects on any Natura 2000 sites and as a result there is no risk of likely significant effects. I would also note that the Board previously determined that no Stage 2 AA was required with regard to the proposed development. However, following this application for a discharge licence for the development, The Environmental Assessment Unit of Kerry County Council required that the applicant prepare a Natura Impact Statement to assess further, the potential for impacts on the following European Site:

- Lower River Shannon SAC (Site Code: 002165) – 6km to the south-west

10.3.5. I am satisfied that the submitted NIS provides adequate information in respect of the site, clearly identifies the potential impacts, and uses best scientific information and

knowledge. Section 6 of the AA document presents an Assessment of the Effects of the Project on the integrity of the identified Natura 2000 site and mitigation measures to be employed are also noted. The NIS concludes that, with the implementation of the 'designed-in' mitigation measures described, on the basis of information set out in the NIS, that the proposed development, either alone or in combination with other plans or projects, will not give rise to significant effects on the Lower River Shannon SAC. It is considered that there will be no adverse affects on the integrity of the European Site. I am satisfied that the information is sufficient to allow for Appropriate Assessment of the proposed development.

10.4. **Consultations and Observations**

10.4.1. In the course of the assessment of the proposed development, the following consultations and third-party submissions were considered as they relate to AA:

10.4.2. Council departments:

The **Environment Section** of Kerry County Council raised concerns in relation to the potential effects of the proposed development on the watercourses within and downstream of the proposed site, and in particular, the Lower River Shannon SAC.

10.4.3. Third Party Submissions:

A number of third-party submissions were made to the Planning Authority in the course of its assessment of the proposed development. These submissions are summarised above in Section 3.4 of this report. A number of these submissions make reference to potential impacts on watercourses and Natura 2000 sites.

All of the observations, submissions, appeal submissions and technical reports from departments of Kerry County Council and prescribed bodies are considered as part of this appropriate assessment.

10.5. **Screening for Appropriate Assessment:**

10.5.1. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:

- c) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and

- d) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.

10.5.2. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. I am satisfied that the River Shannon and River Fergus Estuaries SPA (Site Code: 004077), Kerry Head SPA (Site Code: 004189) and Moanveanlough Bog SAC (Site Code: 002351) can be screened out in the first instance, as the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated site to the development site and therefore, I conclude that no significant impacts on these Natura 2000 sites is reasonably foreseeable.

10.5.3. This is an application for a licence to discharge groundwater and surface water which is associated with a proposal to recommence quarrying activities at the site. The subject site, while not located within the SAC or SPA, is hydrologically connected to a Natura 2000 site via the proposed discharging of waters from the quarry into the Kilmulhane Stream, which flows into the Cashen Estuary and forms part of the Lower Shannon SAC (Site Code: 002165). Having regard to the information available to me, I am satisfied that this European Site can be identified as being within the zone of influence of the project and that there is potential for impacts to arise in terms of water quality.

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

10.6. Stage 2 Appropriate Assessment

10.6.1. The following table sets out the qualifying interests for the identified Natura site:

European Site	Qualifying Interests
<p>Lower Shannon SAC (Site Code: 002165)</p> <p>Located approx. 6km to the South- west of the site</p>	<ul style="list-style-type: none"> • 1029 Freshwater Pearl Mussel - Margaritifera margaritifera • 1095 Sea Lamprey - Petromyzon marinus • 1096 Brook Lamprey - Lampetra planeri • 1099 River Lamprey - Lampetra fluviatilis • 1106 Atlantic Salmon - Salmo salar (only in fresh water) • 1110 Sandbanks which are slightly covered by sea water all the time • 1130 Estuaries • 1140 Mudflats and sandflats not covered by seawater at low tide • 1150 *Coastal lagoons • 1160 Large shallow inlets and bays • 1170 Reefs • 1220 Perennial vegetation of stony banks • 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts • 1310 Salicornia and other annuals colonizing mud and sand • 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae) • 1349 Bottlenose Dolphin - Tursiops truncatus • 1355 Otter - Lutra lutra • 1410 Mediterranean salt meadows (Juncetalia maritimi) • 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation • 6410 Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) • 91E0 *Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)

Lower Shannon SAC (Site Code: 002165)

10.6.2. This very large site stretches along the Shannon valley from Killaloe in Co. Clare to Loop Head/ Kerry Head, a distance of some 120 km. The site thus encompasses the

Shannon, Feale, Mulkear and Fergus estuaries, the freshwater lower reaches of the River Shannon (between Killaloe and Limerick), the freshwater stretches of much of the Feale and Mulkear catchments and the marine area between Loop Head and Kerry Head.

10.6.3. Overall, the Shannon and Fergus Estuaries support the largest numbers of wintering waterfowl in Ireland. There is a resident population of Bottle-nosed Dolphin in the Shannon Estuary. This is the only known resident population of this E.U. Habitats Directive Annex II species in Ireland. Five species of fish listed on Annex II of the E.U. Habitats Directive are found within the site. The three lampreys and Salmon have all been observed spawning in the lower Shannon or its tributaries. The Fergus is important in its lower reaches for spring salmon, while the Mulkear catchment excels as a grilse fishery, though spring fish are caught on the actual Mulkear River. The Feale is important for both types. Freshwater Pearl Mussel (*Margaritifera margaritifera*), a species listed on Annex II of the E.U. Habitats Directive, occurs abundantly in parts of the Cloon River.

10.6.4. This site is of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II of the E.U. Habitats Directive, including the priority habitats lagoon and alluvial woodland, the only known resident population of Bottle-nosed Dolphin in Ireland and all three Irish lamprey species.

10.7. Conservation Objectives:

10.7.1. The Conservation Objectives for the relevant designated site are as follows:

European Site	Conservation Objectives
<p>Lower Shannon SAC (Site Code: 002165)</p> <p>Located approx. 6km to the South- west of the site</p>	<ul style="list-style-type: none"> • The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Brook Lamprey - <i>Lampetra planeri</i> [1096] ○ River Lamprey - <i>Lampetra fluviatilis</i> [1099] ○ Sandbanks which are slightly covered by sea water all the time [1110] ○ Estuaries [1130]

	<ul style="list-style-type: none"> ○ Mudflats and sandflats not covered by seawater at low tide [1140] ○ Large shallow inlets and bays [1160] ○ Reefs [1170] ○ Perennial vegetation of stony banks [1220] ○ Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] ○ Salicornia and other annuals colonizing mud and sand [1310] ○ Bottlenose Dolphin - <i>Tursiops truncatus</i> [1349] ○ Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachion</i> vegetation [3260] ○ <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410] <ul style="list-style-type: none"> ● The NPWS has identified a site-specific conservation objective to restore the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] ○ <i>Petromyzon marinus</i> (Sea Lamprey) [1095] ○ Atlantic Salmon - <i>Salmo salar</i> (only in fresh water) [1106] ○ *Coastal lagoons [1150] ○ Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330] ○ Otter - <i>Lutra lutra</i> [1355] ○ Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] ○ *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]
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10.8. Potential Significant Effects

10.8.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated.

10.8.2. In terms of indirect effects, and with regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 6km from the boundary of any designated site. As such, there shall be no direct or indirect loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The subject site comprises a quarry environment, which has not operated for many years. The wider area is generally a quiet rural area, with a small number of one-off houses and farmyards in the vicinity. As such, there is little physical development in the vicinity.

No qualifying species or habitats of interest, for which the closest Natura 2000 site is so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to land based species or habitats for which the identified Natura 2000 site have been designated.

- **Water Quality:** This is an application for a discharge licence associated with the proposal to recommence quarrying activities at the site. The subject site, while not located within the SAC or SPA, is hydrologically connected to a Natura 2000 site via the proposed discharging of waters from the quarry into the Kilmulhane Stream, which flows into the Cashen Estuary and forms part of the Lower Shannon SAC.

Kerry County Council completed an AA report and concluded that while the qualifying interest habitats for the SAC are estuarine or marine in nature, they are not considered to be susceptible to pollution as could arise from a quarry project of the nature and scale proposed. Given the hydrological distance from the site together with the dilution capacity available in the downstream estuarine waters, which are naturally turbid, Kerry County Council have concluded that the potential for impacts on qualifying interest habitats associated with the Lower River Shannon SAC can be ruled out with certainty.

In terms of QI species, it is considered that the scale and characteristics of the Kilmulhane Stream, including the water quality status, the significance of any potential supporting role associated with Atlantic Salmon or Otter populations in the SAC, is likely to be limited in importance. The Kilmulhane Stream is also not considered to be of significant importance to lamprey populations associated with the SAC.

Water management measures are also incorporated into the overall design of the scheme and are considered to be standard measures not identified as mitigation in the context of AA.

- 10.8.3. Having regard to the above, I am satisfied that with the full implementation of the mitigation measures as described in the submitted NIS, there is little or no potential for impacts on water quality arising within the SAC.

10.9. In Combination / Cumulative Effects

- 10.9.1. In terms of potential in-combination / cumulative impacts associated with the proposed development I note Section 5.35 of the submitted NIS. It is concluded that no effects on Natura 2000 sites are predicted to occur as a result of the proposed project and therefore, there are no pathways for the project to act in combination with other plans and projects. Cumulative effects on the Lower River Shannon SAC are not predicted to occur as a result of the proposed quarry discharging into the Kilmulhane Stream.
- 10.9.2. Given the nature of the proposed development, together with the information available, I consider that any potential for in-combination effects on water quality in

the Lower River Shannon SAC can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in the Lower River Shannon SAC via rivers and other surface water features are also subject to AA.

10.10. Mitigation Measures

10.10.1. Mitigation and best practice measures are proposed to address the potential adverse effects of the development to ensure that the development will not adversely affect the identified European Sites or the conservation status of protected habitats and species they support. The submitted NIS includes details of water management proposals, which I consider to be standard for quarry developments.

10.11. Overall Appropriate Assessment Conclusion

10.11.1. Having regard to the nature of the subject development site, the nature of the proposed development and its location within the rural area, together with the details presented in the Natura Impact Statement, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, I consider it reasonable to conclude on the basis of the information on the file, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the following Natura 2000 site, or any other European site, in view of the sites Conservation Objectives:

- Lower River Shannon SAC (Site Code: 002165).

11.0 Recommendation

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

12.0 Reasons and Considerations

1. Notwithstanding the information submitted with the application for the discharge licence, as the receiving waterbody, the Island-Sack Little_10, is currently unclassified as unassigned and under review, the water quality status is currently unknown and therefore, it is unclear whether this particular waterbody is at risk of not achieving the required Water Framework Directive quality status. The proposed receiving waterbody is also a tributary of The Cashen transitional waterbody, which is classified as being of poor water quality status and is at risk of not achieving the required WFD quality status. As such, the Board cannot be satisfied that the proposed discharge will not negatively impact on the ability of both water bodies to achieve the relevant water quality status required under the Water Framework Directive

A. Considine
Planning Inspector

29th August, 2022