



An
Bord
Pleanála

Inspector's Report ABP-312502-22.

Development

Retention Permission sought for (A) 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 for a 6 year period. (B) permission for blasting and washing of aggregate, (C) portacabin (40m²) weighbridge and wheelwash, (D) installation of a packaged waste water treatment system and polishing filter.

The application is accompanied by a Natura Impact Statement.

Location

Farranastack Townland, Lisselton, Co. Kerry

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

21/1199

Applicant(s)

McSweeney Bros. Quarries Ltd

Type of Application

Permission

Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	McSweeney Bros. Quarries Ltd
Observer(s)	Stephen O'Connor Michael & Helen Moriarty Maurice Dunworth Darragh Gill Hugh & Mary O'Donnell Elaine Nolan & Glen Wightman
Date of Site Inspection	23 rd June, 2022
Inspector	A. Considine

1.0 Site Location and Description

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

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices, as follows:
- (A) 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,
 - (B) Permission for blasting and washing of aggregate,
 - (C) Permission for a portacabin (40m²) weighbridge and wheelwash,
 - (D) Installation of a packaged waste-water treatment system and polishing filter.
- 2.2. The planning application was accompanied by the following documents:
- Application form and relevant plans and particulars
 - Planning & Environmental Report which includes the following in appendices:
 - Natura Impact Statement Report

- Hydrological Assessment – incl Theis GW Drawdown Calculations
- Air Quality Impact Assessment
- Noise Impact Assessment
- Vibration Impact Assessment
- Landscape and Visual Impact Assessment
- Traffic and Transport Assessment Report.
- Site Characterisation Report (dated 2016)
- Letter of consent from landowner

2.3. The Planning & Environmental Report

The P&E report sets out the details of the site location and the proposed development as well as setting out the needs for the development. It is indicated that the development will ensure that the applicant will meet the needs of the markets they have built up in the area and will supply their existing asphalt manufacturing facility at Banemore, Listowel Co. Kerry, some 28km from the subject site. The Report also includes an EIA Screening at section 1.6. of the report, which concludes that EIA is not required.

It is proposed that the quarry will be worked using conventional mechanical excavator and industry standard blasting. It is not proposed to deepen the quarry floor. The working life of the quarry is indicated at 5 years with a proposed annual output of up to 120,000 tonnes. In the 6th year, final restoration of the site will be completed.

Section 3 of the report sets out the Planning Considerations including policy, planning history of the site and a consideration of alternatives. Section 4 of the Report seeks to consider environmental impacts associated with the proposed development under a number of headings including as follows:

- | | |
|-------------------------------|----------------------|
| • Flora & Fauna | • Noise |
| • Soils & Geology | • Vibration |
| • Surface Water & Groundwater | • Landscape & Visual |
| • Air Quality | • Cultural Heritage |

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for the proposed development for the following stated reasons:

1. The transport and haulage associated with the projected extraction quantities from the proposed development would lead to significant volumes of heavy goods vehicles using the L-6012 and L-1004 Local Roads. Notwithstanding the proposal to construct passing bay arrangements along the L-6012 Local Road, it is considered that the HGV traffic generated by the proposed development would present traffic capacity problems and road safety risks for all road users. The additional traffic generated by the proposed development would, therefore, endanger public safety by reason of traffic hazard and obstruction of road users and would be contrary to the proper planning and sustainable development of the area.
2. Based on the information submitted with the planning application, the Planning Authority is not satisfied that the discharges from the quarry would not have significant effects on water quality of the Kilmulane Stream which ultimately drains to the Lower Shannon SAC. Consequently, the proposed development would be likely to cause water pollution and would seriously injure the environment, biodiversity, water quality and natural heritage of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. In the absence of detailed information in relation to dust, noise and vibration levels generated by the proposed quarry, the Planning Authority is not satisfied on the basis of submissions made in relation to the application, that the proposed development would not cause environmental pollution and nuisance. Furthermore, having regard to

the proximity of the quarry to existing residential development in the area, it is considered that the proposed development would seriously injure the amenities of residential properties in the vicinity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

The planning report notes that this is essentially a repeat application and sets out the planning history of the site, considers the proposal against the Development Plan policies and objectives, details submitted in internal reports and external submissions from third party objectors. The assessment considered the proposed development in terms of principle, visual impact, planning history, road safety / traffic, water/ soil / effluent disposal and residential amenity, as well as third party objections. The report also includes an EIA sub-threshold screening report which concludes that an EIA is not required. AA Screening is also carried out within the planning report and the mitigation measures outlined as part of the proposed development are noted as being standard for quarry operations. The report concludes that the proposed development, including the development and discharge licence, are not likely to adversely affect European Natura 2000 sites.

The report concludes recommending that permission be refused for the proposed development for 3 stated reasons. This report formed the basis for the PAs decision to refuse permission for the development.

3.2.2. Other Technical Reports

Environment Section: The Board will note that there are 2 reports from the Environment Section noted as follows:

1. An initial report notes that it is restricted to consideration of potential for significant effects and adverse impacts on Natura 2000 or European sites. The report does not intend on assessing the impact on wider environmental considerations including the Water Framework Directive, Fisheries, NHAs or watercourses downstream unless relevant. The report essentially comments on the discharge licence application.

The report concludes that mitigation measures outlined are standard for quarry operations and that it is unlikely that the development as proposed will adversely affect European sites in view of the sites' conservation objectives provided that the proposed water management plan measures outlined are adhered to.

2. A second Environment Section Report relates to the proposed development noting that notwithstanding the information furnished, the Section has strong reservations in relation to the discharge of water from the proposed quarry to the Kilmulhane Stream, in particular the assimilative capacity of same to accept the quarry discharge.

The Section has serious concerns about the potential for water quality related issues arising and cannot be satisfied that the proposed discharge will not negatively impact on identified waterbodies – Island Sack Little and The Cashen – ability to achieve the relevant water quality status required under the WFD.

Issues relating to noise are also noted as a concern, together with the fact that the baseline data in the Noise Impact Assessment Report was collected in 2016.

Refusal is recommended.

Listowel Roads Office: The report notes that the public road is approximately 4-4.5m in width and that the applicant proposes to a passing bay arrangement along the L-6012 for an approximate length of 1.5km between the quarry entrance and the junction of the L-6012 and the L-1004. Notwithstanding the proposals, it is considered that the proposed volumes of heavy goods vehicles on the narrow local secondary road will present physical road cross section problems and road safety risks for all road users including motorists and vulnerable road users.

The existing pavement and proposed passing bays are not considered sufficient to cater for the projected volumes of HGVs. A more extensive road widening and road strengthening solution is considered to be appropriate and as such, the report recommends that permission be refused.

3.3. Prescribed Bodies

An Taisce: The planning history of quarrying on the site needs to be addressed.

EPA: The submission notes that under Section 42(1G)(b) of the Waste Management Act 1996 as amended or Section 87(1G)(b) of the EPA Act 1992 as amended, the Agency makes observations in relation to whether EIA is required where a licence is required. No licence application relating to the proposed development has not been received by the EPA.

3.4. Third Party Observations

There are 16 third party objections noted, 1 with 130 signatories, on the planning authority file. Issues raised are summarised as follows:

- Roads and traffic issues – road is too narrow to accommodate the development and associated volume of traffic
- Impact of dust on existing residential properties. Dust was a chronic problem with the original quarry.
- History of site in relation to pollution issues, and in terms of violations, a prosecution and repeated attempts at obtaining planning permission.
- Third parties are weary of studying planning applications for the quarry.
- The assimilative capacity of the Kilmulhane Stream is not adequate to cater for the discharge from the quarry and would have significant effects on the Lower Shannon SAC.
- The submitted AA Screening / NIS fails to address elevated suspended solids which will have a disastrous effect on fish populations.
- The proposed extraction levels is 6 times that of the originally permitted quarry in 2006. The roads were destroyed with the original levels and are not suitable for HGV traffic.
- Noise impacts given the elevated and exposed location and proximity to residential properties.

- This is not an operational quarry with no operations since 2009.
- The development will devalue property in the area.
- The NIS assessment is inadequate and does not comply with the Habitats Directive.
- Visual impacts associated with the development.
- Proposed blasting could cause damage to houses and will affect the mental health of residents in the vicinity of the site.
- The site is close to part of the Shannon Way walking trail and the local roads are used by cyclists and walkers.
- The site is located within the zone of influence for the Lower River Shannon SAC.
- An impartial and independent Environmental Impact Study and Ecological Impact Study should be carried out.
- Impact of the development on domestic wells and water quality.
- There has been no engagement with the community.
- Impact of the development on agriculture in the area.

4.0 Planning History

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

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

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

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

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

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

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

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

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

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

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

PA ref. 15/927: Permission was sought 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 Pl. 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).

4.2. Unauthorised Development:

Ref. UD32/07: This is an Unauthorised Development file which dealt with a number of enforcement issues including opening of land outside of the area included

in the application made under Ref. 06/2419. Enforcement was deferred until after the section 261A process.

4.3. Section 261 Registration:

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

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

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

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

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

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

The Reason for the Decision was as follows:

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

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

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

5.0 Policy Context

5.1. National Policy

National Planning Framework – Project Ireland 2040:

- 5.1.1. The Department of Housing Planning and Local Government, on behalf of the Government, prepared and published the finalised National Planning Framework under Project Ireland 2040, the overarching policy and planning framework for the social, economic and cultural development of our country, in 2018. It is a national document that will guide at a high-level strategic planning and development for the country over the next 20+ years, so that as the population grows, that growth is sustainable (in economic, social and environmental terms).

Southern Regional Spatial & Economic Strategy, 2020:

- 5.1.2. The RSES provides a long-term, strategic development framework for the future physical, economic and social development of the Southern Region and includes Metropolitan Area Strategic Plans (MASPs) to guide the future development of the Region's three main cities and metropolitan areas – Cork, Limerick-Shannon and Waterford. The RSES for the Southern Region came into effect on 31st January 2020.

5.2. National Guidelines

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

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

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

- 5.2.2. These guidelines are intended to complement existing national guidance and to be of assistance to operators, regulatory authorities, and the general public (They are also complemented by the 'Environmental Management in the Extractive Industry – Guidelines for Regulators'). The guidelines provide general advice and guidance in relation to environmental issues to practitioners involved in the regulation, planning, design, development, operation and restoration of quarry developments and ancillary facilities.

5.2.1. Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, August 2018

- 5.2.2. These guidelines coincide with the making of the European Union (Planning & Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018) and the coming into operation of the Regulations on 1st September 2018 in order to transpose the Directive into Irish law. The Guidelines replace *Guidelines for Planning Authorities and An Bord Pleanála on carrying out environmental impact assessment* issued by the DoECLG in 2013. The purpose of the guidelines is to give practical guidance on procedural issues and the EIA process arising from the requirements of Directive 2014/52/EU.

5.3. Development Plan

- 5.3.1. The Kerry County Development Plan 2015-2021 is the relevant policy document.

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

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

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

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

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

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

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

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

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

NR-7 Ensure that development for aggregates / mineral extraction, processing and associated concrete production will be prohibited in Prime Special Amenity Areas and will not generally be permitted in other open or sensitive landscapes.

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

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

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

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

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

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

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

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

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

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

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

Section 10.3: Water Quality

Section 10.14: Environmental Impact Assessment

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

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

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

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

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

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

5.4. Natural Heritage Designations

There is no designated site within the proposed development site. The subject site is located within 6km of the Lower River Shannon SAC (Site Code 002165) and 7km from the River Shannon and River Fergus Estuaries SPA (Site Code 004077).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a first party appeal against the decision of the Planning Authority to refuse permission for the proposed development. The grounds of appeal are summarised as follows:

6.1.2. Refusal Reason no. 1: Roads & traffic issues:

- It is submitted that a comprehensive and detailed traffic and transportation assessment was submitted with the application which clearly demonstrated that there would be no link or junction capacity concerns at the year of opening (2022) and in all future scenarios (2027 and 2037).
- The passing bay design developed was Road Safety Audited.
- The PA does not provide any details to support the claims regarding the existing road pavement and material makeup.
- If there is a requirement to upgrade the access road this should be detailed and a financial contribution levied to allow the improvements to be carried out.
- This reason for refusal is not fair, reasonable or justified and it is requested that the Board removes this reason for refusal and grants permission for the proposed development.

6.1.3. Refusal Reason no. 2: Impacts on Water in terms of discharge from the quarry and impact on water quality.

- A discharge licence has been sought for the proposed development, which was refused by Kerry County Council, which is also under appeal with the Board.
- Delays to responding to the request for FI was due to Covid restrictions.
- 6 rounds of surface water quality sampling were taken between December 2020 and June 2021 at a number of identified points.
- The baseline discharge average water quality results from the quarry indicate that the water from the site is of good quality, better than the water in the receiving waters of the Kilmulhane Stream.
- 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.
- An assimilative capacity assessment and mass balance calculation for the discharge from the quarry was submitted with the Discharge Licence application. The results show that there is available assimilative capacity in the receiving waters of the Kilmulhane Stream. It is not clear why the Council were not satisfied in this regard.
- The appeal considers the potential impact on water bodies not achieving relevant water quality status of the Island-Sack Little Waterbody and the Cashen Transitional Waterbody. It is concluded that the operation of the quarry will not have an adverse impact on water quality and will not be responsible for the waterbodies being at risk of not achieving the required Water Framework Directive quality status.
- It is requested that this reason for refusal be removed and that the Board grants permission for the proposed development.

6.1.4. Refusal Reason no. 3: Noise impacts

- The submitted noise impact assessment was prepared in accordance with the Guidelines for Noise Impact Assessment, 2014 produced by the IEMA.
- It is considered that the as a comprehensive noise impact assessment was undertaken which concluded that the cumulative long-term impact from plant associated with the development is negligible to minor, and with a negligible noise impact on any Natura 2000 site.

- It is unclear therefore how this reason for refusal came about and it is requested that the Board remove this reason and that permission be granted for the development.

6.2. **Planning Authority Response**

Kerry County Council submitted a response to the observation submitted by Elaine Nolan & Glen Wightman. The response notes the concerns raised in relation to traffic safety, water pollution, noise pollution and visual impact of the proposed development. The Planning Authority notes the 3 reasons for refusal in terms of water quality, traffic and noise.

With regard to the visual impacts, the location of the quarry in an amphitheatre setting, the low visual impact of the existing quarry from the surrounding area and the proposal to recommence quarrying activity within the existing site area, it is considered that subject to mitigation measures put forward by the applicant, the visual impact of the proposed development is acceptable.

6.3. **Observations**

There are 6 observations noted in relation to the subject appeal from the following:

- Michael & Helen Moriarty
- Maurice Dunworth
- Darragh Gill
- Hugh & Mary O'Donnell
- Elaine Nolan & Glen Wightman

The issues raised in the observations are summarised as follows:

- It is requested that the Board uphold the decision of the PA and refuse permission for the proposed development.
- The Board has already refused permission on roads, and nothing has changed since this decision. The road is not suitable to accommodate the traffic associated with the quarry and the information provided by the application is not accurate in terms of road widths.

- The development if permitted will lead to the stream, which flows into the Lower Shannon SAC, being polluted.
- Residential Amenity Issues raised in relation to noise, dust, vibration, visual impact and general nuisance created by the Quarry.
- The quarry previously worked as a small family operation which supplied local businesses and farmers using agricultural tractor and trailers. There is no need for another large industrial quarry in the area.
- Blasting causes concerns and anxiety for locals whose homes may be at risk.
- Pollution of air and water risks.
- The repeat applications are having an impact on the mental health of locals and causes anxiety.
- Shortcomings in the Noise model noted as it does not include all of the machinery needed to produce aggregates for asphalt.

6.3.1. The Board will note that a further submission was received by the Board from An Taisce. This observation was submitted outside of the appropriate period and was returned.

6.4. First Party Response to Third-Party Observations

6.4.1. The First Party response relates specifically to the observation submitted by Elaine Nolan & Glen Wightman. The response addresses the issues raised in the Earth Science Partnership report and is summarised as follows:

- It is submitted that sufficient information has been provided with the application to enable an assessment of the potential impact of the proposed development in terms of water, noise and traffic.
- The applicant has not carried out any development works on the site and the quarry development was carried out by previous quarry operators. Permission for the retention of the unauthorised works was granted in November 2020.
- The development is demonstrated to be entirely consistent with the proper planning and sustainable development of the area.

- The proposed development will not result in a significant road hazard, as demonstrated in the Traffic Assessment submitted with the application.

The Board will note the comprehensive response submitted by the applicant and it is requested that permission be granted for the proposed development.

6.5. Further Responses

Hugh & Mary O'Donnell submitted a further response concurring with the observation submitted by Elaine Nolan & Glen Wightman.

7.0 Planning Assessment

7.1. Introduction

- 7.1.1. The Board will note that this is essentially, a repeat application. The previous assessment by the Board concluded that permission should be refused for quarry 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.

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

- The principle of the proposed development & compliance with policy
- Roads & traffic issues
- Environmental issues
- General & residential amenity issues
- Other issues

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

- 7.2.1. National and Regional Guidance recommends that local authorities identify and protect important strategic mineral reserves in development plans while also acknowledging the economic importance of the quarry industry in supplying the construction sector with aggregates and stone. It is accepted that major infrastructure projects will create a demand for aggregates that will support the continuing economic and social development of the country and maintain Ireland's international competitiveness.
- 7.2.2. In terms of compliance with the current Kerry County Development Plan, 2015, the Board will note that the Plan recognises the importance of the extractive industry in economic and employment terms to the county through the production of aggregates and the associated manufacture of products, such as pre-cast concrete blocks and ready-mix concrete, for use in the wider construction sector. The Plan further states that the industry is necessary for continual economic growth; which is an integral requirement for the implementation of the National Development Plan, Transport 21 and private sector development. It is the stated objective of the Plan, Objective NR-1 refers, to 'maximise the economic potential and development of natural resources in a sustainable manner.....'.
- 7.2.3. The policy objectives relating to the extractive industry seek to promote such uses in appropriate locations and where such developments do not result in significant adverse effects on the environment, designated sites or local communities. The Plan also seeks to ensure that all extractive development proposals comply with the objectives of the plan as the relate to development management standards, flood risk management requirements and the protection of landscape, biodiversity, infrastructure, water and air quality, built and cultural heritage and residential amenity, Objective NR-5 refers.
- 7.2.4. The subject site is located within an area of Co. Kerry which has been designated as Rural General and there is a long-standing history of quarrying at the site, albeit, no quarrying appears to have occurred at the site from approximately 2009. The site is located in a rural area with a number of residential properties within 500m. The access to the site is via a local road where the surface upgraded in the past few years. The road itself is narrow and can accommodate two cars passing very slowly.

The speed limit of the road is 80km/ph. The site is not located within a Prime Special Amenity Area where extraction, processing and associated concrete production are prohibited, Objective NR-7. The objective also provides that such uses 'will not generally be permitted in other open or sensitive landscapes.' I propose to deal with landscape and visual impacts further later in this report.

- 7.2.5. In terms of the above, and while I acknowledge that quarrying does not appear to have occurred at the site for many years, the site has been used for quarrying for many years. I also note that the area of unauthorised quarrying has recently been granted retention permission, PA ref: 20/985 refers. As such, I am satisfied that in principle, the proposed development can be considered as being acceptable and in general compliance with national, regional and local policies. Site specific issues will be dealt with further below.

7.3. Roads & Traffic:

- 7.3.1. The Board will note that this current appeal essentially amounts to a repeat application whereby the Board has previously refused permission for the development, PL08.248266 (PA ref: 16/836) refers, 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.

- 7.3.2. The subject site is located in a rural area in north Co. Kerry and is accessed over a network of local roads. The planning history of the subject site would suggest that in the past the public road was deemed inadequate to accommodate the traffic generated by a quarry development without significant improvements to the road. The Board will note that the Listowel Roads Office engineer has also raised concerns with regard to the proposed development. Notwithstanding the proposals by the applicant to construct two passing bays along the L-6012, it is considered that the projected volumes and increase in volumes of heavy goods vehicles on the local road will present physical road cross section problems and road safety risks for all

road users including motorists and vulnerable users. In addition, the existing road pavement and road material in its make-up are not considered sufficient to cater for the projected volumes and increase in volumes of HGV traffic.

- 7.3.3. The report ultimately recommends that permission be refused for the proposed development on the basis that ‘the existing road pavement and the proposal to construct lay-bys to allow for passing movements is not considered sufficient by the Road Authority for the projected volume of heavy goods vehicles traffic that will require access to the proposed development. It is considered that a more extensive road widening and road strengthening solution is more appropriate in this instance.’
- 7.3.4. In support of the proposed development, the Planning & Environmental Report, submitted with the application, contains, at appendix G, a Traffic and Transport Assessment Report. The report advises that it has been prepared in accordance with the requirements of the NRAs Traffic & Transport Assessment Guidelines, 2014 and seeks to address all roads issues arising in terms of the operation of the quarry at the site. Section 2 of the report sets out the existing conditions including at the site where there has been a quarry for many years, as well as the existing road network. The report notes the recent strengthening and resurfacing of the roads, including edge of carriageway road markings and submits that the road surface and condition is good.
- 7.3.5. The local road at the site, the L-6012, is described as a relatively narrow rural road with no footways or cycle facilities and a width between 4m and 5m. The report indicates that the road will continue to facilitate quarry traffic and that the route is currently signed to carry quarry traffic, although the signs are old and are in need of replacement. A traffic survey was carried out in May of 2021, during noted Covid related travel restrictions and as such, the report acknowledges that the travel patterns noted are likely to have been reduced and therefore may not be representative of typical travel patterns. The results were therefore adjusted to account for the observed reduction in traffic.
- 7.3.6. Section 3 of the Traffic & Transport Assessment report considers the proposed development and notes that the subject development will entail the excavation and removal of approximately 120,000 tonnes per annum of quarried material. The report seeks to assess the impact of the development based on a 50-week working year,

5.5 days working per week with a 11-hour working day Monday to Friday and 5 hours on Saturdays¹.

- 7.3.7. In terms of the proposed development, the TTA concludes that a grant of permission will result in 34 daily truck movements, 17 inbound and 17 outbound, together with 6 staff daily trips, 3 inbound and 3 outbound and 2 miscellaneous trips per day, amounting to a total of 42 traffic movements associated with the proposed development. Section 4 of the submitted report deals with road impacts and notes that the L6012, although having an approximate width of 5m with no hard shoulders, is considered to be most similar to the Type 3 Single Carriageway in the context of capacity, with a capacity of 5,000 AADT for Level of Service D. In this regard, the combined background and proposed development traffic in each assessment years is less than the Level of Service D capacity. The proposed development represents between 7.05% and 7.46% of the total traffic on the L6012 during the assessment years 2021 to 2037. The impact on the local road network further from the subject site is considered to be less than the above figures.
- 7.3.8. The traffic impact associated with the proposed development is expected to have a negligible impact on traffic flows on the existing road network due to the low volumes of traffic to be generated from it. All junctions will operate within capacity for each of the assessment years and the report concludes, noting that a Road Safety Audit has been carried out.
- 7.3.9. The Board will note the submissions from local residents and the concerns raised in relation to the traffic issues arising from the operation of a quarry of the scale proposed at this location. Having undertaken a site visit, I can confirm that the condition of the public road is currently, generally good. The narrow nature of the road, however, remains a concern given the intended use of HGVs to transport the quarried materials from the site. There is not enough room for a car and HGV to pass and certainly two HGVs could not pass each other.
- 7.3.10. I would also note the level of previously permitted extraction at this quarry, which was noted to have been 20,000 tonnes per annum. In addition, it is noted that when the quarry last operated (2007-2009), it did so in contravention of set conditions of

¹ The Board will note that the Planning & Environmental Report indicate a 12-hour working day, Monday to Saturday with no operations taking place on Sundays or public holidays.

planning permission. As such, I would have concerns regarding the currently proposed extraction of 120,000 tonnes per annum from the site and the significant impacts this increase in tonnage would have on the existing local road network, as well as the local residents. While I accept the historical use of the site, the local road network has not been subject to ongoing quarry traffic as would appear to be suggested in the applicants TTA report for approximately 13 years, and therefore, the L-6012 does not necessarily 'continue to facilitate quarry traffic'. The inadequacies and age of the signage referred to would attest to this conclusion.

- 7.3.11. While I accept that the estimated volume of traffic that would be generated by the proposed development can be considered low in terms of a quarry development, given the nature and carrying capacity of the existing local road, together with its narrow width, I do not consider that the level of extraction proposed and the traffic movements generated by it, can be accommodated without endangering public safety by reason of traffic hazard and resulting in an obstruction to road users. As such, and having regard to the Boards previous decision, I do not consider that the situation has changed in the intervening years to conclude otherwise. I recommend that permission should be refused for the proposed development.

7.4. Environmental Issues:

Water:

- 7.4.1. The Board will note that a Discharge Licence application to discharge groundwater and surface water from the site to the Kilmulhane Stream, a tributary of the River Feale, has also been submitted. Kerry County Council has refused permission for the discharge licence, and this decision has been appealed to the Board – ABP-312324-21 refers. Surface waters from the subject site drain into the Kilmulane Stream which ultimately drains to the Lower River Shannon cSAC via the Casheen Estuary. The existing site has been used as a quarry in the past and it is submitted that the proposed extraction area, covering approximately 2.1ha, generally comprises stripped bare ground of low ecological and nature conservation value. The applicant proposes that the quarry will be worked dry and therefore, the existing floor level of the quarry will not be altered.

- 7.4.2. The submitted Planning & Environmental Report, Section 2.6 deals with Water Management and notes that the current discharge from the inactive quarry represents the background, or baseline, water quality at the site. Currently, surface water runoff from the quarry floor flows directly into the settlement lagoon via a pipe beneath the berm around the lagoon. The proposed development will remove this pipe and will create a dedicated sump on the quarry floor to collect water to pump to the settlement lagoon. 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.
- 7.4.3. Kerry County Council refused permission for reasons which included the potential significant effects the discharge of water from the development would have on the water quality of the Kilmulhane Stream, and in terms of the assimilative capacity of the stream. The Council concluded that it was not 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.
- 7.4.4. The applicant/appellant has sought to address the concerns of the PA and undertook six rounds of surface water quality sampling which would suggest that the quality of the discharge waters will be a higher quality of the receiving waters. Table 6 of the Planning and Environmental Report presents the summary of the discharge water quality providing an average of the 6 readings from December 2020 to June 2021.
- 7.4.5. In terms of the samples taken after passing through 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.

- 7.4.6. With regard to the capacity of the stream to accommodate the discharge from the proposed quarry, the Board will note that four of the six instream flow measurements carried out following the request for further information, were lower than the 95%ile flow used in the initial assessment – based on a 95%ile flow of 0.0005m³/sec as taken from the EPA Hydro tool.
- 7.4.7. While I acknowledge the information submitted in response to the PAs concerns with regard to the impact of the discharge on receiving waters, the Board will also note relevant case law in terms of the WFD, in particular, *Weser*² and *Bradán Beo Teoranta*³. In this regard, it has been determined by the courts 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.
- 7.4.8. As the Kilmulhane Stream and the Island-Sack Little_10 waterbody, do not have an existing status under the WFD, as such, and 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, 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.

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

³ [2021] IEHC 16

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.

- 7.4.9. The Board may consider this to be a valid reason for refusal of permission in this instance.

7.5. General & residential amenity issues

Residential Amenity:

- 7.5.1. There are a number of residential properties located in proximity to the subject appeal site. The majority of the third-party observations submitted cite the impact on residential amenity as concern, and particular reference is made to the previous operation of the quarry, particularly during 2008/2009. I refer the Board to objective NR-3, of the CDP which states that it is the policy of the Council to 'ensure that the development and exploitation of natural resources does not result in any significant adverse effects on the local community.' The operation of a quarry represents a difficulty in that it is a necessary and vital resource for future development of the area but where that operation gives rise to concerns where residential, environmental, and visual considerations have to be weighed against economic, employment and development considerations. It is required that the Board consider whether or not the operation of the quarry results in any significant adverse effects on the local community.
- 7.5.2. There are a number of elements of the proposed development which have the potential to negatively impact the existing residential and general amenities of the area including the visual impacts associated with the proposed quarry, as well as operational impacts in terms of noise, vibration, blasting and dust. The Board will note that these issues were considered as part of the previous assessment for the development and are dealt with below.

Visual:

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

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

Noise

- 7.5.4. The subject site is located in a very rural and quiet area. The process of quarrying will generate a variety of noises which will have potential to impact on the residential amenity of local residents. The proposed development is seeking permission for blasting and the washing of aggregates at the quarry which will be new processes at this quarry. In addition, other noises associated with quarry operations include mobile crushing, screening and processing of rock and the use of an articulated dump truck amongst other machinery. The issue of noise was raised as a concern by the PA during their assessment of the proposed development.
- 7.5.5. Appendix D of the submitted Planning & Environment Report presents a Noise Impact Assessment. Section 2 of the report seeks to describe the receiving environment and notes that noise surveys were previously carried out at four locations on the 15th January, 2016. The Board will note that this survey was carried out as part of the previous application for a similar development at the site and the details of that assessment were previously considered by the Board. All monitoring locations were adjacent to the local public roads where the results indicate existing background levels ranging from 56.8-58.9dBL_{Aeq,T}. In terms of background noise levels, the Board will note that the measured dBL_{A90} value is typically used as it accounts for the influence of peripheral noises such as passing traffic, dogs barking etc. at the monitoring locations. The measured noise levels recorded are indicated at between 29.1-30.4dBL_{A90}.
- 7.5.6. In terms of the noise modelling, the first party used the calculation algorithms set out in British Standard 2558:2009 'Code of practice for noise and vibration control on construction and open sites, Part 1: Noise'. In addition, the report details the factors the model assumes in its calculations (Section 3.1 of report). The first party presents the cumulative operational noise levels in Table 12 of the report and concludes that the cumulative short-term noise impact within the application site at the nearest receptors will be minor at R1, R2, R5 and R13 and will not be present or significant

at all other noise sensitive receptors. I note the reference to traffic at section 3.2 of the report which indicates 18 no. 2-way HDV movements per day. This would not correlate with the traffic and transport assessment figures. However, the report concludes that the impact of the scheme can be considered to be negligible in terms of noise.

- 7.5.7. Section 4 of the Noise Impact Assessment deals with mitigation measures proposed to be implemented to reduce noise impacts of the plant associated with the quarry development. Such measures include screening, operation and maintenance of plant, traffic measures and other factors associated with hours of operation and limiting the number of noisy events. Once implemented, it is concluded that the cumulative long-term impact from plant at receptors R2 and R15 is negligible and long-term impact at receptor R1 is assessed to be minor.
- 7.5.8. Section 6 of the report considers the impact of noise on the ecological receptors of concern associated with Natura 2000 sites within 2km of the application site. The report concludes that the impacts will be negligible.
- 7.5.9. The EPA Guidance on Quarries and Ancillary Activities suggested noise limit values of 55dB(A) and 45dB(A) for daytime and night-time respectively. The guidelines advise that in areas of higher background noise levels, the EPA recommends that ideally, if the total noise level from all sources is taken into account, the noise level at sensitive locations should not exceed a Laeq (1 hour) of 55 dB(A) by daytime and a Laeq (15 minutes) of 45 dB(A) by nighttime. These guidelines acknowledge that most quarries are situated in areas of low background noise and that it is appropriate to consider this when setting noise limits. It is further stated that complaints can be expected where the noise levels from quarrying operations are between 5 to 10dB above background noise levels.
- 7.5.10. By its nature, the operation of a quarry generates noise. It is noted that while permission has been granted in the past for a quarry operation at the subject site, albeit substantially smaller in scale, it was not operational during the current noise monitoring assessment and therefore did not contribute to the background noise levels. I also note that the PA has refused permission for the proposed development for reasons relating to noise nuisance and the fact that no up-to-date information has been presented. That said, I am satisfied that appropriate conditions could be

attached to any grant of planning permission, should the Board be minded to grant permission in this instance, to control noise emissions from the site in order that the development will not have a detrimental effect on the general and residential amenity of the area by reason of noise.

Vibration & Blasting:

- 7.5.11. The proposed development is seeking permission to use explosives, which will be a new process at this quarry. The Board will note that conditions of previous planning permission specifically excluded blasting. Concerns have been raised by local residents with regard to the impact of blasting and associated vibration on surrounding properties and the possibility of damage. The EPA guidelines, 'Quarries and Ancillary Activities, Guidelines for Planning Authorities' recommends that in order to avoid any risk of damage to properties in the vicinity of a quarry, the vibration levels from blasting should not exceed a peak particle velocity of 12mm / sec as measured at a receiving location when blasting occurs at a frequency of once per week or less. In cases of more frequent blasting, it is recommended that the peak particle velocity should not exceed 8mm/sec. Similarly, the Guidelines recommend that blasting should not give rise to air overpressure values (i.e. pressure waves transmitted through the air) at the nearest occupied dwelling in excess of 125dB(Lin)max. peak with a 95% confidence limit.
- 7.5.12. Appendix E of the Planning & Environmental Report, submitted in support of the proposed development, presents a Vibration Impact Assessment. The report refers extensively to the British Standard guidelines and references in its assessment. The Board will note that it is not proposed to deepen the quarry floor and that proposed future extraction will extend westwards into the area that has already been stripped of topsoil and overburden. It is submitted that a programme of mitigation measures will be implemented to ensure that the blasting operations do not result in any significant impact on residential amenity of the area, and all blasts will be monitored.
- 7.5.13. Using measured data, a blast regression line has been plotted and a maximum instantaneous charge weight of 42.37kg has been derived at 154m, which is the approximate distance to the nearest vibration sensitive receptor. This receptor is a private residence located approximately 40m to the north of the extraction area line of the quarry, and approximately 154m from the quarry extension area (the retention

of which has recently been permitted by Kerry County Council). The Board will note the third-party concerns in relation to blasting and associated vibration, and the impacts on their homes. With regard to the health and safety implications of blasting, the Board will note that such matters are the responsibility of the Health and Safety Authority (HSA).

- 7.5.14. I acknowledge that the submitted information suggests that the development can be considered acceptable in terms of blasting and vibration. However, I refer the Board to the previous conditions associated with the original quarry at the site which specifically excluded blasting at the quarry. Should the Board be minded to grant permission in this instance, no blasting should be permitted.

Air:

- 7.5.15. The Planning & Environmental Report submitted with the application, at Appendix C, includes an Air Quality Impact Assessment Report, including Air Dispersion Modelling. Section 4 of the document presents the impact assessment and associated risks from the quarry works as well as traffic emissions, while Section 5 sets out the mitigation measures proposed to be implemented at the quarry. The report concludes that the development will not have a dust deposition impact on assessed receptors. I note the third-party submissions in terms of the likely dust impact from the proposed quarrying which conclude that the development may result in a nuisance to neighbouring properties.

Conclusion:

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

7.6. Other Issues

Non-Compliance history:

- 7.6.1. With regard to the issues of past failures by the quarry owner / operator to comply with the conditions attached to previous grants of planning permission for the quarry, and indeed the successful prosecution by Inland Fisheries Ireland, I would note that the Board has no function in terms of enforcement. In this regard, all issues of non-compliance would require referring to the Planning Authority.

Hours of operation:

- 7.6.2. The Board will note that the quarry is not operating at present. The last grant of permission associated with the subject site, PA ref 06/2419 condition 7 refers, provided that the onsite operations of the quarry shall take place only between 08:00 hours and 18:00 hours Mondays to Saturdays only. There shall be no quarrying or manufacturing operations on Sundays or public holidays. The reason states in the interests of orderly development and residential amenity. The subject application proposes operations between the hours of 07:00 and 19:00, Monday to Saturday.
- 7.6.3. In terms of hours of operation, the Board is referred to Section 4.7 of the 'Quarries and Ancillary Activities, Guidelines for Planning Authorities, 2004' which states the following:

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

- 7.6.4. Given the location of the quarry, together with the nature of operations proposed under this planning application and the previous conditions of planning permission pertaining to the site, I consider that the proposed additional two hours per day Monday to Friday should not be permitted, should the Board be minded to grant

permission in this instance. In this regard, and notwithstanding the fact that the application is for a 5 year period to extract the onsite resources, I consider that the local residents should be afforded appropriate peace in the evening times, and on Saturday afternoons. In this regard, I would recommend that the hours of operation should be restricted to 08:00 to 18:00 hours Monday to Friday and 08:00 to 14:00 on Saturdays.

Development Contributions:

- 7.6.5. The Kerry County Council Development Contribution Scheme 2017 is the most recent scheme applicable. The development is a class of development which is identified in the General Development Contribution Scheme and proposes to produce material in excess of 10,000 tonnes per annum and therefore is liable to pay a development contribution in terms of Roads and Transport and Community & Amenity. In this regard, should the Board be minded to grant planning permission, a condition to this effect should be included.

8.0 Environmental Impact Assessment

- 8.1.1. 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 Discharge Licence will be required for water discharging from the quarry to the adjacent watercourse. An application for same has been submitted and is also the subject of a current appeal with the Board.

8.1.2. 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.

8.1.3. 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;

8.1.4. 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.

- 8.1.5. 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.

9.0 Appropriate Assessment

9.1. Introduction

- 9.1.1. 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.
- 9.1.2. 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.
- 9.1.3. 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.
- 9.1.4. 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.
- 9.1.5. Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

9.2. AA Screening Report

9.2.1. The application was accompanied by an Appropriate Assessment Screening, dated September 2021 and prepared by SLR 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.

9.2.2. 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. A Discharge Licence application 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.

9.3. Natura Impact Statement

9.3.1. 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

9.3.2. 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.

9.3.3. 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.

9.3.4. 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 an 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

9.3.5. 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.

9.4. Consultations and Observations

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

9.4.2. 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.

9.4.3. 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.

9.5. Screening for Appropriate Assessment:

- 9.5.1. 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.
- 9.5.2. 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 Moanveanlagh 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.
- 9.5.3. This is an application 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.
- 9.5.4. 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.

9.6. Stage 2 Appropriate Assessment

9.6.1. 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

	<ul style="list-style-type: none"> • 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) • 3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation • 6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) • 91E0 *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)
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Lower Shannon SAC (Site Code: 002165)

- 9.6.2. 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.
- 9.6.3. 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.
- 9.6.4. 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.

9.7. Conservation Objectives:

9.7.1. 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] ○ 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] ○ <i>Salicornia</i> 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 fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] ○ <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinia caerulea</i>) [6410] • 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]

	<ul style="list-style-type: none"> ○ Atlantic Salmon - <i>Salmo salar</i> (only in fresh water) [1106] ○ *Coastal lagoons [1150] ○ Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</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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9.8. Potential Significant Effects

9.8.1. 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.

9.8.2. 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 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 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.

- 9.8.3. 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.

9.9. In Combination / Cumulative Effects

- 9.9.1. In terms of potential in-combination / cumulative impacts associated with the proposed development I note Section 5.35 of the submitted NIS refers. 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.
- 9.9.2. 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.

9.10. Mitigation Measures

- 9.10.1. 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.

9.11. Overall Appropriate Assessment Conclusion

- 9.11.1. 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).

10.0 Recommendation

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

11.0 Reasons and Considerations

1. Notwithstanding the proposals to provide passing bays on the L-6012 Local Road, the Board is not satisfied that the local road network has capacity to accommodate, in particular, the HGV traffic associated with the proposed development. It is further considered that the existing road pavement and material in its makeup is not sufficient to accommodate the traffic associated with the proposed development.

The proposed development would, therefore, endanger public safety by reason of traffic hazard and an obstruction to road users, and would consequently be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector

28th August, 2022