



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314293-22

<b>Development</b>	Retention for the following: extraction area of 0.23 hectares, temporary soil management and storage areas, and all associated site works.
<b>Location</b>	Caher West, Kenmare, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	21/1514.
<b>Applicant(s)</b>	F&M Hurley Plant Hire (Schull) Ltd (trading as Gloun Stone Quarries).
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Grant Retention Permission subject to conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	1. Alan Egan. 2. Peter Sweetman on behalf of Irish Wildlife Defense CLG.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	14 February 2024.
<b>Inspector</b>	Daire McDevitt.

## 1.0 Introduction

Planning permission is sought to retain an extraction area of c.0.23 hectares, temporary soil management and storage areas, and all associated site work.

The site is located at Gloun Stone Quarry (Limestone quarry) in Caher West, Kenmare, Co. Kerry and is operated by F&M Hurley Plant Hire (Schull) Ltd who have stated that they took over operations in 2017.

Permission was granted to Patrick Randies under PL6223 in 1969 for c.2ha (5 acres) quarry. The main quarry at this location was registered in 2007 under section 261 (s261) (QY0082) (Duggan Quarries) and subject to conditions (site area 2 hectares). Under Section 261A(2)(a) Kerry County Council Determined that no further action was required under the section 261A review of control of quarries.

The appeal site lies immediately to the south, adjoining the portion registered under s261 with a stated area of 1 hectares of which the extraction area to be retained has a stated area of c.0.23 hectares.

The applicant has submitted that in the course of quarrying the southside of registered quarry QY0082 in the latter part of 2019, development occurred outside the authorised area. The area which is the subject of this application for retention permission has been referred to as a 'lateral extension' outside the boundaries of the quarry registered under s.261. The applicant submits that the quarry remains regulated by Quarry Registration QY0082. The quarrying on the south side in the latter part of 2019 includes the c.0.23ha area of extraction, temporary soil management and storage areas which are the subject of the current appeal before the Board. It is submitted that all subsequent extraction at the quarry occurred within the authorised quarry area.

Extraction relates to rock, no detail of extraction methods, blasting etc are included with the application documentation and the planning authority has not commented on these matters. There are discrepancies in information provided in the application documentation relating to inter alia site areas, extraction areas, activities. The quarry was operational on the day of inspection.

The applicant in their documentation submit that the existing Quarry measures c.2.8 ha and area which is the subject of the retention application is c. 0.23ha (site area of c.1ha), below the level for mandatory EIA.

Discharges from the existing quarry are managed and controlled in accordance with a section 4 Discharge License (W204) (April 2019) as required under the Local Government (Water Pollution Act) 1997 & 1990.

## **2.0 Site Location and Description**

The quarry (known as Gloun Stone Quarries) is located c.3.5km northeast of Kenmare access off a local road off the R569. The site which is the subject of this appeal refers to an extraction area which forms part of a larger limestone quarry at this location which was registered under section 261 (QY0082).

The application relates to the retention of a extraction area outside the s.261 boundaries. The bulk of the wider quarry lands has been excavated from the hillside and results in a large area of exposed rock faces. To the north of the subject site is an area of active quarrying in operation for some time and extends to an area of c.2.8ha. Access to the site is from an existing entrance off a local road off the R569. The site is an active quarry as observed at the time of my visit.

There are offices, shed and a batching plant at the quarry (outside the current application/appeal boundaries). I note it was in place in 2012 when the review under section 261A took place.

## **3.0 Proposed Development**

Public Notices describe the proposal before the Board as:

Permission to (I) retain an extraction area of 0.23 hectares contiguous to the existing quarry development, (II) retain temporary soil management and storage areas and (III) retain all associated site works.

The development to be retained can be summarised as follows:

- Extraction of rock from an area comprising of c.0.23 hectares which is outside the boundaries of the quarry registered under s.261 (QY0082).

- The application is accompanied by limited information which comprises:
  - Site location map
  - Topographical Survey Plan
  - Site Sections
  - AA screening Report

And following a request for Further Information, a Technical Advice note was submitted to KCC on the 27 June 2022.

## **4.0 Planning Authority Decision**

### **4.1. Decision**

The Planning Authority decided to grant permission subject to 12 conditions. 11 as per Environment Section recommendation and 1 pertaining to Development Contributions.

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

#### **4.2.1. Planning Reports**

The basis of the planning authority decision includes:

##### **Report (24 February 2022):**

Report includes, site description, planning history, copy of submissions received, reference to pre-planning, planning history, referrals/reports and copy of 'Notional Appropriate Assessment Screening & Preliminary Environmental Impact Assessment Screening Exercise' and site photographs dated 28/01/22.

Brief Assessment which stated:

*"Planning History – see planning history above.*

*Visual Impact – no negative visual impacts.*

*Road safety/traffic – existing vehicular access to/from the site not affected by proposed development.*

*Residential amenity – no negative impacts on any neighbouring residential amenities.*

*Third party submissions – The comments raised were duly noted and taken into consideration in the assessment of this application.”*

FI recommended as per Environmental Section recommendation.

#### **Report following receipt of Further Information (21 July 2022)**

Reference to further information received 27/06/22.

Reference to further information assessed by environmental officer – positive report received.

Further information response does not alter conclusions of ‘Notional appropriate Assessment Screening & Preliminary Environmental Impact Assessment Screening Exercise’.

Development Contributions: Noted no details submitted of the volume of rock extracted from application site, therefore a planning condition will recommend requiring developer to submit detail of the volume of rock quarried and to pay development contributions at 150% of the standard quarry rate.

Recommendation grant of permission subject to 12 conditions. (11 as per EO recommendation and 1 pertaining to development contributions).

#### **4.2.2. Other Technical Reports**

**Kenmare Area Engineer** (17 February 2022). No issues from a road perspective.

##### **Environment Section:**

##### **Report (18 February 2022) – FI recommended as follows:**

- clarify if they are continuing to discharge quarry waters through the existing settlement ponds?, can they confirm of the settlement ponds are sufficiently sized for the volume of discharge and are they maintained regularly?
- can the applicant clarify how surface water from the quarry itself, entrance road and batching plan area is now treated prior to discharge.

##### **Report following receipt of further information (19 July 2022).**

Noted FI submitted and recommended 11 no. conditions relating to 1) compliance with Discharge License (W204), 2) bunded/secure areas, 3) oil absorbent materials to address spills, 4) no scrap metal to be stored on site, 5) all non hazardous waste to a suitably licensed waste collector, 6) burning/burial of waste prohibited onsite, 7) removal of hazardous waste to a suitably authority waste collector, 8) noise levels, 9) noise at noise sensitive locations (NSL), 10) dust deposition limited and 11) dust beyond the quarry boundary.

### **Environmental Assessment Unit report (22 February 2022) (COPIED INTO PLANNERS REPORT)**

Notional Appropriate Assessment Screening & Preliminary Environmental Impact Assessment Screening Exercise.

Includes:

- Planning History
- AA Screening
- Preliminary Environmental Impact Assessment Screening

Works: The extraction and processing works undertaken on/after 18/06/2012 and which not permitted by PA Ref. 6223. Includes the extraction of rock by way of blasting and ripping in the area of c.0.23ha (application). On a precautionary basis and to facilitate consideration of cumulative and in combination effects, extraction within the adjoining S261 boundaries is included within the assessment as are site restoration works.

It is noted that the floor of quarrying permitted under PLRef. 6223 extends below water table, necessitating pumping of waters from a sump in the quarry floor and discharge license in place with respect to associated discharges to the adjoining Kilpatrick stream. As part of the surface water arrangements silt settling ponds are in place. These ponds predate the development to be retained. The area of ground exposed for extraction post 2012 sloped away from the Kilpatrick stream. Overland flow from this area would have been onto adjoining agricultural improved grassland. It is also noted that working hours have been and are restricted to daylight hours. The concrete batching plant located on site and referred to in a submission received is not a new feature of the quarry and is visible in the Planner's Report prepared as

part of the S261A process (2012). The application outlined that works proposed to be retained commenced in the latter part of 2019.

#### AA Screening Conclusion:

It is considered that the potential for significant effects to Natura 2000 sites can be conclusively ruled out and therefore that an Appropriate Assessment is not required in this instance.

The conclusion has been reached based on the following:

- The nature, scale and extent of the works, which for the most part comprise a lateral extension of a permitted quarry located c.1.8km from the nearest European (Natura 2000) site.
- The location of the development concerned on lands located outside of any Natura 2000 site and the intervening land uses, buffering capacity and distance between same.
- The lack of in-combination effects, arising from other proposals and permitted development in the vicinity.
- The lack of loss or degradation of Natura 2000 habitat or functionally linked habitat.
- The lack of direct or indirect impact on qualifying habitat or species associated with Natura 2000 sites.

Measures intended to avoid or reduce negative effects on the European sites were not taken into account in considering whether or not the development concerned would have required an Appropriate Assessment.

#### Preliminary EIA Screening:

The planning authority noted that a c.2ha quarry was permitted at this location by way of PLREF 6223 and which predates the EIA Directive. The development concerned is a lateral extension to the permitted quarry. The scale of works and in particular the extraction area involved are considered to be relatively small within an established area for quarrying. It is noted that in its totality the quarry extraction area of c.2.8ha. The development concerned either by itself or in combination with the overall quarry is therefore well below the relevant mandatory EIA Thresholds. The

Archaeological Report submitted as part of the application is noted, which has excluded risk of archaeological impact. As part of the, the report outlines that any surviving remains of the castle (KE093-006) would have been removed in 1969 when quarrying activities commenced onsite. It is considered that there are no particular environmental sensitivities in the vicinity of the development concerned and that there was no real potentiation cumulative or in combination effects of significance.

The planning authority concluded that having regard to the nature and scale of the development concerned adjoining a permitted quarry of greater scale, it was considered that there was or is no real likelihood of significant effects on the environment arising from the development concerned.

The planning authority concluded that a hypothetical planning application for the 'development concerned' submitted in advance of works being undertaken would not have triggered a requirement to carry out: (a) an EIA, (b) a determination as to whether an EIA is required or (c) an AA.

#### **4.3. Prescribed Bodies**

**Inland Fisheries Ireland (IFI)** (7 February 2022):

- The site is in the catchment of the River Kilpatrick, tributary of the Cleady River, all Salmonid spawning and nursery streams.
- Potential impacts on the aquatic environment will include runoff from lands during the stripping of overburden, the control of quarries and contaminated site and storm water runoff from the new and old site, pumped discharge from silt ponds and interference with ground waters leading to surface water drawdown.

#### **4.4. Third Party Observations**

2 no. third party objections received by the current appellants. Issues raised broadly reflect the grounds of appeal in both third party appeals before the Board which have summarised in section 7.5.1 and 7.5.2 respectively.



## 5.0 Planning History

### Site

**PA Ref. EUQY0082** – Section 261A. Section 261A(2)(a). Determination that No further action was required under the A261A process. Reason: *“It is considered that the development carried out within this quarry has been carried out under PL Ref 6223. The development carried out is therefore exempt from the EIA Directive 2011/92/EU & 85/37/EEC and the Birds & Habitats Directive 2009/147/EC & 92/43/EEC”*.

**PA Ref QY 00852**– Section 261 registration with conditions imposed.

**PA Ref. 01/1708** refers to a grant of permission to Denis Duggan for an electrical substation.

**PA Ref. 78/1080** refers to a 1978 grant of permission to Kenmare Limeworks Ltd for office, sheds, weighbridge and ancillary works.

**PA Ref. 6223**.refers to a September 1969 grant of permission to Patrick Randles for a quarry (5 acres ie 2 ha).

## 6.0 Policy Context

- 6.1.1.** The **Kerry County Development Plan 2022 -2028** is the operative statutory plan for the area.

Relevant parts of the development plan include inter alia:

Section 9.7.6.2.1 Extractive Industry

Extractive Industry Objectives include:

**KCDP 9-67** 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.

**KCDP 9-68** Facilitate and support the development of bitumen plants and reprocessing aggregate facilities within existing quarries subject to environmental assessment.

**KCDP 9-69** Ensure all extractive development proposals comply with the objectives of this plan including development management standards, flood risk management requirements and the protection of landscape, biodiversity, infrastructure, water and air quality, built and cultural heritage.

**6.1.2.** Other relevant national guidelines include:

- Quarries and Ancillary Activities: Guidelines for Planning Authorities 2004.
- Carrying out Environmental Impact Assessment, Guidelines for Planning Authorities, August 2018.
- Appropriate Assessment of Plans and Projects, Guidelines for Planning Authorities, February 2010.
- Framework and Principles for the Protection of the Archaeological Heritage Department of Arts, Heritage, Gaeltacht and the Islands 1999.
- National Planning Framework

**6.2. Natural Heritage Designations**

The site is not located within, abutting or adjacent to any designated sites.

The closest relevant designated sites are:

Kilgarvan Ice House SAC (site code 000364) c. 1.8km to the east.

Kenmare River SAC (Site code 002158 is c. 4km to the west.

An Appropriate Assessment Screening report was submitted with the application.

**6.3. EIA Screening**

See Appendix 1 & 2 and section 8. 3 of my report.

**7.0 The Appeal**

Two third party appeals have been received 1) Alan Egan, local resident from Caher West, Kenmare, Co. Kerry and 2) Peter Sweetman on behalf of Irish Wildlife Defense CLG.

### **7.1. Appeal by Alan Egan, Caher West, Kenmare, Co. Kerry**

#### **Grounds of Appeal:**

- The land which is the subject of the retention application was never part of the quarry under QY082 (later purchased by current operators).
- Aerial images (18 June 2017). Quarry and Area in 2007 (QY082).
- Reference to aerial images September 2019 and April 2021 – part of area quarried is submitted to be illegal as permission was given for weighbridge, office and sheds.
- Reference in September 2019 to “the latter part of 2019 development occurred outside the area authority under QY0082”.
- Query size of ‘extraction area’ subject of application.
- KCC Enforcement Office inspected site in June 2020 (ENF#U40608) – reference to quarry had started work in the unauthorised section.
- Overall quarry is c. 4.37ha, need to EIA.
- Operation of Concrete Batching Plant has no planning permission.
- Noise nuisance
- Traffic.
- Blasting, lack of warning and structural damage to nearby properties.
- Blasting with no permission as QY0082 permission for blasting does not extend to the unauthorised extension of the quarry.
- If permission is granted, it should clearly state that soil management area is only used for such and not a truck or equipment storage area or parking area.
- Aerial images from 2022 show that they have already extend beyond the ‘retention’ area.

### **7.2 Appeal by Peter Sweetman on behalf of Irish Wildlife Defense CLG**

#### **Grounds of Appeal:**

### 1. Appropriate Assessment

- Planner's Report dated 24/02/22 found that development for which retention is applied for may have an effect on SAC 000364 (Kilgarvan Ice House SAC) and Killarney National Park, Macgillycuddy's Reek & Caragh River Catchment (Code 000365). Therefore submission of NIS was required.
- Reference to Kelly V ABP and CJEU in People over Wind & P. Sweetman v Coillte.
- It is submitted that the test carried out by the Competent Authority was not carried out by the planning authority.

### 2. Environmental Impact Assessment

- The planning authority failed to properly consider the requirements of the Environmental Impact Directive in the context of the proposed application and the overall site which must be considered cumulatively.

### 3. Water Framework Directive

- The planning authority has not complied with the requirements of the WFD. The planning authority had no regard to the effect on the receiving waters and whether those waters have been properly assigned or classified for the purposes of WFD.

### 4. Batching Plant

- The planning authority has failed to properly consider this proposed application in the context of the historic s.261 process or the current Batching Plant permission within the site. The planning authority has not carried out an AA of the entire project including the s261 process in line with its remedial objections under the Habitats and EIA Directive.

## 7.3 Applicant Response

The applicant has prepared a response to the grounds of appeal raised by both third parties which I summarise separately below:

### 7.3.1 **Response (received by ABP 8 September 2022) to appeal by Alan Egan, Caher West, Kenmare, Co. Kerry**

The response broadly refutes points raised in the grounds of appeal and reiterates information submitted at application stage. Points of note include:

Re points 1-6:

- Overall site measures c.2.8ha, extraction area to be retained is c.0.23ha. Unclear where the appellant's figure of 4.37ha has derived from.

Re points 7 & 10:

- Concrete batching plant there since 1980s, applicant took over operations of quarry in 2017.
- Batching plant used to supply ready mix concrete. Cement is not manufactured on site (concrete batching plant is not listed under schedule 5).
- Reference to vibration noise from batching plant. This related to a problem at the plant which has since been rectified.

Re: points 8,9 &12:

- Noise survey (11 July 2022) concluded "when assessed at the eastern boundary of the site, at the time of the survey, the total ambient noise (and therefore quarry related noise) was within the permitted noise level and general WHO limits".
- New advance warning can be implemented in agreement with the neighbours.
- Also willing to carry out blast monitoring(vibration and air overpressure) at neighbouring residences, if requested.

### **7.3.2 Response (received by ABP 15 September 2022) to appeal by Peter Sweetman on behalf of Irish Wildlife Defense CLG**

The response broadly refutes points raised in the grounds of appeal. Points of note include:

Re point 1:

- KCC (Competent Authority) carried out AA screening and concluded that an AA was not required.
- Unclear what lacunae are referred to given the competent authority reviewed all information available, including information submitted with the application. The competent authority was satisfied that there was no doubt with respect to the potential for significant effects to Natura 2000 sites.

Re Point 2:

- The competent authority undertook a 'preliminary EIA screening of the development concerned' and concluded the need for EIA could be excluded at preliminary examination and a screening determination was not required.
- It is submitted that it is unclear that the planning authority did not properly consider the requirements of the EI Directive in the context of the potential cumulative effects of significant from the planning application and overall site.

Re Point 3:

- Discharge license in place.
- Report submitted with the further information refers to catchment characteristics, discharge metrics, site monitoring reports and EPA published information – All of which were presented and valued by the consultants and findings presented in report submitted to KCC.
- Agreed with the finding of AA screening ; "Given that the quarry extracting and ancillary works within the existing quarry boundary and retention area are not having a significant impact on water quality within Kilpatrick stream and extraction retention area (0.2ha), it is objectively concluded that significant water quality impacts to the Kenmare River SAC, owing to the quarry retention development have not occurred and are unlikely to occur into the future."

Re Point 4:

- Quarry was registered under section 261 and conditions imposed.
- Under section 261A(2)(a) KCC determined that no further action was required.
- Batching plant in operations since late 1980s, applicant took over operations in 2017.

## **7.4 Planning Authority Response**

None.

## **7.5 Further Responses**

### **7.5.1 Alan Egan (Appellant) response received 27 September 2022 to first party response to his appeal.**

- Disputes site area presented by applicant. Argues real area of retention should be 1 hectares and if roadway also included this brings the overall quarry area of c.4.37hectares.
- Noise only an issue since the applicant took over the quarry.
- Refers to a Cork application by the applicant to illustrate attitude towards the planning process.
- Reference to cement batching plant was a mistake. Confused cement with concrete (easy mistake).
- Applicant refers to blasting as not relevant to the application. Up to ABP to determine if it is relevant. Query if blasting is covered in the new area by the planning permission.
- Noise monitoring carried out in the afternoon. Issues/complaints for noise from 6am.
- Copies of correspondence with KCC included.

## **7.6 Prescribed Bodies**

The appeal was referred to the following Prescribed Bodies for comment:  
Development Applications Unit, An Taisce, and the Heritage Council.

The following submission was received:

**An Taisce** (28 September 2022). The proposal relates to a larger quarry area. The application fails to provide for integrated management of the entire landholding, including the haul route, under the control of F&M Hurley Plant Hire and other associated land use and activity in the protection of watercourses draining into the SAC designated areas. Recommend FI be sought.

## **8.0 Assessment**

I have reviewed the proposal in the light of the National Planning Framework 2020 – 2040 (NPF), the Quarries and Ancillary Activities Guidelines, the Kerry County Development Plan 2022 – 2028 (CDP), relevant planning history, the grounds of appeal, the submissions of the parties (application stage and appeal), and my own site visit. Accordingly, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Policy Context
- Quarry Authorisation
- Requirement for an EIAR
- Quarry Operations and potential impacts.
- WFD
- Appropriate Assessment

### **8.1 Policy Context**

The NPF and the CDP recognise quarries as a national resource that are of key importance in their provision of aggregates to the construction sector and in their provision of employment within the rural economy. They also recognise that aggregates are a finite resource, which needs to be safeguarded. The Quarries and Ancillary Activities Guidelines recognise, too, the land use reality that “aggregates can only be worked where they occur” and the economic reality that, in order to limit transportation costs, quarries need to be excavated throughout the country.

I note that the KCC Planner’s Report assessed the development having regard to the Kerry County Development Plan 2015-2021. The Kerry County Development Plan 2022-2028 is the operative Plan. Section 9.7.6.2.1 sets out the relevant policies and objectives for extractive industries, these include: KCDP 9-67 to 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. KCDP 9-68 to facilitate and support the development of bitumen plants and reprocessing aggregate facilities within existing quarries subject to environmental assessment and



KCDP 9-69 to ensure all extractive development proposals comply with the objectives of this plan including development management standards, flood risk management requirements and the protection of landscape, biodiversity, infrastructure, water and air quality, built and cultural heritage.

The 2004 Quarry Guidelines provide advice in relation to the environmental implications, assessment if an EIS has been prepared and finally the implementation of section 261 of the Planning and Development Act 2000 (as amended). There has not been a document recently published to supersede the 2004 guidelines.

Within this context, I consider the development to be retained to be in accordance, in principle, with the policies of the County Development Plan, which facilitate the development of the industry and the sustainable development of rural areas as required by NPO 23 of the National Planning Framework. This is however, subject to further consideration of the likely impacts of the proposed development on local residents, on the environment, on traffic, as well as the broader principles of proper planning and sustainable development. These issues are addressed in the following sections of this report.

## **8.2 Quarry Authorisation**

The planning authority have set out the planning history of the site and section 5 of my report does likewise, but for clarity I set out my understanding of the quarry operations as follows:

Permission granted in 1969 for a c. 2 hectare (5 acres) quarry under Pa Ref. 6223.

The quarry was assessed in 2007 under section 261 of the Planning and Development act (as amended) under Ref. QY0082. The quarry was registered and conditions were imposed.

The quarry was reviewed under section 261A (Control of Quarries) Planning & Development Act 2000 (as amended) Ref. EUQY0082. Under the provisions of Section 261A(2)(a) Kerry County Council determined that (i) no development was carried out after 01/02/90 with no planning permission (planning granted prior to 1/02/90 Part IV 1963 Act), which required an EIA but such an assessment was not carried out, (ii) no development was carried out after 01/02/90 with no planning permission (planning granted prior to 1/02/90 Part IV 1963 Act), which required a

Determination as to whether an EIA was required but such an assessment was not carried out and (iii) no development was carried out after the 26/02/97 which would have required appropriate Assessment, but such an assessment was not carried out. Notices issued in 2012 stated “*Recommendation No further action as it was considered that the development carried out within the quarry has been carried out under PLRef 6223. The development carried out is therefore exempt from the EIA Directive 2011/92/EU & 85/337/EEC and the Birds & Habitats Directive 2009/147/EC & 92/43/EEC*”

The applicant has submitted that in the course of quarrying the southside of registered quarry QY0082 in the latter part of 2019, development occurred outside the authorised area. This refers to a c.0.23ha area of extraction and adjacent temporary soil management and storage area. It is submitted that taken into account the existing quarry extraction area (c.2.81ha) (I note reference to 2 hectares registered under section 261) and area to be retained (c.0.23ha) that the scale of works and extraction area involved are considered to be relatively small and limited in nature within the established area of quarrying. The quarrying on the south side in the latter part of 2019 includes the c.0.23ha area of extraction, temporary soil management and storage areas which are the subject of the current appeal before the Board. The applicant has submitted that all subsequent extraction at the quarry occurred within the authorised quarry area.

In summary, I can see from the planning history available to me on file that a quarry at this location was granted permission in 1969 and has operated on a continual basis since that time. To be clear, the northern portion of the quarry is registered under section 261 (I note reference to registered extraction area of 2 ha and 2.81ha interchangeably in the documentation) and the southern portion (site area of c.1hectare with an extraction area stated to be c.0.23 hectare at the time of application) that is the subject of this appeal is outside the s.261 boundaries and does not have the benefit of said registration. The applicant now wishes to retain permission for the extraction of this area.

The planning authority agreed to accept the current application to retain the extraction area and validated the planning application in accordance with the requirements of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

### 8.3 Requirement for an EIAR

As set out above, the applicant has submitted that in the course of quarrying the southside of registered quarry QY0082 in the latter part of 2019, development occurred outside the authorised area. This refers to a c.0.23ha area of extraction and adjacent temporary soil management and storage area. It is submitted that taken into account the existing quarry extraction area (c.2.81 ha) and area to be retained (c.0.23ha) that the scale of works and extraction area involved are considered to be relatively small and limited in nature within the established area of quarrying. And that the development is below the mandatory EIA Threshold. I note the overall site area associated with Gloun Stone Quarry is stated as c.4.16 hectares at this location with c 3.04ha extraction area.

The second named appellant has submitted that the planning authority failed to properly consider the requirements of the Environmental Impact Directive in the context of the proposed application and the overall site which must be considered cumulatively.

The applicant has not submitted an Environmental Impact Assessment Screening Report. Kerry County Council (competent authority at application stage) concluded following a sub threshold preliminary EIA examination that a hypothetical planning application for the 'development concerned' submitted in advance of works being undertaken would not have triggered a requirement to carry out an EIA, or a determination as to whether an EIA is required.

In this instance, whether an EIAR is required is determined by a variety of factors, such as the class of development and its scale if it falls below a certain threshold. The current planning application is for the retention of extraction area of c.0.23 hectares, extraction activities, the extraction of rock, over an area of 0.23 hectares that has already been quarried down to an unspecified level. The overall area of the quarry (disturbed areas, batching plant and access amounts to less than 5 hectares). No details have been provided regarding how extraction took place. I note reference to blasting by the applicant in response to the appeal which state 'future blasting at the site is not relevant to this application for retention'. While I disagree as it is not clear what the applicants' intentions are with the area which is the subject of this application and if ongoing extraction will occur, this has not been applied in the

application which is the subject of the current appeal before the Board. Public Notices clearly set out the development description as follows: (I) retain an extraction area of 0.23 hectares contiguous to the existing quarry development (II) retain temporary soil management and storage areas and (III) retain all associated site works. This report is assessing the development as described and not hypothetical or potential future development which would be required to be the subject of requisite consents and assessments.

The quarry, a limestone quarry produces limestone aggregate and agricultural lime (see AA Screening report submitted). The extraction area, which is the subject of this application has a stated area of c. 0.27 or 0.3ha (depending on which document submitted with the application is consulted). The quarry registered under section 261 (QY0082) has a stated area of c.3ha. Therefore based on information submitted by the application the overall extraction area ranges from 2.7 to 3.2 ha (permission in 1969 granted for 5 acres (2ha). The area to be retained has an approximate elevation of c.25m above sea level (as per AA Screening report prepared in 2021 and submitted with the application). Site Sections show heights of c.27.56 to 28.53m. Topographical Survey (Dwg. 107ken-DWG-003) submitted with the application sets out the following information:

Surveyed August/September 2021:

- Existing Quarry Area: 2.81 hectares.
- Retention Area (red area): 1 hectare.
- Retention area extracted (hatched red area): 0.23 hectares.
- Total site area: 4.16 hectares.

Based on the available information (which is limited) the cumulative excavated area appears to be below 5 hectares. I note that in 2012 Kerry County Council determined under the section 261A Review determined that no further action was required under the S261A process as *"It is considered that the development carried out within this quarry has been carried out under PL Ref 6223. The development carried out is therefore exempt from the EIA Directive 2011/92/EU & 85/37/EEC and the Birds & Habitats Directive 2009/147/EC & 92/43/EEC"*.

I note that permission was granted in 1969 for a quarry of 5 acres (c.2 hectares) which was excavated prior to 1990. I also acknowledge that the concrete batching plant located on site and referenced in the submissions visible in the photographs included as part of the Planners Report prepared in 2012 as part of the s261A process. Following a review of the planning register I have not been able to locate a record of a grant of planning permission for said development at this location.

In terms of the requirement under Article 93, Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) which relates to Extractive Industry and part (b) Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares, and para 13. Changes, extensions, development and testing, part a) refers as follows:

*Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:-*

- (i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and*
- (ii) (ii) result in an increase in size greater than – - 25 per cent, or - an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.*

The development would not move to a class of development in Part 1, it would remain an extractive industry. The proposed extraction area of 0.23ha would not amount to an increase in size by a magnitude of 25% and would be less than 50% of the appropriate threshold, i.e. less than 5 Hectares.

When considered cumulatively with QY0082 which has a quarry extraction area of c.2.81ha based on application information and the area to be retained of c.0.23ha, results in an overall extraction area of c.3.04ha at this location which is below the 5 hectare threshold for a mandatory EIA. The batching plant located at the main quarry is concrete ready mix which is not of a class. Therefore even when considered cumulatively with the adjoining QY0082 quarry, the requirement for a mandatory EIA is not triggered based on thresholds.

The development is of a class but sub-threshold, a pre-screening exercise has been carried out (See appendix 1 and 2) as to whether EIA can be ruled out at a high level where the proposal is relatively limited in terms of its size and nature and does not have the potential to affect an environmentally sensitive location.

Schedule 7 of the Planning and Development Regulations 2001 as amended set out the criteria for determining whether development listed in part 2 of schedule 5 should be subject to an environmental impact assessment. This information assists in carrying out preliminary examination for EIA and whether or not a formal Determination is required and the submission of Schedule 7A information. The application has not included this information with the application as it was determined that given the small scale of the development to be retained within an existing quarry did not require an EIA. While I note that the information is limited on file, I refer the Board to Appendix 1 & 2 where I have carried out an EIA Preliminary Examination.

I acknowledge that while information is absent relating to method of extraction, amount extracted, haul routes etc and indeed if it is intended to continue this activity and if so, how long, traffic implications etc which are addressed and while it may not trigger the requirement for an EIAR given the scale of the development, these matter need to be considered further which I address in section 8.4 below.

Having regard to the limited nature and scale of the development (0.23ha of extraction area to be retained, overall extraction area of 3.04 hectares when considered cumulatively with QY0082 registered under section 261 and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development.

I conclude that likely significant effects on the environment can be excluded on the basis of a preliminary examination. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required and ground of appeal relating to this matter should be dismissed.

Having regard to the nature and scale of the proposed development it is considered that the issues arising from the proximity/ connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment).

#### **8.4 Quarry Operations and potential impacts**

The first named appellant raised concerns that the activities are having a negative impact on their residential amenity (noise, blasting and structural damage to nearby properties). It is submitted that blasting on the site has no permission as QY0082 permission for blasting does not extend to the 'unauthorised' extension.

Traffic was also raised in the grounds of appeal, the level of traffic and type of vehicles associated with the development. Issues relating to the batching plant at the Quarry were also raised, the status of which is queried. I have referred to the batching plant in my EIA Preliminary Screening and AA Screening when considering the site as a whole and cumulative impacts. And I refer the Board to the relative section in this report. Issues relating to the planning status of the batching plant and compliance with conditions attached to planning permission/s261 registration are a matter for the planning authority to pursue.

The applicant has set out the following information in a cover letter that accompanied the application to KCC.

- All rock extracted at the retention development was processed on the existing quarry floor using existing quarry plant and machinery.
- There are no particular environmental sensitivities within the retention site or immediate environs.
- It is not located in an ecological sensitive area.
- The habitat has a low ecological value.
- There are no Natura 2000 sites within or in the immediate vicinity.
- There are no drains or water courses within the retention development site itself.
- Discharge license in place for discharges from the quarry.
- Site is well screened from public road and nearby dwellings.

No details are provided relating to the method of extraction, level/amount of material extracted, traffic movements associated with the extraction activities that have been carried out in the area to be retained, length of operation phase for said area etc. I note a noise survey was submitted in response to the appeal.

Traffic - The appellant has raised concerns with regard to the traffic implications of the proposed development and the adjoining network. I note the only reference to traffic is in a report from the Kenmare Area Engineer who noted no issue arising from traffic. The application documentation does not include details of traffic movement, vehicles, haul routes, etc. Indeed I have no details before me regarding inter alia volume of material extracted, remaining to be extracted, life span of quarrying activities arising from the area of extraction to be retained. Documentation on file is sparse and comprises a site location map, site section and a topographical survey. I have no information before me to enable an assessment of traffic impacts past/present/future and therefore cannot comment further on this matter. Therefore based on the information before me I cannot conclude that if permission for retention was given that would it not endanger safety or lead to a traffic hazard arising from an intensification of traffic movements associate with the development.

Quarry Operations – The appellant is critical of the applicant's reports with respect to adverse impacts arising from the quarry, ranging inter alia from noise to vibrations. The appellant is also affected by the adverse impacts of un-notified blasting in the past.

Noise - The first named appellant, a local resident is not satisfied that noise and vibration measures in the past have been effective, and that future development will be no different. It is understandable that the appellant is not satisfied with the activities carried out on this active quarry and the perceived impacts that they have on their property.

Reference to blasting and conditions attached to section 261 registration do not cover the area which is the subject of the application for retention before the Board. In the absence of this information I cannot fully assess the potential impacts on nearby sensitive receptors.

With regard to blasting and potential impacts that may have occurred on the extracted area to be retained I refer the Board, in the absence of other information



on file that addresses this issue, to the AA Screening report submitted with the application sets out a detailed description on page 13 'Details of physical changes that likely took place' as follows:

*"Blasting is used to fragment rock. On average blasting is carried out 3 times per annum in the quarry site overall since operated by Gloun Stone Quarries commenced. Permission to blast 6 times per annum.*

*Prior to processing, any oversized rock remaining from blasting is further broken down by a 48 ton Kobelco Excavator.*

*Rock extracted from blasting activity is processed by crushing and screening rock using a Kleeman Cone Crusher and Screener located on the quarry floor. The machinery is a mobile processing plant that is moved to follow extraction works.*

*The aggregate removed from site is free of silt and does not harbour Invasive Alien Species."*

I note the first named appellant has stated that structural damage to property has occurred as a result of vibrations, no evidence of same is presented to support this.

Results of noise survey have been presented by the applicant in their response to the first named appellants appeal and concerns have been raised by the appellant regarding surveys, methodology and timing. I can see from the material submitted that some monitoring and surveys were carried out. I note that while the first named appellant may disagree with the findings and conclusions advanced by the applicant, no reasoned and scientifically backed counter argument appears to have been submitted.

Dust emissions - this matter is not addressed.

Scrap metal was observed on site on the day I visited. Compliance with Section 261 conditions is a matter for Kerry County Council to pursue.

I am of the view that the applicant has not clearly demonstrated that the retention of c.0.23ha extraction area at this location and its associated quarry activities would not have/continue to have an adverse impact on traffic, resulted/result in noise/vibration nuisance and had/have a detrimental impact on the residential amenities of nearby properties. Indeed this matter has not be addressed in any detail in the application documentation.

On balance and having regard to the significant absence of information on file relating to potential impacts arising from noise, dust, vibrations, traffic movements, haul routes, material extracted etc. the applicant has not clearly demonstrated the extraction area to be retained which comprises the extension to quarry extraction area and the temporary soil management and storage, in proximity to residential dwellings and to the lack of baseline information presented in respect of these sensitive receptors in the application and appeal documentation. I consider that the applicant has not clearly demonstrated that the development to be retained would not seriously injure the amenities of properties in the vicinity by reason of noise, vibrations, traffic and general disturbance arising from the intensification of operations at this location. The development to be retained would therefore be contrary to the proper planning and sustainable development of the area and should be refused on these grounds.

## **8.5 Water Framework Directive**

The second names appellant has submitted in their grounds of appeal that the planning authority has not complied with the requirements of the WFD. It is submitted that the planning authority had no regard to the effect on the receiving waters and whether those waters have been properly assigned or classified for the purposes of WFD.

The applicant submitted a 'Technical Advice Note' as part of their further information response to KCC and I note that the submitted AA Screening report addresses WFD.

The Water Framework Directive (WFD) is the main water policy instrument in operation across the member states of the European Union. The Directive, which came into force in 2000, aims to maintain and restore all surface waters and groundwaters to at least good water status by 2027 at the latest.

The EPA Set out that surface water classification range from 'High' when the water is unpolluted, to 'Bad' is when the water is highly polluted. Ground waters fall into two quality classes (status) under the WFD: 'Good' and 'Poor'.

The WFD assists in highlighting what actions are needed to achieve Good status or to protect Good or High status where it already exists. It also helps us identify what

actions need to be taken. River can be restored to Good and High status by using targeted actions and measures to reduce the impact of human activities.

I refer the Board to internal reports in file from Kerry County Council's Environment Section which concluded following a review of the further information submitted at application stage that there was no objection to the development subject to appropriate conditions.

KCC Discharge License W204 (2019), the applicant in correspondence received in response to the second named appellants ground of appeal note that KCC (as the competent authority) understood that documents that enabled the issue of the discharge license adequately demonstrated compliance with objective of the WFD and any conservation objectives of all potential downstream designations under the Habitats Directive. This included the requisite 'assimilation capacity evaluation on the receiving waters' (2021), the appropriate ecological assessments and a Flood Risk Analysis (2021)

The Kilpatrick stream runs along the western boundary of the quarry. The stream is assessed as part of the Cleady\_010 (IE\_SW\_21C020300) which was assigned a 'good' status this then flows in the Roughty\_040 (IE\_SW\_21R010350) which was assigned a 'high status' for the WFD Cycle 2013-2018.

The floor of quarrying permitted under PA Ref. 6223 extends below water table, necessitating pumping of waters from a sump in the quarry floor and discharge license (2019) is in place with respect to associated discharges to the adjoining Kilpatrick stream. As part of the surface water arrangements silt settling ponds are in place which predate the development to be retained. The area of ground exposed for extraction post 2012 slopes away from the Kilpatrick stream. Overland flow from this area would have been onto adjoining agricultural improved grassland. It is also noted that working hours have been and are restricted to daylight hours (section 261 conditions) . The concrete batching plant located on site and referred to in a submission received is not a new feature of the quarry and is visible in the Planner's Report prepared as part of the S261A process in 2012. The applicant has outlined that works proposed to be retained commenced in the latter part of 2019.

Based on the information available I have no evidence that the development to be retained which form part of a larger quarry which is the subject of a discharge license would result in adverse impacts on the Kilpatrick stream/Cleady River and Roughty River waterbody and in this regard contribute to its risk of failing to achieve the WFD Objective. I am of the view that the development to be retained in this regard is considered acceptable. KCC Environment Section raised no concerns in this regard. Having regard to forgoing I am satisfied that this matter has been addressed and does not warrant a reason for refusal.

## **8.6 Appropriate Assessment**

### **8.6.1 Compliance with Articles 6(3) of the EU Habitats Directive**

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and, therefore, is subject to the provisions of Article 6(3).

### **8.6.2 Screening for Appropriate Assessment (Stage 1)**

#### **Description of Development**

Section 4.2 of the AA Screening Report includes a description of the development. I refer the Board to section 3 of this report. In summary, the development relates to the retention of an extraction area (c.0.23ha) that adjoins a S261 Registration quarry for the extraction of rock at the existing Gloun Stone Quarry. Few details are provided in the application documentation in relation to extraction methods etc however I note the AA Screening report has set out the following information which I refer to when carrying out my screening.

The proposed extension is to the south of the s.261 quarry and comprises an area of c.0.23 ha within a larger landholding. Based on the information provided in the screening report there appears to be no change to the extraction method.

### **8.6.3 Description of Site Characteristics**

The site refers to an area of extraction that forms part of a larger limestone quarry at this location.

The AA Screening submitted noted that the quarry retention area at the time the screening was carried out (2021) comprised primarily of exposed sand/gravel/till/spoil and bare ground as it was relatively newer than the existing quarry. The Screening carried out by KCC noted that the extraction works to be retained included works undertaken in the form of the extraction of rock by way of blasting and ripping in the area of 0.23ha together with the processing and stockpiling and ancillary works within the landholding. KCC as the competent authority at application stage carried out screening and on precautionary basis and to facilitate consideration of cumulative and in combination effects, extraction within the adjoining S261 boundaries were also included. KCC noted prospective works noted to include: the continuance of extraction and processing of rock within the footprint of the existing extraction area and site restoration works.

Based on information available the following is noted: the floor of quarrying permitted under PA Ref. 6223 extends below water table, necessitating pumping of waters from a sump in the quarry floor and discharge license (2019) is in place with respect to associated discharges to the adjoining Kilpatrick stream. As part of the surface water arrangements silt settling ponds are in place which predate the development to be retained. The area of ground exposed for extraction post 2012 slopes away from the Kilpatrick stream. Overland flow from this area would have been onto adjoining agricultural improved grassland. It is also noted that working hours have been and are restricted to daylight hours (section 261 conditions). The concrete batching plant located on site and referred to in submissions is visible in the Planner's Report prepared as part of the S261A process in 2012. The applicant has stated that works proposed to be retained commenced in the latter part of 2019.

#### **8.6.4 Relevant prescribed bodies consulted**

At application stage the application was referred to the relevant prescribed bodies by Kerry County Council. In response to the referrals, IFI raised that the site is in the catchment of the River Kilpatrick, tributary of the Cleady River, all Salmonid spawning and nursery streams. And potential impacts on the aquatic environment will include runoff from lands during the stripping of overburden, the control of quarries and contaminated site and storm water runoff from the new and old site, pumped discharge from silt ponds and interference with ground waters leading to surface water drawdown. The Quarry is the subject of a Discharge License (2019) and KCC have not raised concerns regarding non compliance with same. The appeal has been referred to prescribed bodies, An Taisce in their submission noted that the proposal relates to a larger quarry area. And that the application fails to provide for integrated management of the entire landholding, including the haul route, under the control of F&M Hurley Plant Hire and other associated land use and activity in the protection of watercourses draining into the SAC designated areas and recommend FI be sought. I have noted the content of these submissions and addressed the issues in my report.

#### **8.6.5 Test of likely significant effect**

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Habitat loss/ fragmentation/alteration
- Habitat degradation as a result of hydrological impacts.
- Disturbance and displacement impacts on QI/SCI
- Changes in water quality and resource

No Natura 2000 sites have a direct hydrological connection to the proposed development site. However, potential pathways / connections between the application site and the Kenmare River SAC and Kilgarvan Ice House SAC.

Having reviewed the documents and submissions I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development alone, or in combination with other plans and projects on European sites.

#### **8.6.6 Designated sites within Zone of Influence**

In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site. The site is not within or directly adjacent to any European Site. The site refers to an extraction area to be retained which forms part of an active quarry bounded by agricultural land.

The nearest surface water feature is the Kilpatrick Stream which runs along the western boundary of the quarry.

There is no direct hydrological link with the Kenmare River SAC, there is potential for surface water runoff from the development during quarry operations, therefore potential for pollutants to reach the SAC or the potential to adversely affect the European site and the QI habitats and species for which this site is unlikely. Disturbance related impacts are unlikely given the lack of habitats on site suitable for QI (Otter only terrestrial QI), no ex situ impacts given the location and context of the site.

The site is within the foraging distance of the Lesser horseshoe bat a QI of both the Kenmare River SAC and Kilgarvan Ice House SAC.

Given the scale of the proposed development, the lack of a direct pathways and the distances involved other sites in the area (referenced in the applicant's AA screening report to be within a 15km radius) are excluded from further consideration this screening. I do not consider that any other European sites fall within the zone of influence of the project based on a combination of factors including the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site, aided in part by the applicant's Appropriate Assessment report the lack of suitable habitat for qualifying interests, as well as by the information on file and I have also visited the site.

Having regard to the above, I consider the following Natura 2000 site to be within the Zone of Influence is the Kenmare River SAC (site code 002158) and Kilgarvan Ice House SAC (site code 000364). In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site.

In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site. The site is not within or directly adjacent to any European Site.



The application site is not located within or adjacent to any European site. I note that while there are a large number of designated sites within the area based on the source-pathway-receptor model I consider 2 no. sites to be within the zone of influence I have identified for this screening. There is an indirect hydrological link from the Kilpatrick stream to the Kenmare River SAC. Kenmare River Estuary located c.4 km to the west forms part of the Kenmare River SAC. The intervening waterbodies which include the Kilpatrick stream and the Roughty River do not form part of the SAC. Kilgarvan Ice House SAC is c. 1.8km to the east. It is noted that Lesser horseshoe bats normally forage in woodlands/scrub within 2.5km of their roosts, therefore requires further consideration.

European Site Name [Code] and its Qualifying interest(s) / Special Conservation Interest(s) (*Priority Annex I Habitats)	Location Relative to the proposed development site
<p><b>Kenmare River SAC (site code 002158)</b></p> <p><b>Qualifying Interests:</b></p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>European dry heaths [4030]</p> <p><i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130]</p> <p>Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130]</p> <p>Submerged or partially submerged sea caves [8330]</p>	<p>c.4km to the west</p>

<p>Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]</p> <p>Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Phoca vitulina (Harbour Seal) [1365]</p> <p><b>Conservation Objectives:</b></p> <p>To maintain or restore the favourable conservation condition of qualifying interests/species of conservation interest for which the SAC has been selected.</p> <p><i><b>This SAC overlaps with Iveragh Peninsula SPA (004154), Beara Peninsula SPA (004155) and Deenish Island and Scariff Island SPA (004175). It also adjoins Old Domestic Building, Dromore Wood SAC (000353), Cleanderry Wood SAC (001043), Cloonee and Inchiquin Loughs, Uragh Wood SAC (001342), Mucksna Wood SAC (001371), Glanmore Bog SAC (001879) and Drongawn Lough SAC (002187). These conservation objectives should be used in conjunction with those for overlapping and adjacent sites as appropriate.</b></i></p>	
---	--

<p><b>Kilgarvan Ice House SAC (site code 000364)</b></p> <p><b>Qualifying Interest:</b></p> <p>Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]</p> <p><b>Conservation Objectives:</b></p> <p>To maintain the favourable conservation condition of Lesser Horseshoe Bat in Kilgarvan Ice House SAC, which is defined by a list of attributes and targets relating to number/winter roosts/summer roosts/auxiliary roosts/extent of potential hectares foraging habitat/linear features and light pollution.</p> <p><b>Target - No significant decline within 2.5km of qualifying roosts. Note: Lesser horseshoe bats normally forage in woodlands/scrub within 2.5km of their roosts (Schofield, 2008). See map 2 which shows a 2.5km zone around the above roosts and identifies potential foraging grounds.</b></p>	<p>c.1.8km to the east.</p>
---	-----------------------------

I do not consider that any other European sites fall within the zone of influence of the project based on a combination of factors including the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site. See also the conservation objectives of Natura 2000 sites, the lack of suitable habitat for qualifying interests, as well as by the information on file, including observations made by prescribed bodies at application stage and I have also visited the site.

#### 8.6.7 Assessment of Likely Significant Effects on Designated Sites

Potential Indirect effects on the Kenmare River SAC and the Kilgarvan Ice House SAC relate to:

- Potential impacts arise from impacts on water quality as a result of the quarry retention area and operations.
- Potential impact on surface water run off as a result of pollutant laden surface water from fuel, oils, chemicals.
- Potential to result in an increase in sediment laden surface water run off.
- Possibility that the release of sediment and pollutants from the development into the streams and transported downstream could have detrimental impacts on the water quality of Kilpatrick Stream which has an indirect hydrological connection to Kenmare River SAC and therefore have a detrimental impact on the QIs for Kenmare River SAC, in particular the otter.
- Extending and lowering the quarry floor has the potential to impact on groundwater draining to the water courses in the vicinity of the site.
- Potential impact on the foraging grounds for the Lesser Horseshoe Bat (QI for Kenmare River SAC and Kilgarvan Ice House SAC)

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, there is potential for significant effects upon this Natura 2000 site arising from the quarry activities. The following issues are considered for examination in terms of implications for likely significant effects on European sites:

### **Kenmare River SAC (site code 002158)**

This SAC traverses two counties (Cork and Kerry). Site Synopsis and Conservation Objectives are attached to the file for reference (accessed via NPWS website on the 21 February 2024). Kenmare River SAC contains an exceptional complement of marine and terrestrial habitats, many of which are listed on Annex I of the E.U. Habitats Directive, as well as four species that are listed on Annex II of this Directive. The presence of populations of rare Red Data Book species, in particular of Kerry Lily, together with the ornithological interest of the area, adds to the conservation significance of the site.

Impacts arising from aquaculture, fishing, dumping of wastes and water pollution are the principal threats to the nature conservation interests of Kenmare River. There are several resorts for water sports and a number of popular beaches within this large

coastal site and impacts associated with such recreational activities may also pose a threat. Bait digging is also a potential threat in some areas. Housing developments within the areas of dry heath present another possible threat to the integrity of the site. The seals and bats may be vulnerable to disturbance. Grazing at Derrynane is managed for the conservation of the dune habitats and the rare species they contain.

With regard to habitat loss and fragmentation, given the site is not located within or adjoining any European sites, there is no risk of direct habitat loss impacts and there is no potential for habitat fragmentation.

There is an indirect hydrological link from the Kilpatrick stream to the Kenmare River SAC. Kenmare River Estuary located c.4 km to the west forms part of the Kenmare River SAC. The intervening waterbodies which include the Kilpatrick stream and the Roughty River do not form part of the SAC.

There are two discharge points from the existing quarry discharging treated effluent to the Kilpatrick stream. There are no field drains or water course from the retention area to the Kilpatrick stream. Drainage is to ground in the case of the temporary soil storage area and infiltration through the quarry floor in relation to the extraction area to be retained. Surface water run-off arising from the aggregate storage and concrete batching areas of the existing quarry is directed to three separate settlement tanks prior to discharge to the Kilpatrick stream via the south discharge point. Surface water and potential groundwater arising from the quarry floor collect within a sump located at the east of the quarry floor and are pumped via a single pipeline before discharging to the Kilpatrick stream via the north discharge point.

KCC Environment Section raised issues at application stage that were addressed to its satisfaction, response did not require amendments to the Applicant's AA

Screening. The quarry discharges (Discharge License) to the Kilpatrick stream runs along the western boundary of Gluan Stone Quarry (overall landholding), this then feeds in the Cleady River (c.200m to the south) which in turn runs into the Roughty River (c.0.5km from the Cleady) The Kilpatrick stream is c.4.5km upstream of the Kenmare River SAC. The Roughty River joins the Kenmare River SAC c.4km to the southwest of it. An estuarine body (The Sound) is located between the Roughty River and the SAC. There are no direct hydrological links to the Kenmare River. Kenmare River Estuary located c.4 km to the west forms part of the Kenmare River

SAC. The intervening waterbodies which include the Kilpatrick stream and the Roughty River do not form part of the SAC.

The quarry overlies the Kenmare ground water body (GWB code IE\_SW\_G\_040), The status of this ground water body is 'good' and considered not to be at risk. There is no groundwater vulnerability map. Given the nature of the development (quarrying), this vulnerability could be extreme. The extraction area which is the subject of the appeal before the Board occurred at a higher level to the existing quarry floor at the time of application. Based on available information the following is noted: the floor of quarrying permitted under PA Ref. 6223 extends below water table, necessitating pumping of waters from a sump in the quarry floor and discharge license (2019) is in place with respect to associated discharges to the adjoining Kilpatrick stream. As part of the surface water arrangements silt settling ponds are in place which predate the development to be retained. The area of ground exposed for extraction post 2012 slopes away from the Kilpatrick stream. Overland flow from this area would have been onto adjoining agricultural improved grassland. The concrete batching plant located on site and referred to in submissions is visible in the Planner's Report prepared as part of the S261A process in 2012. The applicant has outlined that works proposed to be retained commenced in the latter part of 2019. In any event of excess surface water arising with the quarry retention area would follow the existing quarry floor water management. All discharges from the existing quarry are managed and controlled in accordance with a Section 4 Discharge License.

Due to indirect hydrological connection, the potential for contaminants to enter the SAC and result in negative impact upon the Otter in particular, which have the potential to be negatively impacted by changes to the aquatic environment. The conservation objectives for the Otter in the Kenmare SAC is to restore its favourable condition. Potential effect is highlighted arising from the potential for emissions associated with the development and impact upon feeding habitat, which have the potential to affect the conservation objectives supporting the qualifying interest / special conservation interest of the European site identified. Otters are widespread in Ireland and will be found near most river systems that provide aquatic prey and safe refuge. The subject site does not provide a suitable habitat for Otter. The potential for a pollution event resulting from quarrying activities could result in localised fish kill, reducing food availability for Otter. Negative impact upon Otter habitat is also possible through nutrient enrichment and sedimentation due to construction activities. In terms of physical habitat, there is limited potential for limited disturbance as a result of the distance from the designated site and by extension, into potentially suitable Otter commuting habitat.

Lesser horseshoe bats normally forage in woodlands/scrub within 2.5km of their roosts with potential foraging grounds. The site is at a remove for roosts associated with this SAC. Furthermore the habitats within the site are not of value for qualifying species of the Natura 2000 sites. The site itself does not provide suitable habitats/environments for these species. The quarry does not present a suitable habitat for foraging and ex situ impacts do not arise. Working hours have been and are restricted to daylight hours (section 261 conditions), therefore reducing potential impacts on potential foraging paths for lesser horseshoe bats. No ex-situ impacts on qualifying species are therefore considered likely.

Having regard to the foregoing it is considered the appeal site and development to be retained is at a sufficient remove from the Kenmare River SAC that potential for likely significant effects on the qualifying interests for which the SAC is designated or its conservation objectives are not likely.

#### **Kilgarvan Ice House SAC (Site Code 000364)**

With regard to habitat loss and fragmentation, given the site is not located within or adjoining any European sites, there is no risk of direct habitat loss impacts and there is no potential for habitat fragmentation.

There is no direct pathway via groundwater or land to Natura 2000 sites and the nearest European site is the Kilgarvan Ice House SAC located c. 1.8km to the east of the development.

Lesser horseshoe bats normally forage in woodlands/scrub within 2.5km of their roosts with potential foraging grounds within proximity to the quarry retention area therefore requires further consideration. The habitats within the site are not of value for qualifying species of the Natura 2000 sites. The site itself does not provide suitable habitats/environments for these species. The quarry does not present a suitable habitat for foraging and ex situ impacts do not arise. Working hours have been and are restricted to daylight hours (section 261 conditions), therefore reducing potential impacts on potential foraging paths for lesser horseshoe bats. No ex-situ impacts on qualifying species are therefore considered likely.

Based in the available documentation I concluded that it provides a reasonable basis to conclude that this proposed development would not be likely to give rise to significant effects on the conservation objectives of European Sites, either individually, or when taken together and in combination with other plans or projects.

#### **8.6.8 In Combination/Cumulative**

My assessment above has had regard to the extraction area to be retained and the temporary soil management and storage areas which forms part of the appeal before the Board, the adjoining s.261 quarry (main quarry), batching plant and ancillary development .

No other in combination/cumulative impacts are considered likely given the location of the development and nature of uses in the vicinity which are predominantly rural houses and agricultural uses/land. I have reviewed the planning register and not no developments that would give rise to potential cumulative/in combination effects.

The site, at a remove from the designated site would not give/did not give rise to issues in terms of noise and disturbance during quarry operation phase. No



significant in-combination or cumulative effects are identified in relation to potential effects associated with other plans or projects.

#### **8.6.9 Invasive species**

There is no evidence of invasive alien species on the site of the proposed development. It is considered, therefore, that effects on the European sites are not likely to arise as there is no evidence of existing invasive species and no direct pathway linking such plants to the European sites.

#### **8.6.10 Mitigation measures**

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

#### **8.6.11 Determination**

The proposed development was considered in light of the requirements of Section 177U of the Planning and Act 2000 as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that there is no potential for significant effects on the Kenmare River SAC (site code 002158), Kilgarvan Ice House (site code 000364) or any other European site as a result of the project individually or in combination with other plans or projects can be excluded in view of the Conservation Objectives of that site, and Appropriate Assessment is therefore not required.

I consider that the particular characteristics of the project for which permission for retention is being sought in the current application are such that it would not be likely to have a significant effect on any Natura 2000 site, either individually or in combination with other projects. This exclusion can be made in view of the objective information set out in the application and this report. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Kenmare River SAC (site code 002158), Kilgarvan Ice House (site code 000364) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. In reaching this conclusion, I took no account of

mitigation measures intended to avoid or reduce the potentially harming effects of the project on any European Sites

## 9.0 Recommendation

Having regard to the foregoing I recommend that permission for retention for the above described development be **refused** for the following reasons and considerations.

## 10.0 Reasons and Considerations

1. Having regard to the location of the development to be retained, which comprises the extension to quarry extraction area, in proximity to residential dwellings and to the lack of baseline information presented in respect of these sensitive receptors in the application and appeal documentation, it is considered that the applicant has not clearly demonstrated that the development to be retained would not seriously injure the amenities of properties in the vicinity by reason of noise, vibrations, traffic and general disturbance arising from the intensification of operations at this location. The development to be retained would therefore be contrary to the proper planning and sustainable development of the area.

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

---

Dáire McDevitt  
Senior Planning Inspector

12<sup>th</sup> March 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	<b>ABP-314293-22</b>		
<b>Proposed Development Summary</b>	Retention of extraction area of 0.23 hectares, temporary soil management and storage areas and all associated works		
<b>Development Address</b>	Caher West, Kenmare, Co. Kerry.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	Y
		<b>No</b>	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X	The development is of a class specified in Part 2, but it does not exceed the threshold.	Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>			<b>Conclusion</b>
			No EIAR or Preliminary Examination required
<b>Yes</b>	x	Extractive Industry, part (b) Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.	Application area amounts to 0.23 hectares. QY0082 refers to quarry with an extraction area of
			Proceed to Q.4



significant waste, emissions or pollutants?	Commensurate with existing operations at QY0082.	
<b>Size of the Development</b> Is the size of the proposed development exceptional in the context of the existing environment?  Are there significant cumulative considerations having regard to other existing and/or permitted projects?	0.23ha extraction area immediately adjoining existing quarry on a site with an overall area of c. 4.16(or which it is stated. 3.04ha is extracted). The size of the development is not exceptional in terms of the type of development or in the context of the existing rural environment.  The development has increased the quarry operations at this location and associated potential impacts.	No  No
<b>Location of the Development</b> Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?  Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	The Kenmare River SAC (site code 002158), Kilgarvan Ice House (site code 000364). Refer to section 8.6 of the Inspectors Report where AA was screened out.  the development does not have the potential to significantly affect other significant environmental sensitivities in the area	No  No
<b>Conclusion</b>		
<b>There is no real likelihood of significant effects on the environment.</b>  EIA Not required		

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_