



An
Coimisiún
Pleanála

Inspector's Report

ACP-324050-26

Question

Whether certain matters pertaining to the quarrying of land and the operation of a pre-cast concrete manufacturing business are or are not development and are or are not exempted development.

Location

Ballymullen, Abbeyleix, Co. Laois.

Declaration

Planning Authority

Laois County Council

Planning Authority Reg. Ref.

S5.2025/98

Applicant for Declaration

Thomas McEvoy

Planning Authority Decision

None issued.

Referral

Referred by

Laois County Council

Owner / Occupier

Booth Precast Products Limited

Observer(s)

David Malone

Date of Site Inspection

28th April, 2026

Inspector

Robert Speer

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1.0 Site Location and Description

- 1.1. The site in question is located in the rural townland of Ballymullen, Abbeyleix, Co. Laois, approximately 2.8km northwest of the village of Ballinakill and 2.5km south-southeast of Abbeyleix, where it occupies a recessed position set back from the public road and to the immediate east of Abbeyleix Bog (and the Abbeyleix Bog Project). Access to the site is obtained via a long private servicerway that extends from the local road between Ballinakill and Abbeyleix which also provides for a direct link to the N77 National Secondary Road at Ballymullen Cross to the south of the town. While the local road narrows in places, road widening would appear to have been carried out at several locations although the carriageway shows some evidence of damage and repair.
- 1.2. The site itself is irregularly shaped and extends southwards to encompass a significant quarrying and manufacturing complex seemingly operated by a number of different companies including the Breedon Group (which would appear to have acquired Booth Precast Concrete Products) and Kwik Precast. In this regard, the site can be divided into three broad areas as follows:
- Those lands encompassing the northern / northeastern extent of the site area (as bisected by the access roadway) which include several settlement ponds, lagoons, and silt deposition areas related to the wider site usage.
 - The central and easternmost part of the site: (i) The westernmost extent of this area is primarily used for the manufacture of pre-cast concrete products and includes several industrial sheds / buildings, gantry cranes, and related drying & open storage yards. It is also occupied by batching plants and plant used for the washing & screening of aggregates as well as stockpiles of assorted sand and stone (ii) The easternmost area is being actively quarried with excavation and extraction works ongoing and includes mobile screening plant in addition to a settlement lagoon.
 - The remaining southernmost part of the site is principally used for the storage of scaffolding and related items.

2.0 The Question

- 2.1. On 18th December, 2025 Mr. Thomas McEvoy, Grallow Lodge, Ballymullen, Abbeyleix, Co. Laois, submitted a request to Laois County Council for a declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, to determine whether certain matters relating to the quarrying of land and the operation of a pre-cast concrete manufacturing business at Ballymullen, Abbeyleix, Co. Laois, are or are not development and are or are not exempted development.
- 2.2. The subject matter of the referral is extensive with a declaration having been sought on the following 9 No. questions as posed to the Planning Authority:
- 1) Whether the ongoing extraction of sand, gravel, shale, or other minerals on the land after the expiry of planning permission PL95/300 in 2001 constitutes development requiring planning permission;
 - 2) Whether the opening and operation of multiple quarry excavations across the lands, including separate quarry areas outside the footprint of the original authorised development, constitute development requiring planning permission;
 - 3) Whether extraction carried out below the natural groundwater table, including the creation of flooded quarry voids and groundwater lagoons, constitutes development requiring planning permission;
 - 4) Whether the abstraction and use of groundwater from quarry voids or excavated areas for the washing and processing of sand and gravel constitutes development requiring planning permission and / or is exempted development;
 - 5) Whether the importation of sand, gravel, or other quarried materials from multiple quarry sites, including from unauthorised quarry excavations, for processing, washing, batching, or manufacture on the lands constitutes development requiring planning permission and / or a material change of use;
 - 6) Whether the erection and operation of a new concrete batching plant, along with the installation and use of two silos for storing and mixing fly ash, as well as the processing or incorporation of fly ash and imported sand and gravel

into concrete, blocks, or other manufactured products, constitute development requiring planning permission and / or a material change of use, where such works were not authorised under PL95/300;

- 7) Whether the deposit, storage, recovery, treatment, or disposal of waste materials within quarry voids or excavated areas, including concrete waste, cementitious sludge, concrete wash-out, construction and demolition waste, and other industrial waste, constitutes development requiring planning permission and / or is exempted development, including when such waste involves waste concrete and concrete sludge (EWC Code 10 13 14);
- 8) Whether the use of quarry excavations or lagoons for the containment, settlement, or discharge of liquid or semi-liquid waste, contaminated runoff, leachate, or waste-derived effluent into ground, surface water, or artificial drainage channels constitutes development that requires planning permission; and
- 9) Whether any of the quarrying, processing, importation, or waste-related activities outlined above may lawfully be carried out without a valid and subsisting planning permission, having regard to the expiry of PL95/300, the absence of any extension or subsequent permission, and the absence of screening for Environmental Impact Assessment or Appropriate Assessment in accordance with relevant legislation?

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority did not issue a formal declaration on the subject application and instead opted to refer the matter to the Commission for a determination pursuant to Section 5(4) of the Act “*Due to the complexity and wide-ranging scope of the queries raised by the third party*”.

3.2. Planning Authority Reports

- 3.2.1. *Planning Reports:*

None.

3.2.2. *Other Technical Reports:*

None.

4.0 **Planning History**

4.1. **On Site:**

- 4.1.1. PA Ref. No. 2560769 (ACP Ref. No. PL11.501262). On 17th April, 2026 the Planning Authority issued a notification of a decision to grant permission to Tullen Concrete Ltd. to (i) Retain alteration (Roller Door to Side Elevation) made to existing industrial unit previously granted planning Ref 10/290; (ii) Retain 2 No. storage containers and 2 No. staff office containers; (iii) Full planning permission to construct an extension to the rear of existing industrial unit; and (iv) Full planning permission to construct a new industrial unit with all associated site works, all at Ballymullen, Abbeyleix, Co. Laois.

(This decision has since been appealed by a third party and a determination is pending with the Commission).

- 4.1.2. PA Ref. No. 22/751 / ABP Ref. No. ABP-315944-23. Was granted on appeal on 12th September, 2024 permitting Booth Precast Limited permission to (a) retain 4 No. staff welfare containers to facilitate social distancing requirements as per Covid guidelines; (b) 3 No. steel storage containers with canopies to provide shelter for workers; (c) 1 No. mechanics storage container; (d) single lean-to shed to provide shelter for materials storage, and all associated site works, at Ballymullen, Abbeyleix, Co. Laois.
- 4.1.3. PA Ref. No. 22253. Was granted on 4th October, 2022 permitting Booth Precast Ltd. permission to retain a gantry mounted crane and alterations to an adjoining shed previously granted planning permission (Ref. 10/288) at Ballymullen, Abbeyleix, Co. Laois.
- 4.1.4. PA Ref. No. 105 / ABP Ref. No. ABP-309964-21. Was determined on 24th January, 2022 wherein it was held that the erection of an outdoor gantry mounted crane, an addition to an existing gantry crane located within an existing shed, at Booth Precast

Limited, Ballymullen, Abbeyleix, Co. Laois, was development and was not exempted development.

4.1.5. PA Ref. No. 10/5 / ABP Ref. No. ABP-309575-21. Was determined on 9th December, 2021 wherein a split decision was issued as follows with respect to revisions to the on-site management of surface water within an existing facility for the manufacture of concrete products, including the creation of new surface water / silt ponds / lagoons, the recirculation of surface water on site, and the cessation of surface water discharge to an adjoining watercourse at Ballymullen, Abbeyleix, Co. Laois:

- Is development and is not exempted development insofar as it relates to the development of two silt ponds / lagoons, and
- Is development and is exempted development insofar as it relates to the installation of new pipework and the construction of the new pump houses (identified as number 06 and number 15 on drawing 20-056-P-02-00) and works to the existing pumping arrangement and to the closure of the existing surface water discharge from the site.

4.1.6. PA Ref. No. 1246. Was granted on 8th May, 2012 permitting Arastra Construction Ltd. permission to amend the approved opening hours for the entirety of the existing and approved quarry, concrete manufacturing, precast manufacturing, and associated permitted uses at the existing facility which were previously granted permission under Planning Reg. Ref. Numbers 95/300, 98/780, 06/24, 07/1451, QY05/76, 10/288, 10/289 & 10/290, all at Ballymullen, Abbeyleix, Co. Laois.

4.1.7. PA Ref. No. 10315 / ABP Ref. No. PL11.239202. Was refused on appeal on 2nd November, 2011 refusing Arastra Construction Limited permission for the construction of a new truck park / lay-by and entrance gates to facilitate the off road parking of up to 20 No. trucks at Ballymullen, Abbeyleix, Co. Laois, as amended by the revised newspaper notice received by the planning authority on the 11th day of May, 2011.

- The site of the proposed truck parking area is greenfield land in an unzoned rural area, and is outside the site of the quarrying / aggregate-related activities that the development is proposed to serve. It is considered that the proposed development at this location would represent an uncoordinated approach to land-use that would intensify unnecessarily the impacts of the quarrying /

aggregate related activities on the local environment (including in relation to drainage, noise, lighting and visual impacts), and would seriously injure the amenities of the area and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 4.1.8. PA Ref. No. 10290 / ABP Ref. No. PL11.239204. Was granted on appeal on 2nd November, 2011 permitting Arastra Construction Limited permission for the retention of an existing precast concrete product manufacturing building at Ballymullen, Abbeyleix, Co. Laois. The development comprises a single storey steel portal frame structure with external single skin cladding. The building is adjoining an existing maintenance garage (subject to separate application) and is to house the manufacture and storage of a variety of precast concrete, concrete and related products. The opening hours of the facility are proposed to be 0700 hours to 2000 hours Monday to Friday and 0700 hours to 1800 hours Saturday. As amended by the revised public notice received by the planning authority on the 11th day of May, 2011.
- 4.1.9. PA Ref. No. 10289 / ABP Ref. No. PL11.239205. Was granted on appeal on 2nd November, 2011 permitting Arastra Construction Limited permission for the retention of an existing maintenance garage facility at Ballymullen, Abbeyleix, Co. Laois. The development comprises a single storey garage structure with a lean-to single storey ancillary store to the rear. The building is utilised for the maintenance of trucks, light vehicles and ancillary equipment. The opening hours of the facility are proposed to be 0700 hours to 2000 hours Monday to Friday and 0700 hours to 1800 hours Saturday. As amended by the revised public notice received by the planning authority on the 11th day of May, 2011.
- 4.1.10. PA Ref. No. 10288 / ABP Ref. No. PL11.239206. Was granted on appeal on 2nd November, 2011 permitting Arastra Construction Limited permission for the retention of an existing precast concrete product manufacturing building at Ballymullen, Abbeyleix, Co. Laois. The development comprises a single storey steel portal frame structure with external single skin cladding. The building is to house the manufacture and storage of a variety of precast concrete, concrete, masonry and related products. The opening hours of the facility are proposed to be 0700 hours to 2000 hours Monday to Friday and 0700 hours to 1800 hours Saturday. As amended by the revised public notice received by the planning authority on the 11th day of May, 2011.

- 4.1.11. PA Ref. No. 071451. Was granted on 2nd November, 2007 permitting Arastra Construction Ltd, permission to replace existing hardstanding by a concrete surface at Ballymullen, Abbeyleix, Co. Laois.
- 4.1.12. PA Ref. No. 0624 / ABP Ref. No. PL11.218941. Was granted on appeal on 21st December, 2007 permitting Arastra Construction Limited permission for the retention of an existing industrial unit with offices, toilets and septic tank along with hardstanding and car park spaces at Ballymullen, Abbeyleix, Co. Laois.
- 4.1.13. PA. Ref. No. QY05/76 (Environmental Protection Agency Extractive Industries Registration No. QS0561). Notice served on 15th February, 2007 of the registration of a quarry under Section 261 of the Planning and Development Act, 2000, as amended. On 17th April, 2007 the Planning Authority served notice on Arastra Construction pursuant to the provisions of Section 261(6)(a)(i) of the Planning and Development Act, 2000, as amended, of the imposition of 15 No. conditions on the operation of the quarry at Ballymullen, Abbeyleix, Co. Laois.
- 4.1.14. PA Ref. No. 98780. Was granted on 18th August, 1999 permitting Booth Concrete Ltd. permission to erect a 2-storey office building ancillary to existing concrete works at Ballymullen, Abbeyleix, Co. Laois.
- 4.1.15. PA Ref. No. 95300. Was granted on 2nd September, 1996 permitting Mr. Phil Butler permission to retain concrete plant, extraction of sand and gravel and washing facility at Ballymullen House, Ballymullen, Abbeyleix, Co. Laois.

5.0 Policy Context

5.1. Development Plan

5.1.1. Laois County Development Plan, 2021-2027:

Chapter 6: Economic Development:

Section 6.4: Manufacturing and Services Enterprises (Nationally / Internationally Traded):

The manufacturing of concrete and stone products, using locally-quarried aggregate and stone, is a feature of the manufacturing sector in Laois. Adding value to locally-

produced commodities within the county is a way of increasing the value, sustainability and importance of the commodity sector to the Laois economy.

Economic Development Management Standards:

DM ED 1: Industrial Activities:

Where proposed industrial facilities, waste disposal facilities, mineral extraction developments, or other developments that may have a significant impact on surface water quality, ground water quality, or on the water table, the developer will be required (whether as part of an EIAR or an Environmental Report) to:

- 1) submit an assessment of the impact of the development on water quality and the water table; mitigation and monitoring measures should also be included, as appropriate;

Development proposals that could cause pollution, a reduction in biological or chemical water quality or changes in the water table will not be accepted unless appropriate mitigatory measures are proposed, such as settlement ponds, oil and chemical interceptors, bunding of storage tanks and refuelling areas, capping where ground water is exposed as a result of extraction etc.

Chapter 9: Rural Laois:

Section 9.5: Mining and Aggregates:

The Council recognises that the aggregate and concrete products industry contribute to the development of the national, regional and local economies by the proper use and management of natural resources for the benefit of the community and the creation of employment opportunities. These products are required as essential building materials in the social and economic development process including the provision of housing and infrastructure. Laois County Council will seek to safeguard these valuable resources for future extraction.

The National Guidelines on Quarries and Ancillary Activities for Planning Authorities (DOEHLG, 2004) is the guiding document against which applications for quarries and ancillary activities will be considered.

Aggregate extraction can only take place where suitable aggregate resources exist; they are a 'tied' resource. It is considered, therefore, that planning policies should be carefully constructed to avoid adverse effects on aggregate resources and the related extractive industries and added value production that are essential for the built environment, infrastructure and future economic development.

Like many forms of development, extractive industries have the potential to cause harm to the environment, heritage and the landscape if not appropriately designed and managed. However, aggregates are a necessary resource and are of great importance to the economy and society. In addition, well managed and designed quarry sites minimise environmental effects. There is also the potential for habitat creation through the restoration of quarry sites following the cessation of operations.

The following National Guidelines (as may be superseded and/or updated) should be complied with:

- Environmental Management (EPA 2006);
- Quarries and Ancillary Activities: DOECLG Guidelines 2004);
- Environmental Code (ICF 2006);
- Geological Heritage Guidelines (ICF & GSI 2008);
- Archaeological Code of Practice (ICF & DOECLG 2009);
- Sections 261 & 261A Planning and Development Acts 2000 – 2013.

Section 9.6: Commercial Developments in Rural Areas:

Policy Objectives for Rural Development:

RL 12: Reconcile the need for resource-based economic activities to conduct a reasonable operation and the needs of residents in rural areas to access a good quality of life and access to rural areas.

RL 13: Have regard to Laois' Landscape Character Assessment, as well as more general Planning considerations, such as transport, environmental sensitivities, habitat considerations, the need for buffer zones around water bodies in its determination of planning applications related to land-based economic activities.

- RL 14:* Support in principle the expansion of the aggregates and concrete products industry which offers opportunity for employment and economic development generally subject to environmental, traffic and planning considerations and ensure that any plan or project associated with extractive industry is subject to Appropriate assessment screening in compliance with the Habitats Direction and subsequent assessment as required, applicants for planning permission shall have regard to the GSI-ICF Quarrying Guidelines.
- RL 15:* To secure the long-term supply of value-added products (such as concrete products and asphalt, which are often, but not always, produced in conjunction with aggregate extraction.
- RL 16:* To support the necessary role of the extractive industries in the delivery of building materials for infrastructural and other development and to recognize the need to develop extractive industries for the benefit of society and the economy.
- RL 17:* Support in principle the processing of minerals to produce cement, bitumen or other products in the vicinity of the source of the aggregate, where the transport network is suitable to reduce trip generation.
- RL 19:* Facilitate land-based or resource-based economic activities in rural areas that support a sustainable environment and resilient communities.

Enterprise Development Management Standards:

DM RL 2: Commercial Development in Rural Areas:

Development proposals in the open countryside should satisfy a high standard of siting and design, while being properly located to ensure their assimilation into their rural setting. The following considerations should be taken into account:

- 1) Buildings should be kept simple and should be finished with materials appropriate to a rural setting such as nap plaster, stone and slate;

- 2) Buildings should reflect the scale and pattern of the rural development in the vicinity;
- 3) Building height should be restricted to that required for the normal operation of the premises, buildings of excessive height will not be permitted;
- 4) Buildings should be sited to make use of existing hedgerows and topography to provide natural screening, buildings in open landscapes should be avoided;
- 5) Access roads and driveways should respect existing site contours;
- 6) Car parking should be located to the rear of the building and in compliance with the car parking standards in Table 18;
- 7) Advertising signs should be kept to a minimum;
- 8) Large advertising signs at the road frontage will be resisted;
- 9) Hedgerows or stone walls should be used for boundary treatments;
- 10) Any new building will be required to respect the appearance of and character of the landscape.
- 11) It will not be acceptable where it is unduly prominent in the landscape, where it results in build-up of development when viewed with existing and/or approved building or where the impact of the ancillary works, including the creation of visibility splays would damage rural character or impact negatively on the environment or which fails to protect Natura Sites, conservation areas, natural heritage or the environment or fails to protect and improve or is injurious to amenities(including visual amenities).
- 12) A justification as to why the proposed development is to be located in a rural area over a settlement where adequate zoning is in place shall be submitted.

DM RL 3: *Mining and Aggregates:*

Applications for new development for aggregate extraction, processing and associated processes, shall:

- 1) identify existing public rights of way and walking routes which may be impacted on or are adjacent to the development site. They shall be kept free from development as a Rights of Way/Walking Route
- 2) ensure the protection, conservation, preservation and safeguarding of recorded monuments and areas in their vicinity, World Heritage Sites (including Tentative Sites), NHA's, Euro Sites, Nature Reserves, scenic views and prospects archaeological sites and features, natural heritage, natural environment, features of natural beauty or interest and prescribed sites, geological sites and areas of geological/geomorphological or historic interest and areas of high scenic amenity from inappropriate development that might be detrimental to them.
- 3) minimise adverse effect on the environment and visual and natural amenities to the greatest possible extent must be carried out during all life cycle stages, whether in respect of new quarries or extensions to existing ones and development will be prohibited if the quality of the environment or landscape, particularly sensitive landscape, is adversely affected or there is a reduction of the visual amenity of areas of high amenity.
- 4) be landscaped either by the retention of existing vegetation or by screening to minimise the detracting from the visual quality of the landscape.
- 5) Require that development proposals on or in proximity to a quarry site should investigate the nature and extent of the risks associated with the development together with appropriate mitigation.

Chapter 11: Biodiversity and Natural Heritage:

Section 1.4: Designated Sites:

Policy Objectives for Biodiversity and Designated Sites

BNH 1: Protect, conserve, and seek to enhance the county's biodiversity and ecological connectivity.

- BNH 2:** Conserve and protect habitats and species listed in the Annexes of the EU Habitats Directive (92/43/EEC) (as amended) and the Birds Directive (2009/147/EC), the Wildlife Acts 1976 and 2010 (as amended) and the Flora Protection Orders.
- BNH 4:** Protect and maintain the conservation value of all existing and future Natural Heritage Areas, Nature Reserves, Ramsar Sites, Wildfowl Sanctuaries and Biogenetic Reserves in the county.
- BNH 5:** Projects giving rise to significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall not be permitted on the basis of this Plan (either individually or in combination with other plans or projects). Screening for AAs and AAs undertaken shall take into account invasive species as relevant.
- BNH 6:** Assess, in accordance with the relevant legislation, all proposed developments which are likely to have a significant effect (directly or through indirect or cumulative impact) on designated natural heritage sites, sites proposed for designation and protected species.
- BNH 7:** Protect Natural Heritage Areas (NHA) from developments that would adversely affect their special interests.
- BNH 8:** Recognise and protect the significant geological value of sites in County Laois and safeguard these sites, in consultation with the Geological Survey of Ireland and in accordance with the National Heritage Plan and “Geological Heritage Guidelines for the Extractive Industry”.

Development Management Standard for Designated Sites

DM BNH 1: Developments in Proximity to pNHA:

Where a development is of a significant scale or in close proximity to a pNHA, the Council will require an Ecological Impact Assessment to

determine the impact of the proposed development on the designated site or natural heritage.

DM BNH 2: Appropriate Assessment:

Article 6(3) and 6(4) of the Habitats Directive requires an Appropriate Assessment of any plan or project whether within or outside a designated Natura 2000 site, which does not directly relate to the management of the site but may impact upon its conservation objectives. All planning applications shall be screened for Appropriate Assessment and a Phase II Appropriate Assessment carried out if necessary.

Where full Appropriate Assessment is required, the assessment shall be based on best scientific knowledge, by a person with ecological expertise. It shall address the potential impacts of the plan or project on the conservation objectives of any Natura 2000 site. The impacts assessed must include the indirect and cumulative impacts of approving the plan or project, considered with any current or proposed activities, developments or policies impacting on the site. The potential impacts of policies outside Natura 2000 sites but potentially impacting upon them (known as 'ex situ' impacts) must also be included in the assessment. (Refer to: Appropriate Assessment of Plans and projects in Ireland, Guidance for Planning Authorities, DEHLG (2009).

Section 11.5: Green Infrastructure:

Table 11.4: Strategic Natural Assets: 'Abbeyleix Bog'

Policy Objectives for Green Infrastructure:

BNH 19: Ensure that areas and networks of Green Infrastructure are identified, protected, enhanced, managed and created to provide a wide range of environmental, social and economic benefits to communities.

Section 11: Landscape:

(The subject site is located within the 'Lowland Agricultural Area Landscape Character Area' by reference to Map 11.7: 'Landscape Character Assessment' of the Plan which is considered to be of 'Low Sensitivity' by reference to Table 11.6:

‘Landscape Sensitivity’ and is described as encompassing ‘Areas with the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area’).

Policy Objectives for Landscape Character Areas:

- LCA 1:** Ensure that consideration of landscape sensitivity, as indicated in Table 11.6 of the Plan, is an important factor in determining development uses. In areas of high landscape sensitivity, the design, type and the choice of location of proposed development in the landscape will also be critical considerations.
- LCA 2:** Protect and enhance the county’s landscape, by ensuring that development retains, protects and, where necessary, enhances the appearance and character of the existing local landscape and conserve valuable habitat including any European and National Designations.

Policy Objectives for Lowland Agricultural Areas:

- LCA 12:** Recognise that this lowland landscape character area includes areas of significant landscape and ecological value, which are worthy of protection, particularly the 18th and 19th century estate landscapes and associated parkland & woodland to develop them as a tourism resource.
- LCA 14:** Recognise that the lowlands are made up of a variety of working landscapes, which are critical resources for sustaining the economic and social wellbeing of the county.

Section 11.11: *Geology:*

Policy Objectives for Geology:

- GEO 1:** Work with stakeholders to protect, preserve, enhance, maintain, manage, conserve, recognise and, where appropriate, restore the character conservation value and integrity of these sites for their amenity, scientific, heritage and historic values (including County Geological Sites listed in Table 28, proposed NHA’s, areas near site and areas of geomorphological interest.

Table 11.8: *‘County Geological Sites’*: Abbeylax Bog

Section 11.11.1: *Esker*:

The Council recognises the unique importance of esker landscape and its archaeological and historic value. All proposals for sand and gravel extraction will be determined by considering the need to conserve the environment and the extent to which proposed developments would be damaging. There is a presumption against new quarry development on eskers. The Council recognises that the exploitation of deposits can have seriously damaging environmental impact on the esker network.

Policy Objectives for Eskers:

- GEO 5:** Protect, preserve and conserve the landscape and natural heritage and geo-diversity values of esker systems from inappropriate development. Ensure that any plan or project affecting eskers are adequately assessed with regard to their potential impact on the environment.
- GEO 6:** Assess applications for quarrying activity and gravel extraction and other development in proximity to eskers, with respect to their landscape importance or amenity value and the need to conserve them free from inappropriate development and to conserve their environmental character values and the extent to which proposals would damage these qualities.

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- River Nore / Abbeyleix Woods Complex Proposed Natural Heritage Area (Site Code: 002076), approximately 1.7km southwest of the site.
- River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 2.2km west of the site.
- River Nore Special Protection Area (Site Code: 004233), approximately 2.3km west of the site.
- Lisbigney Bog Special Area of Conservation (Site Code: 000869), approximately 2.7km south of the site.

- Lisbigney Bog Proposed Natural Heritage Area (Site Code: 000869), approximately 2.7km south of the site.
- Shanahoe Marsh Proposed Natural Heritage Area (Site Code: 001923), approximately 6.3km northwest of the site.
- The Curragh and Goul River Marsh Proposed Natural Heritage Area (Site Code: 000420), approximately 7.5km southwest of the site.
- Cuffsborough Proposed Natural Heritage Area (Site Code: 000418), approximately 9km west of the site.

6.0 EIA Screening

- 6.1. The Commission is referred to the assessment set out in Section 9.0 of this report and the subsequent recommendation that the referral be dismissed pursuant to Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended, on the basis that the details presented by the applicant are insufficient to enable the Commission to issue a declaration and as the provisions of Section 5 of the Planning and Development Act, 2000, as amended, are not considered to apply in this particular case. In such circumstances, it is not necessary to undertake screening for the purposes of environmental impact assessment.

7.0 The Referral

7.1. Referrer's Case

- 7.1.1. The Section 5 application as lodged with Laois County Council has sought a declaration as to whether certain matters (as set out in Paragraph 2.2 of this report) pertaining to the quarrying of land and the operation of a pre-cast concrete manufacturing business at Ballymullen, Abbeyleix, Co. Laois, constitute development and, if so, whether such development is exempted development. The supporting documentation submitted with the application consists of a series of site location maps (each identifying a different site area within a larger landholding) as well as '*Annex A - Background Information*' which provides further details of the quarrying and manufacturing activities on site in addition to a copy of a written complaint

(dated 24th October, 2025) lodged with the Environmental Protection Agency as regards alleged unauthorised waste activities at the Ballymullen site. Notably, the applicant has expressly stated that the contents of 'Annex A' are for contextual background / context purposes only and are not to be relied upon in the determination of the Section 5 application, however, in the interest of completeness, these details can be summarised as follows:

- A 'Quarry Map' detailing the extent of the quarry area registered under Ref. No. QY5/76/1 pursuant to Section 261 of the Planning and Development Act, 2000, as amended, which purportedly shows the locations of 8 No. extraction areas established after the expiration of the grant of permission issued for PA Ref. No. PL95/300. Quarry Nos. 3, 4 & 5 are shown to be located within the confines of the registered area while Quarry Nos. 1, 2, 6, 7 & 8 are situated outside of that zone (with sand and gravel from these quarries being transported into the area formerly authorised by PA Ref. No. PL95/300).
- It is alleged that sand and gravel is imported to the referral site from several unauthorised quarries in the wider area.
- It is alleged that a second concrete batching plant and 2 No. fly ash silos were erected following the expiration of PA Ref. No. PL95/300.
- On 24th October, 2025 the applicant registered a complaint with Laois County Council and the Environmental Protection Agency as regards alleged unauthorised waste activities occurring at the Ballymullen site. This complaint makes a series of allegations as regards the deposition and handling of assorted waste material on site and associated legislative breaches.

7.2. Owner / Occupier's Response

- The Commission is advised of an ongoing dispute between Mr. Thomas McEvoy (the applicant) and the site owner / operator that is the subject of High Court proceedings, the outcome of which will determine several of the questions raised in the Section 5 referral.

On 23rd June, 2025 the High Court delivered judgement in the case of *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345* with the proceedings against the Council

and the Commission being struck out and / or dismissed in their entirety while the proceedings against Booth Precast were ruled to be limited to the following allegations made by Mr. McEvoy:

'Permission PL95/300, only, has expired such that further quarrying is now unauthorised.

Unauthorised development in the form of waste activities have occurred on site'.

The first allegation (as stated above) to be determined in the pending proceedings overlaps with Question No. 1 of the Section 5 application while the second issue overlaps with Question Nos. 7, 8 & 9 of the request.

The outcome of these proceedings (*Malone & Anor v. Laois County Council & Ors H.MCA.2025.0000017*) will determine Question Nos. 1, 6, 7, 8 & 9 of the subject referral. Notably, Mr. McEvoy did not bring these proceedings to the attention of the Council or the Commission and has yet to bring the pending Section 5 request to the attention of the High Court.

- The applicant has failed to provide the Council and / or Commission with the necessary information pursuant to Section 5(1) of the Act to enable a decision on the matters raised.

"Annex A – Background Information (Provided for Context Only)" as appended to the application is *"provided for contextual background only and is not relied upon for the determination sought under section 5(1)"* and, therefore, it can be concluded that the information contained therein is not relevant or necessary. Accordingly, this response does not address those matters (although this should not be interpreted as an acceptance by Booth Precast of the contents therein). Moreover, it follows that in the absence of any material to support the 9 No. requests, the applicant has failed to provide any relevant information to enable a decision to be made. It is a matter for the Commission to consider whether the request should be dismissed on this basis.

- The jurisdiction under Section 5 is limited to *"what, in any particular case, is or is not development or is or is not exempted development within the meaning*

of this Act". It does not extend to whether activities on land are "authorised" (*Ógalas (t/a Homestore and More) v. An Bord Pleanála [2014] IEHC 487*).

The Supreme Court has confirmed that *"the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, was not an issue that the planning bodies have jurisdiction to decide"* (*Krikke V. Barranafaddock Sustainable Electricity Limited [2022] IESC 41*). It was made clear that the *"concepts of "development" and "exempted development" and "unauthorised development" are very distinct and separate concepts under the planning code, and the Oireachtas chose to include the first two concepts within the scope of s. 5 but not the third concept"*. The Commission remains free – under Section 5 – to interpret a planning permission is whether a material change of use from permitted development.

In this context, some of the requests made by Mr. McEvoy trespass the limited scope of Section 5. It is a matter for the Commission to consider whether those requests should be dismissed.

- Response to Question No. 1:

'Whether the ongoing extraction of sand, gravel, shale, or other minerals on the land after the expiry of planning permission PL95/300 in 2001 constitutes development requiring planning permission':

- Section 5 does provide the Commission with the jurisdiction to form a conclusion about whether PA Ref. No. PL95/300 *"expired . . . in 2001"*. Jurisdiction under Section 5 does not extend to whether activities on land are "authorised" by a permission. The Supreme Court has confirmed that *"the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, was not an issue that the planning bodies have jurisdiction to decide"* (*Krikke*). The concepts of "development", "exempted development" and "unauthorised development" are very distinct and separate concepts under the planning code with "unauthorised development" not falling within the scope of Section 5.

- Question No. 1 is based on the false premise that PA Ref. No. PL95/300 has expired. The permission has not in fact expired with Mr. McEvoy having conflated the “appropriate period” under Section 40 of the Act with the permitted operational life of the quarry.
- In its determination of *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345*, the High Court, when dismissing other allegations to the pending dispute, made the following relevant observations:
 - The Environmental Impact Statement (EIS) submitted with PA Ref. No. 95/300 described the extraction activity as continuing for 30 No. years. The court also observed that the EIS referred to the expansion of the extraction area, not merely its retention in its then existing form.

“Its Non-Technical Summary describes the planning application as ‘for the retention of a 2.0 approx. hectare and the extension of 4.70 approx. hectare gravel pit’. In other words, and despite the terms of the permission, it permitted not merely retention, but substantial expansion of the quarry more than trebling its potential size”.

The court has not yet decided whether PA Ref. No. 95/300 has expired.

- None of the conditions imposed under that permission purported to limit the operational life of the quarry to a shorter period than requested in the application.
- The grant of permission for PA Ref. No. 95/300 included a standard form ‘note’ that described the effect of Section 40 of the Planning and Development Act, 2000. Under Section 40, a permission shall on the expiration of the “appropriate period” cease to have effect as regards development not completed within the period. However, this does not apply to permission for the retention on land of any structure and does not affect the

continuance of any use under the permission or the obligation under conditions requiring something to be done.

The aforementioned 'note' cannot be read to change the operational life of the quarry. It concerns a different requirement, namely, commencement and construction of development.

- The regulatory history of the land is set out in *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345*. The applicant appears to suggest that permissions were granted for development on site between 2006 and 2020 with neither the Council and / or the Commission noticing that the principal permission for the entire facility (PA Ref. No. 95/300) had lapsed. Despite Mr. McEvoy having had the opportunity to raise concerns at the time and to challenge any or all of the decisions within the correct period he did not do so. In these circumstances, the Commission is requested to dismiss the request and / or to determine that PA Ref. No. 95/300 has not expired.

- Response to Question 2:

'Whether the opening and operation of multiple quarry excavations across the lands, including separate quarry areas outside the footprint of the original authorised development, constitute development requiring planning permission':

- The opening and operation of a quarry excavation is an act of development that is not exempted development.
- To the extent the question invites the Commission to form a view on whether there has been extraction "*outside the footprint of the original authorised development*", this cannot be answered without information that Mr. McEvoy has not provided or without exceeding the limits of Section 5 of the Act. Without prejudice to the foregoing, it is not accepted that Mr. McEvoy has established any unauthorised development.

- Response to Question 3:

‘Whether extraction carried out below the natural groundwater table, including the creation of flooded quarry voids and groundwater lagoons, constitutes development requiring planning permission’:

- Extraction by way of excavation is an act of development.
- The inundation of an excavation with water is not an act of development. It is a natural consequence of excavation.
- To the extent the question invites the Commission to form a view on whether there has been extraction “*below the natural groundwater level*”, this cannot be answered without information that Mr. McEvoy has not provided or without exceeding the limits of Section 5 of the Act. Without prejudice to the foregoing, it is not accepted that Mr. McEvoy has established any unauthorised development.

- Response to Question 4:

‘Whether the abstraction and use of groundwater from quarry voids or excavated areas for the washing and processing of sand and gravel constitutes development requiring planning permission and / or is exempted development’:

- The abstraction and use of water is not any act of development.
- To the extent the question invites the Commission to form a view on whether there has been a material change of use “for the washing and processing of sand and gravel”, this cannot be answered without information that Mr. McEvoy has not provided or without exceeding the limits of Section 5 of the Act. Without prejudice to the foregoing, it is not accepted that Mr. McEvoy has established any unauthorised development.

- Response to Question 5:

‘Whether the importation of sand, gravel, or other quarried materials from multiple quarry sites, including from unauthorised quarry excavations, for

processing, washing, batching, or manufacture on the lands constitutes development requiring planning permission and / or a material change of use':

- The importation of sand, gravel or other quarried materials is not an act of development.
 - The processing, washing & batching of quarried materials, or the manufacture on land of concrete products, is development, but is permitted development.
 - To the extent the question invites the Commission to form a view on whether there has been a material change of use by the “importation of sand, gravel or other quarried materials”, or “unauthorised quarry excavations” at other locations, or “processing, washing, batching of quarried materials, or the manufacture on land of concrete product”, this cannot be answered without information that Mr. McEvoy has not provided or without exceeding the limits of Section 5 of the Act. Without prejudice to the foregoing, it is not accepted that Mr. McEvoy has established any unauthorised development.
- Response to Question No. 6:

‘Whether the erection and operation of a new concrete batching plant, along with the installation and use of two silos for storing and mixing fly ash, as well as the processing or incorporation of fly ash and imported sand and gravel into concrete, blocks, or other manufactured products, constitute development requiring planning permission and / or a material change of use, where such works were not authorised under PL95/300’:

 - The erection and operation of a concrete batching plant, including silos, is development, but is permitted development.
 - The High Court has dismissed the applicant’s complaint that the permitted concrete works are unauthorised development. It concluded that *“the planning status of the use of the retained concrete plant was inevitably unaffected by any expiry of Permission PL95/300”*. The court ordered that *“continued use of the concrete plant, as permitted by Permission PL95/300, is clearly not unauthorised development and the*

case cannot proceed on the basis of an allegation that, by expiry of Permission PL95/300, it is unauthorised development". Mr. McEvoy should not be entitled to agitate the same complaint before the Commission where the High Court has dismissed it already.

- To the extent the question invites the Commission to form a view on whether there has been the erection and operation of "a new concrete batching plant", the question is not understood and cannot be answered without information that Mr. McEvoy has not provided or without exceeding the limits of Section 5 of the Act. Without prejudice to the foregoing, it is not accepted that Mr. McEvoy has established any unauthorised development.

- Response to Question No. 7:

'Whether the deposit, storage, recovery, treatment, or disposal of waste materials within quarry voids or excavated areas, including concrete waste, cementitious sludge, concrete wash-out, construction and demolition waste, and other industrial waste, constitutes development requiring planning permission and / or is exempted development, including when such waste involves waste concrete and concrete sludge (EWC Code 10 13 14)':

- The dispute as regards this question is the subject of High Court proceedings i.e. *Malone and McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Products Limited, High Court 2025 17 MCA.*

On 23rd June, 2025 the High Court delivered judgement in the case of *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345* with the proceedings against the Council and the Commission being struck out and / or dismissed in their entirety while the proceedings against Booth Precast were ruled to be limited to the allegations made by Mr. McEvoy that:

'Permission PL95/300, only, has expired such that further quarrying is now unauthorised.

Unauthorised development in the form of waste activities have occurred on site’.

The second issue that remains to be determined in the proceedings overlaps with Question Nos. 7, 8 & 9 of the Section 5 request.

The deposit, storage, recovery, treatment, or disposal of waste on land is an act of development, but there has been no such deposit, storage, recovery, treatment, or disposal of waste on Booth Precast’s lands.

- To the extent the question invites the Commission to form a view on whether there has been any deposit, storage, recovery, treatment, or disposal of waste on Booth Precast’s land, this cannot be answered without information that Mr. McEvoy has not provided or without exceeding the limits of Section 5 of the Act. Without prejudice to the foregoing, it is not accepted that Mr. McEvoy has established any unauthorised development.

- Response to Question No. 8:

‘Whether the use of quarry excavations or lagoons for the containment, settlement, or discharge of liquid or semi-liquid waste, contaminated runoff, leachate, or waste-derived effluent into ground, surface water, or artificial drainage channels constitutes development that requires planning permission’:

- The second issue that remains to be determined in the proceedings between Mr. McEvoy and Booth Precast overlaps with Question Nos. 7, 8 & 9 of the Section 5 request.
- The diffuse drainage of liquid from land is not an act of development.
- It is not accepted that there has been any containment, settlement, or discharge of liquid or semi-liquid waste, contaminated runoff, leachate, or waste-derived effluent into ground, surface water, or artificial drainage channels.
- To the extent the question invites the Commission to form a view on whether there has been any diffuse drainage from the lands, this cannot be answered without information that Mr. McEvoy has not

provided or without exceeding the limits of Section 5 of the Act. Without prejudice to the foregoing, it is not accepted that Mr. McEvoy has established any unauthorised development.

- Response to Question No. 9:

‘Whether any of the quarrying, processing, importation, or waste-related activities outlined above may lawfully be carried out without a valid and subsisting planning permission, having regard to the expiry of PL95/300, the absence of any extension or subsequent permission, and the absence of screening for Environmental Impact Assessment or Appropriate Assessment in accordance with relevant legislation’:

- The alleged expiry of PA Ref. No. PL95/300 has been addressed in response to Question No. 1.
- The alleged waste-related activities have been addressed in response to Question Nos. 7 and 8.
- The dispute between Mr. Evoy and Booth Precast about environmental assessment has already been determined in the pending High Court proceedings (*Malone and McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Products Limited, High Court 2025 17 MCA*).
- The judgement of the High Court in *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345* struck out and / or dismissed proceedings against the Council and the Commission in their entirety.

In those proceedings, Mr. McEvoy had argued that the entire planning history for the referral should be ignored and alleged that planning permissions granted without prior environmental impact assessment or appropriate assessment (where such assessment was required) were invalid.

The Council, the Commission and Booth Precast were entirely successful in persuading the Court to dismiss and / or strike out this allegation.

The Court accepted that the relevant permissions remain valid.

Mr. McEvoy should not be entitled to agitate the same complaint before the Commission given that the High Court has already dismissed it.

7.3. Planning Authority's Response

None received.

7.4. Observers:

7.4.1. David Malone:

- The referral requires a determination as to whether works undertaken on site following the expiry of PA Ref. No. PL95/300 may lawfully be treated as exempted development under Section 4 of the Planning and Development Act, 2000, as amended, or whether they constitute development requiring planning permission and prior compliance with Environmental Impact Assessment and Appropriate Assessment obligations.
- The subject development comprises a continuous and integrated quarrying, processing and waste-related operation. Therefore, the central issue is whether the project triggers screening obligations given that Section 4(4) of the Act serves as a statutory bar to any exemption.
- Section 4(4) of the Act states that development is not exempted development where Environmental Impact Assessment or Appropriate Assessment is required. Article 9 of the Planning and Development Regulations, 2001, as amended, further disapplies the exemption where the development in question would contravene a condition of permission or comprise the extension or continuation of unauthorised structures or uses.

The post-CJEU amendments to the Act, including the substitute consent and extension provisions introduced following Case C-50/09 and Case C-215/06, reinforce that development requiring EIA must be assessed before authorisation and cannot be regularised through reliance on expired or incomplete permissions.

Section 5 is declaratory only. It determines whether development is exempted development. It does not confer permission and cannot disapply Section 4(4) of the Act. Accordingly, where screening is required under EU law, exempted development provisions cannot apply.

- The on-site operations must be assessed as a single, integrated project given that the quarrying, processing, settlement and waste management activities etc. are physically and functionally interdependent.
- Extractive industry development and installations for the disposal of waste can require Environmental Impact Assessment where significant environmental effects cannot be excluded. Article 6(3) of the Habitats Directive requires screening where a project is likely to have a significant effect on a European Site alone or in combination with other projects.

Extraction below groundwater level, engineered settlement infrastructure, industrial-scale processing, and on-site waste deposition are each capable of significant environmental effects. Viewed cumulatively, the integrated project triggers screening obligations under EU law.

- For the purposes of Section 5, the sole legal question is whether, viewed cumulatively, the integrated development is capable of requiring EIA or AA. If screening is required, Section 4(4) of the Act operates as a bar to exempted development. In those circumstances, the Commission is not required to determine the ultimate environmental effects but only to determine whether the development falls within the screening threshold.
- The on-site activities amount to an integrated project undertaken following the expiry of PA Ref. No. PL95/300 which gives rise to significant environmental effects and therefore triggers screening obligations. In such circumstances, exempted development cannot lawfully be applied.

Section 5 cannot operate to displace the statutory consequence of Section 4(4) of the Act. The only legally sustainable determination is that the development requires planning permission supported by prior EU-compliant environmental assessment.

- The Commission is referred to the supporting details contained in Appendix 1:

- The accompanying 'Quarry Map' details the extent of the quarry registered under Ref. No. QY5/76/1 pursuant to Section 261 of the Planning and Development Act, 2000, as amended, and shows the locations of 8 No. extraction areas. Quarry Nos. 3, 4 & 5 are located within the confines of the registered area whereas Quarry Nos. 1, 2, 6, 7 & 8 fall outside that area (with material extracted from all eight locations being transported to the former PA Ref. No. PL95/300 lands for processing as part of the single integrated quarrying and industrial operation).
- Condition No. 2 of PA Ref. No. PL95/300 confines excavation to the area hatched in red. Excavation beyond that boundary falls outside the permission and constitutes unauthorised development. Article 9(1)(a)(i) disapplies exempted development where a condition of permission is breached. Therefore, reliance on exempted development is precluded due to the contravention of Condition No. 2.
- The post-expiry extraction across the 8 No. locations represents a material expansion both spatially and operationally beyond what was previously authorised. In the absence of any extant permission or substitute consent, continued extraction and processing require a fresh planning consent.
- No screening for EIA or AA has been carried out for the integrated quarry development. Where screening is required, Section 4(4) disapplies exempted development.
- The determination of ABP Ref. No. ABP-309575-21 concluded that the silt / settling ponds on site were development which was not exempted development and established that the excavation and use of additional settlement ponds fell outside the scope of PA Ref. No. PL95/300. No application for permission or substitute consent has been made in respect of those works.
- The use of the settlement ponds for the storage and containment of residues such as cementitious washout and slurry (including European Waste Catalogue Codes EWC 10 13 14 & EWC 10 13 09) reinforces

the view that these activities form part of an integrated extractive and industrial operation that does not constitute exempted development.

- The decision in respect of ABP Ref. No. ABP-309575-21 determined that the installation of pump houses, pipework and pumping equipment constituted exempted development, however, it relied on the existence of an “existing concrete manufacturing facility” permitted under PA Ref. No. PL95/300. That grant of permission expired in 2001. Therefore, the new pumping infrastructure and drainage arrangements demonstrate the continuation and material intensification of operations formerly authorised under PA Ref. No. PL95/300, notwithstanding the expiry of that permission. There is no subsisting permission to underpin those works.
- The scale of the concrete product manufacturing operation across the site is materially greater than was approved under PA Ref. No. PL95/300 and is consistent with the description that multiple permissions are operating together as a single industrial facility for aggregate processing and concrete manufacture. There has been a material intensification and expansion of the site usage beyond that authorised by PA Ref. No. PL95/300 (since expired). This continued operation constitutes development which requires a new planning consent and prior compliance with EIA screening obligations.
- The materials processed on site include aggregates being extracted from 8 No. unauthorised quarry locations and those imported from other quarry sites. Condition No. 2 of PA Ref. No. PL95/300 limited the approved development to that described in the application and within the red-hatched area. The supporting photographs demonstrate that the on-site activity has materially intensified and expanded beyond that previously permitted under PA Ref. No. PL95/300 (since expired).
- The operation of a second batching plant on site represents a material intensification beyond the scope of the permission and, in the absence of any subsisting consent, constitutes development requiring fresh authorisation.

- The accumulation of discarded concrete products etc. on site amounts to the storage / disposal of (construction and demolition) waste as part of the wider site operation. Other material (including concrete washout slurry, cementitious fines, contaminated process waters, and suspended solids) is also being discharged or deposited within the quarry void. Where such material is discarded or deposited without controlled reuse, it constitutes waste within the meaning of the Waste Framework Directive and the Waste Management Act, 1996.
- Extraction has occurred below the groundwater table which involves a significant alteration of the prevailing hydrological conditions. Such activity represents a material intensification beyond the scope of PA Ref. No. PL95/300. In these circumstances screening is required and Section 4(4) of the Act serves to disapply exempted development.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000, as amended:

8.1.1. Section 2(1) of the Act includes the following definitions:

“quarry” means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include—

- (i) *any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;*
- (ii) *any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners*

of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;

- (iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;*
- (iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.*

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“unauthorised structure” means a structure other than—

- (a) a structure which was in existence on 1 October 1964, or*
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34, 37G or 37N or 293 of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);*

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;*

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

8.1.2. Section 3(1) of the Planning and Development Act, 2000, as amended, states the following:

“Development” in this Act means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in use of any structures or other land.

8.1.3. Section 4(2) of the Act states that the ‘Minister’ may by Regulation provide for any class of development to be exempted development for the purposes of the Act.

8.1.4. Section 4(4) states that notwithstanding *paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2)*, development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

8.2. Planning and Development Regulations, 2001:

8.2.1. Article 6(1) of the Regulations states the following:

‘Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.

8.2.2. Article 9(1) of the Regulations states as follows:

‘Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive’.

8.3. Relevant Case Law:

8.3.1. *Krikke and Others v. Barranafaddock Sustainable Electricity Ltd [2022] SC 2021/133:*

This judgement delivered by the Supreme Court on 3rd November, 2022 provides clarity as to the Commission’s jurisdiction with respect to Section 5 of the Act by stating that such an exercise is confined to a decision as to development and exempted development and does not extend to any determination of unauthorised development. It refers to the concepts of “development” and “exempted development” and “unauthorised development” as being very distinct and separate concepts under the planning code, with the Oireachtas choosing to include the first two concepts within the scope of s. 5, but not the third concept. It further states that unlike a situation where the question of whether there has been a material change of use arises (where a material change of use amounts to development), the question of whether the development comes within the scope of the planning permission, i.e.

whether it was authorised, is not an issue that the planning bodies have jurisdiction to decide.

9.0 Assessment

9.1. Having conducted a site inspection, and following a review of the available information, given the subject matter of the questions posed, in my opinion, it will be necessary at the outset to consider whether a determination pursuant to the provisions of Section 5 of the Planning and Development Act, 2000, as amended, is the appropriate mechanism by which to engage with the issues raised. Particular consideration will need to be given to the limitations of Section 5 of the Act and whether the questions raised involve a determination of matters, including unauthorised development, which would be beyond the scope of Section 5 and should more appropriately be referred to the Planning Authority for investigation pursuant to its powers as an enforcement body. In this regard, I refer to Section 138(1) of the Act which provides that the Commission has an absolute discretion to dismiss an appeal or referral -

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

- (i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or
- (ii) any previous permission which in its opinion is relevant.

9.2. Additionally, I would draw the Commission's attention to the judgement of the High Court in the case of *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345* (delivered on 23rd June, 2025) wherein it was held that an application under Section 160 of the Planning and Development Act, 2000, as amended, which sought injunctions to restrain alleged unauthorised development on the subject lands, could only proceed against Booth Precast Concrete Limited on the basis of allegations that '*Permission PL95/300, only, has expired such that further quarrying is now unauthorised*' and '*Unauthorised development in the form of waste activities have occurred on Site*'. Notably, this ruling held that the proceedings could not proceed on any basis which asserted i) the invalidity of certain permissions on site; ii) that the permitted concrete works and the

office ancillary thereto are unauthorised development by reason of the expiry of any permission; or iii) that unauthorised development outside the scope of the permissions has occurred on site – other than waste activities. A decision on a full hearing of the Section 160 application is currently pending (*Malone & Anor v. Laois County Council & Ors H.MCA.2025.0000017*).

9.3. At this point, it should also be emphasised that a determination under Section 5 of the Planning and Development Act, 2000, as amended, unlike a normal planning application / appeal, is not an assessment of the merits of the development per se but is rather an assessment of whether that development falls within the narrow confines of the definitions / descriptions governing exemption as set out in the relevant provisions of the Act and Regulations.

9.4. Accordingly, it is proposed to assess the issues raised as follows:

9.5. **Question No. 1: Whether the ongoing extraction of sand, gravel, shale, or other minerals on the land after the expiry of planning permission PL95/300 in 2001 constitutes development requiring planning permission?**

9.5.1. At the outset, any determination with respect to the foregoing will require a decision as to whether or not the grant of permission previously issued on site pursuant to PA Ref. No. 95/300 (which permitted the retention of a concrete plant, the extraction of sand and gravel, and a washing facility) has in fact expired. Notably, a determination in this regard would appear to form a key component of the applicant's ongoing legal proceedings against the site owner / operator (*Malone & Anor v. Laois County Council & Ors H.MCA.2025.0000017*) with the High Court having already ruled in the case of *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345* that the application for injunctions under Section 160 of the Planning and Development Act, 2000, as amended, to restrain alleged unauthorised development on the subject lands, could only proceed against Booth Precast Concrete Limited on the basis of allegations that '*Permission PL95/300, only, has expired such that further quarrying is now unauthorised*' and '*Unauthorised development in the form of waste activities have occurred on site*'.

9.5.2. By way of summation, the current legal action is in part grounded on the assertion by Mr. McEvoy that the grant of permission issued under PA Ref. No. 95/300 on 2nd

September, 1996 expired in 2001 (i.e. five years after the grant of permission) by reference to the inclusion of a “Note” on that permission which states the following:

‘The permission herein granted shall, on the expiration of the period of 5 years beginning on the date of the granting of permission, cease to have effect as regards:

(1) In case the development to which the permission relates is not commenced during the period, the entire development and

(2) In case such development is so commenced, so much thereof as is not completed within that period’.

9.5.3. Any such interpretation would have the effect of rendering those operations carried out on site since 2001 on foot of the (expired) permission as unauthorised development.

9.5.4. In response, the site owner / occupier (Booth Precast Products Limited) has asserted that while the “Note” reflects the default expiry of planning permissions after 5 years, it is merely a standard informative note and that the permission must be interpreted in accordance with the approved plans and particulars, including the submitted Environmental Impact Statement which explicitly envisaged a 30-year permission and stated that the *“life expectancy of the operation is approximately 30 years”*.

9.5.5. In ruling on *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345*, Holland J. has referred to the duration of a planning permission by reference to its *“appropriate period”* within the meaning of s.40 of the Act and has noted that the default appropriate period is 5 years from the grant of permission (with s.41 of the Act giving a planning authority or the Commission, as may be appropriate, the power to vary the appropriate period). He proceeds to note the definition of *“development”* as *“the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”* and emphasises that s.40(1) does not apply, inter alia, to:

- any permission for the retention on land of any structure;
- the continuance of any use, in accordance with a permission, of land;
- obligations under planning conditions as to completed developments.

- 9.5.6. The judgment continues by suggesting that it may be important to consider whether quarrying consists of works which must cease on expiry of the permission or of use which may go on thereafter (while noting legal precedent as regards any such consideration). It is stated that the expiry of the permission granted under PA Ref. No. PL95/300 as to quarrying activity is problematic and that *'it is at very least arguable that "each time a shovelful of material is extracted this constitutes the carrying out of development" - that continuing and future extraction of sand and gravel is a matter of ongoing works, the performance of which is development'*. In turn, the question arises as to whether after the expiry of a planning permission for quarrying to which the default duration of 5 years applies, further extraction works constitute unauthorised development. In seeking to resolve the foregoing, a key consideration will be not what duration for quarrying did the then applicant seek in 1995 (under PA Ref. No. PL95/300) but what duration did Laois County Council grant permission. The complexity of the issues concerned has thus been held to merit consideration on full argument (rather than on a motion to dismiss / strike out) with the case being allowed to proceed as to the issue of the expiry of PA Ref. No. PL95/300 and whether, in light of the resolution of that issue, the quarrying activity on site is unauthorised.
- 9.5.7. Having considered the available information, it is my opinion that any answer to the question as posed requires a determination as to whether the grant of permission issued under PA Ref. No. 95/300 has expired and that any response in the affirmative is effectively intended to serve as a mechanism by which to establish that the continued extraction of sand, gravel, shale, or other minerals on the land (after any such expiry of permission) amounts to unauthorised development. The question itself is not seeking an answer as to whether a particular activity constitutes development or exempted development but is rather seeking a determination as to whether that activity is permitted by way of a valid 'live' grant of planning permission. Moreover, the query has acknowledged that permission was previously granted for the activities in question and thus would seem to have tacitly accepted that said activities constitute 'development' which are not 'exempted development' by reason of the need to obtain planning permission.
- 9.5.8. The limitations of the Commission's jurisdiction under Section 5 of the Act have been established by legal precedent with *Krikke and Others v. Barranafaddock*

Sustainable Electricity Ltd [2022] SC 2021/133 reaffirming the position that the Commission is limited to making a “decision” on two possible questions which may be the subject of a referral by a planning authority i.e. whether something is or is not development, and whether something is or is not exempted development. Within that judgment it was explained that *‘The concepts of “development” and “exempted development” and “unauthorised development” are very distinct and separate concepts under the planning code, and the Oireachtas chose to include the first two concepts within the scope of s. 5, but not the third concept’*. It was further stated that *‘the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, is not an issue that the planning bodies have jurisdiction to decide’* and that Section 5 was to be construed in light of that absence of jurisdiction.

9.5.9. Therefore, considering the nature of the question posed and the limitations of the Commission’s jurisdiction, it is my opinion that a determination as to *‘Whether the ongoing extraction of sand, gravel, shale, or other minerals on the land after the expiry of planning permission PL95/300 in 2001 constitutes development requiring planning permission’* is not a question which falls within the scope of Section 5 of the Act and that it is beyond the jurisdiction of the Commission as provided to it under Section 5 to make a declaration on such a question. Accordingly, I would suggest that this aspect of the referral should not be considered further and should be dismissed under Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

9.6. **Question No. 2: Whether the opening and operation of multiple quarry excavations across the lands, including separate quarry areas outside the footprint of the original authorised development, constitute development requiring planning permission?**

9.6.1. This question can be divided into two parts as it requires a determination as to whether the opening and operation of multiple quarry excavations both within and beyond *‘the footprint of the original authorised development’* constitutes development requiring planning permission. However, in order to consider the foregoing, it will be necessary in the first instance to establish the extent of the ‘original authorised development’ and in this regard I would suggest that the use of the term ‘authorised’

can reasonably be interpreted as referring to the grant of permission issued for PA Ref. No. 95/300.

- 9.6.2. From a review of the plans and particulars provided by the Planning Authority with respect to PA Ref. No. 95/300, it is of relevance to note that the application as initially lodged sought '*permission to retain concrete plant, extraction of sand and gravel and washing facility*' over a site area of 4.515 hectares (as outlined in red on Drg. No. R-123-1: '*Site Map*' (Scale: 1:2,500) received by the Planning Authority on 15th May, 1996), however, in response to requests to submit an Environmental Impact Statement (dated 18th May, 1995) and for further information (dated 5th July, 1995), the applicant subsequently provided amended details on 27th March, 1996, including an EIS and additional drawings, which refer to an extended site area of 6.715 hectares that incorporates the retention of a gravel pit across an area of approximately 2.0 hectares and its proposed extension by c. 4.7 hectares along with silting basins / silt ponds to the west of the pit area previously shown on Drg. No. R-123-1: '*Site Map*' received by the Planning Authority on 15th May, 1996. It would appear that the site boundary was then revised further to accommodate the relocation of the concrete works to an area south of the gravel pit (outlined in red and marked 'B' on Drg. No. R-123-2 (1:2,500) received on 11th June, 1996).
- 9.6.3. Condition No. 2 of the grant of permission issued in respect of PA Ref. No. 95/300 states the following:

'This permission shall be restricted to the area hatched in red on the maps submitted on 15/05/95 and 11/06/96 and no excavation operations of any kind shall take place outside the curtilage of the site as hatched in red.'

Reason: In the interest of proper planning and development amenity of the area'.

- 9.6.4. An examination of the areas outlined in red on Drg. No. R-123-1: '*Site Map*' and Drg. No. R-123-2: '*Site Map*' received by the Planning Authority on 15th May, 1996 and 11th June, 1996 respectively (noting that there are no drawings on file which depict an area 'hatched' in red) confirms that the permission granted under PA Ref. No. 95/300 is limited to a site area totalling 6.134 hectares as follows:

- Drg. No. R-123-1: '*Site Map*' (15th May, 1996): 4.515 hectares

- Drg. No. R-123-2: '*Site Map*' (11th June, 1996) :1.619 hectares

- 9.6.5. Notably, the delineation of those lands occupied by the sand & gravel pit, washing facility, and the concrete plant, pursuant to Condition No. 2 above excludes the silt ponds as well as most of a pre-1963 pit situated to the north of the area outlined in red on Drg. No. R-123-1: '*Site Map*'.
- 9.6.6. At this point, I would advise the Commission that there would appear to be no further grants of permission on site as regards the physical expansion of the quarrying activities or the extraction area with the broader planning history instead primarily relating to the development of the adjacent concrete and precast manufacturing operations.
- 9.6.7. Having established the extent of the development permitted under PA Ref. No. 95/300, the Commission is referred to the subsequent registration of the quarry under the provisions of Section 261 of the Planning and Development Act, 2000, as amended. In this regard, it is regrettable that the Planning Authority responded to a request to forward all documentation relating to the registration process (Ref. No. QY05/76) by stating that the file pertaining to the subject quarry cannot be located and that only letters / documents from the Council's online system have been provided as no other documents are available. Nevertheless, it would appear from the information submitted that on 15th February, 2007 the Planning Authority served notice on the quarry owner / operator of the registration of the quarry under Section 261 of the Act and its intention to restate, modify and add conditions on the operation of the '*area hatched in green*' (while further clarifying that those conditions were only concerned with '*sand and gravel extraction on site and not activities such as batching, offices or the use of industrial units*'). The registration process thus concluded on 17th April, 2007 when the Planning Authority served notice on Arastra Construction pursuant to Section 261(6)(a)(i) of the Act of the imposition of 15 No. conditions on the operation of the quarry at Ballymullen, Abbeyleix, Co. Laois.
- 9.6.8. In my opinion, and in the absence of further details of the registration process, it is at this point that difficulties arise as to determining the extent of the quarry area. In this respect, the Commission is advised that the registration documentation provided by the Planning Authority clearly states that the initial notice served under Section 261(5) detailed an intention to '*restate, modify and add*' conditions as regards the

sand and gravel extraction operations on site and not activities such as batching, offices or the use of industrial units. Not only does this notice state that the conditions proposed to be applied relate only to the extraction operations, but it is of further relevance to note that any restating, modifying or adding of conditions (Section 261(4)(b)(ii) of the Act) is specific to instances where planning permission has been granted in respect of the quarry (as distinct from the 'imposition' of conditions which applies where planning permission has not been granted in respect of the quarry). The implication of the foregoing is that the initial notice of intention was based on a determination by the Planning Authority that quarrying on the subject site was granted planning permission under PA Ref. No. 95/300 and was not reliant on any pre-1964 use.

- 9.6.9. Regrettably, the details of the Section 261 registration process provided by the Planning Authority do not include any mapping of the '*area hatched in green*' to which it was proposed to '*restate, modify and add*' conditions, however, I would draw the Commission's attention to the mapping titled as '*Quarry QY5/76/1 Registration Area*' which has accompanied the application for the Section 5 declaration as lodged by Mr. Thomas McEvoy and has also been provided by Mr. David Malone as an observer to the referral. That mapping delineates an area hatched in green which would appear to broadly correspond with the site boundaries of the area shown on Drg. No. R-123-1: '*Site Map*' (15th May, 1996) as referenced in Condition No. 2 of the grant of permission issued for PA Ref. No. 95/300.
- 9.6.10. However, within the information on the Section 261 process provided by the Planning Authority (i.e. the document titled '*Final Decision Stage as part of Section 261 of the Planning and Development Act, 2000*') reference is made to the then broader definition of a quarry under the Mines and Quarries Act, 1965 and '*... an area of quarry which the council considers that the operator could reasonably anticipate to excavate having regard to the pre 64 status of the quarry*'. This would seem to represent a shift in the position of the Planning Authority away from an intention to '*restate, modify and add*' conditions to the quarry permitted under PA Ref. No. 95/300 to instead '*imposing*' conditions on a pre-1964 quarry. Indeed, the Manager's Order dated April, 2007 refers to the 'imposition' of 15 No. conditions on the operation of the quarry at Ballymullen pursuant to Section 261(6)(a)(i) of the Act (i.e. in relation to a quarry which commenced operation before 1st October, 1964)

although the attached schedule of reasons appears to be contradictory in that it only refers to *'the existing use of the proposed land as a quarry which was granted planning permission under PL2/95/300'* with no reference to any pre-1964 use.

9.6.11. With respect to the conditions 'imposed' on the quarrying operation, Condition No. 1 requires the quarry to be operated in accordance with the plans and particulars received by the Planning Authority on specified dates (except where otherwise required by subsequent conditions), however, no details of those plans and particulars have been made available to the Commission. Similarly, although Condition No. 2 states that the area registered is outlined in red on the enclosed 'Map Ref. QY 05/76/1', no such map has been supplied and while it is likely that the mapping supplied by both Mr. McEvoy and Mr. Malone reflects that referenced in Condition No. 2, in the absence of full particulars of the registration process, any such conclusion would involve a degree of speculation. It is of further note that although Condition No. 2 as 'imposed' serves to define the area on which the Council is *'restating, modifying and adding to conditions'* (with a view to defining the scope of the permission as per the stated reason for its inclusion), the terminology used would suggest it relates to a permitted quarry (i.e. PA Ref. No. 95/300) as opposed to a pre-1964 use.

9.6.12. In any event, it seems likely that any challenge to the registration process and the conditions applied by the Planning Authority would be out of time and thus Condition No. 2 of Quarry Ref. No. QY 05/76 would seem to have the effect of registering an expanded quarry area beyond that referenced in the original notice of intent dated 15th February, 2007 (the 'area hatched in green') as well as that previously permitted under PA Ref. No. 95/300 although this is a matter raising legal considerations beyond the remit of the Commission. While any such expanded quarry area (which would now appear to encompass much of the concrete and precast manufacturing operations) may tally with that shown on the mapping provided by Mr. McEvoy and Mr. Malone, this cannot be definitively verified from the limited information made available to the Commission by the Planning Authority.

9.6.13. In the absence of full details of the registration process, it is unclear how the Planning Authority determined that it was appropriate to 'impose' 15 No. conditions on the operation of the quarry at Ballymullen pursuant to Section 261(6)(a)(i) of the Act, particularly as the initial notice of intention was seemingly based on a

determination that the quarrying on site was granted planning permission under PA Ref. No. 95/300 (as is also referenced in the reasons for the imposition of the conditions) and did not concern any pre-1964 status while Condition No. 2 of the conditions imposed would also seem to relate to the earlier permission.

9.6.14. Having regard to the foregoing, I would revert the Commission back to the question of *‘Whether the opening and operation of multiple quarry excavations across the lands, including separate quarry areas outside the footprint of the original authorised development, constitute development requiring planning permission?’*.

9.6.15. Regrettably, the Section 5 application does not include precise information as to the exact nature, dimension, or location of the quarrying excavations referenced in the question posed and while the accompanying mapping (entitled *‘Quarry QY5/76/1 Registration Area’*) contained in Annex ‘A’ identifies 8 No. locations where quarrying excavations have seemingly been carried out or are underway, the applicant has expressly stated that this information is for background / context purposes only and is not to be relied upon in the determination of the Section 5 application. The adoption of any such position gives rise to difficulties in ascertaining the subject matter of the Section 5 request and in this respect I would suggest that insufficient information has been submitted to make a ruling on this aspect of the application. Accordingly, given the inadequacy of the available information, I would recommend that this aspect of the referral should not be considered further and should be dismissed under Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

9.6.16. In the event the Commission is amenable to accepting the mapping set out in Annex ‘A’ of the Section 5 application (given that an identical copy of said map (i.e. Map Ref. ‘Quarry QY5/76/1 Registration Area’) has been provided as part of the observation received from Mr. Malone), it remains the case that it is not possible to verify if that mapping serves as an accurate representation of the registered quarry as per Condition No. 2 of Quarry Ref. No. QY 05/76 with the result that difficulties remain in discerning the subject matter of the Section 5 application. Alternatively, if the Commission is satisfied that the aforementioned mapping equates to that referenced in Condition No. 2 of Quarry Ref. No. QY 05/76 and is accurate in depicting the full extent of the ‘authorised quarry’ (notwithstanding my reservations as regards the registration process), it would appear that the quarrying excavations

identified as Quarry Nos. 3, 4 & 5 are outside the spatial extent of the development as originally permitted under PA Ref. No. 95/300 although they do fall within the limits of the registered quarry area. In this regard, I would refer the Commission to *Krikke and Others v. Barranafaddock Sustainable Electricity Ltd [2022] SC 2021/133* wherein it was stated that ‘*the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, is not an issue that the planning bodies have jurisdiction to decide*’. In my opinion, parallels may be drawn between development permitted by a grant of permission and that sanctioned by the Section 261 registration process to the extent that a determination as to whether quarrying at Location Nos. 3, 4 & 5 constitutes development requiring planning permission is not a question which falls within the scope of Section 5 of the Act. In effect, any determination with respect to the question posed as regards Quarry Nos. 3, 4 & 5 would be reliant on a finding as to whether the quarry excavations at those locations are authorised / permitted development which is beyond the jurisdiction of the Commission as provided.

- 9.6.17. With respect to the opening and operation of quarrying excavations at those locations identified as Quarry Nos. 1, 2, 6, 7 & 8 on the submitted mapping, having reviewed the available information, and following a site inspection, it can be confirmed that the lands in question fall beyond the site boundary of the quarrying operation originally approved under PA Ref. No. 95/300 and are also outside of the registered quarry area as per Condition No. 2 of Quarry Ref. No. QY 05/76. Furthermore, it is apparent from historical aerial photography of the area that said lands were previously used for agricultural purposes unrelated to any quarrying operation. Without seeking to encroach on matters of enforcement or any determination of unauthorised development, in my opinion, it is clear that the excavation and extraction operations carried out to date on the affected lands, along with the associated activities, including the stockpiling of material and the construction of settlement ponds / lagoons, accord with the definition of a “quarry” as provided by Section 2(1) of the Planning and Development Act, 2000, as amended. Indeed, given the working relationship, inter-dependency and physical connectivity of the operations undertaken at Quarry Nos. 1, 2, 6, 7 & 8, they would seem to be intrinsically linked to the wider quarrying and manufacturing operations conducted

from within the quarry area registered pursuant to Condition No. 2 of Quarry Ref. No. QY 05/76.

9.6.18. Section 3 of the Planning and Development Act, 2000, as amended, defines “*development*” as the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land. Accordingly, any quarrying operations at the locations identified as Quarry Nos. 1, 2, 6, 7 & 8 on the mapping included at Annex ‘A’ of the Section 5 application would involve an act of development by reason of a material change in the use of the lands in question (from agricultural to use as a quarry) as well as the carrying out of “works” as defined by Section 2 of the Act. Furthermore, I am satisfied that there is no exempted development provision within the legislation that would allow quarrying activity at Quarry Nos. 1, 2, 6, 7 & 8.

9.6.19. At this point, I would reiterate my earlier comments that the applicant for the Section 5 declaration has specifically stated that the mapping included in Annex ‘A’ of the application particulars (which identifies Quarries 1, 2, 3, 4, 5, 6, 7 & 8) is intended for background / context purposes only and is not to be relied upon in the determination of the application. Furthermore, the information provided by the Planning Authority as regards the registration of the quarry is both incomplete and insufficient to allow for any verification of the extent of the quarry area (as per Condition No. 2 of the registration) as registered pursuant to Section 261 of the Act under PA. Ref. No. QY05/76. Therefore, it is my opinion that inadequate information has been provided to make a ruling on ‘Question No. 2’ and that this aspect of the referral should not be considered further with dismissal under Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

9.7. **Question No. 3: Whether extraction carried out below the natural groundwater table, including the creation of flooded quarry voids and groundwater lagoons, constitutes development requiring planning permission?**

9.7.1. The process of extraction (both above and below the water table) involves an act excavation and thus can be considered to fall within the definition of a “quarry” as provided by Section 2(1) of the Planning and Development Act, 2000, as amended. In this respect, it is to be noted that quarrying has already been established as constituting development which is not exempted development. Regrettably, the

question as posed in the subject referral is somewhat generalised and does not provide any specific details as to the location, depth or extent of any excavations purportedly carried out below the water table. Moreover, the mapping included in Annex 'A' of the Section 5 application fails to give any indication of the extraction in question (with the applicant in any event having expressed that this information is for background / context purposes only and is not to be relied upon in the determination of the application). Similarly, no details have been provided of the quarry voids or the lagoons, although I would draw the Commission's attention to its decision as regards ABP Ref. No. ABP-309575-21 (PA Ref. No. 10/5) wherein it was determined that revisions to the on-site management of surface water within the existing facility for the manufacture of concrete products, insofar as they relate to the development of two silt ponds / lagoons, was development and was not exempted development.

- 9.7.2. In the absence of further details as regards any extraction activities below the water table, flooded quarry voids, or groundwater lagoons, it is not possible to determine if any such operations etc. have occurred within the limits of the quarrying activities originally granted permission under PA Ref. No. 95/300 or the quarry area as registered pursuant to Section 261 of the Act (i.e. PA. Ref. No. QY05/76). Consequently, it is not possible to ascertain whether any such activities or operational practices already benefit from any previous approval / authorisation on site. In this regard, I would suggest that any matters pertaining to compliance or a determination as to what may or may not constitute permitted development or unauthorised development are beyond the scope of the Commission as provided to it under Section 5 of the Act. The Planning Authority is best positioned to determine whether any particular aspect or activity falls within the terms and conditions of a 'permitted' development while the Commission has no function in respect of issues pertaining to enforcement with the pursuit of such matters being the responsibility of the Planning Authority in the first instance. Accordingly, this aspect of the referral should not be considered further and should be dismissed under Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

- 9.8. **Question No. 4: Whether the abstraction and use of groundwater from quarry voids or excavated areas for the washing and processing of sand and gravel constitutes development requiring planning permission and / or is exempted development?**

9.8.1. The abstraction and use of groundwater as outlined in the question is not in itself an act of development and is to be distinguished from any works that may be required in order to facilitate same.

9.8.2. With respect to the washing and processing of sand and gravel, I am inclined to suggest that a determination as to whether any such activities constitute development and are or are not exempted development (as distinct from the actual usage of water as part of those activities) has not been sought by the question as posed. Notwithstanding, given the limitations of the information provided, it is not possible to determine if the operations in question fall within the limits of the quarrying activities originally granted permission under PA Ref. No. 95/300 or the quarry area as registered pursuant to Section 261 of the Act (i.e. PA. Ref. No. QY05/76). By extension, it is not possible to ascertain whether any such activities or operational practices already benefit from any previous approval / authorisation on site. Accordingly, I would suggest that the findings set out in Paragraph 9.7.2 also apply with respect to Question No. 4.

9.9. **Question No. 5: Whether the importation of sand, gravel, or other quarried materials from multiple quarry sites, including from unauthorised quarry excavations, for processing, washing, batching, or manufacture on the lands constitutes development requiring planning permission and / or a material change of use?**

9.9.1. The question as phrased would appear to concern the principle of importing sand, gravel, or other quarried materials from off-site locations for processing or washing etc. on site as opposed to the actual processing activities themselves or the volume of the material imported and any implications arising from same. In this regard, I would suggest at the outset that the importation / transportation of material to the site is not in itself an act of development as defined by the Act.

9.9.2. With respect to any subsequent processing or washing of that material or its use in concrete batching or the manufacture of pre-cast concrete products on site, I would advise the Commission that any such activities would appear to involve development already permitted and developed on site by reference to a series of grants of permission. Whether the processing, washing, batching or use in manufacturing of the imported material falls within the terms and conditions of the relevant grants of

permission is a matter for investigation by the Planning Authority which is beyond the jurisdiction of the Commission as provided to it under Section 5.

- 9.9.3. With regard to any suggestion that the importation of sand, gravel, or other quarried materials from off-site locations for processing or washing etc. on site has given rise to a material change of use, presumably on the assumption that the importation of said material has resulted in such an intensification of operations / activity as to have material consequences, in my opinion, there is inadequate information available on file to make a finding on same. Any such determination would require an investigation and knowledge of the operations originally approved on site (e.g. the volumes of material imported & exported to / from the site, the number traffic movements, and any relevant restrictions on site operations) as well as the current levels of activity for comparison purposes so as to allow for a reasoned judgement in order to establish whether there has been any intensification of use on site which could be held to amount to a material change of use. This would also necessitate establishing whether the activities in question fall within the limits of development already approved on site which is beyond the jurisdiction of the Commission as provided for under Section 5 of the Act (by reference to *Krikke and Others v. Barranafaddock Sustainable Electricity Ltd* [2022] SC 2021/133). Accordingly, I would suggest that this aspect of the referral should not be considered further and should be dismissed under Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

9.10. **Question 6: Whether the erection and operation of a new concrete batching plant, along with the installation and use of two silos for storing and mixing fly ash, as well as the processing or incorporation of fly ash and imported sand and gravel into concrete, blocks, or other manufactured products, constitute development requiring planning permission and / or a material change of use, where such works were not authorised under PL95/300?**

- 9.10.1. The totality of this question raises a number of issues which can be broadly summarised as follows:

- The erection and operation of a new concrete batching plant;
- The installation and use of two silos for storing and mixing fly ash;

- The processing or incorporation of fly ash and imported sand and gravel into concrete, blocks, or other manufactured products; and
- Whether the aforementioned works are authorised under PA Ref. No. PL95/300.

9.10.2. With respect to the erection and operation of a new concrete batching plant, it is of relevance in the first instance to note that permission was previously granted for the retention of a concrete plant on site as part of the development approved under PA Ref. No. 95/300 and that the judgment of the High Court in its determination of *Malone & McEvoy v. Laois County Council, An Bord Pleanála and Booth Precast Concrete Limited [2025] IEHC 345* held that the planning status of the use of the retained concrete plant would be unaffected by any expiry of PA Ref. No. 95/300 and stated that:

‘It is trite law that once a development of a permitted structure has occurred within the period of the permission –which is *ex hypothesi* so in the case of a retention permission – and absent a condition requiring cesser of its use after a stated period, its continued use after the expiry of the permission, for the purpose implicitly or explicitly permitted by the permission, is not unauthorised development. That is so because such continued use is not development at all. Use is not development: only change of use is development’.

9.10.3. Having conducted a site inspection, it can be confirmed that there are 2 No. batching plants on site with the westernmost construction appearing to comprise that approved under PA Ref. No. 95/300. The easternmost plant is a larger unit with two cuboid-shaped silos and appears to be of a later construction although aerial photography shows that it has been in place since before 2001. Regrettably, it is unclear which concrete plant is the intended subject matter of the Section 5 application and in the absence of clarity on this matter it is not possible to make a determination on the query raised.

9.10.4. With regard to the installation and use of two silos for the storage and mixing of fly ash along with the processing / incorporation of fly ash and imported sand & gravel into concrete, blocks, or other manufactured products, it is similarly regrettable that no details have been provided of the silos in question (including their location) and

thus it is not possible to identify the specific subject matter of the question posed. Additionally, there is a lack of information as regards any use of fly ash as part of the manufacturing activities carried out on site and thus any consideration of this matter would require a degree of speculation. At this point I would reiterate that matters of enforcement and the investigation of allegations of unauthorised development are both beyond the remit of the Commission and outside of the scope of Section 5 of the Act. Notwithstanding, it is my understanding that while fly ash can be used as a supplementary cementitious material in the production of concrete, I would anticipate that any substitution of fly ash for cement would have limited (if any) impact in terms of volumetric change as regards the input and output of materials. By extension, it is unclear whether the use of fly ash would give rise to such an intensification of use as to amount to a material change of use that would constitute development as defined by the Act.

9.10.5. The remaining consideration is whether the aforementioned batching plant and the installation and use of two silos for the storage and mixing of fly ash along with the processing / incorporation of fly ash and imported sand & gravel into concrete, blocks, or other manufactured products are authorised under PA Ref. No. PL95/300. In my opinion, there is inadequate information available on file to allow for a determination on this matter. Moreover, issues pertaining to compliance or a determination as to what may or may not constitute permitted development are beyond the scope of the Commission as provided to it under Section 5 of the Act. Therefore, it is my recommendation that the Commission dismiss this aspect of the referral from further consideration pursuant to Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

9.11. **Question No. 7: Whether the deposit, storage, recovery, treatment, or disposal of waste materials within quarry voids or excavated areas, including concrete waste, cementitious sludge, concrete wash-out, construction and demolition waste, and other industrial waste, constitutes development requiring planning permission and / or is exempted development, including when such waste involves waste concrete and concrete sludge (EWC Code 10 13 14)?**

9.11.1. The question as phrased seeks a determination as to whether a variety of activities pertaining to a multitude of waste types are or are not exempted development. In this regard, I would suggest that the subject matter of the question lacks specificity and is

unduly broad-ranging and expansive in its nature which gives rise to difficulties in rendering any determination. Nevertheless, I would draw the Commission's attention to Section 3(2)(b)(iii) of the Planning and Development Act, 2000, as amended, which clarifies that where land becomes used for the deposit of '*old metal, mining or industrial waste, builders' waste, rubbish or debris*', the use of the land shall be taken as having materially changed and thus amounts to development. It is of further relevance to note that Class 22 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, states that the '*Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process*' constitutes exempted development provided the raw materials, products, packing materials, fuel or waste stored is not visible from any public road contiguous or adjacent to the curtilage of the industrial building.

9.11.2. Given the generality of the question posed, a variety of scenarios potentially arise depending on the interpretation of the issues raised. For example, it is unclear whether the subject matter is intended to refer to the importation of waste from off-site sources; waste material arising from the quarrying and ancillary site activities; waste generated from the on-site concrete / pre-cast concrete manufacturing operations; or any combination of the foregoing. However, on the basis of the information provided, and noting the repeated references to waste derived from the manufacture of concrete, I am inclined to conclude that the applicant is seeking a determination as regards the '*deposit, storage, recovery, treatment, or disposal of waste materials*' generated by the existing activities on site as opposed to any waste importation from off-site locations.

9.11.3. While the applicant has referred to the various activities as occurring within '*quarry voids or excavated areas*', no further details have been provided as to the location or extent of the works in question and thus it is not possible to determine if any such operations have occurred within the limits of the quarrying activities originally granted permission under PA Ref. No. 95/300 or the quarry area as registered pursuant to Section 261 of the Act (i.e. PA. Ref. No. QY05/76). Moreover, I would have concerns that the question as posed effectively requires a determination by the Commission as to whether the particular activities amount to permitted development in the first

instance. For example, the plans and particulars submitted in support of the original grant of permission for quarrying activities on site under PA Ref. No. 95/300 indicated that there would be '*basically no waste as all sand / gravel is removed through sale from the site*' with all topsoil to be stored for restoration purposes (Para. 2.9 of the Environmental Impact Statement). Condition Nos. 19, 24 & 25 of that grant of permission also put controls in place as regards the disposal of wash-water from the washing activities and the removal of waste additive containers and waste oil from the site. Additionally, the issue of waste management is likely to have been considered during the Section 261 quarry registration process (PA. Ref. No. QY05/76), however, it is not possible to comment further on this matter given the limited information made available by the Planning Authority as regards the registration process other than to note the attachment of Condition No. 8 which refers to a review of the developer's Environmental Management System.

9.11.4. With respect to the concrete / pre-cast concrete production facilities on the wider site, it is evident from a review of the relevant planning history that waste management from these operations was considered in the assessment of the relevant planning applications. For example, Condition No. 3 of PA Ref. No. 0624 / ABP Ref. No. PL11.218941 required the submission of a plan containing details for the management of waste within that development, including the provision of facilities for the storage, separation and collection of the waste, and the ongoing operation of those facilities. Condition No. 6 of that grant of permission also required an Environmental Monitoring Plan to be agreed with the planning authority which was to include for the '*recording of waste generation and export off site, including materials such as waste oils, and maintenance of the proposed interceptor*' with a similar condition having also been attached to the grants of permission issued in respect of ABP Ref. Nos. PL11.239204, PL11.239205 & PL11.239206.

9.11.5. In my opinion, there is a lack of clarity as regards the subject matter of the question which is further complicated by the inadequacy and limitations of the information before the Commission. Notwithstanding, I am of the view that any examination of the activities identified by the applicant would require a determination as to whether or not those practices fall within the terms and conditions of any previous approval / authorisation issued on site. In this regard, I would reiterate that matters pertaining to compliance or a determination as to what may or may not constitute permitted

development or unauthorised development are beyond the scope of the Commission as provided to it under Section 5 of the Act. Accordingly, this aspect of the referral should not be considered further and should be dismissed under Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

9.12. Question No. 8: Whether the use of quarry excavations or lagoons for the containment, settlement, or discharge of liquid or semi-liquid waste, contaminated runoff, leachate, or waste-derived effluent into ground, surface water, or artificial drainage channels constitutes development that requires planning permission?

9.12.1. Having reviewed the question as posed, it is my opinion that parallels may be drawn between it and Question No. 7 above. In this regard, I would repeat my position that the nature of the query would require a determination as to whether or not the activities in question fall within the terms and conditions of any previous approval / authorisation issued on site which is beyond the scope of the Commission as provided to it under Section 5 of the Act. Therefore, the referral should be dismissed under Section 138(1)(b)(i) of the Act.

9.13. Question No. 9: Whether any of the quarrying, processing, importation, or waste-related activities outlined above may lawfully be carried out without a valid and subsisting planning permission, having regard to the expiry of PL95/300, the absence of any extension or subsequent permission, and the absence of screening for Environmental Impact Assessment or Appropriate Assessment in accordance with relevant legislation?

9.13.1. Having reviewed the available information, it is my opinion that any answer to the aforementioned question requires a determination as to whether previous grants of permission issued on site, with particular reference to PA Ref. No. 95/300, have expired with any response in the affirmative effectively intended to serve as a means by which to establish that quarrying, processing, importation, or waste-related activities conducted on the land (after any expiry of the said permissions) amount to unauthorised development. Such a question is not in itself seeking an answer as to whether a particular activity constitutes development or exempted development but is rather seeking a determination as to whether that activity is permitted by way of a valid 'live' grant of planning permission.

9.13.2. The limitations of the Commission's jurisdiction under Section 5 of the Act have been established by legal precedent with *Krikke and Others v. Barranafaddock Sustainable Electricity Ltd [2022] SC 2021/133* reaffirming that the Commission is limited to making a "decision" on two possible questions which may be the subject of a referral by a planning authority i.e. whether something is or is not development, and whether something is or is not exempted development. Within that judgment it was explained that *'The concepts of "development" and "exempted development" and "unauthorised development" are very distinct and separate concepts under the planning code, and the Oireachtas chose to include the first two concepts within the scope of s. 5, but not the third concept'*. It was further stated that *'the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, is not an issue that the planning bodies have jurisdiction to decide'* and that Section 5 was to be construed in light of that absence of jurisdiction.

9.13.3. Therefore, considering the nature of the question posed and the limitations of the Commission's jurisdiction, it is my opinion that a determination as to *'Whether any of the quarrying, processing, importation, or waste-related activities outlined above may lawfully be carried out without a valid and subsisting planning permission, having regard to the expiry of PL95/300, the absence of any extension or subsequent permission, and the absence of screening for Environmental Impact Assessment or Appropriate Assessment in accordance with relevant legislation'* is not a question which falls within the scope of Section 5 of the Act and that it is beyond the jurisdiction of the Commission as provided to it under Section 5 to make a declaration on such a question. Therefore, this aspect of the referral should not be considered further and should be dismissed under Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

10.0 AA Screening

10.1. The Commission is referred to the assessment set out in Section 9.0 of this report and the subsequent recommendation that the referral be dismissed pursuant to Section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended, on the basis that the details presented by the applicant are insufficient to enable the Commission to issue a declaration and as the provisions of Section 5 of the Planning

and Development Act, 2000, as amended, are not considered to apply in this particular case. In such circumstances, it is not necessary to undertake screening for the purposes of appropriate assessment.

11.0 Recommendation

11.1. I recommend that the Commission should dismiss this referral in accordance with the following draft order.

WHEREAS questions have arisen as to -

- Whether the ongoing extraction of sand, gravel, shale, or other minerals on the land after the expiry of planning permission PL95/300 in 2001 constitutes development requiring planning permission;
- Whether the opening and operation of multiple quarry excavations across the lands, including separate quarry areas outside the footprint of the original authorised development, constitute development requiring planning permission;
- Whether extraction carried out below the natural groundwater table, including the creation of flooded quarry voids and groundwater lagoons, constitutes development requiring planning permission;
- Whether the abstraction and use of groundwater from quarry voids or excavated areas for the washing and processing of sand and gravel constitutes development requiring planning permission and / or is exempted development;
- Whether the importation of sand, gravel, or other quarried materials from multiple quarry sites, including from unauthorised quarry excavations, for processing, washing, batching, or manufacture on the lands constitutes development requiring planning permission and / or a material change of use;
- Whether the erection and operation of a new concrete batching plant, along with the installation and use of two silos for storing and mixing fly ash, as well as the processing or incorporation of fly ash and imported sand and gravel into concrete, blocks, or other manufactured products, constitute development

requiring planning permission and / or a material change of use, where such works were not authorised under PL95/300;

- Whether the deposit, storage, recovery, treatment, or disposal of waste materials within quarry voids or excavated areas, including concrete waste, cementitious sludge, concrete wash-out, construction and demolition waste, and other industrial waste, constitutes development requiring planning permission and / or is exempted development, including when such waste involves waste concrete and concrete sludge (EWC Code 10 13 14);
- Whether the use of quarry excavations or lagoons for the containment, settlement, or discharge of liquid or semi-liquid waste, contaminated runoff, leachate, or waste-derived effluent into ground, surface water, or artificial drainage channels constitutes development that requires planning permission; and
- Whether any of the quarrying, processing, importation, or waste-related activities outlined above may lawfully be carried out without a valid and subsisting planning permission, having regard to the expiry of PL95/300, the absence of any extension or subsequent permission, and the absence of screening for Environmental Impact Assessment or Appropriate Assessment in accordance with relevant legislation

at Ballymullen, Abbeylax, Co. Laois,

AND WHEREAS Mr. Thomas McEvoy, Grallow Lodge, Ballymullen, Abbeylax, Co. Laois, requested a declaration on the questions from Laois County Council and no declaration on said questions was issued by the planning authority:

AND WHEREAS Laois County Council referred the question for decision to An Coimisiún Pleanála on the 23rd day of January, 2026

AND WHEREAS An Coimisiún Pleanála, having considered the nature of the question, is satisfied that the referral should not be further considered by it:

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 138 (1) of the Planning and Development Act, 2000, as amended, hereby dismisses the referral under subsection (1)(b)(i) of section 138 of the Act, based on the reasons and considerations set out below.

Reasons and Considerations

Having regard to the nature of the referral, and the totality of documentation on file, it is considered that the details presented by the applicant for the declaration are insufficient to enable the Commission to issue a declaration. Furthermore, it is considered that the provisions of Section 5 of the Planning and Development Act, 2000, as amended, are not applicable in this particular case. In these circumstances, it is, therefore, considered that the referral should not be further considered by the Commission.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Robert Speer
Senior Planning Inspector

23rd June, 2026