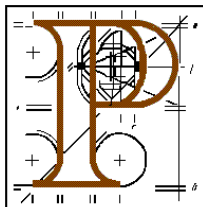


# An Bord Pleanála



## Inspector's Report

**Site Address:** Cloonascragh, Ballinasloe, Co. Galway.

**Proposal:** Quarry

### Application

Planning Authority: Galway County Council.

Planning Authority Reg. Ref.: QSP57

Applicants: Fursey Whyte

Type of Application: Application for Substitute Consent

Planning Authority Decision: Not applicable

Submissions: Geological Survey of Ireland  
An Taisce  
Department of Arts, Heritage, and the  
Gaeltacht.

Date of Site Inspection: 18<sup>th</sup> September 2013

**Inspector:** G. Ryan

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## **1.0 INTRODUCTION**

- 1.1 This report concerns itself with an application to the board for 'substitute consent' in respect of a quarry at Cloonascragh, Ballinasloe, Co. Galway. This is not a 'standard' appeal, and arises due to a specific process, provided for by legislation, which arises from the 'Derrybrien' case. The European Court of Justice ruled that Ireland was in breach of EU law in permitting retention permission for projects accompanied by an Environmental Impact Assessment.
- 1.2 The 'Substitute Consent' procedure in the 2010 Act seeks to provide a mechanism whereby the position in respect of EIA development can be regularised. However, leave to apply for consent from the board is only allowed in exceptional circumstances. In the specific case of quarries there will be a 'sunset period' whereby quarry owners will be given a last opportunity to regularise any unauthorised works without having to meet the exceptional circumstances test.
- 1.3 Within this process, the planning authority (and the board if subsequently challenged) make a determination that EIA or AA (or Screening for same) was required, but not carried, out. In such instances, the owner or operator of the quarry is directed them to apply to the Board for substitute consent in respect of the quarry.
- 1.4 This process is predicated on the precondition that either planning permission was obtained for the quarry or that it pre-dates October 1964 and the quarry operator, if required to do so, applied for registration under Section 261. Quarries that never had planning permission or failed to register under Section 261 of the Planning and Development Act 2000 do not qualify for substitute consent. In this instance, all these pre-requisites apply, as set out in section 4.0 below.

## **2.0 SITE AND CURRENT OPERATIONS**

### **2.1 Context**

- 2.1.1 The site consists of a sand / gravel quarry in east county Galway, around 5km southeast of Ballinasloe. The River Suck passes around 900m to the northeast. Downstream of the subject site, around 9km east (at Shannonbridge), the Suck joins the River Shannon. The small village of Laurencetown is around 5km to the south. The R335 links Ballinasloe with Portumna, passing through Laurencetown.
- 2.1.2 Access to the site is via a local road junction at the R335, which has obscured sightlines to the west due to a structure at the junction. This local road, the LT87171 runs north, past the quarry entrance, before onward access is impeded by a gate. It continues as a private road to the northwest, before it becomes a public road once again as it approaches Ballinasloe.

## **2.2 The quarry**

- 2.2.1 The quarry sits within a linear esker feature that traverses this area in a roughly east-west direction. Its complex undulating topography, with local highpoints and dry hollows, may be in part natural, but has almost certainly been influenced by quarry operations on this site. Most of the site and its surroundings are covered with low grass, bracken, or gorse.
- 2.2.2 The north-south road to the quarry splits, with the southern branch entering the quarry floor. This clearly accommodates the majority of traffic at present. The northern branch runs parallel, but on higher ground, above the quarry floor. There is evidence of dumping of off-site material in this area, with spoil heaps including lumps of concrete and other building rubble.
- 2.2.3 Contrary to the report of the previous inspector under PL07.QC2152 and the planning officer under PA Ref. QY57, I found operations to be ongoing on the site, albeit at a low level.
- 2.2.4 The current marshalling area and material stockpiles are to the west of the area delineated. Machinery and plant are located around this area and along the site's northern boundary. There are tractors, trailers, drums, palettes, containers, graders/conveyors, etc. While some items are clearly operational, other items are clearly broken or scrap. Working faces are evident to the north and south of this area. At the time of my inspection, a wheel loader was moving material from the base of the southern working face to a grader that was feeding stockpiles on the quarry floor.
- 2.2.5 There is no evident drainage network within the site. Adjoining the quarry to the north is a west-east drain that appears to form the 'backbone' of the pNHA. At the time of my inspection, this drain was quite overgrown, but did appear to hold water along its length, albeit without a flow direction being evident. A south-north drain is located a distance west of the quarry access road. It was dry at the time of my site inspection. I will refer to these in my report as the 'northern drain' and the 'western drain' respectively.

## **2.3 Surrounding lands**

- 2.3.1 The lands to the north of the site consist of open bogland that is stated to be in Bord na Mona ownership. There is evidence of this land having been cut for drainage. There is no evidence of recent harvesting, with a good cover of bog vegetation. A small area of land between the subject site and the large bog, along the line of a drain/stream, is covered with taller shrubs and trees. Along this alignment, to the northwest of the subject site, the ground-level vegetation was sodden at the time of my inspection.

- 2.3.2 The lands to the south of the quarry consist of generally low, level farmland, under pasture. The nearest dwelling is around 400m to the south, with associated farm buildings, although I understand this dwelling is associated with the applicant's family.
- 2.3.3 Between this dwelling and the Cloonascragh River crossing, around 500m south of the site is an area of hardstanding which at the time of my site inspection accommodated at least 8 concrete lorries with 'Whyte's' branding, along with other vehicles and equipment. Two unbunded tanks, presumably of fuel given the staining on the surrounding ground, are located along the northern boundary of this area.
- 2.3.4 A river flows to the south of the site in a west-east direction, and is called Ballinure River to the west, and Cloonascragh River as it passes to the south of the site. The Ballinure/Cloonascragh River flows into the River Suck.
- 2.3.5 Around 750m to the northwest of the site, along the private road identified within the rEIS as being within the ownership of the applicant's family, a smaller quarry is identified in an area delineated as 'Black Wood' on historic mapping (see Section 4.3.1 below for planning history). Further to the northwest again, around 3.5m from the subject site, there is a third, larger quarry. These 3 quarries appear to follow a line between the Ballinure/Cloonascragh River and the area of bogland to the northeast, along the right bank of the River Suck. Aerial photography also indicates potential excavations on land identified as being within the applicant's ownership, around half way between the subject site and the 'Black Wood' quarry, either side of the private roadway.
- 2.3.6 Around 3.5km northwest of the subject quarry, a site on the R355 with 'Whyte's Concrete' signage appears to be in use for batching and distribution. The signage states 'sand, stone, blocks, concrete, flow screed'. (See section 4.4 below for planning history).

### **3.0 APPLICATION TO THE BOARD**

- 3.1 The application to the board is accompanied by a Remedial Environmental Impact Statement (rEIS) and a Remedial Natura Impact Statement (rNIS). The application is also accompanied by a set of drawings, surveys levels, and contours of the site. The submission was prepared by Oliver Higgins Consulting Engineering on behalf of the owner/operator Fursey Whyte.
- 3.2 The application for substitute consent was accompanied by letters from the applicant's agents that can be summarised as follows –
- 3.2.1 Extraction at this quarry commenced in 1946 or thereabouts. 22.17 hectares was registered [under PL07.QC2152], but only 1.9ha has

been extracted to date. The current site measures 2.5ha. The applicant is aware that any development outside of the 2.5ha will be the subject of a further planning application.

- 3.2.2 The applicant would be grateful if any development contributions are to be applied, that they be based solely on the extracted area (1.9ha) and not the originally registered quarry site area.
- 3.3 An 'extension of time' was requested of the board, and granted, in order to allow the applicant to prepare the rEIS/rNIS on foot of the notice from the planning authority (see section 4.2 below)

### **3.4 Remedial Environmental Impact Statement**

3.4.1 The application for Substitute consent was accompanied by a Remedial Environmental Impact Statement (rEIS) prepared for the applicant by Oliver Higgins Consulting Engineering, Moore Group, and AWN consulting. The layout of the rEIS is as follows:

- Non-Technical Summary
- Introduction
- Description of the Development
- Context of the Development
- Human Beings
- Flora and Fauna
- Soils & Geology
- Water (Hydrology & Hydrogeology)
- Noise & Vibration
- Air Quality
- Landscape and Visual Impact
- Cultural Heritage
- Material Assets
- Interaction of the Foregoing
- Volume 3 – Appendices
- Volume 4 – Drawings

3.4.2 Rather than summarise the contents of the rEIS at this point, I would propose to have it stand as a document in its own right. The assessment section of my report (Section 8.0 below), consists of an EIA in accordance with Section 171A of the Planning and Development Act 2000 (as amended by the 2010 act.) In this section, I will draw on aspects of the rEIS's content, as relevant.

3.4.3 At this point, however, it should be noted that the scope of an rEIS is set out in Section 177F(1) of the Planning and Development Act 2000 (as amended). It is to contain the following (my emphasis for clarity):

(a) a statement of the **significant effects**, if any, on the environment, which **have occurred or which are occurring or which can reasonably be expected to occur** because the development the subject of the application for substitute consent **was carried out**;

(b) details of—

(i) **any appropriate remedial measures** undertaken or proposed to be undertaken by the applicant for substitute consent to remedy any significant adverse effects on the environment;

(ii) the period of time within which any proposed remedial measures shall be carried out by or on behalf of the applicant;

(c) such information as may be prescribed under section 177N<sup>1</sup>.

### **3.5 Remedial Natura Impact Statement**

3.5.1 Similarly, I will return to the contents of this document in context in my assessment at Section 8.11 below. The scope of the rNIS is set out in S177G, and is as per the wording of 177F above, as applied to significant effects on relevant European Sites.

## **4.0 HISTORY**

### **4.1 S261 Registration**

**PL07.QC2152** (PA Ref. **QY57**) – Registration of the quarry under Section 261 of the planning act. I note that the inspector's report found no evidence of quarrying at the time of his site inspection (November 2007), and that the quarry embankments had been overgrown by grass and gorse. The inspector's report further noted that the quarry had not been in operation on the day of the planning officer's inspection (August 2005), but that there had been evidence of recent excavation. The board's decision is dated 22<sup>nd</sup> February 2008. The planning authority attached 10 conditions which can be summarised as follows [as amended by the board]:

1. Requires that the environmental mitigation measures detailed in the application and further information be implemented.
2. Sets noise limits
3. Sets dust limits
4. Requires submission of monitoring results.
5. Sets operating hours [subsequently extended on appeal to the board]

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<sup>1</sup> Subsequent Regulations.



6. Requires the provision of a wheel and underbody wash facility.
7. Requires the bunding of oil/petroleum products.
8. Surface water not to discharge to public road or adjacent lands.
9. Scrap material on site to be removed within 3 months.
10. Restoration programme to be agreed with the planning authority.

I note that the extent of the 'current working area' shown in the drawings submitted at this time include the entirety of the lands up to the 'northern drain'.

#### **4.2 Notice of requirement to apply for Substitute Consent**

PA Ref. **QSP57** – The planning authority furnished the applicant with a notice under Section 261A(3)(c) of the Planning and Development Act 2000 (as amended) requiring the submission of an application for Substitute Consent. This notice determined that:

- development was carried out after 1<sup>st</sup> February 1990, which would have required screening for EIA, and
- development was carried out after 26<sup>th</sup> February 1997 which would have required Appropriate Assessment under the Habitats Directive.

The determination noted the site's location (partially) within a pNHA, and within 1km of a second pNHA and an SPA.

The determination also noted that the planning authority had decided that the quarry commenced before 1<sup>st</sup> October 1964 and that the requirements in relation to registration under S261 were fulfilled (see section 4.1 above).

The planning officer's report is accompanied by 3 aerial photographs of the site, which appear to be the '2005', '2000', and '1995' sets from the Ordnance Survey<sup>2</sup>. Land registry deeds are also included.

#### **4.3 Other quarries in the vicinity**

As discussed in section 2.3.5, there are two other quarries in the vicinity. Viewing these on the planning authority's online map search has given the following results

##### **4.3.1 Kellysgrove (Blackwood)**

PA Ref. 09/944 – Permission refused to Thomas Lyons to 'fill in/raise ground level of existing quarry' on a site around 700m northwest of the subject site. The reasons for refusal can be summarised as follows

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<sup>2</sup> It is my understanding that the constituent photographs from these sets were not necessarily taken in 2005, 2000, and 1995 respectively, but are drawn from several flights in the years surrounding these dates.

1. Location within the Cloonascragh Fen and Blackwood pNHA. Development would be contrary to objective HL24 to provide protection to all natural heritage sites.
2. Uncertainties with reference to impacts on River Suck SPA
3. Lack of hydrological assessment with reference to lake/water feature on site.
4. Lack of information on source material.
5. Vehicular movements/traffic hazard.

The planning officer's report states that this does not appear to be a registered quarry. Planning status is unclear, with histories unavailable. The quarry has been excavated and has filled with water.

QRY162 – The planning authority's online register<sup>3</sup> of quarries, dated March 2013 records that there was no application under S261 for this quarry, with no further action under S261A.

#### 4.3.2 Kellysgrove (R335)

PA Ref. QRY61 – At a site 3.5km northwest of the subject site. The planning authority's online register indicates that this quarry was registered under S261, with a notices issued under Section 261A 3 (c) [directing the owner/operator to apply to the board for substitute consent]

PL07.QV0053 – The board issued a split decision in respect of a Quarry Review case at this site. The operator identified was Vincent Cannon and Co. The effect of this decision, dated 23<sup>rd</sup> September 2013, was to direct the operator the applicant to make an application to the Board for substitute consent within 12 weeks. This period was subsequently extended by an additional 12 weeks.

A number of very small additional 'QRY files' lie to the west of this quarry, as per the planning authority's online map search.

#### 4.3.3 Kellysgrove (minor)

PA Ref. QRY22 - Between the two quarries referred to above (Kellysgrove Blackwood and Kellysgrove R335), at a site 1.8km northwest of the subject site, is a smaller quarry. The planning authority's online register indicates that this quarry was registered under S261, with no further action under S216A.

#### 4.3.4 To the immediate east of the subject site

PA Ref. 06/2709 - In addition to the above, a search of the planning authority's online map search shows permission was refused to Raymond Kenny for a sand and gravel quarry to the immediate east of the site, essentially a continuation of the esker ridge on the subject site. Permission was refused for roads/traffic reasons.

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[http://www.galway.ie/en/media/Public%20Control%20of%20Quarries%20Section%20261A\\_Planning%20Quarry%20Inspections\\_Website%20Final.pdf](http://www.galway.ie/en/media/Public%20Control%20of%20Quarries%20Section%20261A_Planning%20Quarry%20Inspections_Website%20Final.pdf)

#### **4.4 Operator's other facilities**

PL07.QC0053 (PA Ref. QY130) – Relates to registration of a quarry at Garbally (west of Ballinasloe) under S261. This is stated in the subject rEIS as being in the ownership of Whyte's Concrete (current applicants), having been bought in 1982. This site is to the immediate west of Ballinasloe Town, within the LAP's development boundary, but on unzoned land. It abuts part of the 'Ballinasloe Esker' pNHA, which lies to its south.

PA Ref. 96/887 Permission granted at the site of the 'Whyte's Concrete' batching plant around 3.5km west of the subject site for retention and completion of extension to concrete batching plant including provision of block making facilities and ancillary site services. No documents are available online in respect of this application.

#### **5.0 REPORT OF THE PLANNING AUTHORITY UNDER S177I(1)**

Under the terms of Section 177I(1) of the Planning and Development Act 2000 (as amended), the planning authority furnished the board with a report on the subject case. The main points of note from this report can be summarised as follows:

- 5.1 There is no planning history or enforcement history on this site.
- 5.2 Provides information on relevant sections of the Development Plan [incorporated in section 7.0 below].
- 5.3 Incorporates a report from the Environment Section of Galway County Council, who have visited the site and reviewed available information, databases, etc. It states that while the nature of quarrying has a significant effect on the immediate environment, for the wider environment (including pNHA), the quarry has not had a significant effect, nor is there any anticipated significant effect from these past activities.
- 5.4 If quarrying recommences within the site, the Environment Section recommends that conditions be attached to address a number of topics [incorporated in conditions at 5.7 below].
- 5.5 Table 2.1 on p6 of the rEIS provides a summary of extraction since 1946. It indicates that for the 30 year period to 2012, a total of 2,400 tonnes were extracted, but this does not match with the description on p62 that 20,000 tonnes of subsoil was taken off the site in a 3 week period in 2004.
- 5.6 Incorporates a report from the Roads Department of Galway County Council which describes the nature of the road network, including a private road which runs north from the quarry entrance, which is owned by the Whyte family. The intersection of the R335 and the local road

has extremely poor sight distances. There will be significant impact on the local road for its entire length. It will need strengthening, maintenance, and the addition of passing bays. Recommends conditions to this effect.

- 5.7 The planning authority consider that the quarry complies with extractive development policies and objectives as set out in the Galway County Devolvement Plan 2009-2015. Substitute Consent should be granted. Recommends 13 conditions to be attached. These are summarised in section 8.12 below.

## **6.0 SUBMISSIONS TO THE BOARD**

### **6.1 Geological Survey of Ireland**

- 6.1.1 No further comment to make. Comments made during the consultation process were duly integrated in the rEIS (Chapter 6 and Appendix 6.1, Volume 3).
- 6.1.2 I note that the correspondence contained in Appendix 3 of the rEIS states that the GIS has undertaken the inventory of sites of geological heritage importance on a national scale. Sites are being surveyed on a county basis and are documented online<sup>4</sup>. Galway has not yet been surveyed, but from GSI database, there are no sites of geological importance within the perimeter of the sand and gravel extraction at Cloonascragh.

### **6.2 An Taisce**

- 6.2.1 The submission makes general comments about the substitute consent procedure. The ECJ judgment on C215/06 only allows retrospective EIA in exceptional circumstances. The national legislation amending section 261 of the act fails to define when such circumstances would apply. Previous registration under S261 must be deemed to be irrelevant as it does not establish a legal basis of a site. Independent examination is required to determine the extent of the operating area given that quarrying is claimed to have occurred since 1948.

### **6.3 Department of Arts Heritage and the Gaeltacht (DoAHG)**

- 6.3.1 The Development Applications Unit (DAU) of the DoAHG notes that the lands overlap with the Cloonascragh Fen and Black Wood pNHA, a non-statutory nature conservation site. The submission refers to their scoping response (see below).
- 6.3.2 The quarry has involved extraction of sand from part of an esker ridge.

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<sup>4</sup> [gsi.ie/programmes/heritage+and+planning/county+geological+sites+audits/](http://gsi.ie/programmes/heritage+and+planning/county+geological+sites+audits/)

- 6.3.3 The DoAHG does not agree that the objectives of the rEIS have been achieved in relation to natural heritage and impacts on sites, habitats, and species. The rEIS is based on surveys undertaken in late November or December 2012, which are sub-optimal for botanical and vegetation surveys. These surveys are necessary to characterise and evaluate the habitat, and to identify any rare and legally protected plant species. The list of species in the rEIS is not put into context, and the habitats are not described or evaluated adequately. The rEIS has failed to confirm presence of / correspondence with 'Annex I' habitats.
- 6.3.4 Summer surveys are required to determine presence, variety, and abundance of orchid species [re Annex I habitat]. There is a failure to consider the potential direct, indirect, and cumulative effects, if any, of the quarry and associated activities on the Annex II Species Vertigo geyeri [Whorl Snails] as a result of changes to the ecology, hydrology, or hydrogeology of the fen area. There is no consideration of whether there is usage of the site by breeding birds, notably the BoCCI amber-listed Sand Martin.
- 6.3.5 Aspects of the DAU's submission at pre-planning (scoping) stage are reiterated, and a copy appended to the submission to the board (see below)
- 6.3.6 The rEIS does not give consideration to the area or extent of the esker that has been lost or that remains. Nor does it consider the cumulative extent of esker loss through similar activities at a wider (regional or national) scale.
- 6.3.7 Regarding the rNIS, while the Department considers that potential significant effects on the SPA in view of its conservation objectives are unlikely to have occurred. It is necessary to have an objective and reasoned screening process that is specific to each of the individual special conservation interests, and takes the potential in-combination effects of other plans and projects into account. This is lacking.
- 6.3.8 DoAHG scoping response (December 2012 – appended to the submission to the board)
- 6.3.9 The pNHA was surveyed as a possible NHA on behalf of the National Parks and Wildlife Service (NPWS) in June 1994. The submission provides information on the species surveyed at the time. Correspondence with Habitats Directive (Annex I) habitat (Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometea)(\*important orchid sites) is likely.
- 6.3.10 There is an old record from 1970 of the Habitats Directive Annex II Whorl snail species (vertigo geyeri) occurring in the fen. The fen was visited in October 1995 on behalf of the NPWS as a possible site for designation as an SAC for this species, but the snail's presence was

not confirmed. The report noted that the site was drying out but retained botanical interest, and may have a vestigial population of the snail.

- 6.3.11 The site's proximity to the River Suck Callows SPA and Suck River Callows NHA are noted. The rNIS will have to address the past, present, and cumulative effects of the development on the SPA in view of its conservation objectives. It should include details of any appropriate remedial or mitigation measures undertaken or proposed to be undertaken to remedy or mitigate any significant effects on a European Site. The submission also makes generic recommendations as to the content of the rEIS.

#### **6.4 Applicant's response to An Taisce's submission**

- 6.4.1 The applicant refutes the submission, and restates information previously given on issues such as the planning status of the quarry. An Taisce's dissatisfaction with the legislation is not related to the applicant, who has complied with the law as he has been directed to do, and in good faith.

#### **6.5 Applicant's response to DoAHG's submission**

- 6.5.1 It was not possible to undertake summer surveys (as suggested by DoAHG) due to the timescales of this process.
- 6.5.2 If the board were to permit an additional time period, the applicant can undertake the necessary works at the optimal time for surveying grassland, as mentioned in the DoAHG submission. The optimal time is June-July. The presence or absence of sand martins can be established at that time too.
- 6.5.3 With regard to the impacts on Whorl Snails, the rEIS and rNIS determined that there were no historical impacts on hydrology and therefore no indirect impact on the snail habitats. This can be checked if required.
- 6.5.4 With regard to the effects on the SPA, the rNIS can be rewritten if required.
- 6.5.5 Requests a period up to 25<sup>th</sup> October 2013 to undertake the surveys and rewrite the documentation.

#### **6.6 Applicant's response to PA's report**

- 6.6.1 With reference to the reports from the Environment Section and the Roads Department, the Substitute Consent application is made in retrospect, and is not proposing any future quarrying proposals. The conditions suggested are therefore not relevant. The applicant will however take into consideration the recommendations made prior to making an application for permission to continue quarrying operations in the future.

## **7.0 POLICY**

### **7.1 Quarries and Ancillary Activities Guidelines for Planning Authorities (April, 2004):**

The guidelines offers guidance to Planning Authorities on planning for the extractive industry through the development plan process and determining applications for planning permission for quarrying and ancillary activities.

### **7.2 Regional Planning Guidelines for the West 2010 – 2022:**

These guidelines make reference to the importance of extractive industry as a valuable resource, in terms of employment and construction. They also acknowledge the potential environmental impacts associated with the industry and in this regard, support the local production of aggregate for local use as a means to lessen the impact on the road infrastructure. Policy EDP51 of the guidelines relate to the extractive industry which seeks to support the sustainable development of the extractive industry as a rural enterprise in the west. The policy also stipulates that developments of this nature must follow EIA and Habitats Directive assessment procedures.

### **7.3 Galway County Development Plan, 2009 – 2015:**

The Development Plan recognises the importance of quarries in terms of the economic development of the county while Section 4.6 of the Plan details the policies and objectives associated with extractive development. Policies and objectives of note can be summarised as follows:

ED16: Deals with location and landscape sensitivity. The site falls within 'Class 1 – low' as designated on Map HL4, as stated by the planning officer. This is the lowest of 5 landscape sensitivity ratings.

ED17: Restrict development where there is a resource potential

ED18: Deals with visual or other environmental impacts

ED6: Shall have regard to national guidelines and DM standard 36<sup>5</sup>.

ED7: Prepare an Extractive Industry Policy

HL39 & HL40: To protect geological and geo-morphological features of heritage value

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<sup>5</sup> I note that DM Standard 35 refers to Extractive Development, whereas DM Standard 36 refers to Landscape Sensitivity Designations. Objective ED6 may have intended to refer to the former.

HL25: To undertake an inventory of sites in the county of geological or geo-morphological heritage value

Development Management standard 35 relates to Extractive Development and sets out the details that shall be considered central to the determination of any application for planning permission for extractive development.

#### **7.4 Natural Heritage Designations**

Cloonascragh fen and Black Wood pNHA (site code 001247) - The quarry site is located overlapping with this proposed Natural Heritage Area. Its footprint is clearly shown on submitted drawings. I note that the planning officer's report under QSP57 determines that the northern portion of the quarry is within the pNHA.

River Suck and Callows SPA (site code 004097) and Suck River Callows NHA (site code 00222) – the site is less than 1km from this Special Protection Area. The special conservation interests of the SPA are Whooper Swan, Wigeon, Golden Plover, Lapwing, Greenland White-fronted Goose (all 'wintering'), and Wetlands.

### **8.0 ASSESSMENT**

#### **8.1 Legislative Context**

At the outset, it is worth considering the scope of this process, as set out in legislation. Section 177K of the Planning and Development Act 2000 (as amended) obliges the board to 'consider the proper planning and sustainable development of the area' with regard being had to the following (my summary):

- The development plan/local area plan, any special amenity area order,
- The rEIS and rNIS,
- The '*significant effects on the environment or on a European site, which have occurred, which are occurring, or which could reasonably be expected to occur because the development concerned was carried out*'.
- The planning authority's report, any submissions or observations,
- Inspector's report
- If the area is a Natura 2000 site (European site)
- Conditions that might be imposed in relation to a grant of permission under Section 34(4)
- Ministerial and government policy
- Views of any other member state
- Any relevant provisions of the act

The board may grant substitute consent, subject to or without conditions, or refuse it. A grant of substitute consent shall have effect as if it were a permission granted under Section 34 of the Act.



## 8.2 Assessment structure

In my opinion, the requirement to carry out an EIA and AA (appropriate assessment) under the Habitats Directive runs alongside the wider obligation to consider the proper planning and sustainable development of the area, as set out in the legislation above. In considering this wider objective, many of the issues requiring assessment would naturally align with consideration under EIA/AA. As such, I propose to deal with such matters concurrently, and to deal with any other matters (not covered by EIA/AA separately).

Again, as set out in section 3.4.3 above, the scope of the EIA process is limited by legislation to the significant effects on the environment in the **past present or future**, but solely those that have/are/will occur **as a result of past development**. The potential significant effects of the proposed development area set out in Section 2.2.3 of the rEIS, and set out an appropriate set of topics for further examination within the rEIS.

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings:

- Principle of Development
- Policy
- rEIS – Compliance with Planning and Development Regulations
- EIA - Soils & Geology, Water(Hydrology & Hydrogeology)(Chs 6, 7)
- EIA - Flora and Fauna (Ch 5)
- EIA - Human Beings, Noise & Vibration, Air Quality (Chs 4, 8, 9)
- EIA - Landscape and Visual Impact, Cultural Heritage, Material Assets (Chs 10, 11, 12)
- EIA - Interaction of the Foregoing (Ch 13)
- AA – Appropriate Assessment
- Possible Conditions.

## 8.3 Principle of Development

- 8.3.1 At this point, it is worth clarifying and characterising the nature of the development that has taken place to date, and the nature of ongoing operations at the site. The chronology of development and extraction at this site is given in Table 2.1 of the rEIS. A further quantitative description is set out in Section 2.3. The rEIS characterises the operations on site as being ‘low level’, with the current rate of use being just 2 days per month. Rates had been much higher in previous decades. At the time of my site inspection, operations were ongoing, as described in section 2.2 above. The accounts from previous inspectors/planning officers/consultants in recent years are reflective of this checkered pattern of operations. Aside from the worked quarry (1.9ha) and the area registered under S261 (2.5ha),

the lands to the south and northwest are owned by the applicant, as per the rEIS.

8.3.2 As described in sections 2.3 above, there is an off-site 'Whyte's Concrete' vehicle storage area around 500m south of the site, and a 'Whyte's Concrete' batching plant around 3.5km west of the site. Neither of these facilities are mentioned anywhere in the rEIS or supporting documentation. There is sole reference to plant storage at the slatted shed to the southeast of the site only. As such, it could reasonably be said that the rEIS is remiss in describing the operation in its entirety.

8.3.3 The rEIS does however make reference to the applicant's other quarry at Garbally Demesne, which is just west of Ballinasloe Town, within its plan boundary but on unzoned lands. It is shown on available mapping as adjoining part of the 'Ballinasloe Esker' pNHA. Section 3.6 of the rEIS states that the applicant is in the process of exhausting this quarry. Section 5.3 of the rEIS states that it was bought in 1982. A decision was made to exhaust this quarry and to hold the subject site in reserve. It is intended that once the Garbally quarry is exhausted, that the scale of operations at the subject site would increase (Section 6.4 of the rEIS).

8.3.4 As per section 4.3 above, there are a number of other quarries and proposed quarries along this east-west esker 'seam' of deposits. None of these are mentioned in terms of 'in combination' effects within the rEIS except for a reference in Section 6.2.1 to the quarry to the immediate northwest at Black Wood being 'almost exhausted'.

8.3.5 An Taisce's issue with the process

8.3.6 I note submissions of An Taisce which refers to the need for 'exceptional circumstances', which it is stated are not claimed or demonstrated in this case. The submission also queries the planning status of the quarry. This application has come about on foot of a decision of the planning authority and serving of the notice to apply for substitute consent. I do not consider that there is any requirement or necessity for the Board to re-visit the basis for the making of this application.

8.3.7 Past and Future planning applications.

8.3.8 It is worth noting, with reference to issues to be raised later in this assessment, the terms of the quarry registration process, under which the board, applied a number of planning conditions in 2008. On the basis of my inspection, it would appear that Conditions 6 (wheel wash) and 9 (scrap removal) of PL07.QC2152 have not been complied with. Furthermore, there is no evidence of Condition 10 (site restoration plan) having been complied with. Section 6.3 of rEIS acknowledges that there is scrap on the site, and Section 5.3 that there is no wheel wash.

- 8.3.9 The applicant asserts that any development up to the 2.5ha (S261) registered site would not require planning permission. The applicant would be well advised to consult the legislative context and relevant case law regarding the status of any future works beyond the conclusion of the subject process.
- 8.3.10 Notwithstanding the shortfalls in information outlined above, I conclude that the application is acceptable in principle.

## **8.4 Policy**

- 8.4.1 Planning policy, as set out in section 7.3 above is generally supportive of the extractive industry, subject to checks and balances in terms of environment and amenity impacts.
- 8.4.2 I note the policies of the development plan in relation to the protection of features of geological and geomorphological heritage value. Furthermore, there is an objective to undertake an inventory of sites in the county of geological or geo-morphological heritage value, which has not yet been undertaken. This matter is revisited in sections 8.5 and 8.9 below.
- 8.4.3 I conclude that the application is acceptable with reference to applicable planning policy.

## **8.5 EIA - Soils & Geology, Water (Hydrology & Hydrogeology) (Chapters 6, 7)**

### **8.5.1 Soils and Geology**

8.5.2 Section 6.2.6 of the rEIS states that the quarry floor is at bedrock.

8.5.3 The rEIS asserts (Section 3.2) that the spoil heaps within the pNHA have been there since the first operations of the quarry after 1946. I note however that builders' rubble is evident in this area, which one would imagine would have recolonised after 50+ years. Aerial photography available online<sup>6</sup> is indicative of the addition in contemporary times [prior to the imagery date of 26<sup>th</sup> May 2012] of spoil heaps within the pNHA in the north-western part of the application site.

### **8.5.4 Geological Heritage**

8.5.5 The subject proposal involves the removal of large parts of a linear geological feature that is most frequently referred to as an esker, but could also be a moraine (Section 5.2.5 of rEIS). The DoAHG in their submission raise the issue of this loss within the wider context of cultural and geological heritage. It is my understanding that the 'Esker Riada' - a discontinuous line of eskers that was the original overland route from Dublin to Galway – passes through this area,

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<sup>6</sup> <http://www.bing.com/maps/>

but I can find no publically available information showing its route. It is my understanding that Clonmacnoise on the eastern bank of the Shannon was on this route. As for its alignment west of the Shannon, it may pass through the subject site or on an alignment to the north to Ballinasloe, or indeed both routes could conceivably be alternates. The GSI's online GIS system<sup>7</sup> gives some indication of potential alignments.

8.5.6 I note that Section 4.3.2 of the rEIS references the Esker Riada, but does not say whether this is part of it. Section 12.3.1 mistakenly states that the nearby SAC is the 'Esker Riada', but this is not developed.

8.5.7 I note that the GSI have a role in the area of geological heritage. As per their submission to the subject case, the GSI have no issue with the subject application. However, County Galway has not been surveyed for the county-level survey of geological heritage. I note that the neighbouring county, Roscommon, has been surveyed. One of the sites identified - 'McKeown's Pit'<sup>8</sup> - is less than 4km to the northeast of the subject site and would appear to be part of the same continuous esker system or a parallel system.

#### 8.5.8 Groundwater

8.5.9 The rEIS states that Groundwater flow expected to follow surface water catchments, and is expected to be in the direction of the Ballinure River. Groundwater levels were observed to be at 36.545mAOD in September 2012, which was below the average level of bedrock across the quarry, assumed to be 37.5mAOD. The quarry floor levels are shown on the submitted drawings as ranging between around 37.4mAOD to 38.2mAOD. Cross section drawings submitted with the application indicate the water table just below the quarry floor. There has been no dewatering to date within this quarry (Section 7.5 of rEIS).

8.5.10 Site conditions, according to the rEIS, enhance the potential for surface water – groundwater interactions. The potential for shallow groundwater at the site was noted.

8.5.11 The rEIS states that Groundwater quality data is generally unavailable for the quarry site, although the results of sampling on site in November 2012 are given at Section 7.3.7 of rEIS.

#### 8.5.12 Surface Water

8.5.13 The surface water layout in the vicinity is indicated in Figure 7.1 of the rEIS. However, this does not incorporate the 'northern drain' and 'western drain' as described in section 2.2.5 above. Further

<sup>7</sup> <http://spatial.dcenr.gov.ie/GeologicalSurvey/GeoTechnicalViewer/index.html>

<sup>8</sup> [http://www.gsi.ie/NR/rdonlyres/32FB554C-5151-4AD0-9F27-C4D42A24289C/0/RO020\\_McKeons\\_Pit.pdf](http://www.gsi.ie/NR/rdonlyres/32FB554C-5151-4AD0-9F27-C4D42A24289C/0/RO020_McKeons_Pit.pdf)

discussion of the surface water network is included in Sections 5.2.2 and 6.2.3 of the rEIS. The flow direction in the northern drain is assumed to be in a west-east direction, although its connection with the wider surface water network is not stated, nor is it immediately discernable from available OSI mapping, which rather ambiguously indicates a route from the Ballinure Stream to the Suck River via the western and northern drains.

- 8.5.14 In my opinion, surface water drainage from the site can reasonably be assumed to enter the 'northern drain' within the pNHA, and from there onward in an easterly direction by some unknown route to the River Suck to the north or east. I do not consider it likely that surface water would drain to the Ballinure River, as stated in the rEIS, given the intervening esker ridge,
- 8.5.15 Water quality for the Ballinure River is recorded as 'Good' with a biological rating of Q4, inferring an unpolluted quality status (Section 7.3.2 of the rEIS).
- 8.5.16 The rEIS identifies potential impacts as deriving from accidental leakage of hydrocarbon fuels or oils from vehicles and/or machinery, and from discarded equipment (Section 6.4). I would concur with this assessment.
- 8.5.17 I note that some ponding was seen on site during the site inspection undertaken on behalf of the applicant. The site was drier at the time of my own inspection. The site walkover in November 2012 on behalf of the applicant showed no apparent soil pollution.
- 8.5.18 The rEIS states that there is no wheel wash on site, and no toilets or other facilities, and that as such, there has been no associated requirement for the disposal of dirty water. There have been no mitigation measures.
- 8.5.19 Notwithstanding the shortfalls in information outlined above, I conclude that the application is acceptable with reference to residual effects on soils, geology, and water.

## **8.6 EIS – Compliance with Planning and Development Regulations 2001**

- 8.6.1 Article 94 and Schedule 6 of the Planning and Development Regulations 2001, as amended, set out the information to be contained in an rEIS and, in my opinion, the document accompanying the application technically accords with the said details, and with the subjects to be addressed.

## 8.7 EIA - Flora and Fauna (Chapter 5)

### 8.7.1 Habitats and flora

8.7.2 While not a Natura 2000 (European) site, the pNHA on which the site is partially located has no doubt a role to play in informing questions of environmental impact. It is notable that this area is spread over two sites, the first being the north-western portion of the quarry site and adjoining unworked area of Bord na Mona site to the north. The second is a parcel of land that also includes a quarry, at 'Black Wood', a distance to the northwest, along the private road stated to be in the applicants' ownership. The Site Synopsis is appended to the DoAHG's December 2012 submission to the scoping request, which is on file. Some excerpts of note are as follows:

*Cloonascragh Fen and Black Wood consists of two small areas of different habitats. Both are associated with a section of a long esker ridge running east-west which crosses the River Suck and Shannon. Both are at the edge of Cloonascragh Bog which is thoroughly drained. Much of the esker in this vicinity is being worked (or has been worked out).*

*The fen is an area between the esker and the bog and is partly quite dry. It consists of a fairly species-rich vegetation in which four Orchids are widespread and common – [listed]. The central section of this long narrow site is the wettest and is probably the location of the rare snail. The only open water is in the form of small 'bog holes' full of Bog Bean (*Menyanthes trifoliata*) and Lesser Tussock Sedge (*Carex diandra*), but the ground is semi-quaking<sup>9</sup>.*

*The very scarce and declining semi-aquatic snail species *Vertigo geyeri* has one of its main Irish sites here (last report 1981). This snail is listed in Annex II of the EU Habitats Directive as it is declining throughout Europe. It requires wet calcareous fen grassland with some open water and little shading. There is a possibility that some habitat rehabilitation is required at this site to preserve the species for the future.*

*At Black Wood dense woodland of old coppiced hazel occurs on two very steep-sided esker ridges separated by a hollow of species-rich dry meadow developed from the woodland soils. The ground flora of this wood is extremely species-rich and unaffected by grazing with a luxuriant growth and high ground cover of all species, which include Early Purple Orchid (*Orchis mascula*)*

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<sup>9</sup> I confirm that I experienced the same conditions along the northern drain at the time of my site inspection.

*Obviously, further encroachment of the sand quarry into the northern section of this wood would destroy most of the woodland site.*

*The fen is one of the main sites for the very scarce and declining snail. Woodland on eskers are a rare and fragmented habitat in Ireland. There has probably always been woodland at Black Wood. Although coppicing has occurred, the ground flora is extremely diverse and intact.*

- 8.7.3 Habitats in the quarry and immediate surrounds were classified in the rEIS according to the Heritage Council publication “A Guide to Habitats in Ireland” (Fossitt, 2000). (Section 5.1.2. Shown on Fig 5.2). I would generally concur with these classifications. However, ‘fen’, as shown, corresponds with the boundaries of the pNHA, which is a crude approximation, and never one likely to be reflected on the ground. This also runs contrary to other assertions within the rEIS, where it is stated that the pNHA boundaries do not correspond with habitats surveyed on the ground, but rather correspond to old OSI boundaries. There is no substantiating information to this effect, and no support for this contention in available OSI mapping. I also note that the ‘fen’ habitat, as mapped, overlaps with other habitats.
- 8.7.4 The DoAHG in their correspondence to the applicant at scoping stage state that correspondence with the Annex I habitat; ‘Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometea) (\*important orchid sites)’<sup>10</sup> is likely. Section 5.5.2 of the rEIS finds indicator species for this habitat including *Carex caryophylla*, *Carlina vulgaris* and *Leontodon hispidus*.
- 8.7.5 I note that a nearby SAC (5km to the west, also an esker), Glenloughan Esker<sup>11</sup>, is an SAC which is identified as such for this very habitat. I note that the Green Winged orchid is stated as being of particular interest at Glenloughan. This plant flowers from late April to June. The site synopsis states that quarrying of the esker for gravel or sand would be very detrimental to the site.
- 8.7.6 The DoAHG, in their submission to the board express their dissatisfaction with the rEIS on the issue of habitats, and take task with the site surveys’ methodology and depth, including the time of year that the surveys were undertaken. It should be understood, however, that the applicant was working to a tight timescale, as dictated by the applicable legislation and associated processes. Indeed, the scoping response from the DoAHG (31<sup>st</sup> December

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[http://ec.europa.eu/environment/nature/natura2000/management/habitats/pdf/6210\\_Seminar\\_dry\\_grasslands.pdf](http://ec.europa.eu/environment/nature/natura2000/management/habitats/pdf/6210_Seminar_dry_grasslands.pdf)

<sup>11</sup>

<http://www.npws.ie/media/npwsie/content/images/protectedsites/sitesynopsis/SY002213.pdf>

2012) post-dates the site habitats survey (November 2012) and therefore could never have been integrated into the survey methodology.

- 8.7.7 The applicant has proffered the suggestion, in their response to the DoAHG submission, that further studies could be undertaken to inform the process. It could reasonably be concluded that a lacuna of information exists in respect of both the potential Annex I grassland habitat of the esker and the pNHA habitats of the fen.
- 8.7.8 While the 2013 'season' has passed, it is perhaps open to the board to afford the applicant the opportunity to undertake these surveys and submit the required information. If this were to be pursued, information pertaining to the Black Wood section of the pNHA might be relevant. Aerial photography available online is indicative of significant expansion of the Black Wood quarry within the pNHA, both horizontally and vertically (below the water table). I note that there is no planning history for these works, and indeed there is a refusal of permission for the filling in of this quarry in 2009 (see Section 4.3.1 above)
- 8.7.9 Turning to the primary question in hand, as set out in Section 3.4.3 and 8.2 above, the question is whether there has been 'significant effects on the environment' in the past, present or future as a result of past development. On the basis of the information submitted, there is no evidence that any such significant effects have occurred, are ongoing, or are likely to occur. I note that the DoAHG criticise the methodology of the rEIS, but do not provide a contrary position to any of its findings. I also note that the planning authority's Environment Section take no issue with the proposal (see section 5.3 above).
- 8.7.10 Fauna – specifically the Whorl Snail
- 8.7.11 The species of most interest in this instance is *Vertigo Geyeri*, a Whorl Snail, which is on Annex II of the Habitats Directive. It was recorded on the site of the pNHA in decades past, but when the site was surveyed as a possible SAC for the conservation of this species, no individuals were recorded (see Section 6.3.8 above. *Vertigo Geyeri* is referred to in the DoAHG's scoping submission. The rEIS essentially restates information from this scoping submission, but does not undertake any further studies or analysis in any substantive sense.
- 8.7.12 As with the issue of habitats, the DoAHG's submission to the board is critical of the applicant for the lack of survey work. Again, it should be noted that the scoping submission was received after the site had been surveyed from an ecological perspective. That being said, the document "Monitoring and Condition Assessment of Populations of *Vertigo geyeri*, *Vertigo angustior* and *Vertigo moulinsiana* in Ireland



– Irish Wildlife Manuals No.55”<sup>12</sup> (DoAHG 2011) is available online, and sets out appropriate survey methodology. It states (inter alia) that *Vertigo geyeri* is stringent in its requirement of saturated water conditions in calcareous, groundwater-fed flushes that are often limited in size to a few metres square. It goes on to say that survey work should take place between May and October inclusive.

- 8.7.13 The DoAHG’s document “The Status of EU Protected Habitats and Species in Ireland - Species Assessments Volume 3” (2013)<sup>13</sup> provides an assessment of the current state of the species. It states that the species is under threat in Ireland, and is assessed as vulnerable on the Irish Red List. It also states that the species is very difficult to identify in the field and recording it requires specialist knowledge. The sites it occupies are often small and sensitive to damage, so sampling has to be done at an appropriate scale and effort.
- 8.7.14 The applicant’s response to the DoAHG on this issue is that because there has been no hydrological impact from the quarry development, there has been no impact on *Vertigo Geyeri*.
- 8.7.15 The possible presence of Sand Martin is also raised as a concern by the DoAHG.
- 8.7.16 While it could reasonably be concluded that a lacuna of information exists in respect of both the presence and/or status of *Vertigo Geyeri* in and adjoining the site, as with the issue of habitats, the question is one of identifiable impacts. On the basis of the information submitted, there is no evidence that any such significant effects have occurred, are ongoing, or are likely to occur.
- 8.7.17 Notwithstanding the shortfalls in information outlined above, I conclude that the application is acceptable with reference to residual effects on flora and fauna.

## **8.8 EIA - Human Beings, Noise & Vibration, Air Quality (Chapters 4, 8, 9)**

### **8.8.1 Noise**

- 8.8.2 The nearest house / noise sensitive location (NSL) is stated as being in family ownership. But it is also said within the rEIS that it is unoccupied. It is located 425m to the south of the site. Sections 5.3 and 8.3 of rEIS refer. Screening plant is the most dominant noise source during simulated activities. The predicted noise level at the NSL is calculated to be 16dB L<sub>Aeq,1hr</sub>. It is stated that this would be imperceptible when added to the existing noise environment. The

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<sup>12</sup> <http://www.npws.ie/publications/irishwildlifemanuals/IWM55.pdf>

<sup>13</sup> [http://www.npws.ie/publications/article17assessments/article172013assessmentdocuments/Article\\_17\\_Web\\_report\\_species\\_v1.pdf](http://www.npws.ie/publications/article17assessments/article172013assessmentdocuments/Article_17_Web_report_species_v1.pdf)

rEIS states that there is natural acoustic screening. No mitigation measures are currently implemented.

8.8.3 Having inspected the site, I would concur with the findings of the rEIS on this issue. The surrounding area is lightly populated, and noise generation on the site would be low in the first instance, and also screened by the working faces of the quarry.

8.8.4 Dust

8.8.5 The modelled dust deposition level averaged over the full year is 61 mg/(m<sup>2</sup>\*day) at the boundary of the quarry, which is 29% of the TA Luft Limit Value. Dust modelling plots are shown on accompanying drawings in the rEIS. Section 4.5.2 of the rEIS says that dust can be suppressed. I note that this was a condition of registration that has not been implemented.

8.8.6 I do not consider that dust generation is likely to be a significant issue in and of itself (see section on interactions at 8.10 below)

8.8.7 I conclude that the application is acceptable with reference to residual effects on human beings, and by virtue of impacts on noise, vibration, and air quality.

## **8.9 EIA - Landscape and Visual Impact, Cultural Heritage, Material Assets (Chapters 10, 11, 12)**

8.9.1 The rEIS places the site within a 'Class 2' landscape sensitivity (see figure 10.3), whereas the planning officer places it within 'Class 1'. It is not, in my opinion, possible to discern the location of the site relative to the boundary between the two areas from publically available development plan maps. In any event, I do not consider that this distinction is critical. The site is either at the lowest or second lowest level of landscape sensitivity.

8.9.2 The photos provided in Section 10.5 of the rEIS are very informative, and give a good characterisation of the site. The accompanying visual assessment is also of a good standard and is frank and representative. It shows that there is no major impact from quarry operations. Any subsequent loss of the remaining high ground would be locally significant, as indeed acknowledged by the rEIS. However, that is not a matter for consideration at this time.

8.9.3 Viewpoint 3, as shown, relates to views from Clontuskert Abbey, which is a protected view in the development plan. rEIS states that the view towards the quarry site is obscured by a low natural mound around 150m from the Abbey. I can confirm that this is the case. Image 11.3 shows the Recorded Monuments and Places in the vicinity of the site. None are of specific concern.

- 8.9.4 Section 4.6.1 of rEIS says that a restoration scheme could be developed. However, it is worth noting that this was a condition of registration that has not been implemented to date.
- 8.9.5 The absence of reference to the potential cultural significance of the esker is notable (see section 8.5.4 above) I note that that the 6" OSI mapping indicates a road or pathway along the ridge.
- 8.9.6 In terms of roads and traffic, the planning authority's roads department are seeking a significant amount of works to the LT87171 and its junction with the R335. In my opinion, the local road itself is in relatively good condition, although the north-west sightlines at the junction with the R335 are quite poor due to the presence of an agricultural structure at the junction. This would not warrant a refusal of permission, in my opinion, however. I will discuss whether the planning authority's conditions in this regard are implementable in section 8.12 below.
- 8.9.7 Notwithstanding the shortfalls in information outlined above, I conclude that the application is acceptable with reference to residual effects on landscape, cultural heritage, and material assets.

## **8.10 EIA - Interaction of the Foregoing (Chapter 13)**

- 8.10.1 I note that there is very little in this regard contained in the rEIS. In my opinion, there are potential interactions between soils/geology and cultural heritage on the issue of the loss of the esker. I have discussed these matters within the relevant sections above. There is also a potential interaction between dust and water and dust and flora/fauna. Indications in this regard are that the resultant impacts are not significant.

## **8.11 AA – Appropriate Assessment**

- 8.11.1 The brief for the AA process at this juncture can be found in Article 6(3) of the Habitats Directive, which is as follows (emphasis added)

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its **implications for the site in view of the site’s conservation objectives**. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project **only after having ascertained that it will not adversely affect the integrity of the site concerned** and, if appropriate, after having obtained the opinion of the general public.”

- 8.11.2 Much of the content of the rNIS replicates matters included in the rNIS. It does however successfully identify the Natura 2000 sites that would potentially be affected by the development, namely the River Shannon Callows SAC, the Glenloughan Esker SAC, the Middle Shannon Callows SPA and the River Suck Callows SPA. Unfortunately, only 'generic' conservation objectives on these sites are available from the NPWS.
- 8.11.3 I note that Section 2.6.2 of the rNIS states that Article 10 of the Habitats Directive and the Habitats Regulations 2011 place a high degree of importance on non-Natura 2000 areas [such as the pNHA] as features that connect the Natura 2000 network.
- 8.11.4 Section 2.6.3 identifies likely impacts. A worst case scenario could potentially occur if contaminated surface water runoff was to find its way to the River Suck and reduce the water quality thereafter affect the qualifying habitats and species for which the river is designated.
- 8.11.5 Appendix A of the rNIS is essentially the crux of the process, wherein the individual questions extrapolated from Article 6(3) are asked and answered in respect of the subject proposal. I would generally concur with the assertions and conclusions therein. However, on the question 'are there other projects or plans that together with the projects or plans being assessed could affect the site', the rNIS refers to the fact that there have been no other planning applications in the past 5 years in the townland. I consider this approach to cumulative impact to be quite limited both in spatial and temporal terms, particularly given the evidence of other quarries in the immediate vicinity, and other off-site facilities of the applicants that support the quarry on this site.
- 8.11.6 I note that the DoAHG, while critical of the rNIS, state that potential significant effects on European Sites are 'unlikely'.
- 8.11.7 The rNIS asserts that the conservation objectives of Natura 2000 sites will not be adversely affected by the development. Notwithstanding the shortcomings identified above, I concur with this assertion.

## **8.12 Possible Conditions**

- 8.12.1 Subsection 3 of Section 177K sets out the conditions which may be included. They can be summarised as follows:
- 'Section 34(4)' conditions [conditions applicable under 'standard' appeals]
  - Conditions relating the remediation of all or part of the site.
  - Conditions requiring a financial contribution under S48 or S49.
- 8.12.2 This gives quite a broad scope for conditions that could attach under this process. However, alongside general considerations of

proportionality, enforceability, legality, etc., I consider that it is necessary that any conditions in this instance relate to any *future* implications of *past* activities, as per the terms of reference of this process.

8.12.3 In the first instance, it is worth considering the conditions recommended by the planning authority. The applicant's response to the planning authority's report is that these conditions are not relevant, as the applicant is not proposing any future quarrying proposals.

<b>PA's recommended condition</b>	<b>Comment</b>
1. Fuel storage	There is no fuel stored on site. I note that there is fuel stored in the open yard by the river, 500m to the south. This is, however, outside the subject site. Conclusion – not applicable.
2. Removal of waste material	This was a condition of the quarry registration that has not been implemented, or at least has not been implemented in full. I consider that it is appropriate in this instance, as it relates to future impacts of past actions. Conclusion – relevant and applicable.
3. Prohibition on import of waste material.	Given the evidence to the effect that waste material has been imported onto the site, and indeed deposited within the boundaries of the pNHA, this matter is quite relevant. In terms of future impacts of past events, I consider it applicable. Conclusion – relevant and applicable.
4. Maintenance of buffer zone along northern boundary drainage ditch in the interests of environmental protection	A buffer zone would only apply to future works. As such, it is not applicable at this juncture. Conclusion – not relevant.
5. No material washing process.	Given that this would only apply to the actual process of quarrying and abstraction, it cannot be applied. Conclusion – not relevant.
6. Restoration proposal for lands to be agreed.	This was a condition of the quarry registration that has not been implemented, or at least there is no evidence to suggest that it has been implemented. I consider that it is appropriate in this instance. Conclusion – relevant and applicable.

<b>PA's recommended condition</b>	<b>Comment</b>
7. Delivery road via LT87171 and R355 only.	Given that this would only apply to the actual process of quarrying and abstraction, it cannot be applied. Conclusion – not relevant.
8. Sight distances at this junction to be improved.	<p>There is no evidence to suggest that the lands needed to implement this condition are within the control of the applicant.</p> <p>Furthermore, given that this would only apply to the actual process of quarrying and abstraction, it cannot be applied. Conclusion – not relevant.</p>
9. 2 passing bays to be provided on LT87171	<p>I do not consider that the level of traffic on this roadway is such that this is warranted.</p> <p>Furthermore, there is no evidence to suggest that the lands needed to implement this condition are within the control of the applicant.</p> <p>Furthermore, given that this would only apply to the actual process of quarrying and abstraction, it cannot be applied. Conclusion – not relevant.</p>
10. Sight distances at quarry entrance to be improved.	In my opinion, the sight distances at the quarry entrance are fit for purpose. Conclusion – not relevant.
11. €100,000 to be provided to the planning authority to enable the LT87171 to be strengthened.	See 8.12.4 below.
12. Wheel wash to be provided/used.	Given that this would only apply to the actual process of quarrying and abstraction, it cannot be applied. Conclusion – not relevant.
13. Signage and road marking to be agreed and provided.	<p>I do not consider that the level of traffic on this roadway is such that this is warranted.</p> <p>Furthermore, there is no evidence to suggest that the lands needed to implement this condition are within the control of the applicant. Conclusion – not relevant.</p>

Table 1.

#### 8.12.4 Development Contributions

8.12.5 S177K does make provision for S48 development contributions. The applicant requests that development contributions be applied to the 1.9ha site, which would appear to be reasonable, given that this is the extent of the extracted area to date, which would be permitted if substitute consent were granted. Applying the rate for commercial development in rural areas from the current development contribution scheme<sup>14</sup>, a sum of €437,000 would be required. I do not think that any reasonable interpretation of the scheme would be that it intended that a quarry would attract the same pro-rate contribution as an office or factory. In any event, this element of the scheme is worded as being based on 'floor area' which would not be applicable in this instance.

8.12.6 I note that the scheme makes specific provision for the payment of 'special' development contributions under Section 48(2)(c) in relation to quarries etc. This is reflected in the wording of the planning authority's condition 11 above. Section 48(2)(c) states the following (my emphasis):

*A planning authority may, **in addition to the terms of a scheme**, require the payment of a special contribution in respect of a particular development where **specific exceptional costs** not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities **which benefit the proposed development**.*

8.12.7 The inclusion of provision for a 'special' contribution within the terms of the scheme is contrary to the intention of the legislation, that such payments would be 'in addition to the terms of the scheme'.

8.12.8 The applicability or otherwise of the €100,000 figure hangs one whether it is considered as part of the contribution scheme from where it can be inferred as emanating, or whether it derives from outside of the scheme, as per the intention of the legislation to which it is attributed. If the former, it may be considered admissible. If the latter, I do not consider that the planning authority has made a valid case in accordance with the legislation; that 'specific exceptional costs' which 'benefit the proposed development' have or will be incurred. Under either interpretation, the figure of €100,000 is conspicuously arbitrary, and without a stated basis.

8.12.9 I recommend that no financial contribution condition be applied in this instance.

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<sup>14</sup> <http://www.galway.ie/en/Services/Planning/DevelopmentContributionScheme/>

## **9.0 CONCLUSION AND RECOMMENDATION**

Based on the above, I recommend that substitute consent be granted in accordance with the conditions as set out below.

While there are some shortcomings in the information submitted, there is no evidence to the effect that quarry operations to date have had any significant effects on the environment. These works and use are also consistent with wider considerations of the proper planning and sustainable development of the area.

If the board were minded to consider requesting further information of the applicant, it may be worth considering the following areas:

- a) Clarification of the surface water drainage network in the immediate vicinity of the site in terms of flow directions, linkages, ultimate discharge points to the River Suck, and relationship to the surface and groundwater flows within the quarry site.
- b) Additional spring/summer studies regarding habitats in and adjoining the site, and consequent analysis and comment. Specific reference to grassland and fen habitats, as identified, would be relevant.
- c) Additional spring/summer studies regarding *Vertigo Geyeri* (Whorl snail) in and adjoining the site, particularly within the pNHA, and consequent analysis and comment.
- d) Information regarding the description and cumulative impact of applicant's operations in vicinity (vehicle yard, batching plant, other quarries).
- e) Information regarding the cumulative impact of other quarries and extraction areas within the vicinity, say a 5km radius.
- f) Information and comment regarding the potential cultural significance of the esker ridge, with specific reference to the route(s) of the Esker Riada and the location of a vestigial route along the ridge as showing on the 6" mapping series.

If the board choose to request further information, it may be necessary to consider a temporary cessation notice under S177J.

## **10.0 REASONS AND CONSIDERATIONS**

Having regard to nature and scale of the development and to the environmental impacts which have occurred, it is considered that subject to compliance with the conditions set out below, the development which has been undertaken will not give rise to an unacceptable level of environmental impact, and is, therefore, in accordance with the proper planning and sustainable development of the area.



## Conditions

1. Recyclable or waste material must be removed off site to licensed or permitted facilities.

Reason: in the interest of orderly development and environmental protection.

2. There shall be a prohibition on bringing in waste material other than usable waste extractive materials.

Reason: in the interests of orderly development and environmental protection.

3. A detailed restoration scheme for the site shall be submitted to the planning authority for written agreement within three months of the date of this order. The following shall apply in relation to the design and implementation of the restoration plan:

(a) The site restoration shall provide for the immediate re-vegetation of the site where suitable and / or the provision of features to control sediments which could result in surface water pollution.

(b) The capacity of any settlement ponds installed shall be demonstrated to be adequate to cater for extreme rainfall events. Management measures relating to release of stored water shall be described.

(c) Prior to the commencement of restoration works a further survey of the site by an ecologist shall take place to establish, in particular, the presence of badgers, nesting birds, bats, amphibians or other species of ecological value, including flora, which may recently have taken up occupancy on the site. The restoration plan shall have regard to the results of this survey.

(d) Details of site safety measures shall be provided.

(e) A timescale for implementation and proposals for an aftercare programme of five years shall be agreed with the planning authority.

Reason: In the interest of the visual amenities of the area, to ensure public safety and to ensure that the quarry restoration projects and enhances ecology.

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G. Ryan  
Planning Inspector  
31<sup>st</sup> December 2013