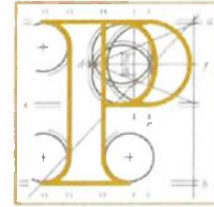


Our Case Number: ABP-319580-24



**An
Bord
Pleanála**

An Taisce
5 Foster Place
Dublin 2
D02 V0P9

Date: 13 June 2024

Re: Application for permission under Section 37L in relation to further quarry development and continuation of use of the ancillary works and structures under substitute consent application ABP-319397-24 and for the life of the quarry, restoration and rehabilitation of whole quarry site. An EIAR and NIS accompanies this application.
Tromman Quarry, Tromman, Rathmolyon, Co. Meath, A83 DA36.

Dear Sir / Madam,

An Bord Pleanála has received your submission in relation to the above-mentioned application and will take it into consideration.

Yours faithfully,

Daniel Moore
Administrative Assistant
Direct Line:

SC40

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Glaao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

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bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Karen Byrne

From: Bord
Sent: Monday 10 June 2024 17:20
To: Appeals2
Subject: FW: Ref. ABP-319580-24
Attachments: 20240610-ABP-319580.pdf

From: Sean O'Callaghan <socallaghan@antaisce.org>
Sent: Monday, June 10, 2024 4:56 PM
To: Bord <bord@pleanala.ie>
Subject: Ref. ABP-319580-24

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

A Chara,

Please find enclosed An Taisce's submission on Section 37L planning application ref. 319580.

Is mise le meas,

Seán O'Callaghan
Planning Officer
An Taisce – The National Trust for Ireland



An Taisce

The National Trust for Ireland

5 Foster Place

Dublin 2, Ireland

D02 V0P9

20240610-ABP-319580

An Bord Pleanála
64 Marlborough Street
Dublin 1

Sent by email to: bord@pleanala.ie

10th June 2024

Ref. 319580

App. Keegan Quarries Limited

For: Application for permission under Section 37L in relation to further quarry development and continuation of use of the ancillary works and structures under substitute consent application ABP-319397-24 and for the life of the quarry, restoration and rehabilitation of whole quarry site.

Site: Tromman Quarry, Tromman, Rathmolyon, Co. Meath.

A Chara,

An Taisce would like to make the following observation on the above s.37L application. We consider that this application warranted referral to An Taisce under Article 28 of the Planning and Development Regulations 2001 (as amended).

As a preliminary matter, we would refer the Board to our submission in relation to Ref. 319397 for substitute consent for quarrying on the subject site. Without prejudice to the fact that we consider that exceptional circumstances have not been demonstrated in that case and that that application should therefore be refused, we wish to make the following observations on this s.37L application.

1. Access to Documentation

At the outset we would highlight what we consider to be a serious issue with access to the relevant files for this application. The application was lodged on 16th April 2024, but the documentation, including the EIAR and NIS, were not available on the Board's website until the afternoon of 22nd May, less than three weeks before the eight-week observation period deadline. An Taisce wrote to An Bord Pleanála on 14th May and again on 20th May regarding the lack of online documentation, but no response was received to either email. An Taisce contacted the Board by phone on the 22nd of May. The files were uploaded later that day.

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An Taisce – The National Trust for Ireland | *Protecting Ireland's heritage, safeguarding its future*

Registered Office: Tailors' Hall, Back Lane, Dublin, D08 X2A3, Ireland | www.antaisce.org | +353 1 707 7076 | info@antaisce.org

Company Limited by Guarantee no. 12469 | Charity CHY4741 | Charity Regulator no. 20006358 | EU Transparency Register no. 473905437651-60

Directors: Stuart McCaul (Chair), Trish O'Connell (Vice Chair), Laura Segura Gutierrez (Hon Secretary), John Conroy (Treasurer)

Olivia Rogers, Rónán O'Brien, Finbarr Murray, Helen Shaw, Terri Morrissey, Sinead Mercier, Phil Doyle

While we are aware that the hardcopy files could be viewed in person, it is our firm view that the lack of online access to the files in this case breaches Article 5(3)(d) of the Aarhus Convention:

"3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:

- (a) Reports on the state of the environment, as referred to in paragraph 4 below;*
- (b) Texts of legislation on or relating to the environment;*
- (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and*
- (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention,***

provided that such information is already available in electronic form." [An Taisce emphasis added.]

We note that in this case an electronic copy of the application was indeed available – the applicant's cover letter stated that the following was enclosed with the application: *"An electronic searchable copy of the entire submission pack on a CD (pdf)"*.

We also note that the lack of electronic access to An Bord Pleanála files is a systemic issue – there is currently an open communication before the Aarhus Convention Compliance Committee (ACCC/C/2023/198) regarding this and other related alleged breaches of the Convention by Ireland.

2. NIS and Issue of Hydrological Connectivity

Similarly to the associated substitute consent application (ref. 319397), the applicant claims that there is a lack of a hydrological connection between the Rathmolyon Stream and Tromman Stream. The Hydrology report relies on an inspection carried out by SLR Consulting in 2017 which claims the absence of a surface water connection between the two streams, thereby not indicating a connection with the River Boyne and Blackwater SAC. The applicant also references ABP Report ref. 17.QV.0182 in which ABP changed its conclusion that there was a hydrological link with the nearby SAC and agreed with the quarry consultants that there was the absence of such a link.

However, we have cross referenced with maps from a variety of other independent sources (EPA, DHLGH and Google), and these indicate the potential presence of a hydrological connection. Given that the stated lack of a connection is one of the primary pieces of evidence relied on to rule out potential impact on the River Boyne and Blackwater SAC, we submit that it is vital that more rigorous evidence is sought on this, given that this is a key point for the NIS. A longer-term hydrological survey, including during prolonged wet periods, is necessary to establish the hydrological connection, or lack thereof, before a decision is made. As it

stands, we submit that this does not meet the threshold of beyond reasonable scientific doubt, and the Board should seek further clarification on this important point.

Failure to clarify this matter could pose an undesirable risk to the nearby SAC which is likely to possess a hydrological connection with the Rathmolyon stream and the drainage ditch adjoining the north of the subject site which is the recipient of trade effluent discharge.

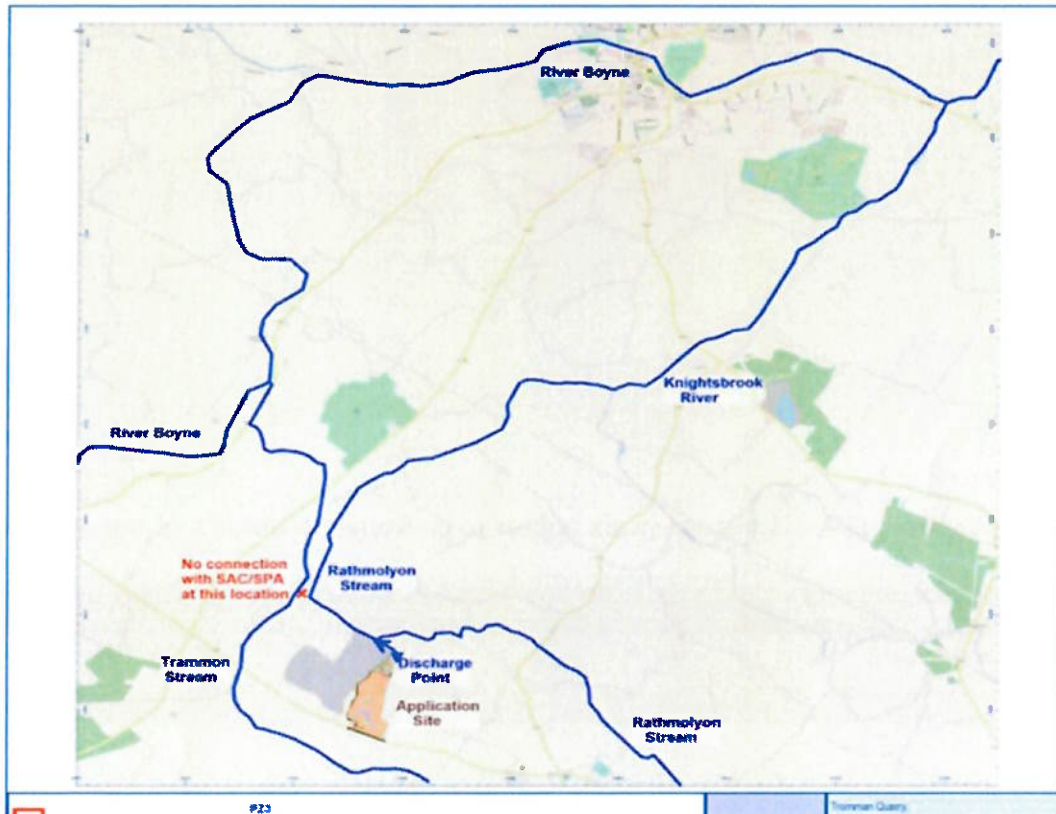


Figure 1: Reference 12 from Hydrological Report



Figure 2: Map from EPA GIS viewer- rivers appear to converge northwards of the red cross

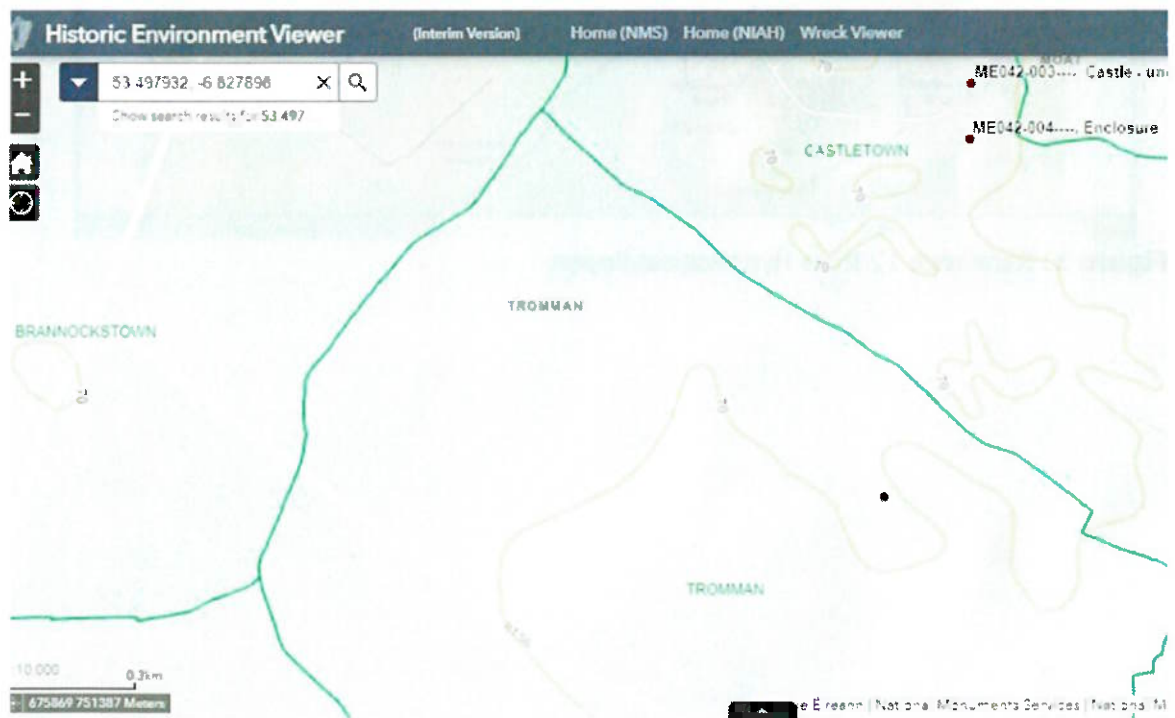


Figure 3: Historical map viewer – again the two rivers appear to converge at the top of the screenshot

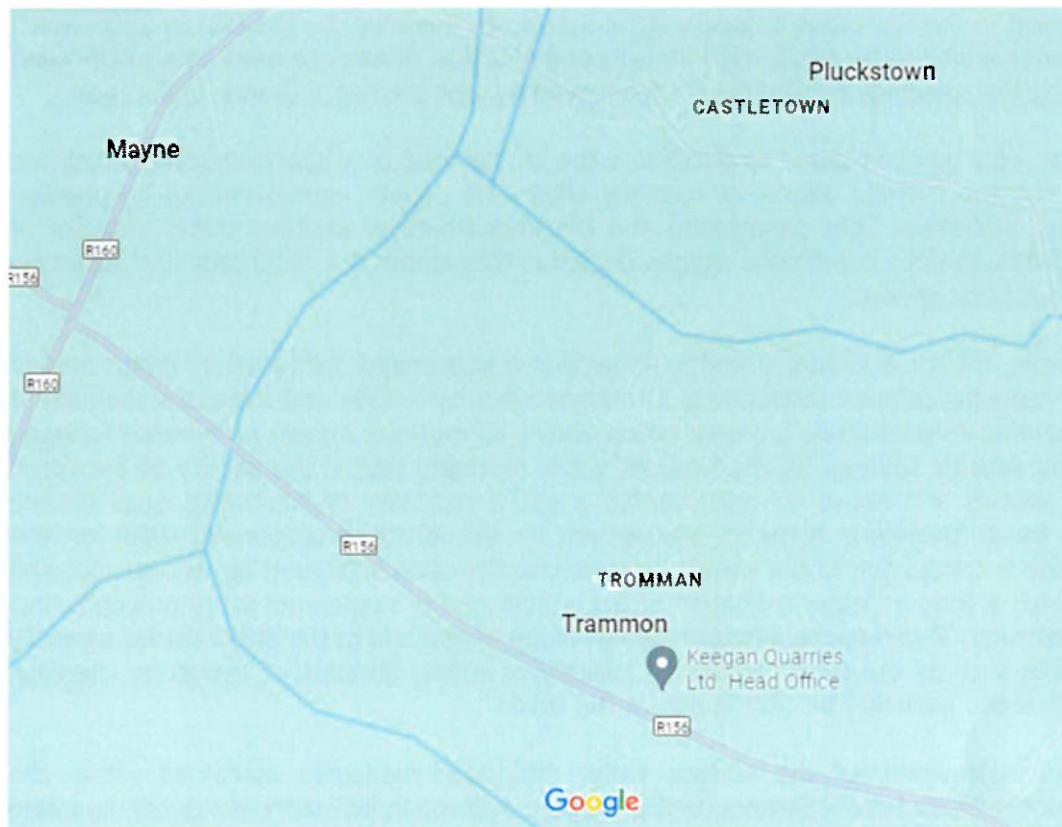


Figure 4: Google map view- again the rivers appear to converge at the top of the screenshot

3. Environmental Impact Assessment Report (EIAR)

3.1 Discharge to Surface Water

We note that the subject proposal seeks to continue discharging water from the quarry sump into the drainage ditch to the north, which has previously been permitted at a rate of 1,400 m³/day under Trade Effluent Discharge Licence Ref. 04/2, which connects with an area of the Rathmolyon Stream acknowledged to be "at-risk" by the applicant.

However, the applicant seeks to alter this licence to facilitate a total discharge of quarry ingress waters estimated at 2,750 m³/day within the "final development" which signifies a large intensification of dewatering activity compared to the current licenced rate, *"The current licensed rate is 1,400 m³/day. This will need to be varied to accommodate the total discharge requirement at the final development, which is estimated at 2,750 m³/day."*

We would have concerns over this proposed intensification of mineral extraction and dewatering activity, embodied in a discharge increase of 1,350 m³/day, and the implications of this regarding impacts on water quality and hydromorphology.

Results from the applicant's water quality parameters test conducted on the 17/07/23 show that the value of suspended solids was 14 mg/l, which appears to transgress the limit value of 1 mg/l as per the discharge licence. The applicant refers to the adjoining Kilsaran quarry's discharge licence (Ref. 14/04) which is claimed to set a limit value of 20 mg/l for suspended solids. They also refer to the Environmental Management Guidelines: Environmental

Management in the Extractive Industry (Non-Scheduled Minerals) by the EPA in 2006 which recommends a limit value of 35 mg/l for suspended solids. These are used as a justification for altering the suspended solid limit for their pending new discharge licence application.

This issue requires clarification to determine the critical load of suspended solids which are likely to cause a harmful degree of turbidity within the aquatic ecosystem due to physical alterations, decreased light penetration and the impairment of photosynthetic activities of aquatic plants, thereby resulting in oxygen depletion throughout the waterbody and adversely impacting aquatic species.

For example, Bilotta & Brazier (2008)¹, show that a suspended solid load of 8mg/l has an effect of reducing primary productivity in macrophytes by 3-13% and increases the rate of drift in benthic invertebrates. Concentrations above 20 mg/l are known to increase foraging activity for Atlantic salmon, 25 mg/l causes a 6% mortality rate in the sac fry of the Arctic grayling species and above 47 mg/l causes a 100% mortality of incubating eggs for the Rainbow trout. Therefore, a robust assessment for the effect of suspended solids on this specific site is crucial due to the known adverse impacts upon important aquatic species and the need for getting a clearer indication of the critical load of suspended solids unique to this site in particular. This requires a determination of the magnitude of the effect across a variety of variables such as the concentration of suspended solids, duration of exposure, chemical composition and particle-size distribution of the solids.

Given our assessment of the surface water mitigation measures contained within the Environmental Management System (EMS), we believe these to lack sufficient detail regarding the capacity of existing settlement ponds and interceptors to handle the planned increase in discharge quantities. Consequently, significant uncertainties remain about the extent to which any potential adverse impacts could be remedied and this requires clarification as a preliminary matter.

We recommend that further detail be sought with regard to the proposed suspended solids mitigation strategy. The following measures are mentioned briefly, and these require further elaboration along with the capacity of existing settlement ponds and interceptors, to ensure an effective outline of mitigation measures: *"The most difficult suspended solids to remove from drainage waters are clay-size particles. These often originate from excavated topsoil and overburden materials/stockpiles. Minimising surface water run-off from these materials through shaping, optimising locations, and re-vegetation of stockpiles can reduce the generation of suspended solids at source."*

Given the potential hydrological connectivity of this ditch with the Tromman Stream and the fact that EPA monitoring has already identified this stream as being of poor water quality WFD status, requiring enhancement of its ecological condition in order to achieve good status by 2027, operating without an approved interceptor would raise concerns over the quality of the discharge being released as part of quarry operations. This is potentially exacerbated by the planned increase in the discharge rate to 2,750 m³/day. Consequently, the required achievement of the WFD objectives by 2027 could potentially become even more difficult to realise. Furthermore, the southern half of the quarry site displays a groundwater body risk that is at risk of not achieving good status by 2027 under the WFD.

¹ Bilotta, G.S. & Brazier R.E. Understanding the influence of suspended solids on water quality and aquatic biota. [doi:10.1016/j.watres.2008.03.018](https://doi.org/10.1016/j.watres.2008.03.018) (uprm.edu)

Given the potential risks to water quality in the area arising from the subject proposal, we submit that it should be assessed against **Article 4** of the WFD to determine whether the project may cause a deterioration of the status of a surface or ground water body or if it may jeopardise the attainment of good surface or ground water status or of good ecological potential and good surface or ground water chemical status. It is also necessary to properly determine the critical loads of suspended solids likely to adversely impact the water body, as well as other potential pollutants present within the discharge. As already mentioned, we believe the applicant's water mitigation measures may be unfit for purpose in order to achieve the objectives of the WFD. The current "at-risk" status of the stream should be taken into account here.

We would highlight the following points of relevant European case law regarding the WFD. In Case C-461/13 (Weser), the CJEU held that:

"Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required

— unless a derogation is granted

— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."

The Weser case also held that the decision maker must ensure that no one quality element reduces as a result of development. This includes physio-chemical quality elements which may be impacted by increased suspended sediment on foot of an increased discharge concentration.

In Case C-529/15, the CJEU held as follows:

"It should be borne in mind that, when a project is liable to have adverse effects on water, consent may be given to it if the conditions set out in Article 4(7)(a) to (d) of that directive are satisfied (see, to that effect, judgment of 4 May 2016, Commission v Austria, C-346/14, EU:C:2016:322, paragraph 65).

In order to determine whether a project has been authorised without infringing Directive 2000/60, a court may review whether the authority which issued the authorisation complied with the conditions laid down in Article 4(7)(a) to (d) of that directive, by determining, first, whether all practicable steps were taken to mitigate the adverse impact of the activities on the status of the body of water concerned; second, whether the reasons behind those activities were specifically set out and explained; third, whether those activities serve an overriding general interest and/or the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) are outweighed by the benefits to human health, the maintenance of human safety or the sustainable development resulting from those activities; and, fourth, whether the beneficial objectives pursued by that project

cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means which are a significantly better environmental option (see, to that effect, judgment of 11 September 2012, Nomarchiaki Aftodioikisi Aitolokarnanias and Others, C-43/10, EU:C:2012:560, paragraph 67)."

We would further highlight that Article 5 of the Surface Water Regulations 2009 requires a public authority, in the performance of its functions, not to undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water. Therefore, clarification regarding the interceptor, settlement ponds and overall discharge regime is required to satisfy this water stewardship function.

3.2 Cumulative Impacts

We also note that there is potential for a cumulative discharge impact arising from the combined discharge activity of the adjoining quarry and the subject proposal. It should be ensured that in conducting the EIA, the Board consider the existing and proposed discharges from the site in combination with discharges from other development in the area. This is needed to fully determine the impacts upon the Tromman Stream. We consider that the applicant's claim that *"there is not considered to be any potential for quarry operations to contribute to cumulative water quality impacts within the locality"* requires assessment by the Board.

4. Dust

With regard to the critical load of dust deposition which induces adverse effects upon nearby vegetation, the applicant cites Farmer (1993) on p. 137 of the EIAR to claim that:

"A review by Farmer (1993) found that dust deposition starts to affect the more sensitive species at levels above 1000 mg/m²/day, which is significantly higher than the upper limit permitted under the planning conditions for the site – set at 350 mg/m²/day. Based on these limits the impact on flora in the vicinity of the quarry will be minimal and in addition there are no dust sensitive terrestrial habitats adjacent to the development."

However, we have reviewed the Farmer (1993) paper², and this finding is not contained within it. In fact, Table 1 in that paper makes clear that while some species can indeed tolerate quite high loadings of dust, effects on other species are seen below 1 g/m²/day, with one cited study (Darley, 1966) demonstrating reduced photosynthesis and increased leaf necrosis at 0.6 g/m²/day, and others finding reduced vegetative and reproductive growth at rates about 0.2 g/m²/day. This raises doubts as to the degree of impact on flora in the vicinity of the quarry at 0.35 g/m²/day (350 mg/m²/day), which is the upper dust limit associated with the proposed development.

Furthermore, the applicant claims that no dust sensitive terrestrial habitats are adjacent to the development. We would note, however, that there appears to be a small woodland area to the southwest of the quarry site, and this may be an area of potential sensitive ecological receptors to dust deposition impacts. It appears that the dust risk assessment only considers

² <https://www.resolutionmineeis.us/sites/default/files/references/farmer-dust-effects-1993.pdf>

nearby residential receptors, overlooking the necessity of conducting a similar dust risk assessment for the woodland receptor.

Please acknowledge this submission and advise us of any decision made.

Is muidne le meas,

Seán O'Callaghan
Planning Officer
An Taisce – The National Trust for Ireland

Phoebe Duvall
Senior Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland

Dr. Elaine McGoff
Head of Advocacy
An Taisce – The National Trust for Ireland

