

CUNNANE STRATTON REYNOLDS

An Bord Pleanála
64 Marlborough Street
Dublin 1

BY HAND
Our Ref. 21420

09 June 2021

RE. APPLICATION FOR SUBSTITUTE CONSENT UNDER S. 261A

For a quarry over an area of 28.8 ha. with a current average working depth of approximately 173 mAOD and final floor of approximately 150 mAOD at Windmillhill, Rathcoole, Co. Dublin within the administrative area of South Dublin County Council.

Dear An Bord Pleanála,

This cover letter accompanies a planning application under S.261A of the Planning and Development Act, 2000 as amended [P&D Act] on behalf of Mr. Laurence Behan of Behan, Behan Quarry, Windmillhill, Rathcoole, Co. Dublin for the above development. A full description of the development for which permission is sought is at Appendix 1.

This is an application for substitute consent that is accompanied by a remedial Environmental Impact Assessment Report (rEIAR).

This application is made concurrent with an application for further development of the quarry under S37L of the P&D Act that is accompanied by an EIAR.

This cover letter has been provided at the request of Golder Associates Ireland who are the lead consultants and agents for the applicant. The purpose of the letter is to provide a context for, and record of, the enclosed application.

By means of reference to the enclosed application documentation, this letter seeks to illustrate how the application has been prepared having regard to statutory provisions and the planning history and context of the application site.

In particular, the letter seeks to highlight the exceptional case that this quarry represents and its according with the considerations for the grant of substitute consent set out in S177K of the P&D Act.

The format of the letter is as follows.

- 1.0 Content of enclosed planning application
- 2.0 Planning, consent and review history summary

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- 3.0 Key statutory provisions in relation to planning permission for existing quarries:
 - 3.1 The Local Government (Planning and Development) Act, 1963,
 - 3.2 The requirement for Environmental Assessments as part of planning application consideration: EIA since 1990 and AA since 1997,
 - 3.3 The Planning and Development Act, 2000 as amended & associated Regulations provisions for quarries and substitute consent,
 - 3.3.1 Recent amendments related to substitute consent provisions.
- 4.0 The quarry's recent planning history and reason for substitute consent application arising
- 5.0 Current substitute consent application
- 6.0 Conclusion

1.0 Content of enclosed planning application

1. A completed Planning Application Form that includes supplementary and additional information in a document appended to that form recording:
 - 1.1 A schedule of the set of drawings.
 - 1.2 A copy of the Site Notice erected in 4 no. locations indicated on submitted drawings.
 - 1.3 A copy of the newspaper notice, a full page from The Daily Mail.
 - 1.4 The planning application fee calculation of €20,517.05. A cheque in this amount is separately provided.

These documents have been prepared having regard to the requirements of the P&D Act and associated Planning and Development Regulations 2001 – 2021 [P&D Regulations].

2. A remedial Environmental Impact Assessment Report (rEIAR) with Non-Technical Summary.
 - 2.1 A copy of the EIA portal certificate, which is appended to the application form.
3. A Screening Report to inform remedial Appropriate Assessment (AA).

These reports to aid environmental assessments have been prepared having regard to enabling Directives, relevant statutory guidance and best practice across the realms of Planning and Development; Environment; Birds and Habitats that are scheduled at the outset of each document.

10 no. hard copies of the application documents are provided and an electronic copy.

2.0 Planning, consent and review history summary

The site the subject of this application is located centrally in landholding in the ownership of the applicant since the 1960s who at that time inherited the land and quarry business from his own father (also Laurence Behan) who had farmed and quarried the lands since the 1940s. The quarry business on site has progressed since those times to include asphalt and concrete production and has been utilised as an infill site mainly for the purposes of upgrades of the N7 and, in more recent times, for the recovery of C&D inert waste materials.

The applicant continues to work in his quarrying and aggregate product business today and companies associated with the site are collectively run by him and his children, all of whom live locally. In this way, the quarry has been under the continuous stewardship of the individual applicant whose recollection and records have been, in part, relied upon to establish the development of the quarry site over time.

A matter of court record is that the first evidence of quarrying on the subject lands occurred in 1710 and has continued since that time. The applicant's personal history with the lands coincides with key events in the evolution of planning and environmental assessment statutes.

The rEIAR contains rendition of the key site events and those in the surrounding area. Appendix 2 provides a rendition of the planning, quarry registration and permits under other statutes related to the site. In this regard it is noted that the rEIAR contains a copy of the original 1968 planning permission for 'stone quarrying' at this site under Dublin County Council Reg. ref. 11547 (A.14). It is noted that older permissions are not available to remotely and originate with the now defunct Dublin County Council. For example, the evidence of the infill permission, also granted in 1968, was provided by the applicant. As such, copies of the other oldest planning permissions granted for the site: Reg. Refs. 11547/5056 for infill reclamation of a quarry in 1968 and SA1936 for a machinery store in 1980 are provided at Appendix 2.

In the surrounding area, besides the increase in the urban footprint of Rathcoole, the most notable development is the N/M7 that provides the only entrance /exit to the site since at least the 1940s. The entrance to the site has been one way since this section of the N7 was made into a dual carriageway over approximately 1963 -1969 that also coincided with the inaugural Planning Act and the first planning permissions related to this site. This section of the N7 was again subject to upgrade, to three lanes in each direction in 2002, with works complete in 2006.

The quarry site production levels are also somewhat remarkable as they remain fairly consistent a rough average of 500,000 tonnes per year since 1990, ramping up to double that for the increased construction activity in the late 2010s. The recession in the construction industry immediately afterward is evident in the depression of extraction rates on site and the then obtaining of planning permission to recover C&D waste for the production of construction aggregate on site over 2012 – 2018. The quarry further appears to recover from recessionary extraction rates faster than other quarries over the period 2015 to 2019,

3.0 Key statutory provisions in relation to planning permission for existing quarries

This section of the letter seeks to identify the key statutory arisings, and their impetus, that have resulted in quarries becoming a land use distinct from all others and commonly the subject of substitute consent applications, for which there is a distinct sub-category of substitute consent. This section also seeks to identify the requirement for environmental assessments in applications for development and the main terminology common to those environmental assessments. The key arisings are presented in ascending chronological order.

3.1 The Local Government (Planning and Development) Act, 1963

The Local Government (Planning and Development) Act, 1963 that for the purpose of obtaining planning permission, came into force in October 1964 and gives rise to the term 'Pre '63' development (development that is exempt from requiring planning permission).

3.2 The requirement for Environmental Assessments as part of planning application consideration: EIA since 1990 and AA since 1997

The requirement for an Environmental Impact Assessment [EIA] and Appropriate Assessment processes as part of the consideration of development process arise from European Union [EU] Directives required to be adhered to by member States and transposed into national laws.

The original **EIA Directive** 85/337/EEC has been amended and superseded by Directives 97/11/EC, 2003/35/EC, 2009/31/EC to codified Directive 2011/92/EU, amended by Directive 2014/52/EU [2014 EIA Directive].

Having regard to the transposition of the original EIA Directive into Irish Law it is determined by reference to planning and development statutes that **the appointed day at which the requirement for EIA as part of planning applications for certain development arose is the 1st of February 1990¹.**

Under Part X of the P&D Act and associated Regulations, certain types of development proposal dependent on land use type, location and scale thresholds are required to be subject to EIA and the applicant must submit an Environmental Impact Assessment Report (EIAR) to inform that EIA.

The **Habitats Directive of 1992** (no. 92/43/EEC, amended by Directives 97/62/EC, 2006/105/EC and 2013/17/EU) **requires and describes Appropriate Assessment (AA)** of certain plans and projects. Development proposals are 'projects' for the purposes of AA. **Together with the Birds Directive of 1979** (no. 79/409/EEC, amended by Directives 2009/147/EC and 2013/17/EU), both Directives and associated Regulations **identify sites that are deemed important for protection of habitats and species at European level.** In Ireland, those sites are Special Protection Areas (SPAs) or Special Areas of Conservation (SACs) and form part of the European Natura 2000 network.

Having regard to the first transposition of the Habitats Directive requirement for Appropriate Assessment (AA) into Irish Law under European Communities (Natural Habitats) Regulations, 1997 that amended the 1963 P&D Act and Regulations, **it is determined that the appointed day at which the requirement for AA as part of planning applications for certain development arose is the 26th of February 1997.**

Where AA determines that significant effect(s) may occur from a development alone or in combination with other plans and or projects, on the Natura 2000 Network (Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), whether candidate, proposed or adopted), it is incumbent upon an applicant to undertake an impact assessment presented as a Natura Impact Statement (NIS) to inform AA.

For development proposals, EIA and AA are undertaken by the authority assessing the development application. In this role the authority is the competent authority for EIA and AA.

3.3 The Planning and Development Act, 2000 as amended & associated Regulations provisions for quarries and substitute consent.

The Planning and Development Act, 2000 as amended replaced the 1963 Act and is the primary Irish statute that defines development and the requirement to seek planning permission for development that is not exempted development from either local authorities or An Bord Pleanála as planning authorities, depending on the type of planning application. Planning authorities in assessing planning applications consider the proper planning and sustainable development interests that a proposed development will protect and / promote. In addition, it governs the preparation of spatial and land use planning policy and guidance.

It is possible to seek planning permission for retention of development already undertaken.

Section 261 of the P&D Act was commenced in 2004 and required that all owners or operators of quarries (rock quarries and sand pits) that held pre '63 status or whose planning permission were more than 5 years old **'register' basic information about their site with their local planning authority.** This registration information was assessed by each authority to determine whether revised operating conditions would be imposed, or the quarry was required to seek planning permission for continuation with EIAR (then an Environmental Impact Statement (EIS)) by reason of the land use exceeding EIA

¹ "The EIA Directive was first transposed into Irish law by the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989) which amended the Local Government (Planning and Development) Act, 1963 (and other legislation) to provide for environmental impact assessment. These Regulations, together with the Local Government (Planning and Development) Regulations, 1990, (S.I. No. 25 of 1990), which made more detailed provision in relation to planning consents, came into effect on 1 February 1990." Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, 2013, par. 1.3. Guidelines are superseded by those of August 2018.

thresholds, or the site would be required to close where it was not established as pre '63 or found to hold planning permission. S.261 registration of quarries was to be completed by 2005, it being an offence not to register.

Quarries have been the only subset land use required to undertake such a registration process.

A **European Court of Justice case C-215/06, *Commission v. Ireland***² found, in summary, that the Irish State was in breach of the EIA Directive *inter alia* by permitting retrospective planning permission for development that required, but did not have an EIA. **This judgement was made on the 8th of July 2008 and had effect from that day.**

The effect of this decision was to put the route of retention planning permission beyond the reach of developments that required EIA or AA and either, or both were not carried out. The **Planning and Development (Amendment) Act 2010**, made several amendments, including ensuring that the European requirements for environmental assessments were reflected. This amendment Act **included provision for substitute consent where planning permission could be sought for development that has already occurred that required EIA or AA, or both**, but those assessments (had not been carried out. Substitute consent may only be sought from An Bord Pleanála where an application on for leave to make a substitute consent application has been granted, or an applicant has been directed to seek substitute consent.

Substitute consent exists as a route for all land uses that require EIA and / or AA. Government however recognised that quarries would become a particularly oversubscribing category of substitute consent application for myriad reasons including inconsistency of administration of S261, delays in expected regularising applications for quarries, reviews following registrations under S261 that 'updated' by new or revised conditions development operating under Pre '63 exemption, and planning permission older than the EIA Directive. Other quarries were required to seek planning permission for continuation of quarrying that were accompanied by environmental assessment reports to aid EIA and / or AA that related to development that may have occurred after the environmental assessment appointed days. It was decided that there would be an amendment that addressed environmental assessments requirements for quarries only which is S261A of the P&D Act.

S261A was also part of the Planning and Development (Amendment) Act 2010 and commenced in 2011. This section required that each local planning authority review the quarries within their administrative area and make determination first as to their planning status (the existence or not of planning permission or S.261 registration) and compliance. The authority was then required to assesses the site and its development over to time to determine whether an EIA or AA would have been required on or after the appointed days and 2008 when the above ECJ judgment was made. In summary, quarries were either found to require no further action, close and remediate, or seek planning permission in the form of substitute consent accompanied by remedial EIAR (rEIAR) and / or remedial NIS (rNIS).

Therefore, again, quarries were treated as a particular subset land use that are bound to seek substitute consent as a 'quarry' only under S261A i.e. substitute consent directed under S261A may only be for uses within the definition of quarry.

² Judgment of the Court (Second Chamber) was made 3 July 2008, in case C-2015/06 on foot of an Action under Article 226 EC for failure to fulfil obligations, brought on 11 May 2006 "(Failure of a Member State to fulfil obligations – No assessment of the environmental effects of projects within the scope of Directive 85/337/EEC – Regularisation after the event)". Please see full judgment here summarised: Found that Ireland had failed to ensure that all projects that should have been assessed for need for EIA and EIA undertaken where a project was likely to have significant effects on the environment that had been executed whole or in part, after the EIA Directive were in breach of the EIA Directive. The judgement concluded that Ireland had failed to fulfil its obligations under Articles 2,4 and 5 to 10 of the EIA Directive. A windfarm at Derrybrien, County Galway was a project that was considered in this case and found that the State had failed to adopt all measures to consider environmental impact assessment ahead of issuing of development consents.

As substitute consent applications were being made and assessed, it became more evident that unlike other land uses, quarry developments consisted of a dynamic land use that functions to remove land (in order to produce aggregates for use in construction projects) unlike other developments seeking substitute consent that will not alter in appearance e.g. a building. **In 2015 the P&D Act was further amended by the insertion of Section 37L³ that allows for the making of a planning to further develop a quarry as a quarry where concurrent with an application for substitute consent for that quarry has been made under S261A.**

3.3.1 Recent amendments related to substitute consent provisions.

On the 1st of July 2020, the Irish Supreme Court made findings relevant to the substitute consent process. In addition, these findings were in respect of in three joined proceedings all related to quarries by An Taisce and Peter Sweetman against collectively An Bord Pleanála, Mc Quaid Quarries and the Attorney General in respect of: the ‘McQuid case’ re. a quarry in Lemgare, Co. Monaghan (S.C. Record No. 9/19, HC Record No. 2014/342 JR); and the ‘Ballysax cases’ re. the same quarry at Ballysax, The Curragh, Co. Kildare (S.C. Record No. 42/19, HC Record No. 2016/868 JR and 43/19, HC Record No. 2016/542 JR). This Supreme Court decision provides a detailed rendition of the information provided in this section of this letter to date and its ramifications in respect of those certain quarry cases. The Court left certain matters ‘rest for the moment’ but in respect of two matters made the following abridged findings:

“...that section 177C(2)(a) and its corresponding provision, section 177D(1)(a) are inconsistent with the EIA Directive as interpreted by the Court of Justice, in that they fail to provide adequately for the exceptionality test as demanded by that court;” and

“...given the structure of s. 177, the failure to make provision for public participation at the leave application stage for substitute consent is inconsistent with the public participation rights conferred by and outlined in the EIA Directive;”

In response, in December 2020, the P&D Act and associated Regulations were amended⁴ in respect of substitute consent procedures. The current application for substitute consent is directed by court order and therefore the application for leave for substitute consent provisions are not relevant and in any case, the amendments require that any decision made in respect of an application for leave being granted not be part of the substitute consent application consideration process. What is submitted to be relevant, it that new S177K(1A) applies “a) *The Board shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board.*”

In view of the relative modernity of the latest amendments to the substitute consent process and their genesis from court cases the type of which continue to today, a watch is being kept by the applicant for further changes to law in respect of substitute consent.

Without prejudice to the P&D Act and Regulations, Appendix 3 is an extract of section 1.1 the submitted rEIAR that describes in greater detail Section 261 and Section 261A of the P&D Act and the treatment of the quarry the subject of this substitute consent application under those sections. It includes a rendition of the definition of a quarry from the P&D Act.

³ European Union (Environmental Impact Assessment and Habitats) Regulations 2015 (S.I. No. 301 of 2015),

⁴ Amended by Planning and Development, and Residential Tenancies, Act 2020, & by the Planning and Development (Amendment) (No. 2) Regulations 2020. Came into force on the 23rd of December 2020 amending: Part XA Substitute Consent of the P&D Act and Part 19 Application to An Bord Pleanála for Substitute Consent under Section 177E of the Act

4.0 The quarry's recent planning history and reason for substitute consent application arising.

The reader is referred again to Appendix 3, which is an extract of the treatment of the quarry under S261 and S261A, that is repeated here in summary in ascending chronological order from S261 registration of the quarry:

25th of April 2005: 261 registration was originally made by the current applicant Mr. Laurence Behan declaring an estimated 'site boundary' of 73 ha. and a 'workable area' of 39.27 ha. This registration further recorded that the quarry was pre '63. **The registration as assigned ref. SDQU05/04** by South Dublin County Council.

31st of August 2005: the local authority required further information on registration including 'revised map indicating (a) site boundary in red, (b) extractable area in blue, (c) 'total extracted area in green'. This request was response was received 10 October 2005 and acknowledged by letter 19 October 2005.

27th of October 2005: Mr. Laurence Behan's agent supplied the original 'full planning permission for the operation of the quarry' ref. 'A.14.11547 and is dated 20th May 1968' and enclosed a copy of that permission. A copy of this permission is at Appendix 1.2 of the rEIAR.

This information altered the status of the quarry leading the local authority to require resubmission of the registration form to include reference to the 1968 permission and their advertising of their intention to impose revised conditions on the continued operation of the quarry. The revised registration form was submitted on the 5th of October 2006 and the notice of the authority's intention was published in the Irish Times on the 27th of January 2007.

27th of April 2007: South Dublin County Council issued the final conditions for the quarry under S261. There were 36 no. conditions. A copy of these conditions is at Appendix 1.3 of the rEIAR. Of note, is condition no. 1 that refers to the original information received for registration and the maps submitted in response to further information and condition no. 35 that limited extraction to within the blue line on the revised site location sheet no. 1 dated 23/04/05 submitted as Additional Information on 10 October 2005.' Please see figure 1.2 of the rEIAR, a copy of the further information map received by the local authority on the 10th of October 2005.

9th of August 2012: The local authority's planning officer's endorsed report and recommendation in respect of a **determination pursuant to S261A for ref. SQD05A/04** was prepared for the site registered under S261.

This report recorded a decision after Section 261A(3)(a) that a notice would issue requiring the seeking of substitute consent to be accompanied by remedial Environmental Impact Statement (EIS now called EIAR) and Natura Impact Statement (NIS) for the respective purposes of EIA and AA as part of the substitute consent application consideration.

22nd of August 2012: In accordance with the requirements of S261A, this notice was issued to the operator and copy issued to An Bord Pleanála who assigned the **notice ref. PL06S.QB0360**. In view of a review received in respect of this notice, this notice was closed 03 October 2012 as 'review received'.

30th August 2012: As allowed, the operator requested An Bord Pleanála review of the determination and decision. **This review was assigned An Bord Pleanála ref. PL06S.QV0090.**

31 May 2013: the review decision under **ref. PL06S.QV0090:**

- (i) confirm the planning authority's determination under Section 261A(2)(a)(i) that EIA was required but not carried out.
- (ii) set aside the planning authority's determination under Section 261A(2)(a)(ii) that AA was required but not carried out.
- (iii) confirm the planning authority's decision under Section 261A(3)(a) insofar as it relates to EIA

24th October 2013: An application for substitute consent for ‘a quarry’ over 40.875 ha. on behalf of Laurence Behan was made and assigned ref. PL06S.SU0068. A copy of the site location map part of this application is at figure 1.3 of the rEIAR.

In respect of the substitute consent application ref. PL06S.SU0068, An Bord Pleanála requested information from South Dublin County Council. A comprehensive responding report dated the 14th November 2013 was submitted that included drawing no. SCB-1 (November 2013), prepared by south Dublin County Council technical staff and consisting of an indictive overlay of boundary areas referred to in that report that included; the proposed substitute consent boundary, then existing quarry area and land ‘anticipated’ to be included in the substitute consent application. A copy this map is at figure 1.4 of the rEIAR.

21st of September 2018: The application for substitute consent ref. PL06S.SU0068 was refused. A concurrent application for further development of the quarry under S.37L, made on 25 November 2015, assigned ref. PL06S.DQ0003 was also refused 21 September 2018.

12th March 2020: High Court judgement issues.

27th August 2020: High Court Order perfected. High Court Order [2018 No. 929 JR] quashed the decisions to refuse substitute consent ref. PL06S.SU0068 and refusal for further development of the quarry under S.37L, made on 25 November 2015, assigned ref. PL06S.DQ0003 that granted reliefs including:

“...that a fresh application for substitute consent submitted by the Applicant to the Respondent pursuant to the Record of Executive Business and Managers Order of South Dublin County Council dated 9th August 2012 in respect of the determination made and notice issued under section 261A(2)(a), 261A(3)(a) and 261A(7) of the Planning and Development Act, 2000 as amended in relation to the quarry at Windmill Hill Rathcoole county Dublin...”

This substitute consent is by High Court Order and is accompanied by rEIAR as was determined to be the requirement at after **An Bord Pleanála review (ref. PL06S.QV0090) of S261A of the site (ref. SQD05A/04) by South Dublin County Council.**

The requirement for this substitute consent therefore originates because of the development’s status as a quarry originally permitted in 1968, provided revised conditions as a result of S 261 registration, and arises, in effect, from its review under Section 261A of the P&D Act.

5.0 Current substitute consent application

Immediately upon the High Court Order the applicant set about retaining technical experts to prepare his substitute consent and concurrent further development of the quarry applications. Golder Associates Ireland were retained by the applicant who in turn, for the design of the developments the subject of the applications and the preparation of portions of the rEIAR and EIAR, retained further specialist subconsultants, including the services of Cunnane Stratton Reynolds (CSR) for planning consultancy and landscape impact assessment purposes.

Golder Associates and CSR have been provided full access to the site for the purposes of survey and monitoring. In October 2020, CSR also undertook a planning history search at the offices of South Dublin County Council that was facilitated within their Covid-19 office access protocols. In tandem, Golder Associates undertook a remote search of the waste permits and certificates registration for the site that was completed with the aid of South Dublin County Council, in December 2020.

An Bord Pleanála facilitated pre-planning communication in respect of the proposed structure and content of the substitute consent application under ref. PL06S.308315 and allowed time extension for the submission of the application under PL06S.308313. Though the site has remained open supplying to necessary and emergency works, the time extension was primarily requested to ensure all specialist

technical subconsultants could travel to the site during periods of Level 5 lockdown due on foot of Covid-19 public health guidance.

The application for substitute consent that this letter accompanies has had regard to the full planning and development history of the site and the designations for the site under the current (2016 -2022) and former South Dublin and Dublin County Development Plans and the requirements for substitute consent applications in the Planning and Development Regulations 2001 – 2021.

Having regard to the High Court Order and the reliefs granted therein, this application preparation has had regard to the concurrent preparation of an application for permission under S37L of the P&D Act.

In this regard too, the requirements of the environmental assessment directives, their transposition into Irish law and guidance for the preparation of applicant reports to support EIA and AA have informed the rEIAR submitted with this application, the EIAR with the concurrent application for further development of the quarry and the AA screening reports with both applications. The S261A determination and decision, High Court Order and extent of the quarry area for both substitute consent and S37L automatically give rise to EIA and thus the requirements for rEIAR and EIAR.

A preliminary consideration and screenings for Appropriate Assessment (AA) by An Bord Pleanála in their review of S261A notice ref. SQD05A/04 (ref. PL06S.QV0090) in 2013 and previous substitute consent (ref. PL06S.SU0068) and further development S37L (ref. PL06S.DQ0003) applications in 2018, have not required progression to Stage 2 Appropriate Assessment.. In view of the requirement for AA consideration as part of the application consideration, the passage of time since prior AA, and being unable to determine whether an rNIS or AA Screening report were submitted as part of the previous substitute consent application, a Screening Report to inform remedial Appropriate Assessment (AA) has been prepared and is submitted as part of this application.

As set out in the rEIAR, in view of this rEIAR and the EIAR being concurrently prepared for much of the same operational lands, it is submitted that a single EIA project boundary for the purposes of assessment by experts of works past and proposed is consistent and will facilitate EIA of each development proposal within the same EIA project envelope.

The EIA project boundary envelopes an area of 46.14 ha. that encloses previous recent quarry application areas, current workings and intended future workings.

The EIA project boundary is therefore larger than the associated planning application units in order to capture:

- the currently proposed substitute consent and S.37L application boundaries and associated infrastructure; and
- the workable area registered under S.261 for which conditions were imposed.

To a lesser extent, the EIA project boundary was chosen to capture previous applications on the lands as they may include information useful to construct the history and baseline of the current development proposals. In this regard, it was assumed that the most relevant information would derive from the rEIS and EIS submitted for the previous substitute consent and S.37L applications (refs. PL06S.SU0068 and PL06S.DQ0003), therefore the current EIA project boundary largely coincides with those EIA project boundaries.

It is recognised and accepted that the previous substitute consent application and decision have been quashed by High Court Order. Without undermining that order it is submitted that the previous application for substitute consent and concurrent S37L applications were considered and determined by An Bord Pleanála. The Inspector's reports, Bord Directions and Orders associated with those application have been reviewed as they represent the most recent review of the lands by a planning authority and a competent authority.

Notwithstanding and in addition, the matters raised in the judicial review case have been noted and inform this application; principally that the substitute consent application was deficient in its submission of the requisite information for a substitute consent application in the first instance.

The landholding of the applicant at approximately 73 ha has remained unchanged since his coming into possession of the lands in the 1960s. Here are the main differentiating features of the current application for substitute consent as compared to that previously submitted.

- The substitute consent planning application area at 28.8 ha. within the above 46.14 ha. EIA project area, is significantly smaller than that for which substitute consent was previously sought. The previous application was over 40.875 ha that also constituted the EIA unit. The reason for this difference is that the current planning application units reflects the extracted area and does not include areas yet to be worked which are the subject of a separate, concurrent S37L application. In this way too, no further deepening of the quarry is proposed in this application where it appeared to be in the previous substitute consent application.
- In addition, the current application does not record or propose the extraction of lands to the south of the current quarry site, within the S261 registered quarry area and the EIA project area. Further development cannot be sought in a substitute consent application and therefore this is the overriding reason for the exclusion of these lands from the substitute consent application boundary. These lands appeared included and proposed for extraction in the previous application for substitute consent. Please note that the concurrent S37L application excludes the proposed extraction of these lands in order to observe Development Plan designations and pending further archaeological assessment of these elevated land that contain the remains of a stone mill, the stone for which likely came from the current quarry. These features give rise to the townland name: Windmillhill and hold to conservation objectives in the current and former local Development Plans recorded at Section 3.2.6 of the submitted rEIAR.
- The current rEIAR recognises the history of the site and utilises 1990 as the baseline year for rEIAR assessment in accordance with the determined EIA appointed day at 3.2. above. Incidentally the submitted screening report for remedial AA utilises 1997 as the baseline year in accordance with the appointed day for AA as at 3.2 above. The previous rEIS appeared to set EIA baseline year at around 1960.
- The current substitute consent unit contains all lands and development within the definition of a quarry (repeated at section 1.1.6 of Appendix 3) and describes what is included in this substitute consent application area in detail supplying supporting drawings to illustrate that description, including labelling site layouts for orientation purposes. In summary, the substitute consent application area includes; excavated lands and associated aggregate processing plant, and pre'63 and permitted development within the administration and plant processing area identified over an area of 5 ha. at the centre of the substitute consent application site.
- The previous application was described as being for 'a quarry' and did not discern between extant and proposed development nor quarry and other development. The planning history search performed for the site audited against the site development for the preparation of this substitute consent application finds that a storage / drying (keeping processed aggregate products dry) shed and a concrete plant are within the administration and plant processing area that do not hold pre '63 or exempted development status. Without prejudice to the consideration of this planning application by An Bord Pleanála, as they respectively constitute a building and concrete manufacturing plant, they have been assessed to fall outside of the definition of a quarry under the P&D Act and are therefore not included in this substitute consent application under S261A of the Act. These items are recognised and included in the rEIAR assessments as part of existing development and drawings (no's 31 and 32) have been supplied for illustration of those items. These items exist and for regularisation purposes will require retrospective planning permission. It is submitted that the local planning authority will not be able to consider a retention planning

application for these items under S34(12) as they exist within a lands that hold development for which an EIA is required. Again, without prejudice to the consideration of this planning application by An Bord Pleanála, the applicant will seek to identify and pursue a regulating planning consent route for these items after seeking the opinion of the local planning authority.

6.0 Conclusion

Having regard to the requirement set down in S177K(1A) of the P&D Act, it is submitted that the quarry development the subject of this application presents a set of exceptional circumstances that justify a grant of consent.

It is further submitted that the substitute consent application meets the criteria An Bord Pleanála must consider in their consideration of the proper planning and sustainable development of area as set out in S177K(2).

Amongst quarries, the arising of the requirement for substitute consent is not exceptional as all quarries after S261 and S261A were subject to review and then review for effective retrospective EIA and / or AA. It was therefore not unusual that applications for substitute consent for quarries arose.

The current site is exceptional amongst peers, in that planning permission was sought and granted for a quarry in 1968 where that requirement did not exist since the site was operated as a quarry since 1710 as recorded in the High Court judgement and order [2018 No. 929 JR] and was certainly in continuous operation since the 1940s and the applicant's father taking over the landholding for the purpose of framing and quarrying.

At all times, the applicant has maintained their observation of planning and development legislative provisions in respect of quarries and properly registered their site under S.261 and instructed the submission of a substitute consent planning application in 2013 (ref. PL06S.SU0068). the outcome of that application was a disappointment to the applicant who understood their established development and use status and sought urgent reliefs. The applicant prevailed in having that decision, and the concurrent decision for an application under S37L (ref. PL06S.DQ0003) quashed and a 'fresh' substitute consent application under S.261A prepared.

This substitute consent application for a quarry has been methodically researched by planning and site history reviews and site inspections. It includes only the development already undertaken at the site and is accompanied by an rEIAR that similarly is exhaustive in its efforts to obtain evidence of the progression of the development of the quarry order that the rEIAR is robust and provides sufficient information properly inform EIA. Furthermore, negative impacts are identified and assessed for their severity with matching mitigation measures recorded.

Restoration of former quarry lands can also be in manner that represents commercial and sustainable reuse of the remaining lands, and / or in a manner that increases natural biodiversity and therefore ecological contribution of the restored lands. A concept restoration plan, informed by advice from the rEIAR ecologist has been prepared for the application site and is part of the rEIAR.

The development for which substitute consent is sought respects designations and conforms to the development objectives assigned to the subject site under the current South Dublin Development Plan 2016-2022 and former Development Plans, including for Dublin County ahead of the formation of South Dublin County Council.

Quarries remove extant land and geology for the purpose of making construction aggregate that is utilised in the construction of developments found to be in the interests of the proper planning and sustainable development of their area. This utilisation of the land's product and employment that the land use creates offsets the negative effect of the removal of that material.

In the interests too of sustainable development, it is preferred that construction aggregate is located in proximity to the projects it serves. The subject site is within 2km of the designated urban settlement of Rathcoole that is identified in the current Development Plan for further development equidistant from the M50 and Dublin City to the south and Naas to the north also designated for further development from the national to local levels and sits adjacent to an access the N7 for which aggregate and asphalt from the site has been utilised by the roadway for fill and upgrades.

The traffic generated from the site has remained relatively constant since the baseline year of 1990 and it is the applicant's intention that traffic generation should maintain at this relatively constant rate into the future under the concurrent S37L application.

The site's long and continued existence is submitted to reinforce the quarry as an historic, established and accepted feature of the area visually and socioeconomically as an employer.

It is submitted that the quarry as a natural resource, commercial entity and land use is exceptional in view of the construction utility value of the greywacke rock reserve from the site, that material's contribution to strategic and local development objectives, the quarry's continued existence and operation since the 18th Century, its proximity to lands designated for development over the past decades and before, and its intergenerational employment source.

On behalf of the applicant, we look forward to a positive outcome for this application. We understand the An Bord Pleanála may seek any information it feels is necessary to obtain or support information here submitted and allow for proper consideration of the application and environmental assessment. We further understand that regulation or procedures for substitute consent may alter or be the subject of further guidance. An Bord Pleanála is welcome to seek any information it may deem necessary at any time.

Yours faithfully,

Cliona Ryan

Associate Director

Appendix 1 Full description of development

The development consists of a quarry over an area of 28.8 ha. with a current average working depth of approximately 173 mAOD and final floor of approximately 150 mAOD. The reserve consists of sandstone (greywacke) and is extracted by blasting and mechanical means. The excavated material is crushed at the working face by mobile plant and transported to a central plant area for washing, grading and processing. The quarry is accessed at a single location from the N7 and holds a centrally located existing administration and processing plant area over approximately 5 ha. that currently holds 2 no. office buildings, 4 no. portacabins, 4 no. containers, 2 no. storage / maintenance sheds, a storage / drying shed, water recycling unit and silt press, an asphalt plant, a concrete plant and washing, crushing, screening and bagging plants. Also, within this plant and administration area are 2 no. weighbridges, 4 no. wheel washes, fuel storage and refuelling area, 1 no. operations water well and sewage holding tank. The concrete plant and the storage / drying shed within this central administration and processing plant area have been erected within the last three years and are not part of this application. They will be the subject of a separate planning application process.

The application site is contained within a quarry area registered in 2005 under S.261 and assessed in 2012 under S.261A (ref. no. SDQU05A/04) by the local planning authority. The S.261A notice was reviewed under An Bord Pleanála ref. 06S.QV.0090 resulting in a requirement for application for substitute consent accompanied by remedial Environmental Impact Assessment Report (rEIAR). That application (ref. no. PL06S.SU0068) was made in 2013 and has been superseded By High Court Order (2018 No. 929 JR) that inter alia ordered the making of this application. This application is made concurrent with an application to further develop the quarry at this location, also part of that Order.

The application is accompanied by a remedial Environmental Impact Assessment Report (rEIAR). The rEIAR is for an EIA project area over 46.14 ha. that encompasses the area of the substitute consent application, the concurrent further development of the quarry application under S.37L and the quarry as registered under S.261.

Appendix 2 Planning and consent history summary

Applications that were quashed, invalidated or refused are shaded in grey.

Planning applications and associated events under the Planning and Development Act 2000, as amended and associated Regulations							
Authority	Reference	Applicant	App Type	Lodged	Decision Date	Decision	Development
An Bord Pleanála (ABP)	PL06S.308315	Laurence Behan	Substitute Consent - Consultation	30.09.2020		n/a	Substitute consent consultation. Not a planning application.
ABP	PL06S.308313	Laurence Behan	Substitute Consent - Extra Time	30.09.2020	16.11.2020	Grant extension	Application for additional time to prepare substitute consent application. Not a planning application. Additional time permitted, requirement that substitute consent application and S37L application be made at the same time.
ABP	PL06S.SU0068	Laurence Behan	Substitute Consent Application	24.10.2013	21.09.2018	Quashed by High Court Order (2018 No. 929 JR)	Substitute Consent Application for a quarry
ABP	PL06S.QD0003	Laurence Behan	S.37L	25.11.2015	21.09.2018	Quashed by High Court Order (2018 No. 929 JR)	Continued development of a quarry, 40.875 Ha. Reinstatement of worked out quarry to agricultural use by importation of inert sub soil and top soil amounting to a total of 11,151,570 cubic metres.
South Dublin County Council (SDCC)	SDQF15A/4	N/A - input to ABP case PL06S.QD0003	Report for S.37L application	02.12.2015	21.01.2016	report sent to ABP by SDCC	Report to ABP for .PL06S.QD0003. Not a planning application.
SDCC	SD12A/0059/EP	Laurence Behan	Ext. of duration of permission SD12A/0059	04.04.2018	28.05.2018	Refuse	A dedicated area within the existing quarry site in which no more than 10,000 tonnes per year of imported inert materials (soils, stones, rock, concrete, tarmacadam) generated by off-site construction activities shall be segregated, processed, recycled and reused as raw materials for the existing on-site asphalt manufacturing plant. The proposed development requires a Certificate of Registration under the Waste Management (Facility Permit and Registration) Regulations 2007 and 2008.
ABP	PL06S.241259	Laurence Behan	Appeal	01.11.2012	24.05.2013	Grant upheld with revised conditions	
SDCC	SD12A/0059	Laurence Behan	Permission	30.03.2012	05.10.2012	Grant	
SDCC	SD11A/0271	Laurence Behan	Permission	18.11.2011	18.01.2012	Refuse	The establishment of a waste management facility with a maximum intake volume of 10,000 tonnes per annum to accept inert waste material including waste bituminous mixtures (EWC 170302), waste concrete (EWC 170101) & waste gravel and crushed rocks (EWC 010408) for it's recycling & reuse in the existing tarmacadam manufacturing plant located on the site. The site currently has a waste permit (Waste Permit No. WPR 051/2) with a permitted volume of 500 tonnes per annum. This facility requires a Certificate of Registration under the Waste Management (Facility Permit and Registration) Regulations 2007 and 2008.

[continued(1)] Planning applications and associated events under the Planning and Development Act 2000, as amended and associated Regulations							
SDCC	SD10A/0197	Permission	L. Behan & Sons Ltd.	06.07.2010	02.03.2011	Declared withdrawn	The establishment of a Waste Management Facility with a maximum intake volume of 24,000 tonnes per annum to accept inert waste material including waste bituminous mixtures (EWC 170302), waste concrete (EWC 170101) & waste gravel and crushed rocks (EWC010408) for it's recycling & reuse in the existing tarmacadam manufacturing plant located on the site and to facilitate the deposit of waste bituminous product, waste gravel and waste concrete into haul roads throughout the subject quarry site in which the subject waste facility is located. The site currently has a Waste Permit (Waste Permit No. WPR 051/2) with a permitted volume of 500 tonnes per annum. This development requires a Waste Facility Permit under the Waste Management (Facility Permit and Registration) Regulations 2007 and 2008.
SDCC	SD10A/0175	Permission	L. Behan & Sons	18.06.2010	23.06.2010	Invalid	Increase in size to 24000 tonnes per annum of the existing waste management facility (operating under Waste Permit No. WPR 051/2) to accept waste tarmacadam, waste concrete and waste aggregates for its recycling and re-use in the existing tarmacadam manufacturing plant.
SDCC	SD10A/0139	Permission	L. Behan & Sons Ltd.	19.05.2010	26.05.2010	Invalid	The increase in size to 50,000 tonnes per annum of the existing waste management facility (operating under existing waste permit No. WPR 051/3) to accept tar macadam, waste concrete & waste aggregates for its recycling & reuse in the tar macadam manufacturing plant located on the site.
SDCC	SD10A/0197	Permission	L. Behan & Sons Ltd.	06.07.2010	02.03.2011	Declared withdrawn	The establishment of a Waste Management Facility with a maximum intake volume of 24,000 tonnes per annum to accept inert waste material including waste bituminous mixtures (EWC 170302), waste concrete (EWC 170101) & waste gravel and crushed rocks (EWC010408) for it's recycling & reuse in the existing tarmacadam manufacturing plant located on the site and to facilitate the deposit of waste bituminous product, waste gravel and waste concrete into haul roads throughout the subject quarry site in which the subject waste facility is located. The site currently has a Waste Permit (Waste Permit No. WPR 051/2) with a permitted volume of 500 tonnes per annum. This development requires a Waste Facility Permit under the Waste Management (Facility Permit and Registration) Regulations 2007 and 2008.
SDCC	SD08A/0764	Permission	L. Behan & Sons Ltd.	07.11.2008	18.11.2008	withdrawn	One and a half storey office building single storey facing the N7. The building has a total area of 540sq.m., it includes office space, toilets and canteen, on the ground floor with board room on the upper floor and installation of a 'hydro' effluent treatment plant.
ABP	PL06S.PC0036	Strategic Infrastructure Development (SID)	Energy Answers International Limited	06.09.2007	21.12.2007	Is an SID	N7 Resource Recovery Project at Behan's Quarry, Windmill Hill, Rathcoole, Co. Dublin

[continued(2)] Planning applications and associated events under the Planning and Development Act 2000, as amended and associated Regulations							
ABP	PL06S.PA0006	Strategic Infrastructure Development (SID)	Energy Answers International Limited	29.05.2008	06.02.2009	Refused consent	N7 Resource Recovery Project at Behan's Quarry, Windmill Hill, Rathcoole, County Dublin
Dublin County Council	88A/709	Permission	Laurence Behan		20.12.1988	Grant	Mobile Asphalt Mixing Plant in Existing Quarry at Windmill Hill, Rathcoole
Dublin County Council	SA1936	Permission	Mr. L. Behan	16.11.1979	26.02.1980	Grant	Machinery store
Dublin County Council	11547	Permission	Laurence Behan	04.01.1968	28.06.1968	Grant	Stone Quarrying
Dublin County Council	P.C. No. 11547/5056 Order No. 860/68	Permission	AH Masser Ltd.	24.04.1968	20.06.1968	Grant	Reclamation of an existing quarry pit by [infill] and the construction of an access road, approximately 800-ft long.

Quarry status events under S.261 and 261A of the Planning and Development Act 2000, as amended

Authority	Reference	Event	Applicant	Lodged	Decision	Decision	Development
ABP	PL06S.QV0090	Quarries Review	Laurence Behan	30.08.2012	31.05.2013	Notice Confirmed with modifications	261A Quarries Review
ABP	PL06S.QB0360	Quarries Notice	Laurence Behan	22.08.2012	03.10.2012	notice reviewed	S261A Quarries Notice
SDCC	SDQU05A/4	261 Quarry Registration	Laurence Behan	25.04.2005	27.02.2007	Revised conditions	Quarry Registration, 261 & 261A

Permits and certificates of Registration under the Waste Management Act, 1996 and associated Regulations

Authority	Reference	Type of permit / COR etc.	Applicant	Location	Note
SDCC	WPR051	Waste Permit application	L. Behan	Windmill Hill Quarry	Waste permit granted for 'deposit of waste bituminous product into haul roads throughout the quarry at Windmill Hill Quarry' for the period 07.04.2005 to 06.04.2008. (obtained from SDCC 15.01.2021)
SDCC	No ref, became WPR051/2	Waste Permit application	L. Behan	Windmill Hill Quarry	Application for a waste permit 27.05.2008. Only provided the application form by SDCC and do not know (suspect not) if this progressed to a waste permit. ((obtained from SDCC 15.01.2021)
SDCC	COR-DS-12-0002-01	COR application	Behan & sons	Windmill Hill Quarry	Expired 27.2018. ((obtained from SDCC 15.01.2021)
SDCC	WCP ref. NWCPO-13-11273-02	Waste Colelciton Permit	Behan Aggregates	windmill Hill	Valid form 18.06.2019 to 17.06.2024

Appendix 3 Extract of section 1.1 of rEIAR

1. Requirement for rEIAR

Certain proposed developments, due to their typology, and scale automatically attract the requirement for EIA by a competent authority as part of that authority's formal assessment of the development proposal when that proposal seeks permission, consent or licensing. As set out in the next section, a hierarchical suite of European and national legislation and guidance govern EIA and direct EIAR content.

Remedial EIA and rEIAR arise where retrospective consent for development that ought to have attracted the requirement for EIA has been undertaken. The consent for that type of development is substitute consent, itself the subject of dedicated legislative provision that in the first instance only allows the seeking of substitute consent after the granting of leave to make such an application or upon direction notice from an authority.

In this instance the substitute application that this rEIAR accompanies is by Order of the High Court [2018 No. 929 JR] of August 2020 that set aside a previous substitute consent application decision (ref. PL06.SU0068) granted relief including:

"...that a fresh application for substitute consent submitted by the Applicant to the Respondent pursuant to the Record of Executive Business and Managers Order of South Dublin County Council dated 9th August 2012 in respect of the determination made and notice issued under section 261A(2)(a), 261A(3)(a) and 261A(7) of the Planning and Development Act, 2000 as amended in relation to the quarry at Windmill Hill Rathcoole county Dublin..."

Section 261A of the Planning and Development Act 2000, as amended is entitled 'Further matters in relation to control of quarries' and succeeded Section 261 'Control of quarries'. It is necessary to set out the treatment of the quarry under Section 261 and Section 261A to illustrate the substitute consent application parameters arising from the above Order as this rEIAR has been prepared to accompany that application.

1. Section 261 Control of quarries

Set out here is a summary of the Section 261 process to set a context for this quarry. As a summary, it does not purport to be a full rendition of Section 261 and is set out without prejudice to Section 261 of the Planning and Development Act 2000, as amended and the planning applications arising which are public record.

Section 261 commenced in 2004 and required that 'the owner or operator of a quarry' that was in operation under planning pre '63 status or had a planning permission over 5 years of age supply details of their quarry operation to their local authority, i.e. to 'register' their quarry with their local authority. The details required to be supplied consisted of a form containing high level information such as; age of extraction use, location, extent, rate of extraction, traffic, hours of operation and a map indicating the 'area of the quarry, including the extracted area'.

Upon receipt of registration information, the local authority were bound to apply a registration number to that quarry and carry out an assessment. In summary, the assessment was to determine whether the quarry was Pre '63 (was in operation before the advent of the requirement to seek planning permission) or held planning permission. The authority also assessed the compliance of the site against its planning permission. The authority then had alternative options to notify to the registering owner or operator:

1. That the quarry was pre '63 and would be subject to the imposition of conditions on the operation of the quarry, or was required to seek planning permission with EIAR (then an Environmental Impact Statement (EIS)).
2. That the quarry held planning permission and the authority were considering imposing new or revised conditions on its operation. Those conditions are considered the same as conditions imposed on planning permissions.
- 3.

It also occurred that certain quarries registered were found to not hold planning permission or pre '63 status and were required to close.

The local authority was required to advertise the commencement of S.261 and their intentions in respect of each registered quarry.

2. Section 261 registration of the quarry, South Dublin County Council ref. SDQU5/04

Mr. Laurence Behan registered the quarry on 25 April 2005 as being operated by L Behan & Sons Ltd. with an estimated 'site boundary' of 73 ha. and a 'workable area' of 39.27 ha. This registration further recorded that the quarry was pre '63. The registration was assigned ref. SDQU05/04 by South Dublin County Council.

31 August 2005 the local authority required further information on registration including 'revised map indicating (a) site boundary in red, (b) extractable area in blue, (c) 'total extracted area in green'. This request was responded to on 10 October 2005 and acknowledged by letter 19 October 2005.

27 October 2005 Mr. Laurence Behan's agent supplied the original 'full planning permission for the operation of the quarry' ref. 'A.14.11547 and is dated 20th May 1968' and enclosed a copy of that permission.

This information altered the status of the quarry leading the local authority to require resubmission of the registration form to include reference to the 1968 permission and their advertising of their intention to impose revised conditions on the continued operation of the quarry. The revised registration form was submitted 05 October 2006 and the notice of the authority's intention was published in the Irish Times 27 Jan 2007.

27 April 2007 South Dublin County Council issued the final operating conditions for the quarry. There were 36 no. conditions. Of note, is condition no. 1 that refers to the original information received for registration and the maps submitted in response to further information and condition no. 35 that limited extraction to within the blue line on the revised site location sheet no.1 dated 23/04/05 submitted as Additional Information on 10 October 2005. Please see Figure 1.3, a copy of the further information map received by the local authority on 10 October 2005.

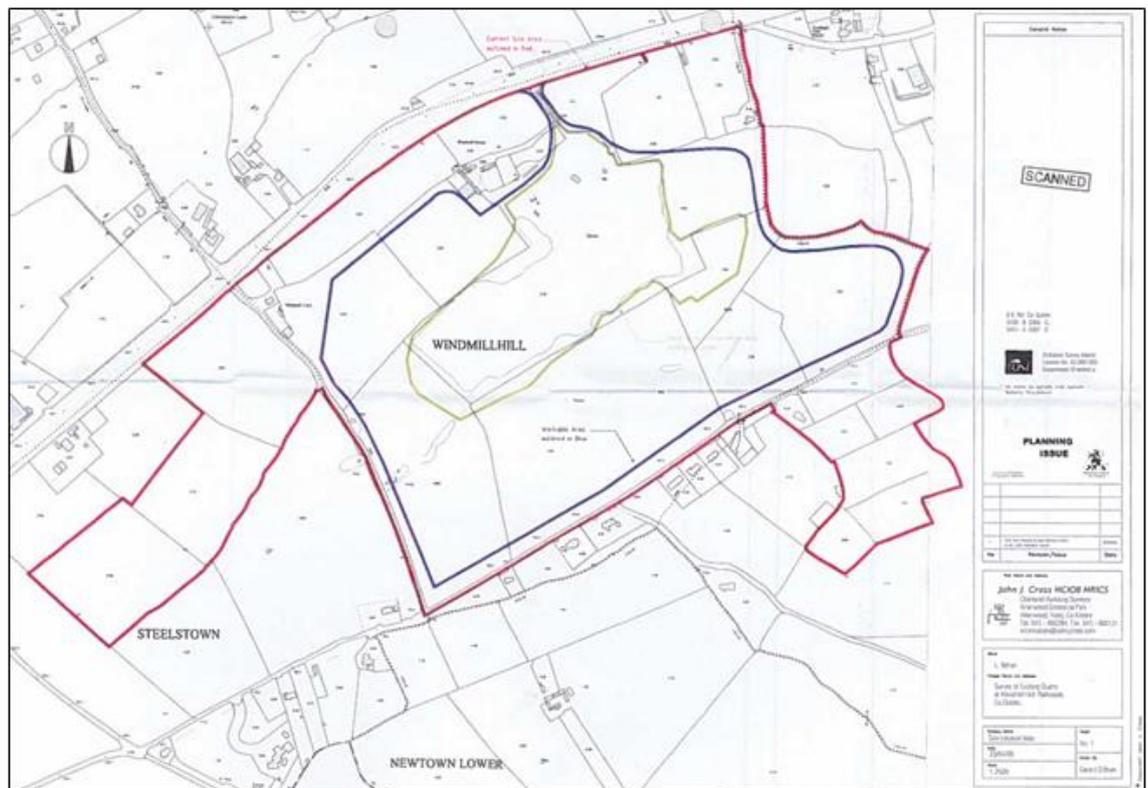


Figure 1.3: Copy of S.261 registration map submitted 10 October 2005, in response to request for further information for S.261 registration ref. no. SDQU05/4 'revised map indicating (a) site boundary in red, (b) extractable area in blue.

3. Section 261A Further control of quarries

Set out here is a summary of the Section 261A treatment of the quarry. The summary of S.261A at the outset does not purport to be a full rendition of Section 261A and is set out without prejudice to Section 261A of the Planning and Development Act 2000, as amended and the planning applications arising which are public record.

Section 261A commenced in 2011. **S.261A(1)** required that each local authority publish notice that it intended to review 'every quarry' in its administrative area to determine (a) whether the following was required but not carried out:

- i. An Environmental Impact Assessment (EIA);
- ii. A determination as to whether an EIA was required; and
- iii. An Appropriate Assessment (AA).
- iv.

For the remainder of this section, EIA and AA are referred to as 'environmental assessments'. The potential outcomes of that review are:

S261A(b) where environmental assessment or a determination for EIA required and not carried out + 261 registration undertaken and pre '63 status or conditions exist: the authority will issue notice that substitute consent is required to be sought.

S261A(c) where environmental assessment or a determination for EIA required and not carried out + 261 registration not undertaken where the quarry is post '63 and no planning permission exists: the authority will issue notice that enforcement action will arise requiring cessation of activity and remedial site measures.

S261A(d) where environmental assessment or a determination for EIA required and not carried out + the development giving rise to that requirement was after 03 July 2008: the authority will issue notice that enforcement action will arise requiring cessation of activity and remedial site measures.

Section 261A(1)(f) required notice of the determination to be issued to the owner or operator and S261(1)(g) allowed for review of that notice upon request to An Bord Pleanála.

Section 261A(2)(a) required that each local authority, having regard to certain matters, make determination as to whether;

- i. development was carried out after 01 February 1990 that would have required EIA or determination as to whether EIA was required and not carried out, or
- ii. development was carried out after 26 February 1997 that would have required EIA or determination as to whether EIA was required and not carried out

Section 261A(3)(a) required that a notice be issued within a certain time limit where an authority made a determination under S261A(2)(a)(i) and / or S261A(2)(a)(ii) and the quarry was found to be pre '63 or had a planning permission and fulfilled registration requirements under S.261. That notice concludes with a requirement to seek substitute consent with relevant environmental assessment from An Bord Pleanála.

The remainder of S261A(3) requires that the notice be issued to the owner / operator of the quarry, anybody who made submission to the process and a copy sent to An Bord Pleanála. The owner or operator of the quarry or anybody who made submission to the process may apply to An Bord Pleanála for a review of that notice.

Section 261A(4)(a) required that a notice be issued within a certain time limit where an authority made a determination under S261A(2)(a)(i) and / or S261A(2)(a)(ii) and the quarry was found; to have commenced after 01 October 1964 and had no planning permission, or the registration requirements under S.261 were not fulfilled. That notice concludes with an intention to issue an enforcement notice for cessation of quarrying and remediation.

The remainder of S261A(4) requires that the notice be issued to the owner / operator of the quarry and anybody who made submission to the process. The owner or operator of the quarry or anybody who made submission to the process may apply to An Bord Pleanála for a review of that notice.

Section 261A(5) required that a notice be issued within a certain time limit where the authority has made a determination under S261A (2)(a) that development occurred after 03 July 2008 that a notice would issue. That notice concludes with an intention to issue an enforcement notice for cessation of quarrying and remediation notwithstanding whether the quarry was found to be pre '63 or had a planning permission and fulfilled registration requirements under S.261.

The remainder of S261A(5) requires that the notice be issued to the owner / operator of the quarry and anybody who made submission to the process. The owner or operator of the quarry or anybody who made submission to the process may apply to An Bord Pleanála for a review of that notice.

Section 261A(6) sets out the matters that can be applied for review to An Bord Pleanála; the determination under S261A(2), decisions under S261A(3)(a) or (4)(a), the determination and / or decision under S261A(5)(a).

The remainder of S261A(6) sets out review procedures such as; suspension of notice operation until review conclusion, local authorities being required to supply information to the board upon request, and the review decision shall be provided to the person who requested the review and the local authority.

Section 261A(7) requires that where a notice has been issued under S261A(3)(a) requiring application for substitute consent and no review has been received by an Bord Pleanála, or a review has confirmed determination under S261A(2)(a) and decision under S261A(3)(a), the application for substitute consent shall be made within prescribed time limits.

Section 261A(8) requires that where a notice has been issued under S261A(3)(a) requiring application for substitute consent and a review by an Bord Pleanála has not been concerned with or confirmed determination under S261A(2)(a) or decision under S261A(3)(a) has been set aside, the local authority shall issue an enforcement notice for the cessation of quarrying.

Section 261A(9) and (10) relate to the review of a notice issued under S261A(4)(a) where notice of enforcement notice was issued.

Section 261A(11), (12) and (13) relates to the review of a notice issued under S261A(5)(a) where notice of enforcement notice was issued where development was after 03 July 2008.

Section 261A(14) requires that subject to section 177E(2A), where an application for substitute consent is made, it shall be made in relation to that development in respect of which the planning authority has made a determination under (2)(a).

Section 261A(15) explicitly requires that applications for substitute consent after direction under subsections (3), (10), or (12) comply with the provision of Part XA.

Section 261A(16) to (24) generally facilitate and apply to quarries that seek leave to apply for substitute consent.

4. Section 261A review of the quarry South Dublin County Council ref. SDQU5/04 & An Bord Pleanála Quarries Review ref. PL06S.QV0090

09 August 2012 the Record of Executive Business and Managers Order of South Dublin County Council is prepared. This is the local authority's planning officer's endorsed report and recommendation in respect of a determination pursuant to S261A for ref. SQD05A/04.

It was determined under S261A(2)(a) that development took place for which an EIA and AA was required but not carried out.

It was further recorded that the quarry was properly registered under Section 261 (ref. SDQ05A/04) that resulted in the imposition of new conditions to supersede those of the original planning permission for the quarry in 1968 (Reg. Ref. A.14).

This report recorded a decision after Section 261A(3)(a) that a notice would issue requiring the seeking of substitute consent to be accompanied by remedial Environmental Impact Statement (EIS now called EIAR) and Natura Impact Statement (NIS) for the respective purposes of EIA and AA as part of the substitute consent application consideration.

In accordance with the requirements of S261A, this notice was issued to the operator and copy issued to An Bord Pleanála who assigned this notice ref. PL06S.QB0360 on 22 August 2012. In view of a review received in respect of this notice, this notice was closed 03 October 2012 as 'review received'.

As allowed, the operator requested review of the determination and decision by An Bord Pleanála. This review was received 30 August 2012 and assigned ref. PL06S.QV0090.

31 May 2013 the review decided:

- (i) confirm the planning authority's determination under Section 261A(2)(a)(i) that EIA was required but not carried out.
- (ii) set aside the planning authority's determination under Section 261A(2)(a)(ii) that AA was required but not carried out.
- (iii) confirm the planning authority's decision under Section 261A(3)(a) insofar as it relates to EIA

An application for substitute consent for 'a quarry' over 40.875 ha. on behalf of Laurence Behan was made 24 October 2013 and assigned ref. PL06S.SU0068. A copy of the site location map part of this application is at Figure 1.4.

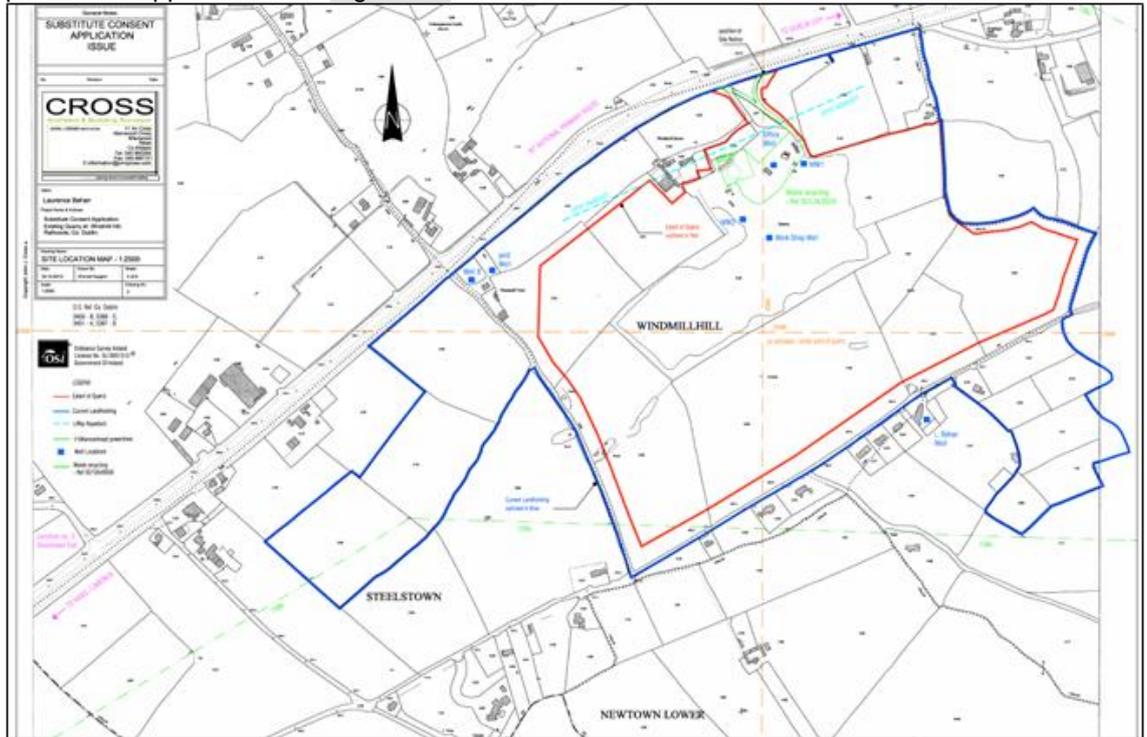


Figure 1.4: Copy of substitute consent application ref. PL06S.SU0068, site location map. Application made 2013, refused 2018, decision quashed by High Court Order 2020.

In respect of the substitute consent application ref. PL06S.SU0068, An Bord Pleanála requested information from South Dublin County Council. A comprehensive responding report dated 14 November 2013 was submitted that included drawing no. SCB-1 (November 2013), prepared by south Dublin County Council technical staff and consisting of an indicative overlay of boundary areas referred to in that report that included; the proposed substitute consent boundary, then existing quarry area and land 'anticipated' to be included in the substitute consent application. A copy this map is at Figure 1.5.

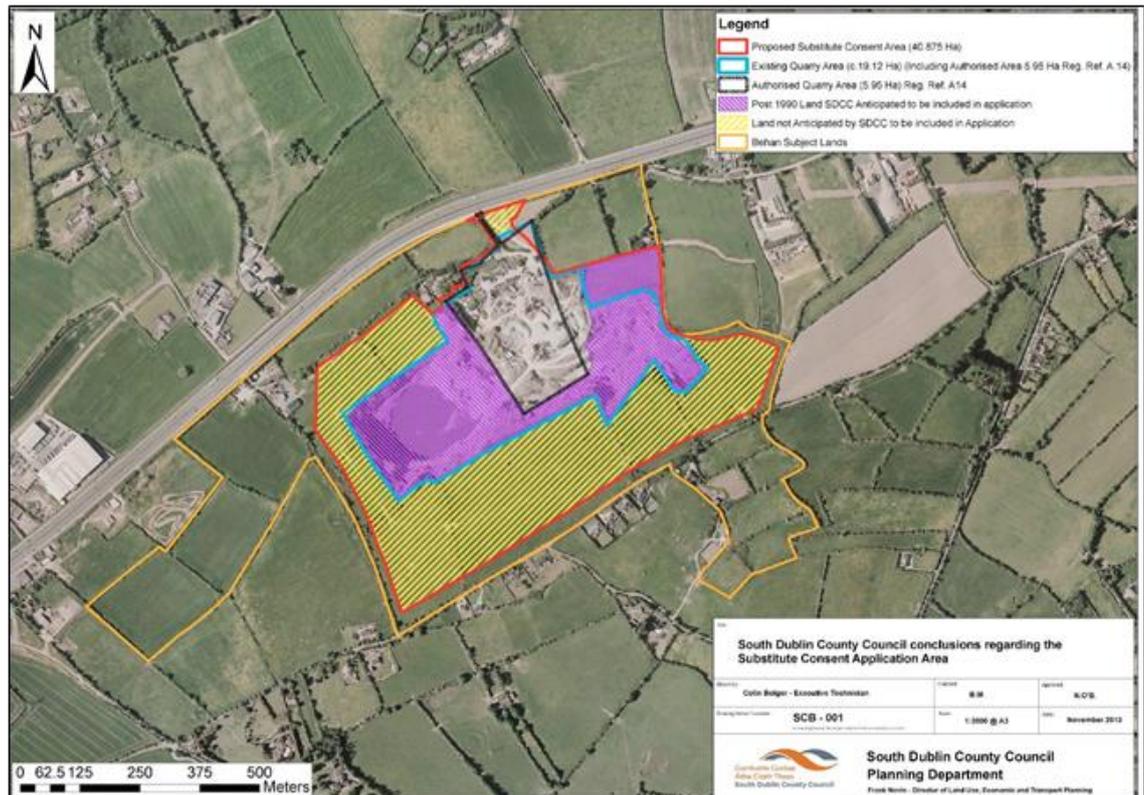


Figure 1.5: Copy of drawing no. SCB-1 (November 2013), prepared by south Dublin County Council technical staff to accompany local authority response to request for information in respect of substitute consent application ref. PL06S.SU0068.

An application was made, also on behalf of Laurence Behan for further development of the quarry under S.37L on 25 November 2015 and assigned ref. PL06S.DQ0003. The development was stated to consist of: '(A) to continue the development of a quarry having a total site area of 40.875 Hectares, (B) Reinstatement of worked out quarry to agricultural use by means of the importation of inert sub soil and top soil amounting to a total of 11,151,570 cubic metres.' A copy of the site location map part of this application is at Figure 1.6.

It is noted that by letter 02 December 2015, An Bord Pleanála requested a report from South Dublin County Council setting out their views on the effects of the proposed development on the environment and the proper planning and sustainable development of the functional area of the authority. A responding report was prepared and submitted under cover 21 January 2016.

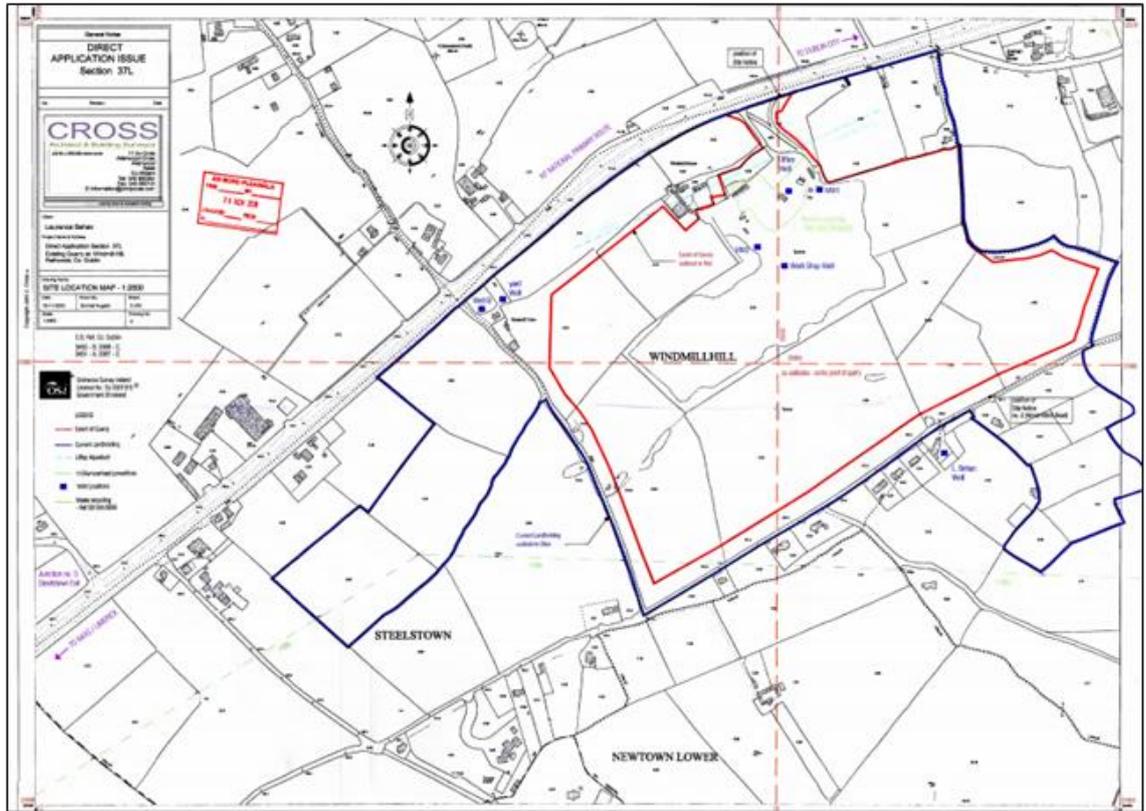


Figure 1.6: Copy of S.37L application ref. PL06S.DQ0003, site location map. Application made 2015, refused 2018, decision quashed by High Court Order 2020.

5. Substitute consent application and EIA project boundary

The application for substitute consent, made 24 October 2013, assigned ref. PL06S.SU0068 was refused 21 September 2018. The application for further development of the quarry under S.37L, made on 25 November 2015, assigned ref. PL06S.DQ0003 was also refused 21 September 2018. These application decisions were quashed by High Court Order [2018 No. 929 JR].

Therefore, having regard to Section 1.1 above and the Order of the High Court [2018 No. 929 JR] of August 2020: the determination under S261A(2)(a) and decision at S261A(3) by South Dublin County Council under ref. SDQ05A/04 as reviewed under PL06S.QV0090 have given rise to the 'fresh' application for substitute consent, accompanied by this rEiAR.

The substitute consent planning application unit extends to 28.8 ha. and reflects the extracted area of the quarry, all contained within the S.261 workable area registration boundary at Figure 1.3.

The substitute consent planning application boundary unit (28.8 ha.) that this rEiAR accompanies is significantly smaller than that for which substitute consent was previously sought (40.875 ha.) as it reflects the extracted area and does not include areas yet to be extracted.

As noted at the outset, the application for substitute consent that this rEiAR accompanies is to be made concurrent with an application for further development of quarry under S.37L over an area of 26.98 ha. which is fairly contiguous with the existing extracted area. That application is accompanied by an EiAR.

In view of this rEiAR and the EiAR being concurrently prepared for much of the same operational lands it is submitted that a single EIA project boundary for the purposes of assessment by experts of works past and proposed is consistent and will facilitate EIA of each development within the same EIA project envelope.

The EIA project boundary envelopes an area of 46.14 ha. that encloses previous quarry application areas, current workings and intended future workings.

The EIA project boundary is therefore larger than the associated planning application units in order to capture:

- The currently proposed substitute consent and S.37L application boundaries and associated infrastructure; and
- The workable area registered under S.261 for which conditions were imposed.

To a lesser extent, the EIA project boundary was chosen to capture previous applications on the lands as they may include information useful to construct the history and baseline of the current development proposals. In this regard, it was assumed that the most relevant information would derive from the rEIS and EIS submitted for the previous substitute consent and S.37L applications (refs. PL06S.SU0068 and PL06S.DQ0003), therefore the current EIA project boundary largely coincides with those EIA project boundaries.

6. Definition of a quarry for S.261 and S.261A

It is noted that S.261(13) are definitions for that Section. This includes ‘quarry’; “has the meaning assigned to it by section 3 of the Mines and Quarries Act, 1965.” This definition is set out here, Section 3, Mines and Quarries Act, 1965

“In this Act “mine” means an excavation or system of excavations made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals.

(2) In this Act “quarry” means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined.

(3) “Mine” and “quarry” include, respectively, any place on the surface surrounding or adjacent to the shafts of the mine or to the quarry occupied together with the mine or quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on.

(4) For the purposes of this Act, any place occupied by the owner of a mine or quarry and used for depositing refuse from it shall form part of the mine or quarry, but any place so used in connection with two or more mines or quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those mines or quarries as the Minister may direct.

(5) For the purposes of this Act any line or siding (not being part of a railway) serving a mine or quarry shall form part of the mine or quarry, but, if serving two or more of them, shall be deemed to form part of such one of them as the Minister may direct.

(6) For the purposes of this Act a conveyor or aerial ropeway provided for the removal from a mine or quarry of minerals or refuse shall form part of the mine or quarry.”

European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011 (S.I. No. 584 of 2011) inserted a discreet ‘quarry’ definition into Section 2 ‘Interpretation’ of the Planning and Development Act, 2000 as amended as follows:

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

(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;

- (ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;*
- (iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;*
- (iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.*

S.261A commenced in 2011 and therefore the above definition of a quarry applies to that section and to the quarry the subject of substitute consent that this rEIAR accompanies.”