Statement of Exceptional Circumstances
w.r.t.
Extraction at Ummera Pit,
in support of
Substitute Consent Application Reference ABP—308036-20
S261 Reference - QR01
S261A Reference – CKQY0003

Exceptional Circumstances

Drimoleague Concrete Works Ltd (DCWL) is making this application for substitute consent on foot of decision of the Planning Authority pursuant to Section 261(A)(3) having met the *sunset* clause provisions of S261(A). Thereafter and without prejudice to the foregoing DCWL considers that the following exceptional circumstances apply pursuant to Section 177 to its extraction operations at Ummera gravel pit:

1. DCWL has worked at the Ummera gravel pit ("the quarry") since the mid-1970's with the knowledge that it was a pre-1963 development, quarrying activities reportedly having taken place at the lands since the 1940's. It leased, operated, secured planning permission for site plant & infrastructure, and eventually purchased the property in good faith with that understanding. The fact that the Council granted permission for the processing plant and infrastructure at the existing pit reinforced DCWL belief that the site had an underlying authorisation, i.e. bonafide pre-1963.
2. In the Supreme Court case of Waterford County Council and J.A. Woods (1999) the extent of a pre-1963 quarry was determined to be that which a reasonable person would expect it to extend to on that date (01 October 1964). At Ummera, one continuous deposit was worked, contained within the same folio, which crossed no physical or man-made barriers. When the Council challenged the planning status of the operations in 2003, DCWL engaged Fehily Timoney & Company (FTC) to investigate the planning status of the quarry. FTC concluded that the Supreme Court definition applied to the deposit being worked at Ummera and this was conveyed to the Council by letter dated 15 March 2004 and in circumstances where no further action was then taken by the Council it was taken that the position presented by DCWL had been accepted. As the Council didn't challenge that position, DCWL continued working the pit with the understanding that it did so with pre-1963 status.
3. DCWL applied to register the quarry by application dated 09 September 2004 as a pre-1963 development. A handwritten report was prepared by Mr. O' Sullivan, Cork County Council's S.E.E and it was noted by Mr. O' Sullivan that DCWL had asserted that the site preceded 01 October 1964 and that there had been extraction at the site since the 1940's. The Council indicated its intention to register the pit as such. The Council changed its approach to the registration after it failed to comply with statutory obligations for advertisement and notification pursuant to Section 261 of the Planning and Development Act 2000.
4. Without prejudice to 1, 2 & 3 above, the Planning Authority on the 23 August 2012 directed DCWL to apply for substitute consent as opposed to DCWL obtaining leave of the Court to apply for substitute consent and this further amounts to exceptional circumstances which ABP should have regard to.

The details, with supporting documentations in appendices, is provided below.

Planning History Summary

This extraction site at Ummera was always operated on the basis of being a pre-1963 site and was purchased on that basis in 2003, DCWL having leased the property since the mid-1970's. The quarry was purchased and worked in good faith with the understanding that the lands had pre-1963 status. DCWL's position in this regard was conveyed to the Council in correspondences dated 12 September 2003 and 15 March 2004 and provided at Appendix 1.

The site was registered in accordance with the requirements of Section 261 as a pre-1963 pit which also had a very small adjoining land parcel upon which a permission had been granted to a third party for extraction but had lapsed. The S261 application was submitted to Cork County Council on 9 September 2004 – a copy of the application is provided in Appendix 2.

The Planning Authority initially intended to seek a Continuance of Use Planning Application under Section 261(5), a provision exclusively reserved for pre-1963 sites. This is clear from the letter dated 14th September 2005 from the Planning Authority a copy of which is attached at Appendix 3 and the Planning Authority press notice advertised on 18 March 2005 and attached at Appendix 3 which clearly states:

> "Proposed Action being considered by the Planning Authority:
> -To modify and add to conditions relating to the area covered by the permission granted under Ref. 76/375 and
> - to require a planning application and submission of an Environmental Impact Statement on the balance of the total quarry area".

However, as no confirmation of that intention was issued within the statutory timeframe, i.e. within one year following the date of registration and therefore DCWL assuming conditions were to be imposed under S261(6)(a)(i) as a pre-1963 site continued to operate as it had relying on its pre 1963 status.

Following on from that by submission dated 24 October 2005 (attached at Appendix 4) to the Planning Authority, Fehily Timoney addressed the 2nd part of the press notice on behalf of DCWL and put forward reasons why DCWL should not be required to make a planning application and submit an EIS. DCWL expected conditions to be imposed under Section 261(6)(a)(i), consistent with the acceptance of the pre-1963 status of the site as it was quite clear that the quarry had been operational pre-1963. The response from the Planning Authority dated 28 October 2005, some 4 days after DCWLs submission, and completely changing its position and altering its treatment of the quarry registration is provided at Appendix 5. It is submitted that the timeframe for the Council's response could not have permitted due consideration of DCWL's submission, and it is submitted that not all relevant information was taken into account.

Conditions were issued under Section 261(6) and DCWL by letter dated 03 October 2006 appealed several of the conditions as they felt they were inappropriate for the site. The Planning Authority report dated 25 August 2006 and S261 conditions are provided at Appendix 6.

The appeal of certain conditions, including the opinion of DCWL's legal team, submitted to ABP on 03 October 2006, are provided at Appendix 7. ABP's determination of that appeal was issued on 08 June 2007 a copy of which is attached at Appendix 8. ABP directed that the Planning Authority amend conditions numbers 4,22,30,45,59,61 and 63 and remove conditions numbers 13,20,23,33 and 35. The quarry operated in compliance with those conditions until 2012.

In August 2012, the Planning Authority issued a Section 261A (2) determination that the site had an EIA Offence and directed that the operator should apply for substitute consent, the site having had a previous authorisation and having been registered under Section 261. A copy of the Planning Authority's notice dated 23 August 2012 is provided at Appendix 9.

In doing so, the Planning Authority had adjudged that the authorised area had been exceeded; in doing so, only the area for which the old permission had been granted was deemed authorised. It then transpired that the Section 261 conditions had been under Section 261(6)(a)(ii), i.e. ignoring the pre-1963 origins of the site and re-stating, modifying or adding to the original conditions of the permission only. This had been missed by the operator at the time of the Section 261 appeal of conditions as only Section 261(6) had been referred to in the final issuance of conditions without detail of the sub-section.

The determination and decision of the Planning Authority was referred to ABP on the 10 September 2012. The referral documents are provided at Appendix 9. In reluctantly addressing the legal reality of the Section 261(6)(a)(ii) conditions, the Inspector confirmed that the site had been developed consistent with pre-1963 extraction jurisprudence but that the legal status of the Section 261 conditions had not been appealed and, therefore, must stand. Consequently, ABP confirmed the determination and decision of the Planning Authority. A copy of ABP's order and inspector's is provided at Appendix 11.

This was a devastating blow to DCWL, given how the Planning Authority had treated the site as pre-1963 until the very end of the Section 261 process up until 2007 and apparently treated it equivalently thereafter up until the Section 261A process in 2012 and then had issued a less than clear notice to the detriment of DCWL whose only warning would have been to have seen the '*re-state, modify or add'* pre-amble to the conditions.

In order to protect its position DCWL obtained legal advice and issued proceedings under record number 2014/230JR seeking leave to judicially review the decision of ABP and an order was made on the 9 April 2014 granting leave and the requirement to make an application for substitute consent was stayed pending the determination of those proceedings.

After years of preparation and addressing legal arguments, it was decided to make an application for substitute consent in fulfilment of the Section 261A direction. This means that the current application is entitled to the benefit of the '*sunset clause*' provisions in qualifying for the right to apply for substitute consent, notwithstanding and without prejudice to any and all other exceptional circumstances that exist in this specific case, DCWL could not reasonably have known that the development was not authorised until the matter was raised in S261A.

Indeed, applying the criteria as provided for in S177C and S177D it is submitted that exceptional circumstances exist that warrant the granting of substitute consent by ABP. In particular it is submitted as follows that pursuant to S177D and in considering whether exceptional circumstances exist ABP shall have regard to the following:

(i) Whether regularisation of the development concerned would circumvent the purpose and objective of the Environmental Impact Assessment Directive or the Habitats Directive. It is submitted that it would not as the issues raised by the Planning Authority in their submission of 08 October 2020 have been dealt with by DCWL. A comprehensive response was provided to ABP on 08 January 2021 addressing all the environmental issues raised by the Council, by way of clarification of the information provided in the remedial Environmental Impact Assessment Report submitted with the application.

(ii) Whether the applicant had or could reasonably have had a belief that the development was unauthorised, it is submitted for the reasons set out above that DCWL could not reasonably have had a belief that the development was unauthorised and were at all times relying on the pre 1963 status;

(iii) Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide public participation in such an assessment has been substantially impaired it is submitted that no such impairment exists here. The public were invited to particate in the substitute consent application process by way of newspaper press notice and site notices. No submissions / objections from the public were received by ABP to the substitute consent application. DCWL continues to foster a good relationship with the local community.

(iv) The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development, it is submitted that no such adverse effects apply here as it is not a European site within the meaning of that term. The quarry is not located in or near a European site and it has no substantive connectivity to any European site. This was the S261A determination of the Local Authority who didn't request a NIS be submitted with the substitute consent application.

(v) The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remedied, it is submitted that this is not applicable to the current case;

(vi) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development. It is submitted that the applicant has at all times fully complied with planning permission previously granted and has not carried out unauthorised development within the meaning of that term.

(vii) Such other matters as the Board considers relevant, it is submitted that the other relevant factors are set out in the within submission and those factors should be taken into account by the Board in reaching a decision to grant substitute consent.

DCWL reaffirms its position that a gravel pit was operational on this site prior to 1963. As further confirmation of this an affidavit sworn by Mr. Pat Kelleher on the 18 February 2019 is attached hereto at Appendix 12. Mr. Kelleher is a life-long resident of Ummera. He was born on 21 June 1950 and lived in close proximity to the quarry his whole life. He can link significant childhood milestones with memories of the gravel pit, which date the gravel pit as being operational as far back as 1957 at least.

Taking account of the foregoing DCWL therefore consider that '*exceptional circumstances'* exist and therefore ABP should accept the application and grant substitute consent to the quarry in circumstances where it has operated as a quarry since the 1940's and is entitled to rely on the pre 1963 status.

APPENDIX 1
FTC CORRESPONDENCE FROM 2003 & 2004

FEHILY TIMONEY & COMPANY

CONSULTANTS IN ENGINEERING & ENVIRONMENTAL SCIENCES

Our Ref: Q:/2003/190/06/Let005/DK

Ms. Yvonne O'Mahony
Planning Enforcement Section
Planning Department
Cork County Council
Model Business Park
Model Farm Road
Cork

15 March 2004

RE: Warning Letter EF/03/0126– Planning Ref. No. 78/1365

Dear Ms. O'Mahony

I refer to the Council's correspondence of 29 July 2003, 27 January 2004 and to our meeting with the Council on 26 February 2004 in relation to the sand/gravel extraction activities at Umera, Macroom, County Cork. As advised in previous correspondence, Murnane & O'Shea has retained Fehily Timoney & Company to carry out an assessment of the planning status of this development.

Having reviewed all available information on the Umera Pit, FTC is of the opinion that Murnane & O'Shea are entitled to operate the pit as they are currently doing, and that the warning letters issued by the Council are unwarranted. FTCs assessment is detailed in the paragraphs below.

FTC's understanding of the Council's position is that:

1. The activities at the pit are unauthorised because of an intensification of extraction, and extension of the pit area, since 1978.
2. Furthermore, the settling lagoons on site are unauthorised and the washing plant has been moved from its permitted location.
3. A similar instant occurred with Murnane & O'Shea at their pit in Dunmanway.

Continued ../...

CORE HOUSE POULADUFF ROAD CORK IRELAND
TEL.: +353 21 4964133 FAX.: +353 21 4964464 E.MAIL: info@ftco.ie Web Site: www.fehilytimoney.ie
Directors: E. Timoney BE CEng FIEI MICE MCIWEM RConsEI D. O'Sullivan BE CEng MIEI RConsEI G. O'Sullivan BE CEng FIEI RConsEI W. Quirke Dip Ag
Company Secretary: A. Keohane. Associates: D. Egan BSc MSc D. Keohane BSc MSc
Registered in Dublin, Ireland, Fehily Timoney & Co. Ltd. Number 180497 Registered Office: Core House, Pouladuff Road, Cork. VAT Registration Number: IE 6580497 D

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Intensification of Extraction Since 1978

The Council have established the rate of extraction up to 1977 from the 1977 OS map showing the extent of the pit, and applying an average annual extraction rate over the lifespan of the pit up to that time (i.e. reportedly 30 years). The activities since 1977 are established using the 1977 OS map and a 2000 aerial photograph. From this, the Council have estimated a 25-fold increase in the rate of extraction and a 15-fold increase in the extent of the pit. These estimates would seem to be inconsistent with the area referred to in the Council's letter of 29 July 2003 as the 'permitted boundaries'.

In the 1978 planning application, Murnane & O'Shea indicated an area of the gravel deposit being leased. This area was approximately 5 or 6 times the size of the pit at the time of the application. The duration of the lease was 15 years as indicated to the Council in a further information request. The Council was therefore aware in 1978 that Murnane & O'Shea would, at a minimum, extract gravel over an area 6 times the size of the original pit and in half the time, yet did not raise the issue of intensification. Instead the Council granted planning for the washer and lagoons, and accepted rates payments from Murnane & O'Shea for this level of extraction. If intensification was an issue, it should have been raised in 1978 during the planning process, not 26 years later.

Furthermore, the Council contend that this has taken place since 1978. If this is the case, then these activities are protected under Section 157 of the Planning & Development Act 2000.

Unauthorised Plant

The plant on site consists of washing plant and two sets of lagoons.

The lagoons located across the road from the site entrance were granted planning in 1978. In the 1980s, the South West Regional Fisheries Board raised concerns over the location of the lagoons adjacent to the stream. In response to this, the quarry manager installed new lagoons within the site. The original lagoons are still in use, but as polishing lagoons only. It is no longer necessary to clean silt from these lagoons. They are now overgrown and stable, and no longer a concern to the South West Regional Fisheries Board.

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The primary settling lagoons were constructed in the early 1980's and are still in use. They form part of the washing plant and could be considered exempt development under Class 21 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001. In any case, they have been in existence for over seven years and therefore are afforded protection under Section 157 of the Planning & Development Act 2000.

The washing plant currently in use on site was installed in 1978, but moved from its original position in 1995/96. Relocating plant at the pit is exempt development under Class 21 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001.

Comparison With Inchafune, Dunmanway Pit

In correspondence of 27 January 2004, the Council draws a comparison with Murnane & O'Shea's pit in Inchafune. Enforcement action was taken against Murnane & O'Shea in the late 1990s for the intensification of operations at the Inchafune pit. This action was triggered by the introduction of washing plant to the pit. Up to that time, the pit was used for extraction only; there was no processing on site.

Having applied for retention for the plant in question, the Council requested that Murnane & O'Shea also apply for retention of the gravel pit. The issue as to '*whether the extension and intensification of an existing gravel pit at Inchafune in recent times has taken place to such a degree as to amount to a material change of use which requires planning permission*' was referred to An Bord Pleanala for determination (PL04.RF.0907).

Having reviewed the inspector's report, a number of similarities and differences are apparent.

Similarities

1. Both lands were used for the extraction of sand/gravel on the appointed day.
2. Gravel extraction continued at both sites to the present day, without abandonment at any stage.

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Differences

1. The Umera pit was granted planning permission in 1978 for washing plant and lagoons at an existing pit. There was no washing plant at the Inchafune pit up until the late 1990s. In his report, the inspector states '*that the fact that it was thought worthwhile to install such plant might be taken as an indication of an intensification of use*'. If the Council accepts the inspector's argument here, then it must also be accepted that the same applies to the granting of permission in 1978 (i.e., that the installation of washing plant in 1978 is intensification of use). The Council didn't seek planning for this in 1978 (as it did at Inchafune), so it is unreasonably of the Council to seek it 26 years later. As stated above, the washing plant installed in 1978 is still being used at the site.

2. With regard to the extension of any pit or quarry, it is generally accepted (see inspectors report) that in order not to amount to a material change of use, it '*should take place as a natural and logical extension of that existing before the appointed day, such as might reasonably have been anticipated, that the deposit being worked on should be the same deposit and that there should be no intensification of use with regard to a large increase in output or involving the use of new equipment and processes*'. At the Inchafune pit, it was determined that the activities did not met these criteria because of the size of the holding, the presence of a perceived barrier (ringfort) and the introduction (without planning permission) of new plant. At the Umera pit, the following points are noted:

    a. The plant in use was installed in 1978 with planning permission.
    b. There is a well-defined gravel deposit in the form of a single esker. This is a geological feature that one would reasonably expect to be worked.
    c. This deposit is in the ownership of one landowner and has been in that folio since 1912. There are man-made boundaries to the pit, which have not been crossed (i.e. roads).

Conclusions

Cork County Council has issued warning letters to Murnane & O'Shea regarding sand/gravel extraction at a pit in Umera, Macroom. It is assumed that this has been initiated following complaints from locals. Murnane & O'Shea would welcome the opportunity to respond to any specific complaints the local community has in relation to its operations in Umera, for two reasons:

1. The complaints received by the Council may be vexatious and without merit, yet there is no recourse to respond to such complaints.

Continued ../...

2. In any instance where a local has a genuine complaint, Murnane & O'Shea would make all reasonable efforts to mitigate the cause of that complaint. They have done so in the recent past at Umera, with the installation of a dust suppression system following a complaint to the quarry manager. Unfortunately, the process does not accommodate this approach.

The comparison between the Inchafune and Umera pits is not justified. These pits have widely differing planning histories.

The plant on site received planning in 1978. Any movement of the plant or additions, by way of lagoons, is exempt development. The scope of the development was indicated to the Council in drawings submitted with the planning application in 1978. Any issues of intensification should have been addressed at that time (as it was at Inchafune when planning retention was sought for the washing plant installed there). Any reasonable interpretation of the size of the pit on the appointed day would include the esker (a distinct geological feature) representing the gravel deposit. The pit is not defined by what has been extracted, as interpreted by the Council, but by the extent of the deposit, land ownership and natural or man-made, physical boundaries.

Murnane & O'Shea refute the Council's stance that the activities at Umera are unauthorised. Murnane & O'Shea intend to comply with Section 261 when it is brought into effect, with the registration of the Umera pit.

I trust that this clarifies the situation. If you have any queries, please contact the undersigned.

Yours sincerely

Dan Keohane
for and on behalf of **Fehily Timoney & Company**

Our Ref: Q:/2003/190/06/Let002/DK

Ms. Yvonne O'Mahony
Planning Enforcement Section
Planning Department
Cork County Council
Model Business Park
Model Farm Road
Cork

12 September 2003

RE: Warning Letter EF/03/0126– Planning Ref. No. 78/1365

Dear Ms. O'Mahony

I refer to the Council's correspondence of 29th July 2003 in relation to the quarrying activities at Umera, Macroom, County Cork. As advised in previous correspondence, Murnane & O'Shea have retained Fehily Timoney & Company to carry out an assessment of the planning status of this development.

Having reviewed planning file S/78/1365, FTC is of understanding that that planning application refers to the installation of gravel processing plant at an existing gravel pit. The 'site' outlined in that application refers only to the installation of the plant in question, i.e., gravel washing plant and settling lagoons. The 'site' does not refer to the extent of the quarrying operation.

The maps included with the application show the area that the operator had legal entitlement over – i.e. the area leased from the owner of the gravel pit at the time of the application. Since that application was submitted, the land leased was extended. The quarry was active since the 1940s, prior to the enactment of the planning regulations. It is shown as a quarry on the Ordnance Survey maps dating from 1974.

The activities at the quarry and the planning application must be considered in the context of the regulations in effect at that time.

Cont'd.....

The current planning regulation (SI No. 600 of 2001) require that:

- The site be outlined in red
- Lands adjoining the site and in the control of the applicant be shown in blue
- Lands adjoining the site and in the ownership of the person who owns the lands which is the subject of the application be outlined in blue.

The planning regulations in effect at the time of the 1978 application (SI No. 65 of 1977) did not require the same level of detail. The full extend of the sand/gravel reserve is not shown on any of the maps, nor is the full land holding of the landowner. As the application did not refer directly to the quarry, but rather an aspect of the quarrying process, the applicant did not delineate the full extend of the quarry. The regulations did not require him to do so.

FTC therefore contends that the operations at the quarry are in compliance with the permission granted under S/78/1365 and respectfully submit that no enforcement action is required.

I trust that this clarifies the situation. If you have any queries, please contact the undersigned.

Yours sincerely

_____

Dan Keohane
for and on behalf of **Fehily Timoney & Company**

APPENDIX 2

S261 APPLICATION DOCUMENTS DATED 10 SEPTEMBER 2004

FEHILY TIMONEY & COMPANY

CONSULTANTS IN ENGINEERING & ENVIRONMENTAL SCIENCES

Our Ref: Q:/2003/190/06/Let009/DK

Planning Department
Cork County Council
Model Business Park
Model Farm Road
Cork

09 September 2004

RE: Umera Pit Macroom – Registration Under Section 261 of Planning & Development Act, 2000

Dear Sir/Madam

Please find enclosed the following information in relation to the registration of the sand/gravel pit at Umera Macroom:

1. Completed Application form
2. Site Map
3. Planning permission (Ref. No. S/78/1365)

If you have any queries, please contact the undersigned.

Yours faithfully

Dan Keohane
for and on behalf of **Fehily Timoney & Company**

CC: Mr. Eugene Murnane, Drimoleague Concrete Works Ltd

CORE HOUSE POULADUFF ROAD CORK IRELAND
TEL.: +353 21 4964133 FAX.: +353 21 4964464 E.MAIL: info@ftco.ie Web Site: www.fehilytimoney.ie

Directors: E. Timoney BE CEng FIEI MICE MCIWEM RConsEI D. O'Sullivan BE CEng MIEI RConsEI G. O'Sullivan BE CEng FIEI RConsEI W. Quirke Dip Ag
Company Secretary: A. Keohane Associates D. Egan BSc MSc D. Keohane BSc MSc
Registered in Dublin, Ireland, Fehily Timoney & Co. Ltd. Number 180497 Registered Office: Core House, Pouladuff Road, Cork. VAT Registration Number: IE 6580497 D

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Appendix D

APPLICATION TO LOCAL AUTHORITY FOR REGISTRATION OF A QUARRY UNDER SECTION 261 OF THE PLANNING AND DEVELOPMENT ACT, 2000

NAME OF PLANNING AUTHORITY – CORK COUNTY COUNCIL

• Name of owner/operator of quarry(s):	Drimoleague Concrete Works Ltd.
• Address	Umera Macroom County Cork
• Telephone number:	028-31209
• E-mail address (if any):	info@murnane-oshea.ie
• If owner/operator is a company-	
Name of Company:	Drimoleague Concrete Works Ltd.
Name of Company Directors:	D.J. Murnane, D. O'Shea, J.M. Enright
Registered Address of Company:	Bredagh Cross Drimoleague County Cork
Companies Office Registration Number:	77810
• Location, townland or postal address of quarry concerned: Please indicate an Ordnance Survey Map Ref No, and the Grid Reference where available. A site location map to a scale of not less than 1:2500 should also be attached. The map should indicate (a) the site boundary (outlined in red) and (b) the current workable area (outlined in blue).	Umera, Macroom OS Map CK071-06 & 02 National Grid Ref: East 137 N 074 See map attached
Was planning permission under Part IV of the Local Government (Planning and Development) Act, 1963 granted? If YES, please quote the reference number of the permission and include a copy. Plan Ref. No.	YES x NO Planning Ref. No. – S/78/1365 Copy Attached

• Did the quarry commence operation before 1 October 1964? If YES, please supply any available documentary evidence.	YES x NO None available
• Total site area of quarry (hectares):	17ha (Blue line)
• Extraction area of quarry (hectares):	To Date: ha approx
• Types of material being extracted:	Sand and Gravel
• Date which quarrying commenced on the land? (If operation of the quarry was only periodic, please give details of dates of operation, if known – See Chapter 5).	Pre 1964 Reportedly in the 1940's
• Quarry operating hours: (i) Plant operating hours: (a) Weekdays (b) Saturdays (ii) Loading/Off-site Haulage Hours (if different from above): (a) Weekdays (b) Saturdays (iii) Hours (outside normal opening hours) required to service exceptional customer requirements:	 07:00 to 18:00 07:00 to 18:00 as above 18:00 to 21:00
• The traffic generated by the operation of the quarry? (Type and frequency of vehicle entering and leaving the quarry).	HGVs – 100 movements Cars – 20 movements Cars w/trailers – 20 movements
• Please give details of emissions (noise, dust, water etc.) from the quarry where measurements are available).	No measurements available.
Please note that any changes to the particulars noted above must be brought to the attention of the planning authority as soon as possible.	
Name (BLOCK CAPITALS):	JEREMIAH E WRIGHT
Signature:	
Position with firm/company[2]:	Director / Secretary
Date:	24/8/04

[2] Where registration is on behalf of a company, the form must be signed by a company director/secretary

(14)

CORK COUNTY COUNCIL.

APPLICATION FOR * Permission FOR + Comm. DEVELOPMENT.

Reg.No. _____

I/We Murrano & O'Shea Ltd., Glengarriffe Road, Bantry per

OF J. & N. Murphy, BB.E., Macroom @

Hereby apply to Cork County Council for * Permission to carry out development namely:

Erection of Gravel Plant in existing Pit @ Ummera, Macroom

At Ummera, Macroom. (Townland Road etc.)

as described in the particulars given hereunder and the drawings attached hereto.

Reg. No. 1365/78
PLANNING DEPARTMENT
17 APR 1978
CORK COUNTY COUNCIL
County Hall, Cork

Signature of Applicant: for J&N Murphy.

DATE 14th April 1978

* Insert Permission or Approval.
+ Insert Industrial or Commercial.
@ Unless otherwise indicated, correspondence will be sent to this address.
O In the case of Registered Company, the full address of its registered office must be stated.

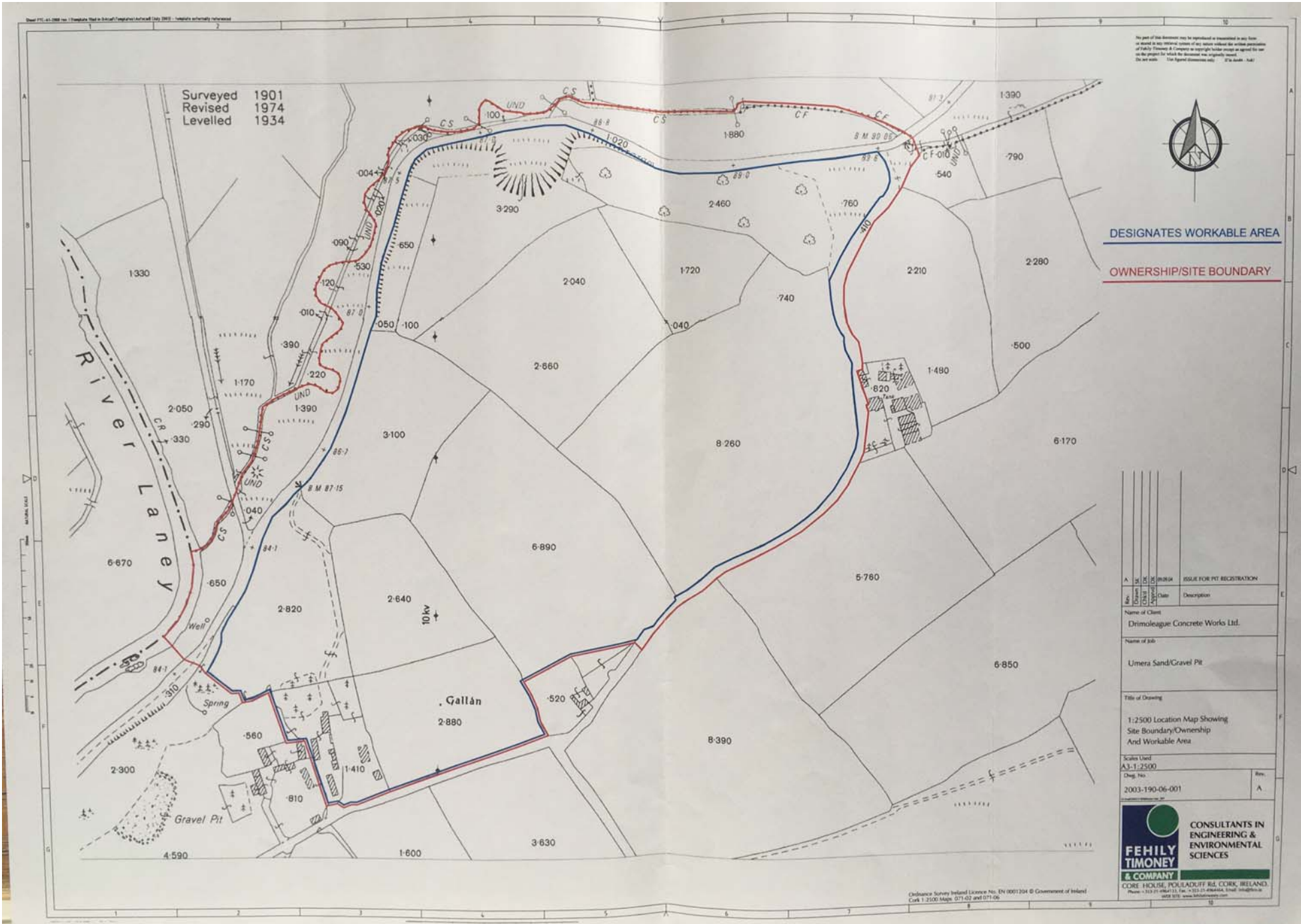
PARTICULARS OF DEVELOPMENT PROPOSED.

1. (a) Name and Address of site owner. (b) Details of your interest in site. e.g. have you purchased it or contracted to do so.?	(a) D. McSweeney, Ummera, Macroom. (b) Leased for gravel extraction.
2. Name and address of person who prepared plans and drawings.	J. & N. Murphy.
3. Total floor area in sq. ft. or sq. metres (i.e. sum of the area in all floors measured inside the external walls.)	N/A.
4. Description of buildings and materials to be used in them. (a) Floors. (b) Walls and Partitions. (c) Roof.	Nature / Colour (a) (b) N/A - Gravel plant (c) is only item being erected.

5. Nature and colour of proposed external materials: (a) Roofs, (b) Front Walls. (c) Side Walls. (d) Rere Walls. (e) Road Boundary Walls (f) Other Boundary Walls (g) Building other than main buildings.	Nature: Colour (a) (b) (c) N/A. (d) (e) (f) (g)
6. Special reasons (if any) for the selection of this particular site.	As contractors working in the Macroom area, the applicants have experienced some difficulties in regard to the supply of gravel and sand in the area, and this was the only available site which they could obtain to develope themselves.
7. Has Outline Permission been obtained or refused and please quote Reg.No.	N.A.- existing pit.
8. Acreage of site.	5.00 acres
Intended use of building with details of process including raw materials and products.	The application is for the installation of a plant to screen and wash gravel, and no buildings other than the plant itself are involved, and as regards emissions, there would be no net emissions, as it is proposed to re-cycle the wash-water, and the plant would be electrically powered, eliminating the greatest noise source.

N.B. The details required under Items 9-16 may be submitted on a separate schedule.

10. Details of [illegible] emissions - e.g. smoke, odour, noise, dust etc. and proposals for control.	
11. Details of all liquid effluents and solid wastes and disposal methods.	
12. (a) Estimate of no. of employees. (b) Estimate of traffic likely to be generated.	(a) 2 or 3 in pit. 2 or 3 in lorries (b) 2 or 3 lorries, av. 4 trips/day.
13. How supplied with water - process and cooling. Method of disposal of cooling water with temperature details etc.	Initally pumped from stream across road (adjoining settlement lagoon). Rainfall to lagoon or possible pumping from stream to replace water evaporated and retained in washed gravel.
14. Have you discussed your proposal with Council's Chief Fire Officer?	No.
15. Energy/power source. Give details.	E. S. B. H.T. line - already on site
16. Storage of materials /products. Give details of open and covered storage proposed.	Wash-water stored in settlement lagoon. If council desire, lagoon will be moved to main pit area as soon as space is available.


Surveyed 1901
Revised 1974
Levelled 1934
River Laney
Gallán
Well
Spring
Gravel Pit
DESIGNATES WORKABLE AREA
OWNERSHIP/SITE BOUNDARY
A SK DK DK 09.09.14 ISSUE FOR PIT REGISTRATION
Rev. Drawn Chkd Apprvd Date Description
Name of Client
Drimoleague Concrete Works Ltd.
Name of Job
Umera Sand/Gravel Pit
Title of Drawing
1:2500 Location Map Showing
Site Boundary/Ownership
And Workable Area
Scales Used
A3-1:2500
Dwg. No. 2003-190-06-001
Rev. A
FEHILY TIMONEY & COMPANY
CONSULTANTS IN ENGINEERING & ENVIRONMENTAL SCIENCES
CORE HOUSE, POULADUFF Rd, CORK, IRELAND.
Ordnance Survey Ireland Licence No. EN 0001204 © Government of Ireland
Cork 1:2500 Maps: 071-02 and 071-06

APPENDIX 3

COUNCIL NOTICE UNDER SECTION 261(5) DATED 14 SEPTEMBER 2005
AND
COUNCIL PRESS NOTICE DATED 18 MARCH 2005

Comhairle Contae Chorcaf
Cork County Council

Planning Department,
Model Business Park,
Model Farm Road, Cork
Tel.: (021) 4867006 • Fax: (021) 4867007
Em Ah planningknfo@corkcoco.ie
Wchc www.corku► co.ie

An Rann6g Pleanala,
Modhph .itc Gnb,
BOthar as Modhfheirme, Cowcaigh.
1'6n; (021) 4867006 • Fake: (021) 4867007
R-phoat: planuinginfo@vorkcoco.ir
Suiiomh Greaa6in, www.corkcoce.ic

Drimoleague Concrete Works Ltd
Umera
Macroom
Co Cork

14 September, 2005

Re: Quarry Registration
Notice under Section 261 (5), Planning and *Development* Act *2000*
Quarry Registration Index No. QR01
Lands at Ummera, Macroom

A Chara

I refer to your application for quarry registration, QR01 relating to lands at Ummera, Macroom, and to the press notice concerning the planning authority's intentions with regard to it, which appeared in The Irish Examiner on March 18th, 2005.

Following consideration *of* all ***responses*** to that press notice the planning authority re-affirms its proposed actions with regard to the registration of this quarry.

These are as follows:

- To modify and **add to conditions** relating to the area **covered** by the permission granted under Ref No.76/375
  and
- To require a planning application and submission of an Environmental Impact Statement **on the balance of the** total **quarry** area.

The reasons for these proposed actions are that it is considered that this quarry **has significant effects on the environment.**

Further submissions on these **proposals may be made within 6 weeks of receipt** of this notice.

Please also take notice **that** the **planning application and submission of** an Environmental Impact Statement **on the balance** of the **total** quarry **area** is required to **be lodged** not later than 6 months from the date of service of this notice.

Mise, le meas

Qifigeach Foirne
PLANNING DEPART T

PLANNING & DEVELOPMENT ACT 2000
SECTION 261

NOTICE OF QUARRY REGISTRATION

Quarry Registered on September 10th 2004

Details:

- Owner/Operator: Murnane & O'Shea Ltd.
- Location: Ummera, Macroom.
- Total Area: 17 Hectares
- Date Quarrying Began: Pre 1964
- Materials Excavated: Sand and Gravel
- Additional Processes: Washing
- Previous Planning Permissions: Ref. Nos. 76/375, 78/1365

Proposed Action by the Planning Authority:

- To modify and add to conditions relating to the area covered by the permission granted under Ref. No.76/375
  and
- To require a planning application and submission of an Environmental Impact Statement on the balance of the total quarry area.

This application for quarry registration may be inspected at the offices of The Planning Department, Cork County Council, Model Farm Business Park, Model Farm Road, Cork between the hours of 9.00 am and 4.00pm, including lunch hour, Monday to Friday (excluding public holidays). A submission or observation in relation to the operation of this quarry may be made in writing to the planning authority at the address given above within 4 weeks of the date of this notice.

Dated this 18th March 2005

PLANNING & DEVELOPMENT ACT 2000, SECTION 261 QUARRY REGISTRATION

Cork County Council would like to remind all owners and operators of quarries in County Cork that, under the terms of Section 261 of the Planning and Development Act, 2000, it is required that the details of all quarries (including 'pre-planning' quarries that were in operation before October 1st 1964), except those for which planning permission was granted in the 5 years before section 261 became operative (i.e. in the 5 years before April 28th 2004), must be registered by their owners or operators with their planning authority by **April 27th 2005.**

The required details include information on the area of the quarry, the material being extracted, the hours of operation and the traffic, noise and dust generated by the quarry.

Following registration and consultation, the planning authority may impose conditions on the operation of a pre-1964 quarry or may require such a quarry to apply for planning permission in certain circumstances. Authorities will also be able to restate, modify or add to conditions on the operation of a quarry, which received planning permission before April 28th 1999.

Application forms for quarry registration may be obtained from The Planning Department, Cork County Council, Model Farm Business Park, Model Farm Road, Cork or downloaded from www.corkcoco.ie

PLANNING & DEVELOPMENT ACT 2000, SECTION 261 NOTICE OF QUARRY REGISTRATION

Quarry Registered on September 10th 2004

Details:

- Owner/Operator: Murnane & O'Shea Ltd.
- Location: Ummera, Macroom.
- Total Area: 17 Hectares
- Date Quarrying Began: Pre 1964
- Materials Excavated: Sand and Gravel
- Additional Processes: Washing
- Previous Planning Permissions: Ref. Nos. 76/375, 78/1365

Proposed Action being considered by the Planning Authority:

- To modify and add to conditions relating to the area covered by the permission granted under Ref. No.76/375 and
- To require a planning application and submission of an Environmental Impact Statement on the balance of the total quarry area.

This application for quarry registration may be inspected at the offices of The Planning Department, Cork County Council, Model Farm Business Park, Model Farm Road, Cork between the hours of 9.00 am and 4.00pm, including lunch hour, Monday to Friday (excluding public holidays). A submission or observation in relation to the operation of this quarry may be made in writing to the planning authority at the address given above within 4 weeks of the date of this notice.

John O'Neill, Director of Planning
18th March 2005

(NORTHERN DIVISION)
NOTICE UNDER SECTION 179 OF THE PLANNING & DEVELOPMENT ACT 2000 & PART 8, ARTICLE 81 OF THE PLANNING & DEVELOPMENT REGULATIONS 2001.

Pursuant to the requirements of Part 8 of the Planning & Development Regulations 2001, notice is hereby given that Cork County Council (North) proposes to carry out development at Ballyhea, Charleville, Co. Cork, particulars of which are set out in the schedule hereunder.

The development consists of 1 No. 5 Bed Unit.

Plans and particulars

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1. Tógfar
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ó 9.00 r.n.

2. Seo mar
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APPENDIX 4
DCWL SUBMISSION - DATED 24 OCTOBER 2005

Planning Department
Cork County Council
Model Business Park
Model Farm Road
Cork

24 October 2005

RE: Quarry Registration QR01 – Ummera, Macroom

Dear Sir/Madam

I refer to the Council's correspondence of 14 September 2005 in relation to the registration of the sand/gravel pit at Ummera, Macroom, County Cork. In that correspondence, the Council have indicated its proposed actions

1. To modify and add to conditions relating to the area covered by the permission granted under Ref No. 76/375
2. To require a planning application and submission of an Environmental Impact Statement on the balance of the total quarry area.

The purpose of this letter is put forward the reasons why Drimoleague Concrete Works Ltd (DCWL) should not be required to apply for planning permission (with EIS) for the pit.

The pit at Ummera has been in operation since the 1940's. In 1978 planning permission was sought and granted for the installation of a washing plant and settlement lagoons. This infrastructure is still in use today. It is DCWL position that the pit is

1. Pre-1963
2. That the pit forms a well-defined gravel deposit in the form of a single esker. This is a geological feature that one would reasonably expect to be worked.
3. This deposit is in the ownership of one landowner and has been in that folio since 1912. There are no man-made or natural boundaries to the pit, which have been crossed.

DCWL position was put to the Council in correspondence to the Enforcement Section dated 15 March 2004. The Council did not respond to that submission, so it was taken that the position presented, and summarised in the bullet points above, was accepted.

The reason that the Council require a planning application and EIS is that the pit '*has significant effects on the environment*'. This is refuted for the following reasons:

Keohane Geological & Environmental Consultancy, 57 Foxwood, Rochestown, County Cork
Phone 086-8289167; email dkck@eircom.net.
VAT Registration No. 6952843Q. Company Registration No. 278742

1. This is a small-scale operation. There is one operator employed at the pit and the processing is carried out using plant installed in 1978. The throughput at the pit is typically 900 tonnes per week. Approximately half of this is taken to Bredagh Cross for concrete manufacture - this equates to 3 loads per day. The remainder is collected by local builders and farmers using small trucks and trailers. To put this in context, in many pits in Cork, this would reflect an hourly output. For example, a pit in Ovens was granted permission (03/4253) for an extraction rate of 11,500 tonnes per week – 13 times that of the Ummera pit.
2. DCWL is voluntary implementing an Environmental Management System (EMS) at the site in accordance with ICF (Irish Concrete Federation) best practice. The ICF has carried out an independent audit of the pit, and recommendations made for environmental improvements are being carried out.
3. Noise emissions are controlled by the siting of the washing plant below ground level. The nearest noise sensitive receptors do not have line of site to the pit workings – refer to photographs. These residences are screened by earthen berms around the perimeter of the pit and also a temporary berm at the edge of the pit workings. In addition,
    a. The washing plant has had rubber screening mats installed to reduce noise emissions, in line with industry best practice.
    b. There are no steep gradients in the pit that would require revving or gearing of HGVs entering/leaving the pit.
    c. The pit is worked from 9am to 6pm, with earlier closing times in winter months. There are no noise emissions from the pit at night.
    d. Qualitative assessment of noise levels at both residences indicates that the pit workings are only just audible. Monitoring of noise levels will be carried out as part of the EMS.
4. There is no blasting at the pit or other sources of vibration that could impact sensitive receptors.
5. DCWL has installed a sprinkler system on the access road to the pit, around the floor of the pit and around the working face of the pit to control dust emissions – refer to attached photographs. In addition,
    a. There is also a temporary berm located adjacent to the pit workings that limits dust emissions.
    b. The gravel is washed so that the product is damp when stored.
    c. The product is stored in concrete bays beneath the washing plant. It is therefore protected from the wind. There is no stockpiling of finished product.
    d. Dust monitoring has commenced to determine dust levels at the pit boundary. A dust monitoring programme will be established as part of the EMS for the pit. Going forward, monitoring will be carried out between April and September.
6. A tributary of the River Laney flows along the northern boundary of the landownership. The stream is separated from the pit workings by the public road. The original settlement lagoons were installed in the lands between the stream and the road. The intake for the washing plant is located in this area. There are however no emissions to surface water. The wash water used in the processing plant is recycled. The wash water is directed to settlement ponds on site, before crossing the public road to the pump intake. This is essentially a closed system.

Keohane Geological & Environmental Consultancy, 57 Foxwood, Rochestown, County Cork
Phone 086-8289167; email dkck@eircom.net.
VAT Registration No. 6952843Q. Company Registration No. 278742

7. DCWL will make improvements to the site entrance to control surface water runoff from the site access road. This will include paving and the installation of a grit trap. Surface water runoff will be directed to the existing roadside drainage system.
8. Diesel is stored on site in a small plastic tank. This tank is being replaced by a double skin tank and a concrete pad is being provided as a refuelling area. The risk of discharge to groundwater will therefore be reduced. There is no dewatering of groundwater carried out at the pit. The vertical extent of excavation is controlled by the presence of a silty stratum, which is above the groundwater table. This silty stratum has been investigated to depths of greater than 3m.
9. Waste generated on site is managed in the following ways
    a. Domestic waste generated by the operator is taken off site at the end of each day.
    b. The machinery is serviced from Bredagh Cross, so any waste arisings, such as waste oil and filters etc, are taken back to Bredagh Cross.
    c. Metal (screens, rollers, etc) and conveyor belts are stored in a designated area on site. This material is sometimes re-used. Any scrap metal is periodically taken off site by a permitted waste collector (e.g. Cork Metal Company).
    d. Silt collected in the settlement ponds adjacent to the washing plant will be re-used in site restoration. The original ponds do not accumulate silt and are not cleaned out.
10. The site is reasonably well screened from view. There are distant views (circa 700m) of the site from the north – refer to photographs. Near views of the site are screened by natural topography, mature trees, berms and/or screen planting. Attached is a drawing showing proposals for initial landscape and restoration plans for the pit. It is proposed to keep the working area to less than 5ha to minimise the potential visual impact. Furthermore, it is proposed to plant additional screening trees along the northern berm.
11. The pit is located in agricultural land used for pasture and arable farming. There are no sensitive ecological habitats in the environs of the pit. Nor is it located in or near an NHA or cSAC. There will be no important habitats lost as a result of the pit. The progressive restoration of the pit will balance the loss of agricultural land as the pit advances.
12. There is a standing stone (CO071-057) within the pit area. Advice will be sought from an archaeologist on the appropriate treatment of the excavations around this standing stone. There is also a fulacht fiadh (CO071-058) near the confluence of the River Laney and the tributary that flows along the northern site boundary. This feature will not be disturbed by site operations.
13. The site perimeter has been secured from unauthorised, casual public access – refer to attached photographs. The safety officer for Murnane & O'Shea has audited the site and appropriate fencing and warning signs have been erected in accordance with the safety officer's recommendations. The settlement ponds and primary screen have been fenced off, and appropriate warning signage erected. The pit has a safety statement in accordance with the Murnane & O'Shea Group requirements.

Keohane Geological & Environmental Consultancy, 57 Foxwood, Rochestown, County Cork
Phone 086-8289167; email dkck@eircom.net.
VAT Registration No. 6952843Q. Company Registration No. 278742

As the operation is such a small scale and because of the effective environmental controls at the pit in accordance with industry best practice, DCWL contend that it would be unlikely to have a significant effect on the environment. Furthermore, DCWL is voluntarily carrying out environmental improvements following an audit of the pit by the ICF. These improvements are set as the targets and objectives for the pit in the coming year.

In addition and without prejudice, I would like to bring to the Council's attention the following

1. Drimoleague Concrete Works Ltd (DCWL) submitted the registration documentation to the Council on 10 September 2004. The newspaper advertisement for the Ummera pit was placed after the statutory 6-month period (as required by Section 261(4)(a) of the Planning & Development Act, 2000). The advertisement was placed on 18 March 2005.
2. As the advertisement was placed outside the statutory period, it is questionable whether submissions received can be considered by the Council. In any event, the submissions were not placed on the public file.
3. DCWL was not given notice of the Council's proposed actions (as required by Section 261(5)(a)) in a timescale that would allow DCWL a 6-week response period and to have that response considered by the Council as required under Section 261(5)(c).
4. DCWL was given notice by the Council of its proposal to seek a planning and EIS in correspondence dated 14 September 2005. This is outside the statutory 1-year period (as required by Section 261(7) of the Planning & Development Act, 2000).
5. Planning file 76/375 is not available in the planning office. The area to which it relates is indicated on the Council planning maps (pre-1987 maps) as the 3.100 acre field located mid way along the western boundary of the pit. DCWL reserves its position on 76/375 until such time as the Planning Department makes the file available and we have an opportunity to review it.

Because of the above, DCWL is of the opinion that the proposed actions to require a planning and EIS are no longer available to the Council. DCWL suggests that the appropriate course of action is to pursue Section 261(6)(a) within the 2-year statutory period.

I trust that this clearly sets out DCWL position on the registration of the Ummera pit. If you have any queries, please contact the undersigned.

Yours sincerely

_____

Dan Keohane

Cc: Mr. Eugene Murnane, Drimoleague Concrete Works Ltd, Bredagh Cross, Drimoleague

Encl.

Keohane Geological & Environmental Consultancy, 57 Foxwood, Rochestown, County Cork
Phone 086-8289167; email dkck@eircom.net.
VAT Registration No. 6952843Q. Company Registration No. 278742

ATTACHMENTS

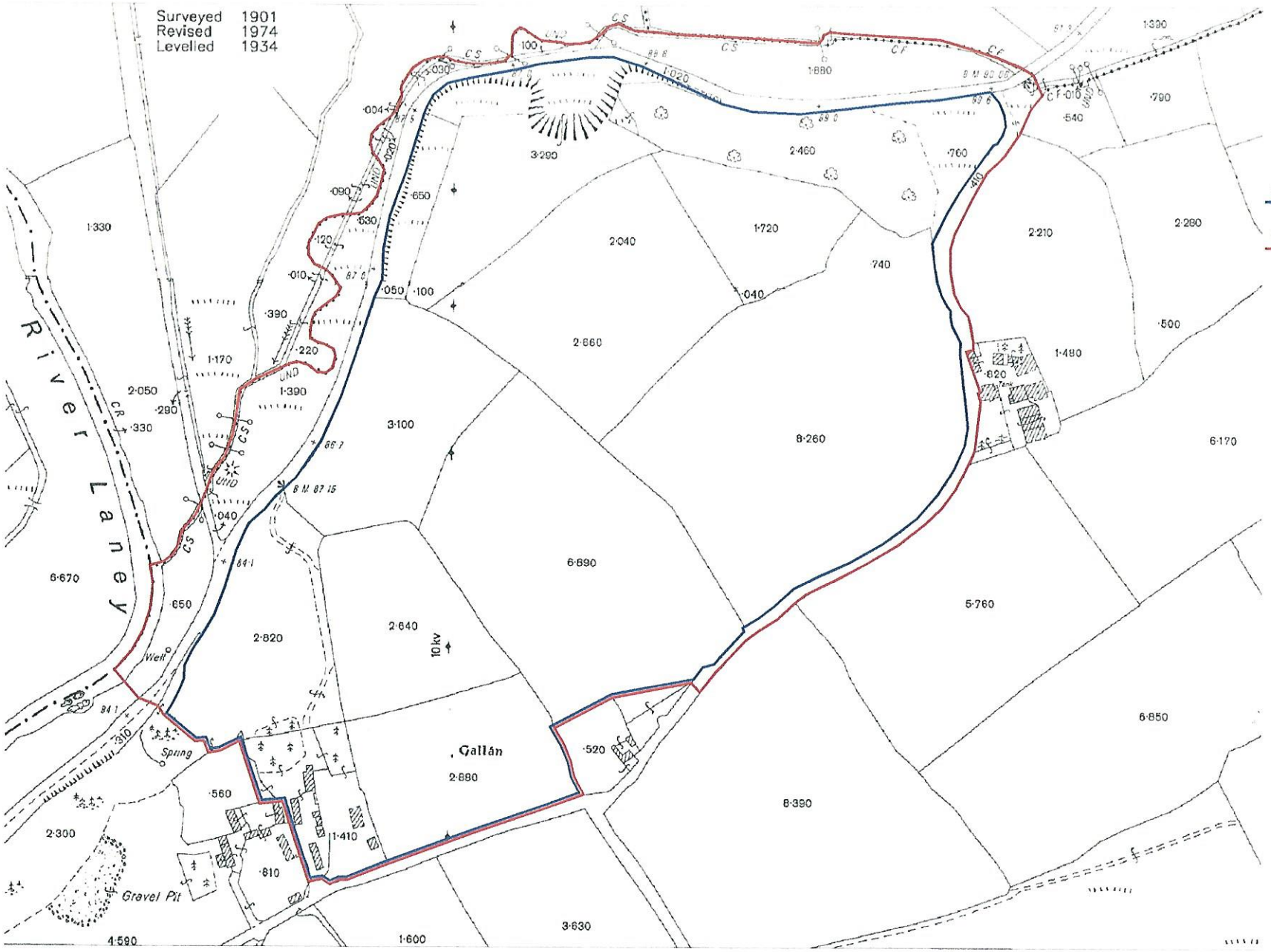
Attachment 1 - Drawings

Drawing 001 – Site Location Map (as submitted with the quarry registration)
Drawing 002 – Site Layout Plan Showing Current Workings, Environmental Monitoring Locations and Area to be Restored & Landscaped

Attachment 2 - Photographs

Keohane Geological & Environmental Consultancy, 57 Foxwood, Rochestown, County Cork
Phone 086-8289167; email dkck@eircom.net.
VAT Registration No. 6952843Q. Company Registration No. 278742

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DESIGNATES WORKABLE AREA

OWNERSHIP/SITE BOUNDARY

Rev.	Drawn	Ckd'd	Chk'd	Appr'd	Date	Description
A	SK		DK		09.09.04	ISSUE FOR PIT REGISTRATION

Name of Client
Drimoleague Concrete Works Ltd.

Name of Job
Umera Sand/Gravel Pit

Title of Drawing
1:2500 Location Map Showing
Site Boundary/Ownership
And Workable Area

Scales Used
A3-1:2500

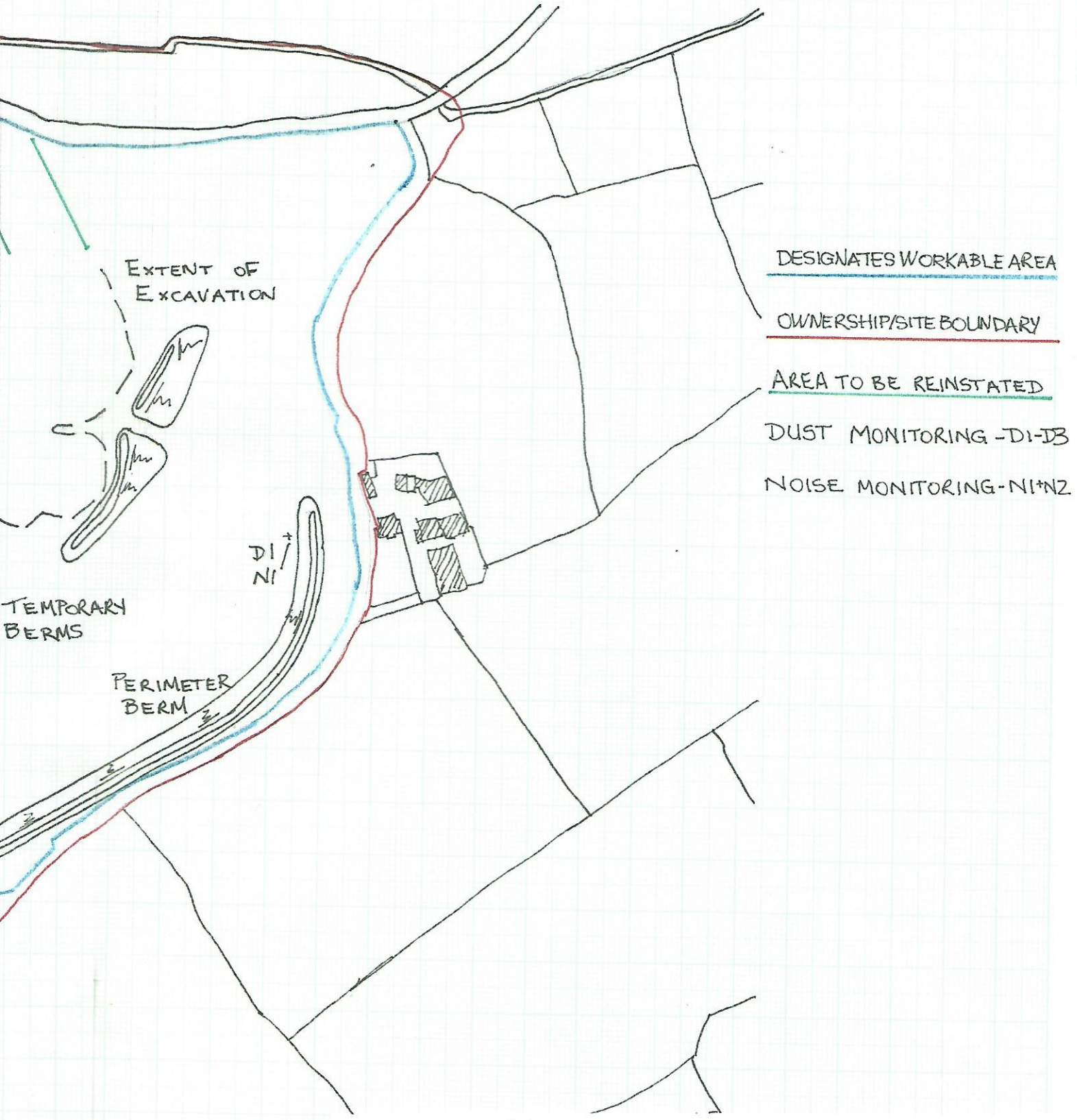
Dwg. No. 2003-190-06-001

Rev. A

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Cork 1:2500 Maps 071-02 and 071-06

FEHILY TIMONEY & COMPANY
CONSULTANTS IN ENGINEERING & ENVIRONMENTAL SCIENCES
CORE HOUSE, POULADUFF Rd, CORK, IRELAND.
Phone:+353-21-4964183, Fax.:+353-21-4964484, Email:info@fehily.ie
WEB SITE: www.fehilytimoney.com


N
River Laney
POND
POND
PLANT
ACCESS ROAD
SITE ENTRANCE
TEMPORARY BERMS
D3
D2/+ N2



QUARRY REGISTRATION AT UMMERA, MACROOM
QR01
for
DRIMOLEAGUE CONCRETE WORKS LTD

Designed by DK	Checked by DK	Approval Date - 24 Oct 2005	Scale - 1:2,500
KEOHANE GEOLOGICAL & ENVIRONMENTAL CONSULTANCY		SITE LAYOUT PLAN & ENVIRONMENTAL MONITORING POINTS	



Photo 1 – Looking South Towards Pit. Note Mature Trees on West & North Boundary of Pit



Photo 2 – Looking Northwest Towards Pit from Near Dwelling to East of Pit. Note Temporary Screening Berms. Also Note That Operations are Out of View.



Photo 3 – Shows Sprinkler System at Top of Pit.



Photo 4 – Shows Boundary Security Fencing and Perimeter Berm on Southeastern Boundary. Note Temporary Berm in Background.

APPENDIX 5

COUNCIL CORRESPONDENCE DATED 28 OCTOBER 2005

Comhairle Contae Chorcaí
Cork County Council

Planning Department,
Model Business Park,
Model Farm Road, Cork.
Tel.: (021) 4867006 • Fax: (021) 4867007
Email: planninginfo@corkcoco.ie
Web: www.corkcoco.ie

An Rannóg Pleanála,
Modhpháirc Gnó,
Bóthar na Modhfheirme, Corcaigh.
Fón: (021) 4867006 • Faics: (021) 4867007
R-phost: planninginfo@corkcoco.ie
Suíomh Gréasáin: www.corkcoco.ie

Mr Dan Keohane
Keohane Geological & Environmental Consultancy
57 Foxwood.
Rochestown
Co. Cork

October 28th 2005

Ref. No. QR01

Dear Mr Keohane,

Quarry Registration
Section 261, Planning and Development Act 2000

I refer to your letter of 24 October 2005 concerning the above.

The planning authority does consider that this quarry 'has significant affects on the environment', notwithstanding your arguments refuting this.

However, we have now reviewed our proposals for registering this quarry. This is based on the changed context since writing to you on September 14th 2005 resulting from having visited and researched more than 70 other quarry sites and in the light of further guidance received.

We have found that there are a significant number of quarries for which registration has been sought and where planning permission has been granted on only a part of the active quarry site. We now consider that the appropriate course of action in such cases is to modify and add to conditions relating to any relevant previous planning permission.

Therefore, in the interests of equity, the planning authority now intends to modify and add to the conditions that were imposed on the QR01 quarry under planning permission ref. no. 76/375.

In view of this you are now requested to respond to the attached further information questionnaire in respect of the whole QR01 site area within 8 weeks of the date of this letter.

If any of the questions should not be relevant to the specific circumstances of the present case would you please indicate this by stating 'not applicable' after the relevant question number. However, a detailed and appropriately comprehensive response will facilitate the processing of this registration application and you may be

Recycled

aware that a failure to respond to a request for further information could result in this quarry development becoming unauthorised [Sec.261 (10) (a) of the Act].

Yours faithfully

Ger Shine
Senior Executive Officer

APPENDIX 6

COUNCIL REPORT & S261 CONDITIONS

S261
25/8/2006

Registration Number:	**QR01**
Owner/Operator:	**Drimoleague Concrete Works Ltd.**
Quarry Location:	**Ummera, Macroom**
Total land holding:	18.96 Hectares (Extracted area: 7.19Ha approx.)
Materials Excavated:	Sand & Gravel

Previous Planning Permissions on site:
375/76: Daniel & Sean Lordan, "Opening of Gravel pit"
1365/ 78: Murnane & O'Shea Ltd., "Gravel plant in existing pit".

An application to register the quarry under Section 261 of the Planning & Development Act 2000 was received by the planning authority on 10/9/04. In accordance with Section 261 (4), notice of the registration of the quarry was published on the Irish Examiner on 18/3/2005 and subsequent to this notice, 3 no. submissions / observation were received (copies attached).
On 28/10/2005 the applicant / operator was informed that the appropriate course of action regarding the application was to modify and add to the conditions imposed under planning ref. 375/76. In view of this, the operator was requested to respond to the attached further information questionnaire.
A response to the further information questionnaire was received by the planning authority on 15/12/2005. Additional further information in response to the council's registered letters dated 16/1/2006 and 7/6/2006, was received by the planning authority on 3/3/2006 and 5/7/2006 (respectively). *(Copies of further information and registered letters attached)*
Subsequent to receipt of the further information, reports and recommendations / conditions were sought from the following:
Senior Exec. Planner, Area Engineer, National Roads Office Glanmire, Heritage Officer, Conservation Officer, County Archaeologist, Environmental Department,
Also, comments were sought from the following authorities:
- South Western Regional Fisheries Board
- Department of the Environmant, Heritage & Local Government (Archaeological and Nature Conservation (Nat.Parks & Wildlife Service))

(Copies of all reports and recommendations attached)

Site Description:

The quarry is located approx. 2.5km North-east of Macroom. The Local Primary (LP) road L-3423 runs along the western and northern boundaries of the site and the Local Tertiary (LT) road, L-34231 bounds the eastern side of the site. Access to the site is via an entrance onto the L-3423.
The River Laney (a tributary of the River Lee) is located to the west of the site. The site is located along a valley where the Clashavoon stream runs along the northern and western boundaries of the site and enters the River Laney to the south-west of the site. There are existing dwelling sites bounding the application site to the south, south-west and east. There are also other dwellings in close proximity to the north-east and west.

The quarrying activities being carried out at the location involve the extraction and processing / washing of sand and gravel. There is a washing / processing plant in operation at the site, as well as an associated settlement lagoon system, sections of which are adjacent to the Clashavoon stream.

To date, extraction works have taken place on the north-western section of the site. The extraction works / activities are not visible from the L-3423 due to established screening, but are visible from the east and north.

The internal haul roads and the processing area of the quarry, are not hard-surfaced. There is no truck / wheel wash facility in place / operation at the site. There is a sprinkler / water spray system in operation in the quarry. However, there is an issue regarding windblown dust from the quarrying activities, in the vicinity of the quarry

From an archaeological viewpoint, there are 2 no. known sites within the land holding. These are a standing stone (CO071-057) and a fulacht fiadh (CO071-058)

Recommendation:

In accordance with Section 261 of the Planning & Development Act 2000 and having regard to the submissions / observations made pursuant to notices under Section 261(4) and 261(5) and all reports / recommendations received, I recommended that the conditions of the original planning permission (Ref. no. 76/375) be modified and added to in accordance with Section 261(6) and **the attached schedule and list of conditions be applied.**
This recommendation is made subject to the pending report of the Senior Executive Planner (particularly on issues of reinstatement, areas / buffer zones, etc) and subject to legal opinion on the structure of conditions, regulating the development and use of the lands, contribution conditions, etc.

.....

Reamonn Walsh
A/S.E.E.
25/8/2006

CORK COUNTY COUNCIL

Quarry Registration

Notice under Section 261 Subsection 6 of the Planning and Development Act, 2000.

Quarry Registration Index No. QR01
Lands at Ummera, Macroom

Drimoleague Concrete Works Ltd.
Murnane & O'Shea
C/o Dan Keohane
Keohane Geological & Environmental Consultancy
57 Foxwood
Rochestown, Co. Cork.

PURSUANT to the provisions of Section 261 Subsection 6 of the Planning & Development Act, 2000 the Council of the County of Cork has by Order Dated 07/09/06 decided to modify and add to the Conditions imposed under Planning Permission Reg. No. 375/76 granted for the operation of the quarry

For: Continued operation of quarry on lands at Ummera, Macroom.

In accordance with the plans and particulars lodged with the Planning Authority on 10/09/04 and amended on 15/12/05 and 03/03/06 and 05/07/06 and subject to the attached schedule of Conditions.

An appeal against a decision of the Planning Authority may be made to An Bord Pleanala by any authorised person before the EXPIRATION of the period of FOUR WEEKS beginning on the day of the giving (i.e. Date of Order) of the decision of the Planning Authority. (SEE NOTES ATTACHED)

Signed on behalf of the said Council

Date: - 7 SEP 2006

Planning Department
County Hall
Cork.

First Schedule.

Having regard to Section 261 of the Planning & Development Act 2000, the provisions of the current County Development Plan, proper planning and sustainable development, any submissions and observations received and the terms and conditions of Planning Ref. 76/375, it is considered that the attached conditions shall apply.

	Condition	Reason
1	The development, including mitigation measures, shall be carried out in accordance with the plans and particulars lodged with this application, as amended by the further plans and particulars received by the planning authority on the15th Dec. 2005, 3rd Mar. 2006 and 5th Jul. 2006, except as may otherwise be required in order to comply with the following conditions.	In the interests of clarity.
2	All plant and surface equipment shall be removed from the site within six months of the date of cessation.	To ensure the rehabilitation of the site, in the interests of visual amenity and to facilitate reinstatement / restoration of the site.
3	Operation hours for all operations and all activity relating to site operations on site, including the transportation of vehicles on site, shall be restricted to between 0700 hours and 1900 hours Mondays to Fridays and between 0700 hours and 1400 hours on Saturdays. No operations shall take place on site on Sundays and Public Holidays.	To prevent noise nuisance.
4	No blasting, rock-breaking or crushing shall take place on the site.	To prevent noise nuisance.
5	No excavation / extraction / quarrying works shall be carried out below the natural ground water (water table) level.	To prevent water pollution
6	Child and stock-proof fencing shall be provided and maintained along the perimeter of the quarry to the planning authority's satisfaction.	In the interests of public safety.
7	The operator of the site shall provide ongoing mobile / fixed contact numbers for the site to the Cork County Council Area Office in Macroom.	To facilitate effective environmental protection.
8	Entrance recess between public road edge and entrance gate shall be set level with public road surface edge The recess and surface finish between the public road edge and the entrance gate shall be to the Planning Authority's satisfaction.	In the interests of road safety
9	Satisfactory sight distance in either direction shall be provided from centre point of entrance to the satisfaction of the planning authority. No vegetation or structure shall exceed lm in height within the sight distance triangle.	To provide proper sight distance for emerging traffic in the interests of road safety.
10	On-site sanitary facilities for quarry staff shall be to the planning authority's satisfaction. Full details of sanitary provisions shall be submitted and agreed with the planning authority within 2 months of the date of this order.	To prevent water pollution
11	All operations on-site shall be carried out in such a manner as to ensure that no odour or dust nuisance occurs beyond the	In the interests of protecting the amenities of the area and preventing environmental pollution.

	site boundary because of such operations.	
12	Dust deposition levels arising out of activities on site shall not exceed 350 milligrammes per square metre per day, averaged over 30 days, when measured at the site boundaries. The monitoring stations shall be installed and operational within 2 months from the date of this order. The location and monitoring stations shall be agreed with the Planning Authority.	In the interests of protecting the amenities of the area and preventing environmental pollution.
13	Soiling levels of ambient dust arising out of activities on site shall be such that the soiling level of standardised sticky pads shall not exceed 3% effective area coverage/day at the site boundaries. Monitoring shall be performed on a seven day average basis or as otherwise directed by the Planning Authority. A control site plus seven sampling locations shall be agreed with the Planning Authority and the monitoring shall be carried out at the applicant's own expense. No spot sample shall exceed 5% EAC. Monitoring of soiling levels shall be carried out when the activity is in operation. The frequency of monitoring and the number of sample sites required shall be reviewed by the Planning Authority after one year. Sampling and analytical methods shall be agreed with the Planning Authority. These methods shall be reviewed during the period of this permission and shall be demonstrated to be equivalent to standard methods agreed with the Planning Authority. The implementation of this programme shall be agreed with the Planning Authority.	In the interests of protecting the amenities of the area and preventing environmental pollution.
14	The wheels and undersides of all vehicles transporting materials from the site shall be washed in a wheel / vehicle washing facility prior to exiting the site. The facility shall be maintained such that no deposits from the site shall be deposited on the public road. Full details and drawings of the wheel / vehicle washing system shall be submitted and agreed with the planning authority within 2 month of the date of this order. These details / drawings shall include for the treatment and recycling of all soiled waters from the wheel / vehicle washing system. There shall be no off-site discharges of soiled water. The wheel / vehicle washing system shall be installed and operational within 4 months of the date of this order.	In the interests of protecting the amenities of the area, preventing environmental pollution and traffic safety.
15	The surface of the site road between the wheel / vehicle washing facility and the site entrance shall be hard-surfaced to the	In the interests of protecting the amenities of the area, preventing environmental pollution and traffic safety.

	planning authority's satisfaction.	
16	All trucks exiting the site shall pass through the wheel / vehicle washing facility prior to exiting the site.	In the interests of protecting the amenities of the area, preventing environmental pollution and traffic safety.
17	No surface water or silt from the site shall be allowed onto the public road. Existing roadside drainage shall be maintained and not obstructed.	To maintain proper roadside drainage.
18	The fixed water spray / sprinkler system shall be installed to the planning authority's satisfaction to include the access road, all internal roads, all processing areas, storage bays / areas, stockpiles and extraction area. The further dust control measures (i.e. mitigation measures) proposed in response to question 16 (i.e. Page 6 of 11) received by the planning authority on 15 Dec. 2005, shall be implemented to the planning authority's satisfaction	In the interests of protecting the amenities of the area and preventing environmental pollution.
19	All trucks hauling dusty materials onto and from the site shall be covered.	In the interests of protecting the amenities of the area and preventing environmental pollution.
20	All internal haul roads on site shall be hard paved with asphalt or as otherwise agreed with the Planning Authority.	In the interests of protecting the amenities of the area and preventing environmental pollution.
21	All conveyor belts carrying materials of a dusty nature shall be enclosed.	In the interests of protecting the amenities of the area and preventing environmental pollution.
22	Fine sized aggregates shall be stored in concrete bays.	In the interests of protecting the amenities of the area and preventing environmental pollution.
23	Adequate dust control measures shall be taken to the planning authority's satisfaction to ensure that there is no detectable wind blow dusting beyond the site boundaries. During dry weather conditions, the operator shall ensure that dust from the movement of machinery and windblown on-site is controlled. An adequate hose capacity shall be maintained in the quarry area to dampen down stockpiles and equipment during periods of dry windy weather to prevent the emission of fugitive dust.	In the interests of protecting the amenities of the area and preventing environmental pollution.
24	All water contaminated with hydrocarbons, including storm water from bunded areas and surface waters, shall be discharged via a grit trap and appropriate hydrocarbon interceptor. Inspection chamber with sump to be provided between hydrocarbon interceptor and the settlement lagoon. The sump shall be of a minimum size of 500mm by 500mm and 400mm deep and shall be of watertight construction. These shall be installed and operated to the satisfaction of the planning authority.	To prevent water pollution.
25	All over ground tanks containing liquids other than water shall be contained in a	To provide safe storage and to prevent water pollution.

	waterproof bunded area of sufficient volume to hold 110% of the value of the largest tank within the bund. All valves on the tank shall be contained within the bunded area. Drum storage areas shall be bunded to a volume equal to 110% of the sum of the largest five drums likely to be stored therein. The bunded area shall be fitted with a locking penstock valve which shall be opened only to discharge storm water to the interceptor. The developer shall ensure that this valve is locked at all times.	
26	All inflammable substances shall be stored in accordance with the Fire Officers requirements.	To safeguard the amenities of the area.
27	Concrete aprons that drain to a hydrocarbon interceptor shall be provided at all locations where the handling of hydrocarbons will take place. These shall be installed and operated to the satisfaction of the Planning Authority. All operations involving the loading and unloading of hydrocarbon products shall take place on these aprons in such a manner as to avoid pollution to waters including ground waters.	To prevent water pollution.
28	The operator shall inspect the hydrocarbon interceptors and traps monthly and shall maintain on site at his own expense a register for each year which shall include details of monthly inspections. The register shall be made available for inspection by the Planning Authority at all reasonable times.	To prevent water pollution.
29	All soiled surface water and water used in the washing plant shall be directed to settlement Lagoons. All lagoons shall be suitably sized and of secure construction and maintained to the Planning Authority's satisfaction so as to ensure that no soiled water is discharged to the nearby water course. The system shall be such that all waters in the lagoons shall be recycled for further use in the process.	To prevent water pollution.
30	No polluting matter, soiled water, silt or gravel shall be allowed to drain from the site into adjacent watercourses. Measures shall be put in place to ensure that the quarry operates with a zero discharge of silt to the River Laney. Detailed proposals for installation and maintenance of silt traps and other measures to be undertaken to protect water quality shall be submitted and agreed with the Planning Authority within three months of the date of this order.	To prevent water pollution.
31	No substance shall be discharged in contravention of Water Quality	To prevent water pollution.

	(Dangerous Substance Regulations) Statutory Instrument 12, 2001 from any activity on site.	
32	The developer shall establish a programme of monitoring to ensure effectiveness of silt control and other water quality protection measures. This programme shall include the carrying out of physical and chemical sampling on the stream adjacent to the site. Detailed proposals for the monitoring programme, including parameters, location of points and frequency of testing, shall be submitted and agreed with the Planning Authority within 3 months of the date of this order.	To prevent water pollution.
33	The stream adjacent to the quarry shall be fenced off at a minimum distance of 3m back from the stream bank and there shall be no interference with the river / stream bank vegetation within the fenced off area	In the interests of preserving the quality of the local environment.
34	The boulders / dam in the stream adjacent to the quarry site shall be removed and the free passage of fish shall be ensured and water abstraction shall thereafter be effected in such a way as to ensure the free passage of fish.	In the interests of preserving the quality of the natural environment.
35	A weather monitoring station shall be maintained on the site. This station shall record conditions of wind speed and wind direction. All records from this wind station shall be made available to the planning authority on request whether requested in writing or by a member of staff of the planning authority at the site. The location, installation and maintenance of the monitoring station shall be carried out by a competent authority and to the satisfaction of the Planning Authority within 3 months of the date of this order. Adequate arrangement for replacement in the event of a breakdown shall be provided. The developer shall ensure direct access to the weather station is available to authorised staff at all working times	In the interests of protecting the amenities of the area and preventing environmental pollution.
36	Noise levels emanating from the proposed development when measured at the site boundaries shall not exceed 55 dBa (30 minute Leq) between 08.00 hours and 18.00 hours, Monday to Friday inclusive and 08.00 and 1400 hours on Saturday excluding public holidays. Noise emissions shall not exceed 45 dBa (30 minute Leq) at any other time. Measurements shall be made in accordance with I.S.O. Recommendations R.1996/1 "Acoustics - Description and Measurement of Environmental Noise, Part 1: Basic quantities and procedures".	In the interests of protecting the amenities of the area and preventing environmental pollution.

	If the noise contains a discrete, continuous tone (whine, hiss, screech, hum, etc.), or if there are distinct impulses in the noise (bangs, clicks, clatters or thumps), or if the noise is irregular enough in character to attract attention, a penalty of +5 dBA shall be applied to the measured noise level and this increased level shall be used in assessing compliance with the specified levels.	
37	A noise monitoring survey shall be carried out by the developer. The extent and timing of the survey and monitoring sites used shall be agreed with the Planning Authority within 2 months of the date of this order. The results of the survey shall be submitted to the Planning Authority within one month of completion of the survey.	In the interests of protecting the amenities of the area and preventing environmental pollution.
38	All solid wastes arising on the site shall be recycled as far as possible. Materials exported from the site for recovery, recycling or disposal shall be managed at an approved facility. Adequate on-site arrangements for the storage of recyclable materials prior to collection shall be made to the satisfaction of the Planning Authority.	In the interests of protecting the amenities of the area and preventing environmental pollution.
39	All hazardous waste generated on site shall be disposed of through licensed collection and disposal contractors. The applicant shall maintain records of the quantities generated and the routes, quantities and dates of removal of the material off site. All records shall be made available the Planning Authority on request whether requested in writing or by a member of staff of the Planning Authority at the site.	In the interests of protecting the amenities of the area and preventing environmental pollution.
40	All liquid chemicals shall be stored in a waterproof bunded area. As and when any waste arises within the bunded area, this shall be disposed of in a proper manner complying with all domestic and EU legislation.	In the interests of protecting the amenities of the area and preventing environmental pollution.
41	Waste oil shall be stored in a waterproof bunded area and the capacity of the bund shall be 110% of the tank size. The bunded area shall be fitted with a locking penstock valve which shall be opened only to discharge storm water to the interceptor. The developer shall ensure that the valve is locked at all times.	In the interests of protecting the amenities of the area and preventing environmental pollution.
42	Waste oil shall be disposed of to the planning authority's satisfaction i.e. to be recycled. Records shall be kept of the volume of waste oil produced and disposed of and the names of persons to whom such waste is transferred. The register shall be made available for	In the interests of protecting the amenities of the area and preventing environmental pollution.

	inspection by the planning authority at all reasonable times.	
43	There shall be no dumping onto the site of any waste materials imported on to the site nor of any disused vehicles, plant or machinery.	In the interests of protecting the amenities of the area and preventing environmental pollution.
44	In the event of any spillage of polluting matter on site whether accidental or otherwise, the developer shall notify the Planning Authority immediately.	In the interests of protecting the amenities of the area and preventing environmental pollution.
45	Proposals for a site specific Environmental Management System (EMS) shall be submitted and agreed with the planning authority and the EMS shall be put in place within 6 months of the date of this order and thereafter shall be made available to the planning authority on request, whether requested in writing or by a member of staff of the Planning Authority at the site.	In the interests of protecting the amenities of the area and preventing environmental pollution.
46	On an annual basis for the lifetime of the facility (to be submitted every year on the date of this notice), the applicant shall submit to the planning authority five copies of an environmental audit. Independent environmental auditors approved by the planning authority shall carry out this audit. This audit shall be carried out at the expense of the developer and shall be made available to the public for inspection at all reasonable hours at a location to be agreed with the planning authority. This report shall contain: (a) An annual topographical survey carried out by an independent qualified surveyor approved by the planning authority. This survey shall show all areas excavated and restored. On the basis for this , a full materials balance shall be provided to the planning authority. (b) A record of groundwater levels measured at monthly intervals. (c) A full record of all breaches over the previous year for noise, dust, and water quality monitoring. (d) A written record of all complaints, including actions taken on each complaint. Notwithstanding this requirement, all incidents where levels of noise or dust exceed agreed levels shall be notified to the planning authority within 2 working days. Incidents of surface or ground water pollution, or incidents that may result in ground water pollution, shall be	In the interests of protecting the amenities of the area and preventing environmental pollution.

	notified to the planning authority without delay.	
47	The applicant shall ensure that a responsible and suitably qualified person is available on the site at all times during which emissions to the environment are occurring. A designated member of the company's staff shall interface with the Planning Authority or member of the public in the event of complaints or queries in relation to environmental emissions. Details of the name and contact details and the relationship to the operator of this person shall be available at all time to the Planning Authority on request whether requested in writing or by a member of staff of the Planning Authority at the site. There shall also be available for inspection by the Planning Authority at the site the full name and address of the land owner, who the operator of the site is, who is the occupier of the site and the full name and contact details of any other person or persons who are carrying out activities on the site.	In the interests of clarity and to facilitate effective environmental protection.
48	All results of monitoring required by this permission shall be submitted to the Planning Authority during the first ten days of each calendar month, or as specified by the Planning Authority. The Planning Authority may require additional parameters or a higher frequency of monitoring under this condition. The format for presentation of the results shall be agreed with the Planning Authority. Alternative reporting arrangements may be agreed with the Planning Authority.	In the interests of protecting the amenities of the area and preventing environmental pollution.
49	The developer shall carry out such additional noise and dust mitigation measures as may be deemed necessary following a review of each or all noise and dust survey results. Any such additional measures shall be carried out to the planning authority's satisfaction.	In the interests of protecting the amenities of the area and preventing environmental pollution.
50	The operator of the site shall keep records of all monitoring carried out and shall retain such records for a minimum period of seven years. These records shall state clearly the full name and address of the occupier, the full name and address of the owner of the site, a full list of activities being carried out on the site and who is responsible for each activity. These records shall also have details of any other person or persons carrying out activity on the site and who is responsible for complying with the permission in relation to all activities. These records shall be available for inspection by authorised personnel representing any	In the interests of clarity.

	statutory body involved in pollution control at all reasonable times. Any non-compliance with the terms of the permission shall be highlighted and the reason why this occurred shall also be outlined.	
51	When demanded by the planning authority the applicant shall submit a summary report within 1 month of all monitoring carried out in the previous year. This report shall evaluate the operation of the facilities available on-site in the light of the results achieved in the previous year. The report shall also outline the intentions of the applicant with regard to the upgrading of treatment methods or operations should these results not fully comply with the terms of this permission. All monthly and annual reports shall be certified accurate and representative by the plant manager or other senior officer designated by him. Provision shall be made for the transfer of atmospheric monitoring data and related information to the planning authority's computer section, on request	In the interests of protecting the amenities of the area and preventing environmental pollution.
52	The developer shall prevent the spillage/spread of dust and aggregates onto public roads, from all vehicles associated with the development. The developer shall clean up any spillages on public roads from vehicles associated with the development as soon as such spillage arises or is notified.	To safeguard the amenities of the area and to prevent dust pollution. In the interests of traffic safety.
53	Satisfactory on-site truck parking shall be provided. There shall be no queuing of trucks outside the entrance to the site.	In the interests of traffic safety.
54	The developer shall ensure that the proposed development does not affect or cause deterioration in water quality, water levels or yields in the domestic wells in the vicinity of the quarry. In the event of quarrying activities having an adverse impact on existing private wells in the vicinity the developer shall undertake appropriate remedial measures as agreed with the Planning Authority, at his own expense. In the event of any disruption of water supplies, the developer shall cease any operations causing such disruption until water supply has been restored or replaced.	To safeguard the residential amenities of the area and to prevent water pollution.
55	A ground water monitoring programme shall be agreed with the Planning Authority within three months of grant of permission. The extent of the programme and the frequency and locations of monitoring shall be agreed with the Planning Authority in advance. Monitoring	To safeguard the residential amenities of the area and to prevent water pollution.

	Authority within one month of completion each survey.	
56	The operator shall ensure that all reasonable measures are in place to prevent fly-tipping within and along the boundaries of the site.	In the interests of protecting the amenities of the area and preventing environmental pollution.
57	No quarrying shall take place within 5m of the public road except for material required to be excavated to form the entrance and this 5m deep area shall be fenced and planted to the Council's satisfaction.	In the interests of road safety and to safegaurd the visual amenities of the area
58	The site shall be landscaped and planted in accordance with a comprehensive scheme to comprise predominantly native species and varieties and to include: [a] details of screening proposals, including the required berms and planting thereon [b] species, variety, number and locations of trees and shrubs [c] programme for implementation of the scheme. Full details shall be submitted to and agreed with the planning authority within 3 months of the date of this order and the agreed works shall be completed to the satisfaction of the planning authority within 12 months of the date of this order and shall be maintained thereafter to the satisfaction of the planning authority. This maintenance shall include, inter alia, the replacement of any plants which should die and the suppression of noxious weeds.	In the interests of visual amenity and abatement of environmental pollution.
59	5 metre high earth mounds / berms shall be constructed along the eastern and north-eastern sides of the quarry at a distance of no less than 20m from the site boundary. Fully detailed proposals (including precise locations, plans, sections and drawings) of the mounds / berms, which shall include details of construction, height and planting (with native species), shall be submitted and agreed with the planning authority within 2 months of the date of this order. The agreed works shall be completed to the satisfaction of the planning authority within 12 months of the date of this order and shall be maintained thereafter to the satisfaction of the planning authority.	In the interests of protecting the amenities of the area and abatement of environmental pollution.
60	Within 3 months of the date of this order, a fully detailed proposal for restoration shall be submitted and agreed with the planning authority. This shall include a phased programme of works, which shall commence within 1 month of the	To limit the impact of the development on the amenities of the area and to ensure appropriate restoration of the site.

	cessation of extraction and shall be completed within 12 months of commencement.	
61	No groundworks, development / construction works, stockpiling of topsoil / spoil or landscaping shall take place within 30 metres radius of the external perimeter of monument number CO071:057, a standing stone. This buffer zone of 30m radius shall be established by a suitably qualified archaeologist and no trees plants, etc. shall be removed from within this buffer zone.	To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.
62	Within 3 months of the date of this order, the operator shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion and restoration of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the site . The security to be lodged shall be as follows:- (a) an approved insurance company bond in the sum of €50,000 or (b) a cash sum of €50,000 to be applied by the planning authority at its absolute discretion if such reinstatement is not carried out to its satisfaction, or (c) a letter of guarantee by any body approved by the planning authority for the purpose in respect of the development in accordance with the guarantee scheme agreed with the planning authority and such lodgement in any case has been acknowledged in writing by the planning authority.	To ensure satisfactory completion of the development.
63	No quarrying shall take place within 40m of the eastern roadside site boundary or of any dwelling house.	In the interests of residential amenity and to prevent noise and dust nuisance and pollution of residential properties.
64	Within two months of the date of this order, the developer shall pay a special contribution of € 100,000 (one hundred thousand euro) to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the maintenance and improvement of roads serving the development. The payment of the said contribution shall be subject to the	It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

	following: (a) where the Council has decided not to proceed with the works in question, the return of the contribution (b) where the works in question are not commenced within 5 years of the date of payment of the contribution or final instalment thereof, or have not been completed within 7 years of that date, the return of such proportion of the contribution, as shall correspond to the proportion of the works not carried out within those periods (c) payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council No development shall take place until the monies have been paid to the Council.	

APPENDIX 7

DWCL APPEAL OF S261 CONDITIONS & LEGAL OPINION

The Secretary
An Bord Pleanala
64 Marlborough Street
Dublin 1

03 October 2006

RE: Quarry Registration under Section 261 for Gravel Pit at Ummera, Macroom – Cork County Council Ref. No. QR01

Dear Sir/Madam

On behalf of Drimoleague Concrete Works Ltd of Bredagh Cross, Drimoleague, County Cork, I, Dan Keohane of Keohane Geological & Environmental Consultancy 57 Foxwood, Rochestown County Cork wish to make an appeal to the registration of the gravel pit at Ummera, Macroom by Cork County Council. Quarry registration QR01 refers. The Council's decision was to modify and add to the conditions imposed under planning permission Reg. No. 375/76. I enclose a copy of the Council's decision for reference. I also enclose a cheque in the amount of €630 as fee for this appeal.

Cork County Council issued its decision with 64 conditions on the operation of a small-scale gravel pit in Ummera, Macroom. Drimoleague Concrete Works Ltd (DCWL) has received legal advise on this matter from Mr Paddy Keane – copy attached. It is our legal advise that the registration of this pit '*is totally null and void and ultra vires on the basis that the Council failed to comply with Section 261(4) insofar as it did not within the mandatory six month period from the registration of your quarry publish notice of the registration in one or more newspapers circulated in the area*'. DCWL therefore requests that the Board dismiss the modified and new conditions in their entirety.

DWCL recognises the spirit and intent of Section 261 and, as demonstrated to the Council, has voluntarily implemented an Environmental Management System for the gravel pit. DCWL will have regard to the Council's proposed conditions in future Targets and Objectives for the EMS. The EMS is being implemented in accordance with ICF (Irish Concrete Federation) standards. Notwithstanding our legal opinion and voluntary EMS, DCWL is of the opinion that a number of conditions are inappropriate and not in accordance with the Department's Guidelines (April 2004) and EPA Guidelines (April 2006) for the extractive industries. DWCL would like to take this opportunity to outline these inappropriate conditions to the Board.

Site Background

The gravel pit has been in operation since the 1940's. The current operator became involved with the pit in 1978. Prior to that, another operator worked a different area of the deposit. That operator applied for planning permission in 1976, planning reference number 375/76 refers. In 1978, Murnane & O'Shea applied for planning permission to install washing plant and lagoons; planning reference number 78/1365 refers.

Currently, the pit is worked by a single operator, DCWL. This operator wins the gravel from the pit face with a front-end loader, loads the washing plant and loads HGV with product. The primary use of the aggregate is for use at the concrete batching facility operated by DCWL in

Bredagh Cross Drimoleague. Aggregate is also purchased by locals (concrete batching operations and builders). Approximately 45,000 tonnes of product is taken from the pit annually. This is a small-scale operation when compared to other pits in the Lee Valley, where throughputs of up to 600,000 tonnes per annum are typical.

On review of the conditions imposed by the Council on the operation of other recently granted permissions, DCWL is surprised at the level of requirements that the Council sought to impose on its small-scale operation. Pits with throughputs up to 14 times greater were not subject to the same level of environmental controls / monitoring or financial contributions. This inequity in the planning process would have put DCWL at a distinct commercial disadvantage. DCWL considers that the Council has not followed the Planning Guidelines in that it did not '*recognise that quarries (including sand and gravel pits) vary greatly in size, with varying environmental impacts and that the planning response to proposed developments should be tailored accordingly*'.

The specific conditions that DCWL considers to be unfair and inconsistent with the spirit and intention of Section 261 of the Planning and Development Act, 2000 are set out below.

Condition 4 – Rock Crushing

At present, DCWL do not crush rock at the Ummera pit. Over-sized aggregate (boulders and cobbles) make up a small percentage of the overall resource. This material is sold 'as is'. However, the makeup of the deposit may change as the pit is developed. Should the percentage of cobbles and boulders increase, DCWL should have been permitted to occasionally crush this material at source in a sustainable manner. It would not be sustainable to take over-sized aggregate to another pit for crushing.

In recognition of this fact, DCWL suggests that this condition should have been worded as follows: '*No blasting shall take place on the site*'.

Condition 13 – Sticky Pads

The Council sought to impose the use of dust monitoring using sticky pads. DCWL has already voluntarily introduced a dust monitoring programme at the pit using Bergerhoff gauges. Three rounds of monitoring have been carried out to date. The results for the most recent monitoring are not yet available. The results to date are provided below and show compliance with the 350mg/m^2/day emission limit value.

Dust Monitoring Results – Ummera Quarry

Monitoring Period	D1 (mg/m^2/day)		D2 (mg/m^2/day)		D3 (mg/m^2/day)	
	Total	Inorganic	Total	Inorganic	Total	Inorganic
14 Jan to 10 Feb 2006	84	26	31	6	29	8
25 April to 24 May 2006	<5	<5	5	<5	<5	<5
25 Aug to 23 Sept 2006	Results pending		Results pending		Vandalised	

The results to date do not justify the use of sticky pads at this site. This monitoring method is not provided for in either the Planning Guidelines or the EPA Environmental Management Guidelines (Environment Management in the Extractive Industry). In fact, the EPA document states that '*it (the Bergerhoff Method) is the only enforceable method available. Where this method is deemed unsuitable for use, and only in these circumstances, an alternative method may be agreed with the local authority*'. Condition 12 requires dust monitoring using the Bergerhoff method, so clearly the Council doesn't deem it unsuitable. The use of sticky pads should not be sought for dust monitoring at pits and quarries.

Condition 14+15 – Wheel-wash Facilities

Condition 14 sought the installation of an under-body truck wash. It is referred to again in Condition 15. The site does not have a wheel-wash facility and has been operating at its current output since at least 1978 when a washing plant was installed. This is the same washing plant that is in operation today. Vehicles entering and leaving the site travel along a gravel paved haul road. [It is proposed to pave this road from the site entrance for a distance of 60m into the site.] There have been no complaints or issues raised by the Council in relation to the condition of the public road. DWCL considers that the infrastructure requested is unnecessary. Rather then protecting the environment, it will use (or rather waste) water and electricity in its operation.

Conditions 19 and 20 – Haul Roads

In Condition 15, the Council sought that the haul road be paved (as far as the wheel-wash facility). In Condition 19, the Council sought that all haul roads be paved with asphalt. Condition 20 sought to have all internal haul roads to be paved with asphalt. During the registration process, DCWL proposed that the haul road would be paved for 50m past the front gate (approximately 60m from the public road). The remainder of the haul road to the loading area is surfaced with washed stone. The only vehicle using the internal haul roads is the loading shovel. This vehicle is used within the site only; it is not a road-going vehicle. The internal haul roads that it uses have the benefit of a sprinkler system. The road-going HGVs only use the road from the site entrance to the washing plant, which is paved as described above. The existing design and proposed upgrade is considered more than adequate to protect the environment. Paving all internal haul roads with asphalt is entirely unnecessary.

Conditions 22 – Storage of Fine-Sized Aggregates

Sand is stored in concrete bays. Silt is removed from the ponds and stored for drying in the pit, prior to reuse in restoration. This condition could have been interpreted that silt should be stored in concrete bays, which is not industry practice.

Conditions 23 – Wind Blown Dust

This condition is considered to be punitive given the provisions of Condition 12. Condition 12 reflects the industry standard for emission limit values for dust. Condition 23 would have placed an unreasonable restriction on normal activities to best practice. The phase '*to ensure that there is no detectable wind blow dusting beyond the site boundary*' should not have been used.

Condition 30 – Zero Silt Discharge

There is no discharge from the site to the River Laney, except for a natural stream that flows along the southwest site boundary. It is distant from the extraction works and is not impacted by the extraction activities in any way. The silt level in this stream will vary naturally with rainfall events and other activities within the stream catchment, outside the control of DCWL (as it will in the Laney River itself). It would therefore have been unreasonable to expect DCWL to control the silt level in this stream.

The wash water used at the site is recycled. The silt traps and settlement lagoons' details have already been provided to the Council during the registration process. There adequacy has already been demonstrated. It is not intended to install further silt traps as they are unnecessary. Condition 29 addressed the use of wash water at the site as well as prohibiting discharges to the adjacent stream. DWCL considers that Condition 30 was unnecessary.

On a general note, the concept of a zero silt discharge is unattainable. An emission limit value of 35mg/l total suspended solids is used by the EPA – refer to EPA Environmental Management Guidelines – and is the industry standard.

Condition 33 – Fence of River

This stream is not entirely within the applicant's control. The area of the pit adjacent to the stream is not active. It is an area used passively for final polishing of wash water. The area is overgrown with semi-mature trees, and has the benefit of a road boundary hedgerow. DCWL do not, and can not, bring vehicles to this stream, so it is unclear what purpose an additional fence would serve. Further fencing would be entirely unnecessary.

Condition 35 and 51 – Weather Station

The provision of a weather station at a gravel pit is unprecedented. It is entirely unnecessary and would have burdened DCWL with unreasonable cost for its purchase and maintenance. It is not a feature recommended in either the Department's Planning Guidelines or the EPA Environmental Management Guidelines. It is unclear from the internal Council reports why a weather station would be needed. They are generally only installed at sites where odour dispersion modelling is required, such as at landfills and pharmaceutical plants.

The workings at the pit are damp; material is then washed and the stockpiles and haul roads wetted by sprinkler system. Results confirm that dust at the pit is under control. A weather station would serve no useful purpose. We have reviewed a number of recent Council decisions, and nowhere else has a weather station been conditioned. A weather station was not sought by the Council in recently granted permissions in Ovens where production rates of 600,000 tonnes per annum was proposed – planning reference numbers 03/4253 and 05/2452 refer.

The Council should not have included Condition 35 and or any reference to a weather station (Condition 51 refers).

Condition 45 – EMS

An EMS is already in place for the Ummera gravel pit. It is the ICF (Irish Concrete Federation) format. A copy was submitted already to the Council. DCWL intends to maintain this EMS for the Ummera Pit.

Condition 46(b) and 55 – Groundwater Monitoring

To date, excavations have not extended below groundwater level. It was a requirement of Condition 5 that excavation not be carried out below the water table. Furthermore, DCWL do not extract any groundwater at the site. It is therefore considered unreasonable and unnecessary for the Council to seek a groundwater monitoring programme. This would have necessitated the installation of monitoring wells at the pit, which would have added additional cost and expense on DCWL unnecessarily.

Condition 59 and 63 – Buffer Zones and Berms

Condition 59 required the construction of a 5m-high berm along the eastern and north-eastern site boundaries. The berms were to be no less than 20m from the boundary. This would have effectively sanitised a 40m-wide strip along approximately 500m of the site boundary. This was restated in Condition 63. The result would have been the loss of 2ha (5 acres) of the 9.25ha of remaining resource. This along with the buffer required around the standing stone would have resulted in the direct loss to DCWL of up to 40% of the remaining extractable resource. This would have been an unacceptable burden imposed by the Council.

The Board is reminded that this is a small-scale operation; a relatively small shallow pit, with no blasting. A more acceptable buffer would have been 15m from the site boundary. This 15m-wide buffer could accommodate a 3m-high berm with planting. This would require the raising of the existing berm. A 5m-high berm is a visual intrusion, and considered unnecessary as the workings are below ground level. The working face of the pit acts as a noise barrier.

There are recent examples of planning permissions granted in County Cork (and upheld by An Bord Pleanala) where an 11m-wide buffer is used for roads and private dwelling plots. One such development is for a sand/gravel pit in Knockanemore Ovens. The planning reference number is S/03/4253 and the An Bord Pleanala reference number is PL 04.205925. At this pit, extraction occurred within 11m of the National Primary Route (N22) and within 11m of private dwelling plots. At this pit, depth of excavation is in the order of 40m with faces worked to 70°. DCWL contents that there would have been no significant reduction in noise or dust emissions from the site resulting from this excessive buffer.

Condition 61 – Standing Stone

A 20m-buffer was requested by the Heritage Unit of Cork County Council and this is considered sufficient. As part of the registration process, DCWL retained Sheila Lane & Associates to carry out an archaeological assessment of the pit. This was at the instruction of Cork County Council. Having carried out detailed fieldwork on the site, the archaeologist recommended a 20m buffer.

Condition 64 – Special Contributions

Not withstanding the legal position as outlined in the attached letter from Mr Paddy Keane, there are a number of issues with this special contribution that are unfair and inequitable.

On review of the Engineer's report, it is evident that the Council is levying this payment for works that it may undertake to resurface the road between the N22 and the pit because of the truck usage on this section of road. It should be pointed out that all of DCWL trucks are registered, operate within the permissible weights and are perfectly entitled to use this road. The Engineer's report states that the payment equates to €5,000 per annum over the lifetime of the pit. DCWL use 2 to 3 trucks to draw aggregate from this pit and between them already pay in excess of €5,000 per annum in road tax to Cork County Council.

DWCL has further concerns that the road condition, current road usage and traffic patterns have not been assessed properly by the Council. This is borne out in the Engineer's report. As stated above, DCWL has been involved with this pit since 1978. In that time, the subject road has never been upgraded, yet it is in good condition. It is fair to say that the subgrade has been tested and found to be more than adequate. The Council concede that it has not assessed the quality of the road, yet it has prepared a budget estimate to repair it. It is simply inconceivable that the Council will replace / upgrade the subgrade of a satisfactory road as indicated in the Engineer's report. If the Council had concern for this road, it would have been in their programme of works and the measurement of parameters and testing would have been carried out already. As none of this was undertaken, one can only deduce that this road was not scheduled for any upgrade.

The Engineer's report further concedes that no assessment of traffic usage on the road has been carried out, yet it is prepared to burden DCWL with 60% of the budget estimate. This rushed judgement is attributed to time constraints. The Council has had this registration application for 2 years. The Board should be aware that there is a concrete batching plant (operated by others) that uses this road. The road is trafficked by heavy agricultural machinery, milk lorries and many other road users. Despite this lack of information, the Council proceeded with pricing this upgrade and levying 60% to DCWL. All this without the minimum information necessary to assess / design the pavement.

The level of contributions sought was disproportionate when compared to other gravel pits granted permission by Cork County Council in recent times. The purpose of Section 261 and the planning Guidelines was to apply conditions across the quarring industry in a fair and proportionate manner. Cork County Council recently granted permission for a gravel pit in Knockanemore, Ovens, planning reference 03/4253 refers. It levied a special contribution of €244,696, where the throughput for this pit is 600,000 tonnes per annum. In 2005, the Council granted a second permission to the same operator in Garryhesty for another pit, again with an output of 600,000 tonnes per annum. Planning reference numbers 05/2452 and PL 04.214198 refer. The special contribution in this instance was €240,000. Both pits have an output 14 times that of the Ummera pit. Had the scheme been applicable and been applied in a fair and equitable matter by the Council, the most DCWL would have been levied is €20,000. However, as pointed out in legal opinion, the proposed conditions are null and void and ultra vires, including the special contributions condition.

As stated, DCWL will continue to implement the EMS for the pit and operate the pit to industry standards. If you have any further queries, please contact the undersigned.

Yours sincerely

Dan Keohane

Dan Keohane

CC: Mr. Eugene Murnane, Drimoleague Concrete Works Ltd, Bredagh Cross, Drimoleague, Co. Cork.

Encl.

ATTACHMENTS

Copy of Council's Decision
Letter form Keane Solicitor

Keane
Solicitors
Hardiman House,
Eyre Square,
Galway.

Telephone: (091) 566767 (6 Lines)
Fax: (091) 565075
DX No. 4013 Galway
E-mail: info@pmkeane.ie

Dublin Office:
24/26 Upper Ormond Quay,
Dublin 7.
Agency No. 190X-16.

Your Ref: Our Ref: PK/MS/KEO7898 Date: 2nd October 2006

Drimoleague Concrete Works Ltd.,
Umera,
Macroom,
Co. Cork.

Re; Registration of Quarry Section 261 Planning and Development Act 2000
Planning Permission Reg Reference 375/76
Cork County Council Registration Reference QR01

Dear Sir,

We refer to the Notice served by Cork County Council pursuant to Section 261(6) of the Planning and Development Act 2000 in relation to the above quarry.

It appears that the said Notice is totally null and void and ultra vires on the basis that the Council failed to comply with Section 261(4) insofar as it did not within the mandatory six month period from the registration of your quarry publish notice of the registration in one or more newspapers circulated in the area. The quarry from instruction was registered on the 10th of September 2004 and accordingly the last date for publication of the notice in the newspaper would have been the 9th of March, 2005 which in fact did not occur until the 18th of March 2005.

Accordingly the Council's purportment to impose these conditions are tainted with illegality ab initio and are ultra vires.

Aside from the illegality of the purported conditions, in any event, the Council would be obliged to compensate you where they are more restrictive than the existing conditions except those relating to the prevention, limitation or control of emissions from a quarry and in this regard I would specifically draw your attention to purported Condition No. 64 seeking €100,000.00 in respect of maintenance and improvement of roads which is self-defeating even if it were to stand as you would be entitled to call it back by way of compensation.

To summarise, I believe that the notice purporting to modify and add to the Conditions of the Planning Permission is ultra vires (illegal).

Yours faithfully,

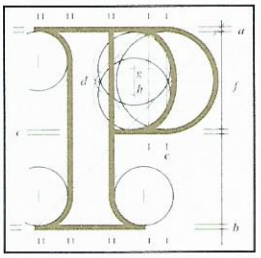
Keanes

KEANES

APPENDIX 8
BOARD'S APPEAL DETERMINATION – DATED 07 JUNE 2007

Our Ref: 04.QC.2002
P.A.Reg.Ref: QR01
Your Ref: Drimoleague Concrete Works Ltd

An Bord Pleanála



Keohane Geological & Environ Cons
57 Foxwood,
Rochestown,
Cork.

0 8 JUN 2007

Appeal Re: Continued operation of quarry.
Ummera, Macroom, Co. Cork.

Dear Sir,

An order has been made by An Bord Pleanála determining the above-mentioned appeal under the Planning and Development Acts 2000 to 2006. A copy of the order is enclosed.

In accordance with section 146(3) of the Planning and Development Act 2000, the Board will make available for inspection and purchase at its offices the documents relating to the appeal within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the appeal on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

Yours faithfully,

pp S. Sweeney

Miriam Baxter
Executive Officer
Direct Line:

Encl:

BP 100n.ltr

64 Sráid Maoilbhríde,
Baile Átha Cliath 1.

Tel: (01) 858 8100
LoCall: 1890 275 175
Fax: (01) 872 2684
Web.http//www.pleanala.ie
email:bord@pleanala.ie

64 Marlborough Street,
Dublin 1.

An Bord Pleanála

Board Direction

Ref: 04.QC.2002

The submissions on this file and the Inspector's report were considered at Board meetings held on 26th April 2007 and 1st May 2007.

The Board decided, unanimously, to confirm with modifications the decision of the Planning Authority to modify and to add to the conditions under the provisions of Section 261, as follows:-

Amend, attach and remove the conditions appealed generally in accordance with the Inspector's recommendation subject to the amendments shown in manuscript on the attached copy of the Inspector's draft modifications, and

Condition No.64 shall be removed for the following reasons and considerations:

REASONS AND CONSIDERATIONS

Having regard to the planning history of the site and the permission granted under file ref. 375/76 granted on -- , and to the decision of the Planning Authority to modify and add to the conditions imposed on the operation of the quarry in accordance with the provisions of Section 261(6)(a)(ii) of the 2000 Act it is considered that there is no provision in the Section for the restating, modification or addition of conditions requiring the payment of financial contributions under Section 48, notwithstanding the provisions of Section 261(6)(b).

Board Member _____ Date 4th May 2007.

Brian Hunt

An Bord Pleanála

PLANNING AND DEVELOPMENT ACTS 2000 TO 2006

Cork County

Reference Number: QR01

An Bord Pleanála Reference Number: 04.QC.2002

APPEAL by Dan Keohane on behalf of Drimoleague Concrete Works Limited care of Keohane Geological and Environmental Consultancy of 57 Foxwood, Rochestown, County Cork against the decision made on the 7th day of September, 2006 by Cork County Council to modify and add to the conditions imposed under planning register reference number 375/76 for the continued operation of the registered quarry on lands at Ummera, Macroom, County Cork.

DECISION

The Board, in accordance with subsection (9)(b) of section 261 of the Planning and Development Act, 2000, confirms with modifications the decision of the planning authority and directs the said Council to ATTACH conditions numbers 14, 15, 19, 46(b), 51 and 55 and the reasons therefor, to AMEND conditions numbers 4, 22, 30, 45, 59, 61 and 63 so that they shall be as follows for the reasons set out, to REMOVE conditions numbers 13, 20, 23, 33 and 35, and the reasons therefor and, based on the reasons and considerations set out below, to REMOVE condition number 64 and the reason therefor.

4. No blasting shall take place on site. Crushing of large gravel material (up to 100 mm) sourced on site shall be permitted subject to details of the crushing plant being agreed with the planning authority.

Reason: In the interest of amenity and to prevent noise nuisance.

22. Production aggregates shall be stored in concrete bays.

Reason: In the interest of amenity and abatement of dust pollution.

30. No polluting matter, soiled water, silt or gravel shall be allowed to drain from the site into adjacent watercourses. The mixing area for clean and recycled water shall be relocated away from the adjoining stream. Detailed proposals for that installation and for the installation and maintenance of silt traps and other measures to be undertaken to protect water quality, shall be submitted to and agreed with the planning authority within three months of the date of this order.

Reason: In the interest of the avoidance of pollution of the adjacent River Laney as it is a habitat of pearl mussel.

45. The on-site Environmental Management System shall be made available to the planning authority on request and shall incorporate any amendments as required by the planning authority.

Reason for Condition: In the interest of protecting the amenities of the area and preventing environmental pollution.

59. Three metre high earth mounds/berms shall be constructed along the eastern and north-eastern sides of the quarry at a distance of not less that 15 metres from the site boundary. The final quarry face shall finish at the natural angle of repose of the material. Fully detailed proposals shall be submitted to and agreed with the planning authority within two months of the date of this order. The agreed works shall be completed to the satisfaction of the planning authority within 12 months of the date of this order and shall be maintained thereafter to the satisfaction of the planning authority.

Reason: In the interest of the amenity of the area.

61. No works shall take place within a 20 metre radius of the external perimeter of monument number CO071:057, a standing stone. The area shall be appropriately protected.

Reason: To ensure the continued preservation of this object of archaeological interest.

63. No quarrying shall take place within 40 metres of any existing dwellinghouse.

Reason: In the interest of residential amenity.

REASONS AND CONSIDERATIONS

Having regard to the planning history of the site and the permission granted under planning register reference number 375/76 on the 10th day of May, 1976, and to the decision of the planning authority to modify and add to the conditions imposed on the operation of the quarry in accordance with the provisions of section 261(6)(a)(ii) of the Planning and Development Act, 2000, the Board has concluded that there is no provision in section 261 or section 48 of the said Act that would authorise the restating, modification or addition of conditions requiring the payment of a financial contribution, notwithstanding the provisions of section 261(6)(b) of the said Act.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Brian Hunt

Member of An Bord Pleanála duly authorised to authenticate the seal of the Board.

Dated this 7th **day of** June **2007.**

APPENDIX 9
COUNCIL'S S261A DETERMINATION – DATED 23 AUGUST 2012

CORK COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACTS 2000-2010, AS AMENDED

NOTICE PURSUANT TO SECTION 261 A (3) OF THE PLANNING & DEVELOPMENT ACT 2000 AS INSERTED BY SECTION 75 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2010, AS AMENDED

Our Ref: CKQY0003

Drimoleague Concrete Works Limited,
Glengarriff River,
Bantry,
Co. Cork.

RE: Quarry Development operated by Drimoleague Concrete Works Limited, at Ummera, Macroom. Reference CKQY0003

THE PLANNING AUTHORITY HAS DETERMINED PURSUANT TO SECTION 261A (2) OF THE PLANNING & DEVELOPMENT ACT 2000 AS INSERTED BY SECTION 75 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2010, AS AMENDED THAT:

Quarry development was undertaken post 1st February 1990 that would, having regard to the Environmental Impact Assessment Directive, have required an environmental impact assessment but that such an assessment was not carried out or made.

REASONS FOR DETERMINATION:

The quarry development expanded by 3.84 ha approx. post 1995. This expansion is evident on examination of the 1995, 2000 and 2005 aerial photography issued by the ordnance survey and from a site inspection.

This expansion results in the quarry being greater than 5ha in surface area and therefore results in the quarry being of a Class listed in Part 2 of Schedule 5. The extension has resulted in an increase in size greater than 25% of the quarry area and greater than 50% of the appropriate 5ha threshold. Accordingly EIA is required under Class 13 of Part 2, Schedule 5 of the Planning & Development Regulations 2001, as amended.

THE PLANNING AUTHORITY HAS DECIDED PURSUANT TO SECTION 261A SUBSECTION (3) OF THE PLANNING & DEVELOPMENT ACT 2000, AS INSERTED BY SECTION 75 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT 2010, AS AMENDED THAT:

- Planning permission was granted for the quarry.
- The quarry was registered under Section 261 of the Planning Acts.

REASONS FOR DECISION

Permission was granted for the quarry under Pl Reg. 76/375. The quarry has been subject to unauthorised extension that has given rise to the requirement for EIA.

THEREFORE YOU ARE DIRECTED TO APPLY TO AN BORD PLEANALA, 64 MARLBOROUGH STREET, DUBLIN 1, FOR SUBSTITUTE CONSENT IN RESPECT OF THE QUARRY, NOT LATER THAN 12 WEEKS AFTER THE DATE OF THIS NOTICE OR SUCH FURTHER PERIOD AS THE BORD MAY ALLOW. THE APPLICATION FOR SUBSTITUTE CONSENT SHALL BE MADE IN ACCORDANCE WITH SECTION 177E OF THE PLANNING & DEVELOPMENT ACT 2000, AS INSERTED BY SECTION 57 OF THE PLANNING & DEVELOPMENT ACT 2010, AS AMENDED AND THE PLANNING & DEVELOPMENT REGULATIONS 2001-2012

THE APPLICATION FOR SUBSTITUTE CONSENT SHALL BE ACCOMPANIED BY A REMEDIAL ENVIRONMENTAL IMPACT STATEMENT AND UNDERTAKEN IN ACCORDANCE WITH SECTION 177 F OF THE PLANNING & DEVELOPMENT ACT 2000, AS INSERTED BY SECTION 57 OF THE PLANNING & DEVELOPMENT ACT 2010, AS AMENDED.

NOTE: YOU MAY APPLY TO AN BORD PLEANALA, NOT LATER THAN 21 DAYS AFTER THE DATE OF THIS NOTICE, FOR A REVIEW OF THE SUBJECT DETERMINATION OF THE PLANNING AUTHORITY UNDER SECTION 261A SUBSECTION 2.A OR THE SUBJECT DECISION OF THE PLANNING AUTHORITY UNDER SECTION 261A SUBSECTION 3.A AND THAT NO FEE IN RELATION TO EITHER APPLICATION FOR A REVIEW SHALL BE PAYABLE.

Please find attached a copy of Section's 177E and 177G of the Planning & Development Act 2000 as inserted by Section 57 of the Planning & Development Act 2010, as amended.

Mise, le meas,

Noel Cooke
Staff Officer,
Planning.

Date: 23rd August 2012

Planning & Development Act 2000-2010, as amended Section 177 E, and Section 177F:

177 E – Application for Substitute Consent

(1) An application for substitute consent shall be made to the Board

(2) An application to the Board for substitute consent shall –

a) Be made pursuant to a notice given under section 177B or 261A or a decision to grant leave to apply for substitute consent under section 177D
b) State the name of the person making the application.
c) In accordance with the direction of the planning authority under section 177B(2), section 261A(3)(*c*), section 261A(10) or section 261A(12) shall be accompanied by a remedial environmental impact statement or remedial Natura impact statement or both of those statements as the case may be.
d) In accordance with a direction of the Board under section 177D(7), shall be accompanied by a remedial environmental impact statement or remedial Natura impact statement or both of those statements as the case may be.
e) Be accompanied by the fee payable in accordance with section 177M,
f) Comply with any requirements prescribed under section 177N, and
g) Be received by the Board within the period specified in section 177B, 177D or 261A, as appropriate.

(3) An application for substitute consent which does not comply with the requirements of subsection (2) shall be invalid.

(4) The Board may at its own discretion, on request extend the period specified in section 177B, 177D or 261A, for the making of an application for substitute consent, by such further period as it considers appropriate.

(5) As soon as may be after receipt of an application for substitute consent under this section, which is not invalid, the Board shall send a copy of the application and all associated documents, including the remedial environmental impact statement, or the remedial Natura impact statement, or both of those statements, as the case may be to the planning authority for the area in which the development the subject of the application is situated and such documentation shall be placed on the register.

177F – Remedial Environmental Impact Statement

(1) A remedial environmental impact statement shall contain the following:

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

b) Details of –
(i) Any appropriate remedial measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy any significant adverse effects on the environment;
(ii) The period of time within which any proposed remedial measures shall be carried out by or on behalf of the applicant;

c) Such information as may be prescribed under section 177N

(2) (a) Before an applicant makes an application for substitute consent, he or she may request the Board to give to him or her an opinion in writing prepared by the Board on the information required to be contained in the remedial environmental impact statement or in relation to the development the subject of the application and the Board shall, as soon as may be, comply with that request.

(b) An applicant shall, in connection with a request under paragraph *(a),* forward to the Board sufficient information in relation to the development the subject of the application for substitute consent to enable the Board to comply with that request, and shall forward any additional information requested by the Board.

(c) The provision of an opinion under this subsection shall not prejudice the performance by the Board of any of its functions under this Act or regulations under this Act and cannot be relied upon in the application for substitute consent or in any legal proceedings.

APPENDIX 10

S261A DETERMINATION REFERRAL TO THE BOARD – DATED 10 SEPTEMBER 2012

DRIMOLEAGUE CONCRETE WORKS LTD.

Suppliers of: Readymix Concrete · Blocks & Precast
Sand & Gravel · Hardcore & Crushed Rock
Registered in Ireland No. 77810 VAT No. IE 4528046E

Reply to Head Office:
Lahadane,
Bantry, Co. Cork.
Accounts: (027) 54102
Fax: (027) 51430

Depot: Bredagh Cross,
Drimoleague, Co. Cork,
Telephone: (028) 31209/31322
Fax: (028) 31750

10th September 2012

The Secretary,
An Bord Pleanala,
64 Marlborough Street,
Dublin 1.

RE: **First Party Application under Section 261A(6)(a) for Review of Determination under Section 261A(2) and Decision under Section 261A(3)(a) by Cork County Council – Drimoleague Concrete Works Ltd., Pit at Ummera, Macroom, Co. Cork (CCC ref CKQY0003)**

Dear Sir/Madam,

Below, please find First Party Application for Review of Determination under Section 261A(2) and subsequent Decision under Section 261A(3)(a) by Cork County Council - Drimoleague Concrete Works Ltd., Pit at Ummera, Macroom:

Determination
Quarry development was undertaken post 1st February 1990 that would, having regard to the Environmental Impact Assessment Directive, have required an environmental impact assessment but that such an assessment was not carried out or made.

Reason for Determination
The quarry development expanded by 3.84 hectares post 1995....This expansion results in the quarry being greater than 5ha in surface area and therefore results in an increase in size greater than 25% of the quarry area and 50% of the appropriate 5ha threshold. Accordingly EIA is required under Class 13 of Part 2, Schedule 5 of the Planning & Development Regulations 2001, as amended.

Applicant:	Drimoleague Concrete Works Ltd.
Applicant Address:	Glengarriff Road, Bantry, Co. Cork
Planning Authority Ref. No.:	CKQY0003, Ummera, Macroom, Co. Cork
Planning Authority:	Cork County Council
Date of P.A. Decision:	23rd August 2012

There is no fee payable for this review. The grounds of the application are as follows.

Application for Review (Section 261A(6)(a)) – Drimoleague Concrete Works Ltd.

1. Introduction

The applicant and its' advisors are firmly of the opinion that the planning authority has erred in law in making a Determination under Section 261A(2) and subsequent Decision under Section 261A(3) in that this is an authorised site with all development in compliance with its pre 63 initial authorisation, a permission for processing of site deposits and the Section 261 conditions as imposed by Cork County Council in 2006.

As the Section 261A(3) Decision merely flows from the flawed Section 261A(2) Determination, this Application for Review, in showing the lack of a basis for such Determination, automatically shows the same lack of basis for the Decision.

Cork County Council has attempted to retrospectively apply the EIA Directive to this fully authorised site and this is clearly contrary to Section 261A(2) and the DECLG Guidance of January 2012. Thus, it is our opinion that the reasoning of the planning authority is flawed regarding the EIA legislation and the reasons for this opinion are now set out for consideration by An Bord Pleanala.

2. Planning History

The site at Ummera was originally authorised by way of being a pre-1963 development, in the ownership of Denis McSweeney, operated by him and by Cork County Council prior to 1st October 1964, used for the extraction and production of sand and gravel aggregates. McSweeneys continued to operate the site after the appointed date.

In 1976, permission 375/76 was granted for the '*Opening of Gravel Pit at Ummera Td, Macroom*' on an undeveloped part of the McSweeney land to Daniel & Sean Lordan, (see Enclosure 1). This was to operate separately from the McSweeney pit. The planning file for that application is no longer available at the offices of Cork County Council. The only remaining documentation is the grant of permission and the map showing the planning applications – a screen shot of the historical planning maps, provided by Cork County Council, is included in Enclosure 1. The map clearly show that the Lordan's application relates to a 3.100ha field located to the south of the pre-1963 quarry.

In 1978, permission 1365/78 was granted for '*Erection of Gravel Plant in Existing Pit at Ummera, Macroom*' – i.e. on the pre-1963 site (see Enclosure 2). This washing plant continues to be operated in the pre-1963 lands, well within its original washing capacity (the washing plant installed in 1978 on foot of permission 1365/78 has been the only washing plant used at the site – and is still in use today). This company has operated the lands since 1978, eventually purchasing the ground from McSweeneys in 2004. The planning application maps included with Enclosure 2 clearly show the pre-1963 pit (and the proposed washing plant) to the north of the area operated by the Lordans.

This site was registered under Section 261 as QR01 and underwent a review by Cork County Council for all elements of potential significant environmental impact as are normally assessed through EIA. In recognition of its pre-1963 origins, Cork County Council initially requested that an application for Continuation of Use with EIS be submitted under Section 261(7), a provision reserved for sites of pre-1963 origins.
In the end however, a comprehensive set of conditions were attached, stated as being by way of a decision to "modify and add to the conditions imposed under Planning Permission Reg. No. 375/76 granted for operation of the quarry" but did not say which part of Section 261(6) the conditions were attached under.

On the face of it, this may seem to have ignored the pre-1963 land use and other existing permission but the conditions were imposed on the total land comprising pre-1963 and both permissions. To that end, it was immaterial which part of Section 261(6) applied. All extraction has remained within this registered area.

It is worth noting that, given that these conditions had to have been issued under Section 261(6)(a)(ii) (on foot of decision to "modify and add") Section 261(6)(b) states:

Where, in relation to a grant of planning permission conditions have been restated, modified or added in accordance with paragraph (a), the planning permission shall be deemed, for the purposes of this Act, to have been granted under section 34 , and any condition so restated, modified or added shall have effect as if imposed under section 34 .
Following the completion of the registration process, the company fully implemented the conditions pertaining to the site. This commitment to environmental management continues to be fully supported by the company as an important part of site management.

The applicant has awaited the implementation of Section 261A and, on foot of compliance with the Section 261(6)(a) conditions, fully expected that No Further Action would be the outcome with regard to this site. On 23rd August 2012, Cork County Council issued its decision under Section 261A(3) on foot of a determination under Section 261A(2). This requires that a substitute consent application with remedial EIS must be made to An Bord Pleanala for the reason given in the Cork County Council letter of that date.

3. Retrospective Application of EIA Legislation

As previously stated, this site was registered in accordance with Section 261 and complied with all requirements of that legislation. Cork County Council registered the site as QR01 and attached conditions under Section 261(6) to the entire site, thereby recognising its authorised status.

It is a matter of fact that the applicant has full authorisation for extraction on the existing site, within the registered area. Being authorised by way of pre-1963 usage and subsequent permissions, the continued operation of this site in compliance with the Section 261 conditions, as amended, is unaffected by the passage of EIA in 1990 and Habitats legislation in 1997. The site was authorised prior to legislation transposition dates and has not been developed in a manner inconsistent with that authorisation since, the original washing plant still being in place and working well within authorised capacity. Therefore, the site authorisation remains as valid today as when it was first formally authorised on foot of the commencement of the 1963 Act on 1st October 1964 and the 1970s permissions.

However, in this case, the planning authority has made a determination under Section 261A(2) that the site requires a mandatory EIA on the basis of cumulative area. The Section 261A(3) merely flows from the Section 261A(2) determination, itself acknowledging the existence of the original authorisation and the registration of the site under Section 261.

It is clear from the evidence above that the continued operation of this site, in compliance with the relevant conditions, does not require a consent decision. EIA legislation only comes in to play on this authorised site when a consent decision is required for an extension to area or material change to the method of operation. As no such consents are currently required, the EIA legislation cannot be invoked with regard to this site, as to do so would be to retrospectively apply such legislation to a fully authorised development, which is an unlawful intrusion on the established property rights.

4. Legal Considerations

The relevant portion of Section 261(a)(2)(a) is in the following terms:

"(2)(a) Each planning authority shall, not later than nine months after the coming into operation of the section examine every quarry within its administrative area and make a determination as to whether –

(i) the development was carried out after 1 February, 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an Environmental Impact Assessment or a determination as to whether an Environmental Impact Assessment was required, but that such an assessment or determination was not carried out or made, ...".

The DECLG Guidance of January 2012 states as follows at Page 7 with regard to deciding if post 1990/1997 development was authorised where a pre-1963 authorisation exists:

The first point to note here is that if the development carried out after 1/2/1990 was authorised by a planning permission granted prior to 1/2/1990 EIA is not required in respect of such development under the Directive because the Directive does not apply in respect of projects authorised before the Directive became operative. Any development which obtained planning permission before the EIA Directive came into effect and is operating in accordance with the terms of its planning permission is not affected by the Directive and does not require EIA under the terms of the Directive..... Where it is established that any post-February 1990 development is authorised by a pre-February 1990 planning permission, or that any post-February1997 development is authorised by a pre-February 1997 planning permission no further action is required in respect of that quarry under section 261A.I

It then goes on to deal with pre-1963 folios:

Where the quarry has not got a planning permission it will be necessary to decide, and this is the third point, whether the post-1990 and/or post-1997 development was authorised by a bona fide pre-1964 use and so might be said to have a "pre-1964 authorisation". Obviously the first step here is establishing whether the quarry commenced prior to 1 October 1964. Planning authorities will already have looked at the pre- or post-1964 status of quarries in the registration process which took place in 2004-2005 and accordingly information gleaned as part of this process should be the first port-of-call.

As the original authorisation dates back to 1964, and to a separate permission on an adjoining land parcel, and to a permission for washing of gravel within the pre-1963 area, and remains an area consistent with development to date and in compliance with Section 261 conditions such as to mitigate any potential significant environmental impacts, there is no question that this development could have required an environmental impact assessment.

The planning authority should not have taken into consideration the authorised area, being the registered area marked by a red boundary within which all extraction has occurred to date as permitted by Cork County Council itself, in so far as this was not subject to the requirements of the EIA Directive or implementing legislation in that regard.

5. Conclusions

In this application for review, the basis for the Cork County Council determination under Section 261A(2) and subsequent decision under Section 261A(3) has been shown to have been fundamentally erroneous.

The established land use, further authorisations by way of permissions, and continued use appropriate to the general scale of authorised/permitted development, has ensured that no material change has occurred since the imposition of those conditions. Accordingly, the Determination of Cork County Council under Section 261A(2) and Decision under Section 261A(3) has no basis in the current legislation.

Accordingly, An Bord Pleanala is respectfully requested to quash the Determination and Decision of Cork County Council as set out in its letter of 23rd August 2012, and to conclude that, without a basis for a determination under Section 261A(2), that No Further Action is the appropriate result of the Section 261A review process with respect to this site, CKQY0003.

Notwithstanding and without prejudice to the arguments above, the legislation affords just this opportunity under Section 261A(6) to request the Board, in the event that the decision of the planning authority is confirmed by the Board, to allow a six month timeframe from the date of such confirmation for submission of the requisite substitute consent application with remedial EIS.

However, this company is confident that the reality of the situation will be self-evident and that this unwarranted and legally flawed attack on the established land use will not be tolerated by An Bord Pleanala.

We look forward to your decision in due course.

Yours sincerely,

Eugene Murnane, Director
For & on behalf of Drimoleague Concrete Works Ltd

Enclosures: 1. Permission 375/76 of 1976
2. Permission 1365 /78 of 1978
3. QR01 Section 261 Conditions 2006

ENCLOSURE 1 – PERMISSION 375/76

76/375

CORK COUNTY COUNCIL.

ORDER NO. P.D. 77 /1976.

SUBJECT: Application Reg.No. 76/76 for permission
for - Opening of gravel pit
at Ummera Td., Macroom.

ORDER:

Permission is hereby GRANTED, subject to the provisions of Sub-Section 5 & 9 of Section 26 of the Local Government (Planning and Development) Act, 1963, to Daniel & Sean Lordan,

of 7, Woodbine Lawn, Ballincollig, Co. Cork.

for Opening of gravel pit

at Ummera Td., Macroom.

in accordance with the plans and particulars submitted by the applicant on 11/2/76 as amended ----

and subject to the Conditions set out on the schedule attached hereto .

E. Mahony
Asst. CORK COUNTY MANAGER.

Dated this 8th day of April, 1976

Form:PL/002/W&Y

SCHEDULE

Reference Number in Planning Register: 375/76

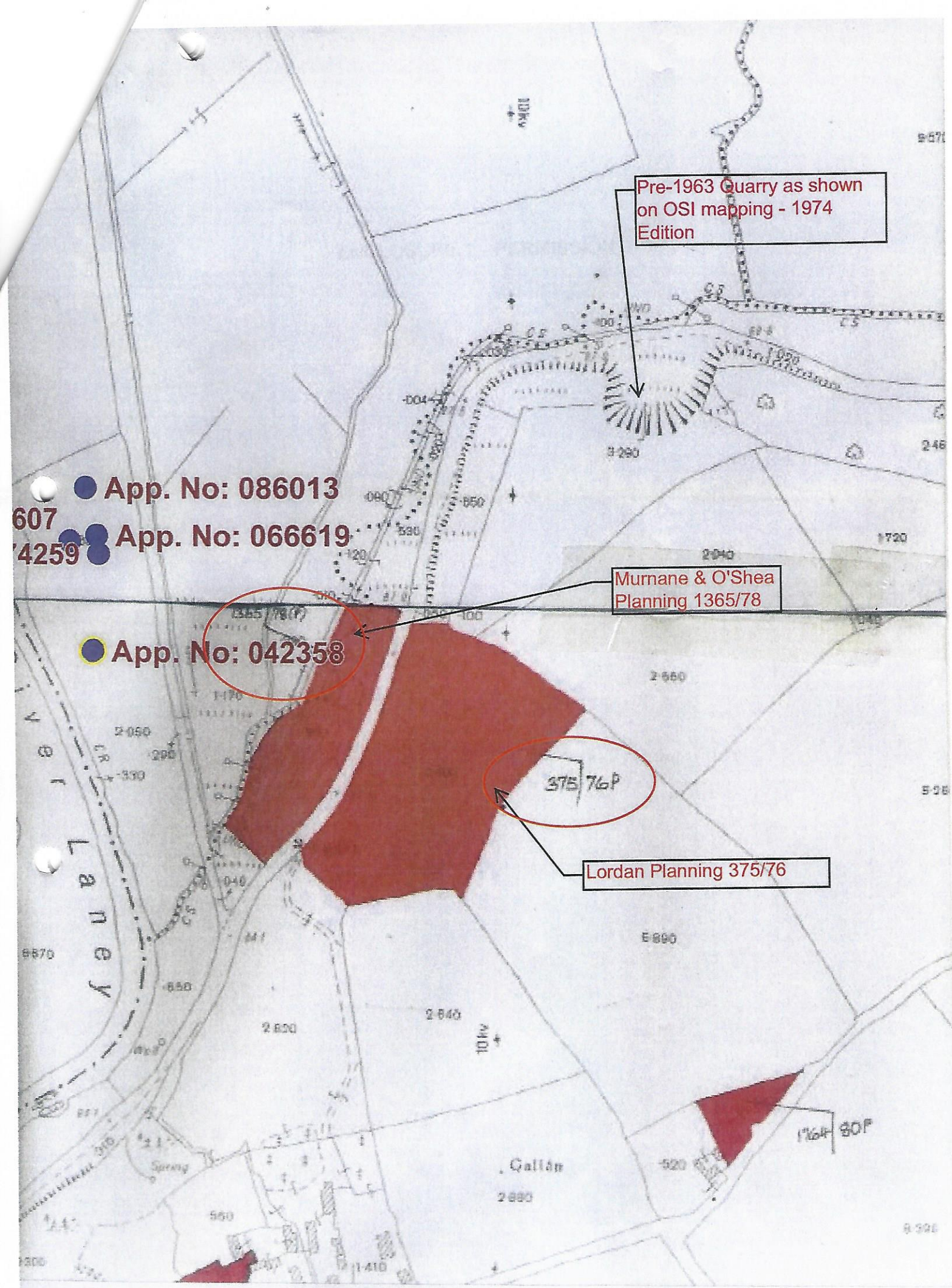
	Column 1 – Condition	Column 2 – Reason
	Provided that:	
(1)	Surface water shall be disposed of on site and shall not be allowed to flow onto public road or into nearby river and roadside drainage shall not be obstructed.	To maintain proper roadside dr. and to prevent the flooding of the public road.
(2)	Entrance gates shall be recessed a minimum of 16' and side walls shall be splayed to an angle of 45 degrees and walls shall not exceed a maximum height of 3½' over the level of the adjoining road.	To provide proper sight distance for emerging traffic in the interests of road safety.
(3)	Entrance avenue between road edge and entrance gate shall be set level with road surface and shall not extend beyond road surface edge.	In the interests of road safety and the proper development of the site.
(4)	No quarrying shall take place within 15' of public road except for material required to be excavated to form the entrance and this 15' deep area shall be fenced and planted to the Council's satisfaction.	In the interests of road safety and to ensure the proper develo of the site
(5)	Quarrying shall be by staged removal of 10' deep layers.	In the interests of orderly development.
(6)	The site shall be reinstated and landscaped to the Council's satisfaction and shall include:	
	(a) the replacement of the waste materials and top soil so as to make the land suitable for agricultural or recreational or other purposes and consistent in appearances with the surrounding land.	(a) and (b) To ensure the satisfactory reinstatement of the land in the interests of amenity.
	(b) arrangements for the moulding of surface levels, the natural surface and subsoil drainage if necessary and the seeding and planting of the site.	

h:PL/002/WEY

SCHEDULE

Reference Number in Planning Register: 375/76

Column 1 – Condition	Column 2 – Reason
(7) Before the development is carried out on the site security shall be given to the Planning Authority by way of a bond in the sum of £400 per acre of the area to be developed or by way of lodgement with the Planning Authority of an agreed sum for the satisfactory completion of the reinstatement and landscaping works stipulated in condition no. 6.	To ensure the satisfactory reinstatement of the land in the interests of amenity.



Cork County Council Historic Planning Applications Registry Map

SCHEDULE

(3)

Reference Number in
Planning Register: ~~1365/78~~

Column 1 – Condition	Column 2 – Reason
Provided that:	
(1) **The proposed plant shall be removed on cessation of extractive and associated operations.**	**The proposed structure would be unacceptable on a permanent basis.**
(2) **The proposed settlement lagoon shall be re-instated to its original position and shall be reseeded with grass.**	**In the interests of visual amenity.**
(3) **The developer shall ensure that pollution of the adjacent watercourse is prevented.**	**In the interests of environmental amenities of the area.**

(14)

CORK COUNTY COUNCIL.

APPLICATION FOR * Permission FOR + Comm DEVELOPMENT.

Reg.No. _____

I/We Murrano & O'Shea Ltd., Glengarriffe Road, Bantry per

OF J. &. N. Murphy, BB.E., Macroom @
O

Hereby apply to Cork County Council for * Permission to carry out development namely:

Erection of Gravel Plant in existing Pit @ Ummera, Macroom

At Ummera, Macroom. (Townland Road etc.)

as described in the particulars given hereunder and the drawings attached hereto.

Reg. No. 1365/78
PLANNING DEPARTMENT
17 APR 1978
CORK COUNTY COUNCIL
County Hall, Cork

Signature of Applicant: Per J&N Murphy.

DATE 14th April 1978

* Insert Permission or Approval.
+ Insert Industrial or Commercial.
@ Unless otherwise indicated, correspondence will be sent to this address.
O In the case of Registered Company, the full address of its registered office must be stated.

PARTICULARS OF DEVELOPMENT PROPOSED.

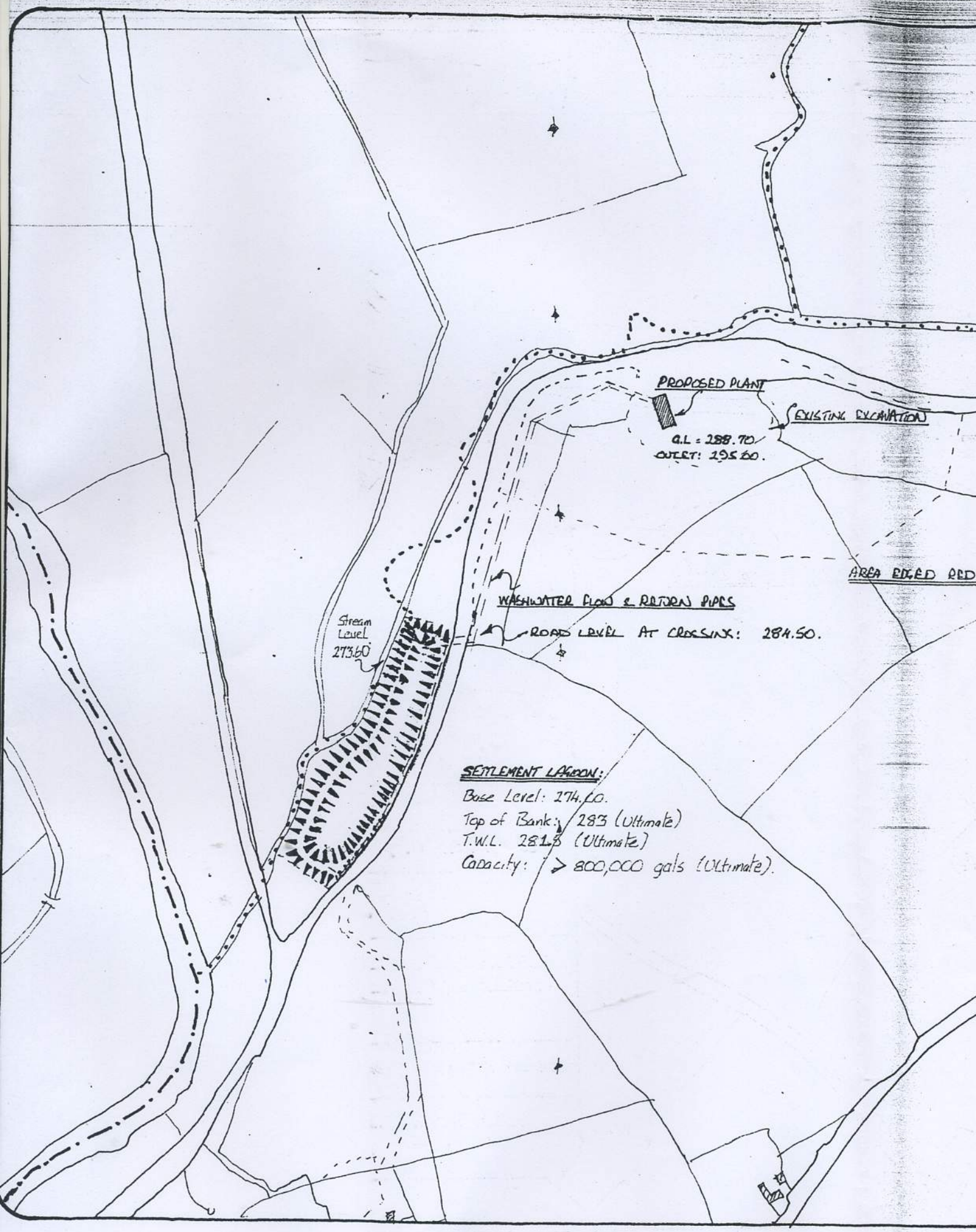
1.	(a) Name and Address of site owner. (b) Details of your interest in site. e.g. have you purchased it or contracted to do so.?	(a) D. MCSweeney, Ummera, Macroom. (b) Leased for gravel extraction.
2.	Name and address of person who prepared plans and drawings.	J. & N. MUrphy.
3.	Total floor area in sq. ft. or sq. metres (i.e. sum of the area in all floors measured inside the external walls.)	N/A.
4.	Description of buildings and materials to be used in them. (a) Floors. (b) Walls and Partitions. (c) Roof.	Nature / Colour (a) (b) N/A - Gravel plant (c) is only item being erected.

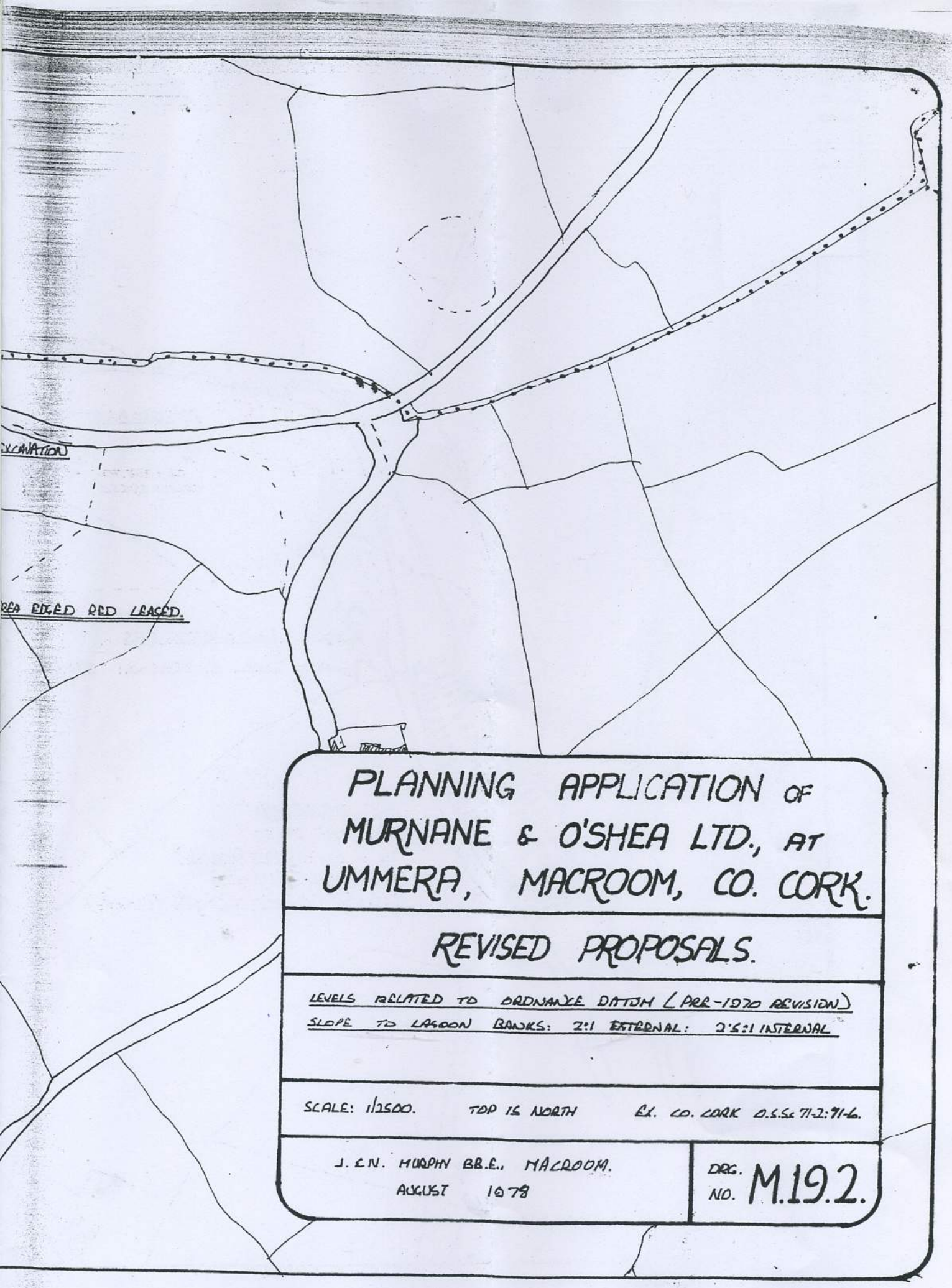
(15)

5. Nature and colour of proposed external materials: (a) Roofs, (b) Front Walls. (c) Side Walls. (d) Rere Walls. (e) Road Boundary Walls (f) Other Boundary Walls (g) Building other than main buildings.	Nature: Colour (a) (b) (c) N/A. (d) (e) (f) (g)
6. Special reasons (if any) for the selection of this particular site.	As contractors working in the Macroom area, the applicants have experienced some difficulties in regard to the supply of gravel and sand in the area, and this was the only available site which they could obtain to develope themselves.
7. Has Outline Permission been obtained or refused and please quote Reg.No.	7. N.A.- existing pit.
8. Acreage of site.	5.80 acres
Intended use of building with details of process including raw materials and products.	The application is for the installation of a plant to screen and wash gravel, and

N.B. The details required under Items 9-16 may be submitted on a separate schedule.

10. Details of all emissions - e.g. smoke, odour, noise, dust etc. and proposals for control.	no buildings other than the plant itself are involved, and as regards emissions, there would be no net emissions, as it is proposed to re-cycle the wash-water, and the plant would be electrically powered, eliminating the greatest noise source.
11. Details of all liquid effluents and solid wastes and disposal methods.	
12. (a) Estimate of no. of employees. (b) Estimate of traffic likely to be generated.	(a) 2 or 3 in pit. 2 or 3 in lorries (b) 2 or 3 lorries, av. 4 trips/day.
13. How supplied with water - process and cooling. Method of disposal of cooling wat with temperature details etc.	Initally pumped from stream across road (adjoining settlement lagoon). Rainfall to lagoon or possible pumping from stream to replace wter evaporated and retained in washed gravel.
14. Have you discussed your proposal with Council's Chief Fire Officer?	No.
15. Energy/power source. Give details.	E. S. B. H.T. line - already on site
16. Storage of materials /products. Give details of open and covered storage proposed.	Wash-water stored in settlement lagoon. If Council desire, lagoon will be moved to main pit area as soon as space is available.


PROPOSED PLANT
EXISTING EXCAVATION
G.L = 288.70
OUTLET: 285.60.
AREA EDGED RED
WASHWATER FLOW & RETURN PIPES
ROAD LEVEL AT CROSSING: 284.50.
Stream Level 273.60
SETTLEMENT LAGOON:
Base Level: 274.00.
Top of Bank: 283 (Ultimate)
T.W.L. 281.8 (Ultimate)
Capacity: > 800,000 gals (Ultimate).



PLANNING APPLICATION OF MURNANE & O'SHEA LTD., AT UMMERA, MACROOM, CO. CORK.

REVISED PROPOSALS.

LEVELS RELATED TO ORDNANCE DATUM (PRE-1970 REVISION)
SLOPE TO LAGOON BANKS: 2:1 EXTERNAL: 2·5:1 INTERNAL

SCALE: 1/2500. TOP IS NORTH EX. CO. CORK O.S.Sc 71-2:71-6.

J. C N. MURPHY B.E., MACROOM.
AUGUST 1978

DRG. NO. M.19.2.

APPENDIX 11

BOARD'S S261A ORDER & INSPECTOR'S – DATED 24 FEBRUARY 2014

An Bord Pleanála

PLANNING AND DEVELOPMENT ACTS 2000 TO 2013

Cork County

Planning Authority Register Reference Number: CKQY003

An Bord Pleanála Reference Number: 04.QV.0116

LOCATION OF QUARRY: Ummera, Macroom, County Cork.

REVIEW REQUESTED by Drimoleague Concrete Works Limited of Lahadane, Bantry, County Cork in respect of;

(i) **the determination** by Cork County Council, on the 22nd day of August, 2012, under subsection (2)(a)(i) of section 261A of the Planning and Development Act, 2000, as amended by the insertion of section 75 of the Planning and Development (Amendment) Act 2010 and as further amended by the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 and European Union (Environmental Impact Assessment and Habitats) Regulations 2012, which determination was that;

development was carried out after the 1st day of February, 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment, but that such an assessment was not carried out or made, and

(ii) **the decision** by Cork County Council, also on the 22nd day of August, 2012, under subsection (3)(a) that;

permission was granted in respect of the quarry under Part IV of the Local Government (Planning and Development) Act, 1963, and

the requirements in relation to registration under section 261 of the 2000 Act, as amended were fulfilled.

BOARD DECISION

The Board in exercise of its powers, conferred on it under section 261A of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations marked (1) set out below, decided to **confirm** the determination of the planning authority in respect of this development made under section 261A(2)(a)(i) of the Planning and Development Act 2000, as amended, and

based on the Reasons and Considerations marked (2) set out below, decided to **confirm** the decision of the planning authority in respect of this development made under section 261A(3)(a) of the Planning and Development Act 2000, as amended

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

REASONS AND CONSIDERATIONS (1)

Having regard to:

(a) the provisions of the Planning and Development Acts, 2000 to 2013, and in particular Part XA and section 261A,

(b) the European Communities (Environmental Impact Assessment) Regulations 1989 – 1999, and the Planning and Development Regulations 2001 (as amended), which, in Schedule 5, restate the prescribed classes of development requiring environmental impact assessment, and which in Schedule 7, set out the criteria for determining whether a development would or would not be likely to have significant effects on the environment,

(c) the documentation on the review file (planning authority register reference number CKQY0003) including available aerial photography,

(d) the planning history of the site in particular permissions granted by the planning authority under planning register reference numbers 375/76 and 1365/78,

(e) details of site registration by Cork County Council under section 261 of the Planning and Development Act 2000, as amended, for a quarry of 17 hectares (planning authority register reference QR01, An Bord Pleanála reference number 04.QC2002), and the conditions attached to same,

(f) the overall scale of the quarry and the rate and extent of expansion post 1st day of February, 1990 beyond the permitted boundary,

(g) the absence of any documentation on file to verify the claim that the quarry has the benefit of established pre - 1964 use,

(h) the report of the Inspector,

it is considered that development was carried out after 1st day of February, 1990 which development would have required having regard to the Environmental Impact Assessment Directive, an environmental impact assessment, but that such an assessment was not carried out.

REASONS AND CONSIDERATIONS (2)

The Board considered that

(a) planning permission was granted for this quarry under Part IV of the Local Government (Planning and Development) Act ,1963,

(b) quarrying at this site has extended beyond the boundaries indicated under planning register reference numbers 375/76 and 1365/78,

(c) the requirements in relation to registration under section 261 of the 2000 Act, as amended, were fulfilled in relation to this quarry site.

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2014.

An Bord Pleanála

Board Direction

REF: QV 04.QV 0116

The submissions on this file and the Inspector's report were considered at a Board meeting held on 11th, February 2014. The Board decided, generally in accordance with the Inspector's recommendation, to:

(i) **Confirm** the planning authority's Determination under Section 261A(2)(a)(i) in accordance with the reasons and considerations (1) set out below,

(ii) **Confirm** the planning authority's Decision under Section 261A(3)(a) in accordance with the reasons and considerations (2) set out below,

REASONS AND CONSIDERATIONS (1)

Having regard to:

(a) the provisions of the Planning and Development Acts, 2000 to 2011, and in particular Part XA and section 261A,

(b) the European Communities (Environmental Impact Assessment) Regulations 1989 – 1999, and the Planning and Development Regulations 2001 (as amended), which, in Schedule 5, restate the prescribed classes of development requiring environmental impact assessment,

(c) the documentation on the review file (planning authority reference no QY0003) including available aerial photography,

(d) the planning history of the site in particular permissions granted by the planning authority including ref. no. 1365/78 and 375/76.

(e) details of site registration by Cork County Council under S261 of the PDA 2000 (as amended) for a quarry of 17 ha (QR01 - 04.QC2002), and the conditions attached to the same,

(f) the overall scale of the quarry and the rate and extent of expansion post 1st, February 1990 beyond the permitted boundary,

(g) the absence of any documentation on file to verify the claim that the quarry has the benefit of established pre-1964 use.

(h) the report of the Inspector,

it is considered that development was carried out after 1st February 1990 which development would have required having regard to the EIA Directive, an environmental impact assessment, but that such an assessment was not carried out.

REASONS AND CONSIDERATIONS (2)

(a) Planning permission was granted for this quarry under Par IV of the Local Government (Planning and Development) Act 1963.

(b) quarrying at this site has extended beyond the boundaries indicated in permission ref. 375/76 and 1365/78

(c) the requirements in relation to Registration under section 261 of the Act, were fulfilled in relation to this quarry site.

Note: Having regard to the lack of information on pre October 1964 operations, the planning history of the site and the rate of expansion of the quarry after 1995, which amounted to intensification the Board considered that the quarry is not operating in accordance with any pre-October 1964 status.

Board Member: _____ Date: 19th, February 2014
Paddy Keogh

An Bord Pleanála

Inspector's Report

Development: Quarrying at Ummera, Macroom, Co. Cork.

Application for Review under Section 261A(6)

Planning Authority	: Cork County Council
Planning Authority Quarry Ref.	: QY0003
Owner/Operator	: Drimoleague Concrete Works Ltd.
PA Determination/Decision	: Subsection (2)(a) & (3)(a)

Review

Party/Parties Seeking Review	: Drimoleague Concrete Works Ltd.
Type of Review	: Subsection (2)(a) & (3)(a)

Date of site inspection : 14th February 2013

Inspector: **Michael Dillon**

1.0 Site Location and Description

1.1 The quarry, the subject of this Review, with an overall site area of approximately 17.0ha (as per Cork County Council Planner's Report), is located some 2km east of the town of Macroom in County Cork, and on or around the 110m contour. The quarry is located within the townland of Ummera. The access to the quarry is from a county road L-3423. The road connecting the quarry with the R618 near Macroom has a good surface and is wide enough for two trucks to pass with care. There is a wide recessed entrance with hard-core and entrance gates to the quarry site. The 80kph speed restriction applies in this area. There are no public footpaths and there is no public lighting in the area. Sight distance at the quarry entrance is good to the northeast, but poor towards the southwest.

1.2 The L34231 road forms the eastern and southern boundary of the quarry site. This is a narrow road with a grass strip in the centre, serving agricultural lands and a small number of houses. There is no access to the quarry from this road. Earthen berms have been thrown up on the southern side of the quarry pit to screen it from view from this road. The quarry is surrounded by fencing. Embankments and scrub woodland screen the quarry from view from all surrounding roads. It is possible to get a view into the quarry from the hill to the south – agricultural access tracks only.

1.3 The quarry ownership extends to a strip of land between the L-3423 and the fast-flowing Clashavoon Stream. This strip varies in width. There is a small shed on the bank of the stream with pumping equipment for extraction of water from the stream. There is also a hairpin siltation lagoon at the southern end of this strip – somewhat overgrown with vegetation – within which there is heavily-silted water – discharging at two places to the Clashavoon Stream. It should be noted that roadside drainage also discharges to this lagoon.

1.4 The quarry was not operational on the date of site inspection, but was open for maintenance. There is a hard-core haul road from the quarry gates to the processing area. Washing and screening plant and a small office and store are located in an area beside two siltation lagoons and aggregate stockpiles. The siltation lagoons (which are fenced) discharge by gravity to a pipe which runs down through an area of scrub woodland to a gully beside the roadside – which would appear to discharge by pipe to a third hairpin lagoon on the opposite side of the road (but some way to the south) as referred to in section 1.3 above. There is some small amount of surface water ponding within the quarry. There were some open springs within the quarry draining naturally towards the pair of siltation lagoons. Silt from the lagoons has been deposited in along the northwestern and northern boundaries. The southern portion of the quarry remains as

grassland. There is a standing stone located within this grassed area in the southwestern sector of the quarry. There are some abandoned agricultural buildings in this area also.

1.5 There is a sprinkler system in place on the haul road between the quarry gates and the processing area. Water pipes for a sprinkler system above the quarry edge to the southeast were also in evidence on the date of site inspection. There are 10kV power lines traversing the quarry. Sandmartins have nested extensively throughout the quarry.

2.0 Planning History

The planning history of this quarry, insofar as it can be ascertained with any degree of certainty, is as follows-

Ref. 375/76: Permission granted to Daniel & Sean Lordan on 8th April 1976, for opening of a gravel pit (3.162 acres) – subject to 7 no. conditions.

Ref. 1365/78: Permission granted to Murnane & O'Shea Ltd. on 26th October 1978, for gravel plant (washing plant and lagoons) in existing pit (5.8 acres) – subject to 3 no. conditions. This site is divided into two portions – one on each side of the public road – the hairpin settlement lagoon being located on the opposite side of the road. The land was stated to be leased from D. McSweeney.

Ref. EF080596: relates to alleged non-compliance with conditions attached to QR01 – quarry registration.

Ref. EF090293: relates to warning letter issued on 17th August 2009 in relation to compliance with condition 17 of QR01 – quarry registration.

3.0 Quarry Registration under Section 261

By Notice dated 7th September 2006, Cork County Council modified and added to conditions imposed under permission ref. 375/76 in relation to the operation of QR01. The total no. of conditions was 64. The application form for registration stated that the quarry was operational in the 1940's. The area of registration was 42 acres (17ha). The quarry operator appealed 17 no. of the 64 conditions attached (ref. **04.QC2002**). The site was visited by an Inspector for the Board and photographs taken. By Order dated 7th June 2007, the Board decided to attach conditions 14, 15, 19, 46(b), 51 and 55; and to emend conditions 4, 22, 30, 45, 59, 61 and 63; and to remove conditions 13, 20, 23, 33 and 35.

4.0 Matters considered by Planning Authority in Assessment

Apart from the planning history and quarry registration under section 261, the following was taken into consideration by the Planning Authority in its assessment of this quarry site-

- Details of property Ownership Research which indicates that Folio CK114765F was in the ownership of Drimoleague Concrete Works Ltd. on 30th August 2004 – area of 20.22ha. There is no map supplied with this Folio - [Copy in photograph pouch downloaded from The Property Registration Authority website].
- Black & white base map to scale 1:2,447 – with quarry area hatched.
- Black & white aerial photographs dating from 2010, 2005, 2000, and 1995.
- Planner's Report – dated 20th June 2012 (based on site inspections of 12th April and 19th June 2012) – and including 4 no. black & white photographs. Also included are 4 no. black & white aerial photographs from 1995, 2000, 2005 and 2011, and a further number of annotated aerial photographs of the same dates. The report states that the quarry is operational. It is noted that the quarry was not assigned a pre-1964 status under the section 261 procedure. At registration the quarry had an exhausted extraction area of 7.19ha and a future extraction area of 9.25ha. Because of distance to the nearest European site, AA was not deemed necessary in relation to the quarry.

5.0 The Planning Authority's Determination/Decision

By Order dated 23rd August 2012, Cork County Council issued a Notification with a determination under section 261A(2)(a) that environmental impact assessment was required in respect of quarrying at this site; and a decision under section 261A(3)(a) requiring the owner/operator to apply to the Board for substitute consent.

6.0 Review to The Board

6.1 A review of the determination/decision of Cork County Council under section 261A(2)(a) & (3)(a) was lodged with the Board by Drimoleague Concrete Works Ltd, on 11th September 2012, and can be summarised in bullet point format as follows-

- The Council has attempted to retrospectively apply the EIA Directive to this fully authorised quarry.
- The quarry has the benefit of a pre-1963 user – operated then by McSweeney's.

- Permission was granted ref. 275/76, to Daniel & Sean Lordan to open up a gravel pit on an undeveloped part of the Sweeney landholding – operated separately from the Sweeney quarry. This planning file is no longer available. This application related to a 3.1ha field located to the south of the pre-1963 quarry.
- Permission was granted ref. 1365/78 for a gravel plant at the existing pre-1963 quarry. The washing plant continues to be operated.
- Drimoleague Concrete Ltd. has been operating the quarry since 1978 – purchasing the ground from McSweeney's in 2004.
- The site was registered under section 261 as QR01. A comprehensive set of conditions were attached to modify and add to the conditions imposed under permission ref. 375/76. All extraction has remained within the registered area. The company fully implemented the conditions.
- The quarry was authorised, both by way of pre-1963 use and planning permission, prior to coming into effect of the EIA Directive in 1990 or the Habitats Directive in 1997.
- The planning authority has decided that mandatory EIA is required based on site area. EIA legislation would only come into play when a consent decision is required for an extension of area or material change in the method of operation. As no such consents are required, the EIA legislation cannot be invoked. To do so, would be to retrospectively apply the Directives.
- The Department of the Environment, Community and Local Government guidance states that quarries that are operating with the benefit of planning permissions which pre-date the coming into effect of the Directives in 1990 and 1997, would require no further action.
- The Guidelines also refer to a pre-1964 *bona fide* use where quarries could be deemed to have a pre-1964 authorisation. This quarry does have a pre-1964 authorisation, so EIA or AA are not relevant.
- The Board is requested to quash the determination and decision of Cork County Council.
- Notwithstanding the above, if the Board holds with the decision/determination of the Council, it is entitled to allow a six-month timeframe from the date of such confirmation, for submission of the requisite substitute consent application.

6.2 The Review is accompanied by the following-

- Copy of permission ref. 375/76 – including 1:2500 OS map extract from Cork County Council planning register – showing the permission area in red.

- Copy of permission ref. 1365/78 – including annotated OS map to scale 1:2500.
- Copy of Quarry Registration conditions – reflecting changes made by way of appeal to the Board – handwritten annotations.

7.0 Observations

There are no observations in relation to this Review.

8.0 Response Submissions

By letter received on 11th October 2012, Cork County Council responded to the Review as follows-

- Based on measurements taken from GIS system, the extraction area was estimated at 9.76ha (when the Planner's Report was compiled in 2012), which is larger than the mandatory 5ha EIA threshold. The aerial photograph of 2000 is the most reliable in terms of determining the scale of quarrying when the EIA Directive came into force. It is estimated that the extraction area was then 6.86ha. The quarry increased in area by 2.9ha which is greater than 25% of the original extraction area and exceeds 50% of the relevant threshold – i.e. 2.5ha. Therefore, the quarry would have required mandatory EIA post-1st May 1999.
- Based on its conclusions in relation to subsection (2)(a), the planning authority was obliged to issue a subsection (3)(a) Notice. Permission was granted in respect of this quarry, and the quarry was registered under section 261.
- The quarry was not assigned a pre-1964 status during registration under section 261. Conditions were attached to a planning permission – ref. 375/76.

9.0 Assessment

9.1 General Comments in Relation to Quarrying at this Site

9.1.1 The European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011, re-introduced the definition of "mine", "minerals" and "quarry" into the Planning Acts in section 2 of the principal act. For the purposes of the Review process of the Board, the definitions of "minerals" and "quarry" are of interest, and are set out below:-

"minerals" includes stone, slate, clay, gravel, sand and other natural deposits except peat.

"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.

9.1.2 The land ownership at this quarry site extends to either side of the L-3428 road. The quarrying area is located on the southeast side of this road only. The strip of land between the road and the Clashavoon Stream (the northwestern portion of the landholding) is not used for quarrying. There is a hairpin shaped siltation lagoon within a wooded area at the southern end of this northwestern portion – receiving discharge waters from a pair of existing lagoons within the quarry site proper, and discharging this water in turn to the Clashavoon Stream at two different points. There is a small shed and water-pumping equipment on the bank of the Clashavoon Stream for extraction of processing water from the stream, when such is required. The extent of land ownership on the northwestern side of the L-3428 is approximately 4 acres (1.62ha), whilst the landholding on the southeastern side is approximately 42 acres (17.0ha).

9.1.3 The OS 1:2500 map for the area, which was revised in 1974, clearly shows a pit immediately to the south of the L-3428 – the approximate extent of which is 1.0 acre. It is claimed that this pit was in operation since the 1940's. Planning permission was granted on 8th April 1976 (ref. 375/76) to Daniel and Sean Lordan to open a new gravel pit on a 3.16 acre distinct site to the southwest of the 1.0 acre pit (although it is not known if it had expanded by then). A separate planning permission was granted to Murnane & O'Shea Ltd. on 26th October 1978 for gravel plant

(washing plant and lagoons) in the existing 1.0 acre pit (ref. 1365/78) – although again, it is not known if the pit had expanded by that time. The lagoon was located on the opposite side of the road, and did not form part of the quarrying area *per se*. The land was stated to be leased from D. McSweeney for a period of 15 years. The area of the site was stated to be 5.8 acres and incorporated the 1.0 acre quarry indicated on the OS 1:2500 map of 1974. I estimate that approximately 1.5 acres of the 5.8 acre site is accounted for by the lagoon area on the opposite side of the road – leaving a balance of approximately 4.3 acres of quarry proper. There are no other planning permissions relating to this quarry site. It is not clear from drawings submitted with the application whether the 1.0 acre pit shown on the OS map of 1974 had expanded to the 4.3 acre extent shown on drawings, or if this was an indication of future quarrying to serve the gravel plant. The notice and description of the development relating to application ref. 1365/78, did not make any reference to extension of quarry area. However, there did not appear to be any objection on the part of Cork County Council to the boundaries of the development indicated on drawings submitted – the site being in two parts (one on each side of the road).

9.1.4 The quarry area on the southeastern side of the road registered under section 261 – amounted to 42 acres (17ha). This area included the quarrying area of both planning permissions on the site – ref. 375/76 and ref. 1365/78 – with extraction areas of 3.1 acres and approximately 4.3 acres respectively. Added together, these amounted to 7.4 acres (3ha). Quarry registration QR01 resulted in the modification and addition of conditions imposed under permission ref. 375/76 – a total of 64 no. conditions. This decision was the subject of an appeal to the Board by the quarry operator (ref. 04.QC2002) – the result of which was the attachment, modification and removal of certain of the 64 no. conditions – by decision dated 7th June 2007.

9.1.5 The earliest aerial photograph for this site is from 1995 (b&w) and shows the two permitted and distinct quarry areas within this holding united into a larger quarry which had extended in a southeasterly direction (into the hill). The coloured aerial photograph from 2000 does not indicate any significant expansion to the southeast. The coloured aerial photograph from 2005 indicates expansion of the quarry in a southerly direction. The 1995, 2000 & 2005 photographs are from the OSI. There is a later colour, aerial photograph from Bing Maps (undated) which shows the quarry extended to the south. The southern portion of the landholding remains as grassland at the date of site inspection on 14th February 2013. The current operator of the quarry states that the quarry was purchased in 2004 (confirmed by Property Registration Authority documentation on file), and that Drimoleague Concrete Ltd. had in fact been operating it since 1978 under lease.

9.2 Review of any Determination under Section 261A(2)(a)(i)

Whether Environmental Impact Assessment (EIA) or Determination of EIA was Required

9.2.1 The overall area of this quarry site is approximately 17ha – as per the section 261 registration process. This area would appear to be the natural extent of this quarry – bounded as it is by a road to the south and farmyards to the southwest. Not all of this area has been subjected to extraction. A wide swathe on the southern boundary of the holding remains in grassland. Almost all internal field boundaries were removed at some stage since 1974 – wherein field boundaries were indicated on the OSI 1:2500 map of that date. There is a hairpin-shaped siltation lagoon located on the opposite side of the access road – and whilst not part of the extraction area, does serve a function within the quarry operation, which entails the processing of sand and gravel (including washing). It has been noted elsewhere in this report that although the quarry was not in operation on the date of site inspection (14th February 2013), it was evident that the quarry was/is operational.

9.2.2 The assessment of Cork County Council notes that the quarry was not assigned a pre-1964 status during the Registration process of QR01, and that what issued from the Council was a modification/addition of conditions to permission ref. 76/375. The subsequent reasoning of the Council within the Section 261A process is a 'follow through' of assigning the quarry the status of a 'permitted' quarry which had extended beyond its permitted boundaries. The appeal to the Board, ref. 04.QC2002, did not alter this status in any way – modifying and omitting some of the conditions attached by the Council. It should be noted that the quarry operator did not question the status of the quarry, assigned by the Council .i.e. a quarry with a permission, rather than a pre-1964 continuation of quarrying. It would appear that the Board must first decide whether (a) this is a quarry operation which has a planning permission, where quarrying has extended beyond the boundary of that permission or, (b) whether quarrying at this site is the natural/proportionate extension of a pre-1964 use, which in the course of extension, subsumed a quarry which had been granted planning permission (the 3.1 acres of permission ref. 76/375). It would appear that the quarry the subject of permission ref. 76/375 was operated as a separate entity to the original 1.0-acre quarry shown on the OSI 1:2500 map of 1974. Planning permission was granted for gravel screening and washing plant within the 1.0 acre quarry (on an extended site of approximately 4.3 acres) to a different party. Vehicular access would appear to have been separate – although there is no way of being certain of this. The current vehicular access to the overall quarry site is through the access for the permitted quarry ref. 76/375.

9.2.3 The planning authority states that at the time of registration under section 261, the total area of the site was 17.44ha – with an exhausted extraction area of 7.19ha and a future extraction area of 9.25ha. The extent of the quarrying area was restricted by way of conditions attached by the Council (and the Board on appeal) in relation to set-back from road boundaries, the standing stone on site (CO071057) and adjoining houses. The Council states that the most recent aerial photograph of the site is from 2011 – and that the extent of quarrying on site in 2012 was roughly approximate to this photograph. The Council does not have an aerial photograph dating to 1990 (the date the EIA Directive was implemented). The aerial photograph of 1995 indicates an extraction area of 5.922ha. Between 1995 and 2011, the extraction area expanded by 3.84ha. Mandatory EIA would not, therefore, be required. It is noted that he extraction area indicated in the section 261 registration process would involve a significant extension of the extraction area of the quarry – and would breach the 5ha threshold for EIA. The Council considered whether the extraction area post 1st May 1999, increased by more than 2.5ha – 50% of the relevant 5.0ha threshold for mandatory EIA. The extraction area is currently estimated to be 9.76ha – greater than the 5ha threshold set down in the EIA Regulations. The aerial photograph of 2000 is the most reliable estimate of the size of the quarry at 1st May 1999 – the extraction area then being 6.86ha. This implies that the quarry increased by 2.9ha in area post 1st May 1999 – exceeding 50% of the relevant threshold (i.e. 2.5ha) and exceeding 25% of the original extraction area (6.86ha x 0.25 = 1.71ha). On the basis of these calculations, the Council decided that, as the quarry had extended by more than 2.5ha post 1st May 1999, EIA was required. The question of sub-threshold consideration of EIA did not arise, as the extension to the quarry breached the threshold for mandatory EIA.

9.2.4 Permissions from the 1970's would appear to cover approximately 3.0ha of the overall extraction area. There is no map or aerial photograph to indicate the precise extent of the quarry at 1st February 1990. The extraction area at the closest date (based on a 1995 aerial photograph) is estimated at 5.92ha. It would seem reasonable to assert that 5.92ha was the subject of extraction prior to the coming into effect of the EIA Directive on 1st February 1990. The quarry subsequently expanded to 6.86ha by 2000 – the closest date to 1st May 1999 for which there is an aerial photograph. This represents an increase of 0.94ha over an approximately 10-year period. Post-2000, it is estimated that the quarry increased in size from 6.86ha to 9.76ha in 2011 – an increase of 2.9ha. This increase represents more than 50% of the appropriate threshold of 5.0ha – i.e. 2.5ha. On the face of it, this would appear to require EIA for continuation of quarrying at this site. As has been noted by Cork County Council, there

are considerable lands available for future expansion by reference to the section 261 Registration boundary.

9.2.5 However, it is possible to regard the expansion of this quarry as the proportionate extension of a pre-1964 use. There is no evidence on the file to establish beyond doubt that a pre-1964 use existed on this site. The OSI 1:2500 map for 1974 clearly indicates a pit – approximately 1.0 acre in area within the overall 17.0ha quarry site. I note that earlier/historical OS maps do not indicate this pit. The fact that the quarry may have subsumed a 3.1 acre permitted quarry (ref. 375/76) does not take away from the fact that the quarry expanded in a natural fashion in concentric arcs towards the south and into the hill. The quarry expanded from 1.0 acres approximately in 1974 to approximately 9.76ha (24.2 acres) in 2012. From this total must be subtracted the 3.1 acres which was the subject of permission ref. 375/76) reducing the total to 21.1 acres. It could also be contended that the 4.3 acres (approximately) indicated in permission ref. 1365/78 could also be subtracted from the overall total – bringing the area to 16.8 acres. Such an expansion over a period of almost 40 years cannot be regarded as disproportionate – somewhat less than half an acre, on average, per year. The available aerial photographs show a gradual and natural progression in expansion, in widening arcs, into the hill to the southeast and south. I would consider that the Section 261 Registration process in relation to this quarry does not preclude the Board from arriving at the conclusion that, notwithstanding the decision in relation to QR01 (04.QC2002), the quarry the subject this section 261A Review, could be regarded as having the benefit of a pre-1964 use.

9.2.6 On balance, and having regard to the foregoing sub-paragraphs, I would incline towards the Determination arrived at by Cork County Council. The quarry was discharging silted water to the Clashavoon Stream on the date of site inspection – on a day when the quarry was not operational – the result of a natural flow from springs within the quarry through the siltation lagoons. It is likely that siltation could be heavier when the quarry and screening/washing plant was operational. The Clashavoon Stream flows into the River Lee reservoir to the east of Macroom.

9.2.7 The Determination of Cork County Council under section 261A(2)(a)(i) that EIA was required in respect of quarrying at this site should be confirmed.

9.3 Review of any Determination under Section 261A(2)(a)(ii)

Whether Appropriate Assessment (AA) was Required

9.3.1 Cork County Council decided that AA was not required in relation to this quarry, as it was not located within or adjacent to any European site, and further that there were no pathways linking the quarry any such site. The

quarry operator has sought a review of the Determination of Cork County Council. No other parties seeking review of the Determination/Decision of the Council. The Council determined that only EIA, and not AA, was required. It would appear, therefore, that the Board is precluded from considering whether AA was required in relation to quarrying at this site.

9.4 Review of Decision under Section 261A(3)(a)

Cork County Council issued a Decision pursuant to section 261A(3)(a), based on its conclusions in relation to the Determination under section 261A(2)(a). The Council decided that quarrying took place on this site which was an unauthorised extension of a permitted quarry, and that such extension would have required EIA. The quarry owner/operator was directed to apply for Substitute Consent with the submission of a remedial EIS. I would concur with the conclusions of Cork County Council in relation to the Decision arrived at. Permission had been granted for quarrying at this site, and the quarry was registered under Section 261 of the Act.

10.0 Recommendation

I recommend that the Board confirm the determination and the decision of Cork County Council in relation to this quarry site, for the Reasons and Considerations set out below.

A. Determination under Section 261A(2)(a)(i)

That EIA was required in relation to quarrying at this site and was not carried out.

REASONS AND CONSIDERATIONS

(a) The extent of quarrying which has taken place at this quarry site, post 1st May 1999, exceeded the 2.5ha threshold set down under Class 13 of Part 2 of Schedule 5 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999, and which resulted in the quarry exceeding an area of 5.0ha.

(b) The discharge of silted water from this quarry to the Clashavoon Stream.

(c) The absence of any documentation on file to verify the claim that the quarry has the benefit of a pre-1964 user.

B. Decision under Section 261A((3)(a)

That an application for substitute consent be submitted to An Bord Pleanála – to include a remedial Environmental Impact Statement.

REASONS AND CONSIDERATIONS

(a) Planning permission was granted for this quarry under Part IV of the Local Government (Planning and Development) Act 1963.

(b) Quarrying at this site has extended beyond the boundaries indicated in permissions ref. 375/76 and 1365/78.

(c) The requirements in relation to Registration under section 261 of the Act, were fulfilled in relation to this quarry site.

_____

Michael Dillon,
Inspectorate.

5th April 2013.

APPENDIX 12

AFFIDAVID OF MR PAT KELLEHER – SWORN 18 FEBRUARY 2019

THE HIGH COURT
JUDICIAL REVIEW

Record No. 2014/ J.R.

Between:

DRIMOLEAGUE CONCRETE WORKS LIMITED

Applicant

-and-

AN BORD PLEANÁLA

Respondent

-and-

CORK COUNTY COUNCIL

Notice Party

AFFIDAVIT OF PAT KELLEHER

I, **Pat Kelleher** of Shanakiel, Macroom, County Cork, aged eighteen years and upwards MAKE OATH AND SAY as follows:

1. I say my date of birth is the 21st June 1950 and have resided at the aforementioned address which is situate opposite the quarry at Ummera, the subject matter of the within proceedings my entire life.

2. I say as a young child of maybe 6 or 7 years old I recall hearing noise from the quarry while still in bed at approximately 6.30/7.00am, the reason I recall this is because the noise would have caused me to wake up, as far as a recall quarrying activities have always during the course of my lifetime been carried out on these lands.

3. I further say that when I recall my First Holy Communion I also recall the noise of the quarry and to me it would have been the backdrop to my childhood in that I would firmly be of the view that my earliest memories as a child feature the quarry

4. I say when I recall my childhood I always recall the quarry and the activity surrounding it as it was integral part of my childhood. I recall in particular attending with my father Cornelius Kelleher at the quarry when it was operated by a man called Peter/ Peadar Moynihan at that time, the purpose of our attendance was to view Moynihan's tractor which I recall was a Fordson Super Major (1961-1964) Tractor. I recall this vividly as the modern tractor as we now know it was still a scarce commodity in 1950's Ireland and I remember as a boy being fascinated by it. I know I was very young at the time maybe 10 or 11 years old as my knowledge of tractors was very limited and when I recall this event in my mind I recall in the particular that the tractor had red wheels which was one of the distinctive features of the Fordson Super Major. I beg to refer to a photograph of that type of tractor which is the same as the tractor as I recall seeing at the quarry

upon which and marked with the letters "**PK1**" I have endorsed my name prior to the swearing hereof. I say that the photograph is a near replica of the tractor that I inspected with my father at the quarry in Ummera. I further recall at the time we inspected the tractor that it was a new tractor and this was the reason we were going to look at it and I now note that this particular brand of tractor was discontinued in 1964 and was replaced by the Fordson Super Dexta which did not have the distinctive red wheels. I beg to refer to a picture of the Fordson Super Dexta upon which and marked with the letters "**PK2**" I have endorsed my name prior to the swearing hereof.

5. I further say that I recall that my father did eventually purchase a new tractor and the model he purchased was the Fordson Super Dexta which I know came into production in 1964 and it was some years after this he purchased same.

6. I say and believe that quarrying activities have been taking place at the lands the subject matter of these proceedings since at least 1956/57 which is the earliest memories that I can recall and the quarry certainly was a feature in same.

Patrick Kelleher

Pat Kelleher

Sworn by the said Pat Kelleher this the 18 February 2019 at Macroom ~~Bandon~~, Co. Cork before me a Practising Solicitor/ ~~Commissioner for Oaths~~ and I know the Deponent and/or the Deponent has been identified by me.

Richard Gunn

Practising Solicitor/~~Commissioner for Oaths~~

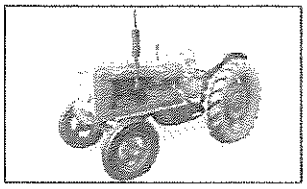
Filed on behalf of the Applicant by Hallissey & Partners, Solicitors, 41 South Main Street, Bandon, Co. Cork on the day of 2019

This is exhibit "**PM1**" as referred to
In the Affidavit of Pat Kelleher

Signed: _____
Pat Kelleher

Signed: _____
~~Commissioner~~ for Oaths/
Practising Solicitor

Fordson Super Major



1961 - 1964
Previous model: Fordson Power Major

Overview | Engine | Transmission | Dimensions | Photos | Tests

The Fordson Super Major was sold as the Ford 5000 in the United States.

Production:
Manufacturer: Ford
Factory: Dagenham, England

Fordson Super Major Engines:
Ford 3.6L 4-cyl diesel
Ford 3.3L 4-cyl gasoline
full engine details ...

Capacity:
Fuel: 20 gal [75.7 L]

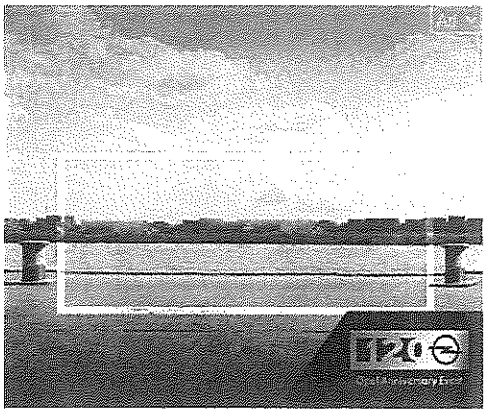
3-Point Hitch:
Rear Type: I,II

Power Take-off (PTO):
Rear PTO: independent
Rear RPM: 540

Dimensions & Tires:
Wheelbase: 80 inches [203 cm]
Weight: 5330 lbs [2417 kg]
Front tire: 6.00-16
Rear tire: 12.4-38
full dimensions and tires ...

Super Major Serial Numbers:
Location: Serial number stamped onto the engine, right side
1960: 1578886
1961: 1583907
1961: 08A 300001
1962: 08B 741001
1963: 08C 945000
1964: 08D 940000

how to read serial numbers...



Fordson Super Major Power:
Engine: 54 hp [40.3 kW]
PTO (claimed): 47 hp [35.0 kW]
Drawbar (tested): 40.21 hp [30.0 kW]
PTO (tested): 47.53 hp [35.4 kW]
power test details ...

Mechanical:
Chassis: 4x2 2WD
Cab: Open operator station.

Hydraulics:
Type: open center
Pump flow: 6 gpm [22.7 lpm]

Battery:

Page information:
Last update: November 21, 2016
Copyright: Copyright 2016 TractorData LLC
Contact: Peter@TractorData.com

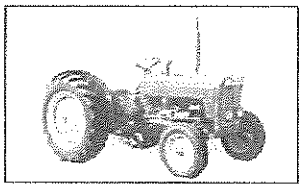
This is exhibit **"PK2"** as referred to
In the Affidavit of Pat Kelleher

Signed: _____
Pat Kelleher

Signed: _____
~~Commissioner~~ for Oaths/
Practising Solicitor

TractorData

Fordson Super Dexta



1962 - 1964
Utility tractor

This tractor was also sold in the United States as the Ford 2000 Diesel.

Production:
Manufacturer: Ford
Factory: Dagenham, England

Fordson Super Dexta Engines:
Ford-Perkins 2.5L 3-cyl diesel
Ford 2.5L 3-cyl diesel
full engine details ...

Capacity:
Fuel: 8.4 gal [31.8 L]

3-Point Hitch:
Rear Type: I

Power Take-off (PTO):
Rear PTO: transmission live*
Rear RPM: 540

Dimensions & Tires:
Wheelbase: 71 inches [180 cm]
Weight: 3510 to 6030 pounds
Front tire: 5.50-16
Rear tire: 12.4-28
full dimensions and tires ...

Super Dexta Serial Numbers:
Location: Lip of flange connecting engine and clutch, left side of tractor
1962: 09B 710530
1963: 09B 731454
1963: 09C 900001
1964: 09D 907332
Final: 09D 928248

how to read serial numbers...

Fordson Super Dexta Power:
Engine: 45 hp [33.6 kW]
Drawbar (tested): 32.25 hp [24.0 kW]
PTO (tested): 38.83 hp [29.0 kW]
power test details ...

Mechanical:
Chassis: 4x2 2WD
Steering: manual
Brakes: differential mechanical expanding shoe
Cab: Open operator station.

Hydraulics:
Pump flow: 4.42 gpm [16.7 lpm]

Electrical:
Ground: positive

Battery:
Number: 2
Volts: 6

Page information:
Last update: September 10, 2015

THE HIGH COURT
JUDICIAL REVIEW
Record No. 2014/ J.R.
Between:
DRIMOLEAGUE CONCRETE WORKS LIMITED
Applicant
-and-

AN BORD PLEANÁLA
Respondent
-and-

CORK COUNTY COUNCIL
Notice Party

AFFIDAVIT OF PAT KELLEHER

PJ O' Driscolls
Solicitors
41 South Main St
Bandon
Co. Cork