

CSR Ref: 23386

CUNNANE STRATTON REYNOLDS

ABP Reg. Ref. ABP-318674-23.

An Bord Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

28th February 2024

BY HAND

Dear Sir/Madam,

Development of a Quarry

Application under Section 261A of the Planning and Development Act 2000, as amended.

For aggregate extraction and ancillary plant and welfare facility development on lands located at Redbog and Philipstown, Co Kildare.

Hudson Brothers, Redbog & Philipstown, Co. Kildare.

This cover letter accompanies a planning application for substitute consent under section 261A of the Planning and Development Act 2000 as amended [PDA] on behalf of Hudson Brothers Ltd, Gorthlum, Brittas, Co. Dublin who are the owners and operators of a quarry and aggregate product operation located across the counties of Kildare and Wicklow.

This application for substitute consent is accompanied by a remedial Environmental Impact Assessment report (rEIAR) and remedial Stage 1 Appropriate Assessment Screening Report indicating that despite concerns previously expressed by Kildare County Council (KCC) regarding a potential hydrological pathway to Redbog SAC, no such pathway exists and in those circumstances, there is no requirement for a remedial Natura Impact Statement (rNIS). This section 261A application for substitute consent is accompanied by, and concurrent with, an application for further prospective development of the existing quarry under section 37L of the PDA and which is also accompanied by an EIAR and Natura Impact Statement.

This cover letter is presented by CSR Ltd who are the planning agent for the applicant in this case.

DUBLIN OFFICE
GAINSBORO HOUSE, 24 SUFFOLK ST
DUBLIN 2, D02 KF65
TEL: 01 661 0419
EMAIL: info@csrlandplan.ie

OFFICES ALSO AT:
COPLEY HALL, COTTERS STREET, CORK
TEL: 021 496 9224
EMAIL: corkinfo@csrlandplan.ie

DIRECTORS
Declan O'Leary BAggr Sc (Land-Hort) Dip LA MILI MLI:
Eamonn Prenter BA (Hons) Dip TP MSc MRTPI MIPI:
Jim Kelly BAggr Sc (Landscape-Hort) Dip LA MILI CMLI:
Keith Mitchell MA (Hons) LA Dip EIA Dip Arb MILI CMLI:
ARDA CONG, BALLYTRASNA, TUAM
CO GALWAY
TEL: 01 661 0419
EMAIL: galwayinfo@csrlandplan.ie
WWW.CSRLANDPLAN.IE

This application is made on foot of a letter from An Bord Pleanála requesting the lodgement of the section 261A substitute consent application by 15th January 2024, subsequently extended to 29th February 2024, and confirmed in previous correspondence.

This cover letter references the enclosed application documentation and illustrates how the application has been prepared having regard to statutory provisions and the planning history and context of the application site. This letter clearly sets out how the subject substitute consent application meets the exceptional case threshold set out in Part XA section 177K(1J) of the Planning and Development Act 2000 as amended by Section 8(b) of the Planning and Development and Residential Tenancies Act 2020 and more recently by the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (SI 645 of 2023) and its accompanying Circular Letter EUIPR 02/2023.

The subject application covers that part of the subject site located within the confines of County Kildare, the remaining component of the existing quarry and aggregate production operation being located within County Wicklow, which has the benefit of a 25 year planning permission stretching into the 2030s. In assessing the impact of the subject development regard is had to the impact within County Wicklow and the proximity of residences within that county, in addition to County Kildare.

The format of this cover letter is set out under the following headings:

1. This substitute consent application;
2. Content of this application;
3. The subject development;
4. Planning history, context and requirement for a substitute consent application;
5. The application site, the existing operation and rEIAR boundary;
6. Key legislation in respect of quarries;
7. Planning guidance and policy;
8. Planning merits of the subject development;
9. Exceeding the substitute consent threshold for 'exceptional circumstances'; and,
10. Conclusions.

1. This substitute consent application

This substitute consent is the culmination of technical input from a number of subconsultants under the umbrella of WSP Ltd. WSP and CSR have been permitted full access to the site for the purpose of survey and monitoring. CSR has undertaken an online planning history search of the application site which has assisted the formulation of this application and undertaken planning histories within both Counties Kildare and Wicklow.

An Bord Pleanála requested the lodgement of a substitute consent under their reg ref ABP311622-21 and correspondence dated 1st August 2023. That correspondence required the lodgement of a substitute consent application by 17th October 2023. The Board extended that period by 3 no. months for requiring lodgement of this application until 15th January 2024 and subsequently extended the period again. That period has been further extended at the request of the applicant by the Board until 29th February 2024. The currently operative reference for the Board's consideration of the subject application is ABP-318674-23.

This substitute consent application follows from granting of leave to apply by the Board under your reg. ref. no. ABP311622. Prior to this it was determined by Kildare County Council in a letter to the applicant, dated 30th October 2020, that the local authority was precluded from considering any application under section 34(12) which was the basis on which a prior application for retention of works and activities was applied for under KCC Reg. Ref. 20/532. The County Council's reason precluding a local authority determination of 20/532 was as follows:

'1. The application for the continuous use of an extraction facility located within the townlands of Athgarrett, Philipstown and Redbog, Blessington, Co. Kildare, which is accompanied by an EIAR and NIS (Reg. Ref. 20/532), cannot be considered by the Planning Authority as it includes the retention of unauthorised development(s) which would have required one or more of the following:

(a) An environmental impact assessment;

*(b) A determination as to whether an environmental impact assessment (EIA) is required;
or*

(c) An appropriate assessment.

An Appropriate Assessment is required due to the proximity and connectivity of the site to the Red Bog Special Area of Conservation and the subsequent mitigation measures required to protect the integrity of the conservation objectives at the site. Threats to the conservation objectives included, dust deposition and water quality both of which have the potential to occur as a result of processing and washing of aggregates on the site.

An Environmental Impact Assessment is required under Class 2(b) of part 2 of the Planning and Development Regulations 2001 (as amended) as the extraction area exceeds 5 hectares.

In this regard the provisions of Section 34(12) of the Planning and Development Act 2000 (as amended) apply, which states:

‘A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more of the following was carried out:

- (a) An environmental impact assessment,*
- (b) A determination as to whether an environmental impact assessment (EIA) is required, or*
- (c) An appropriate assessment.*

Development at the site, comprising continuance of use of an existing extraction facility, is unauthorised and retention permission is required for the following reason:

- 1. Development including specifically aggregate processing, washing, screening, crushing, powerhouse, control rooms, office building, portacabin/canteen, water recycling point continued on site in breach of a number of conditions set out in Reg. Ref. 07/267, namely condition no. 5 which requires all activities associated with Reg. Ref. 07/267 to cease following expiry of the appropriate period on 18th September 2020.’*

A rEIAR and a remedial AA screening report have been provided to support this application. In the professional opinion of the applicant’s experts’ team significant effects on European sites from the activities at the Site from September 2020 to present have been considered unlikely and therefore it is determined that remedial Appropriate Assessment (NIS) is not required.

As was previously stated in our client’s application for leave to apply there is no recourse to an appeal of the above determination. The applicant, however, took legal advice on the above position taken by KCC and having applied for an injunction in the courts, decided consequently to suspend that legal course of action with the agreement of Kildare County Council (KCC), pending the making and determination of this substitute consent application. As indicated in the planning statement to support the leave to apply for substitute consent application, demands and pressures placed upon the business following Covid, with no opportunity for any alternative form of planning application, and the fact that it was no longer financially viable for the suspension of extraction operations on the Kildare County lands to continue, meant that the applicant had to proceed with their business activities without the benefit of planning permission through the recommencement of business and extraction activity to the south west within the confines of the Reg. Ref. 07/267 boundary where there remained at that time economic reserve. There remains, currently, under planning statutes, no alternative available other than seeking substitute consent to regularise development undertaken to this point in time.

In light of the invalidation of 20/532 there is a requirement under S261A of the PDA to obtain substitute consent for the extraction and quarrying activity permitted under the expired 07/267 permission.

2. Content of this application

The content of substitute consent applications is prescribed within the Planning and Development Regulations 2001 (PDR) as amended and the completed substitute consent application form prescribed under 'Form No. 7 of Article 227' which is attached as Appendix 1 to this cover letter. The completed application form is accompanied by the following:

- A schedule of the set of drawings;
- Copies of those drawings;
- Copies of the site notice erected in 6 no. locations indicated on the submitted drawings (the number and location of notices were previously considered acceptable to Kildare County Council (KCC));
- Copies of the newspaper notice, which in this case comprises a full page of The Irish Star dated 27th February 2024;
- Letters of Consent as appropriate;
- A remedial Environmental Impact Assessment Report (rEIAR) with Non-Technical Summary;
- A copy of the EIA portal certificate is also appended to the completed application form;
- A Phase 1 Appropriate Assessment Screening Report to inform remedial Appropriate Assessment (AA); and,
- The planning application fee which in this instance is calculated as €43,858.40 and a Euro Draft for this amount is attached, made payable to An Bord Pleanála.

The above documents have been prepared having regard to the requirements of the PDA and the Planning and Development Regulations 2001-2013 [PDR], both as amended, and incorporating changes consequential to Circular Letter EUIPR 02/2023 (see below).

In accordance with the PDR, as recently amended, some 6. no hard copies of the application documents are provided along with an electronic/soft copy as requested by the Board in prior correspondence.

Please note that a letter of consent is provided where this is necessary and possible. This is from J W. Carnegie which is required to fulfil the function of quarrying set out in the application, the spatial extent of which, is identified below. Over the period between the expiry of 07/267 which is confirmed by KCC as 18th September 2020 and the currency of this application, discharge of clean water occurred into a pond to the east over the relevant substitute consent period indicated above. This pond is now included within this substitute application site area, as it is partially within the ownership of Ava Dawn Ltd, a sister company to, the applicant, and with the same address as the existing Hudson operation, not having been identified within the prior leave to apply application for substitute consent under your Reg. Ref 311622, and into which our client can lawfully discharge.

The applicant has access to this pond and actually owns approximately 4 acres of the pond through Ava Dawn Ltd, which is a sister company to Hudson Brothers Limited, the applicant. We have simply extended the red line in this instance to include the whole pond as our client has rights to discharge into that lake as indicated above. We believe in these circumstances that the Board can, and should, consider this pond within this application as it is subject to contraction and expansion. In reality our client cannot include or assess discharge into half a pond. Finally, on this matter it should be noted that there are no proposals to alter the land in any way in this location and this has been indicated to JW Carnegie and Co. Ltd, another unrelated quarry operator, who have a controlling interest in this land north of the pond and between the pond and a laneway running east west and to which our client also has access.

The reasons that this pond shown in Figure 1 below has now been included in this application is that it is subject to clean water discharge from relatively recent but still historic quarrying activity on site by the applicant and should therefore be included within the S261A application now being considered by the Board. The inclusion of the subject pond is also shown in the digital mapping provided by the applicant in response to an email received from the Board under your Reg. Ref. ABP-318674-23 and dated 13th December 2023 which requires CAD or Digital Files to be made available to the Board in respect of location plans.

There is an area of land included within this application in control of the Bryne family (shown on an accompanying aerial image) which is under dispute between that family and the applicant. In this regard we would draw the board to the Development Management Guidelines for Planning Authorities 2007. We believe the subject development can work around the area whose use and access through it is in dispute.

Section 5.13 of the Guidelines, when referring to issues relating to title or land and rights, states that *'the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the Courts. In this regard, it should be noted that, as section 34(13) of the planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision.'*

Whilst this application is for substitute consent and effectively seeks a current and retrospective permission, it is accompanied by a planning application for prospective works under section 37L of the PDA.

3. The subject development

The subject development as set out in the statutory notices is as follows:

'The development consists of a quarry over an area of 71.9 ha. with a final floor of approximately 188 mAOD. The reserve consists of sand and gravel which is extracted by mechanical means, and sandstone (greywacke) which is extracted by mechanical means. The excavated sand and gravel is transported to a plant area for washing, grading and processing. The excavated rock material is crushed and graded at the working face by mobile plant. The quarry has an existing processing plant and maintenance area of approximately 5 ha. that currently holds 1 no. maintenance shed (including underbody truck wash on a concrete apron surrounding the shed, staff welfare facilities [shower and toilet], proprietary wastewater treatment system and percolation area, interceptor and soakaway), 1 no. generator/power house (within a shipping container), 1 no. control room, 1 no. office and canteen, a water recycling plant, an aggregate processing plant (washing, crushing,

and screening), 1 no. bunded fuel tank and generator room, 1 no. storage shed, 1 no. shipping container storage structure, and 1 no. shipping container. Within this plant/maintenance shed area is a fuel storage and refuelling area. The quarry is located predominantly in Co. Kildare but accessed via a shared laneway connecting to a single location on the N81 which is located within Co. Wicklow. Other items not specified in this application will be the subject of a separate planning application and the requisite statutory process of consultation and determination.

The existing operational quarry has been in use since the early 1950's and has been registered under S.261 of the Planning & Development Act 2000 with Kildare County Council under Quarry Ref. No. QR/42 and with Wicklow County Council under Quarry Ref. No. QY/43. Subsequent planning permission for continuance of quarrying operations was granted by the Wicklow County Council under Reg. Ref. 06/6932 in October 2009 for a period of 25 years and by Kildare County Council under Reg. Ref. 07/267 in April 2010, and subsequently by An Bord Pleanála under their Reg. Ref. PL09.235502 for a period of 10 years, which expired on 18th September 2020 after which quarrying stopped for a period.

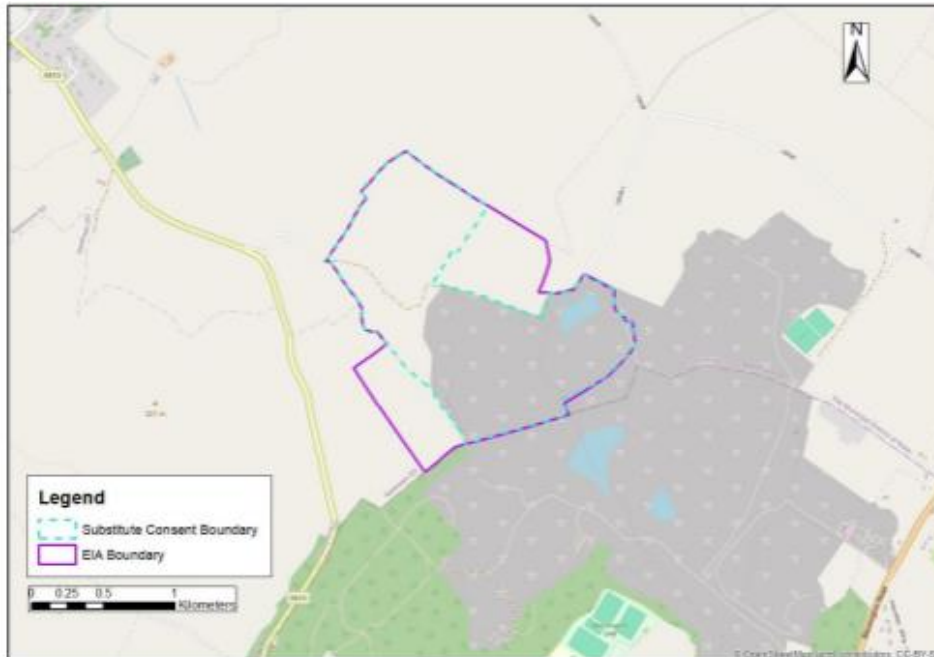
Upon invalidation of a planning application under Kildare County Council Reg. Ref. 20/532 for continuance of the production of construction aggregate beyond 18th September 2020 and to extend the extraction area by just over 13 ha., the applicant sought leave to apply for substitute consent on 8th October 2021, which was granted by the Board on 1st August 2023 under An Board Pleanála Reg. Ref. 311622. This substitute consent application is made concurrent with an application to further develop the quarry at this location under section 37L of the Planning and Development Act 2000 as amended.

This substitute consent application is accompanied by a remedial Environmental Impact Assessment Report (rEiAR) and remedial Stage 1 Appropriate Assessment Screening Report. The rEiAR is for an EIA project unit over 95.8 ha. that encompasses the area of the substitute consent application (71.9 ha.), the concurrent further development of the quarry application under S.37L, and the quarry as permitted under Planning Reg. Ref. 07/267 and PL09.235502.'

This S261A application submitted to the Board covers that area within County Kildare over which planning permission granted under 07/267 expired, being granted only for a ten year period as against the grant of planning permission for a relatively small scope of development granted by Wicklow County Council for a period of 25 years, and which remains extant. Quarrying activity 'having been' undertaken and 'currently being' undertaken by the applicant within Wicklow County is not in dispute and falls outside this application other than in regard to cumulative impact with this substitute consent development under section 261A and prospective development under section 37L of the PDA. It should be noted that the subject site of this substitute consent comprises predominantly quarry related extraction and directly associated activity. It should be noted that the vehicle entrance to the subject quarry operated by the applicant, employees and visitors car parking, and administrative offices and amenities for existing quarry workers are all located within the lands found in Wicklow County and within the spatial extent of the 25 year period of planning permission granted by that local authority.

The extent of this substitute site application boundary is shown in Figure 1 below.

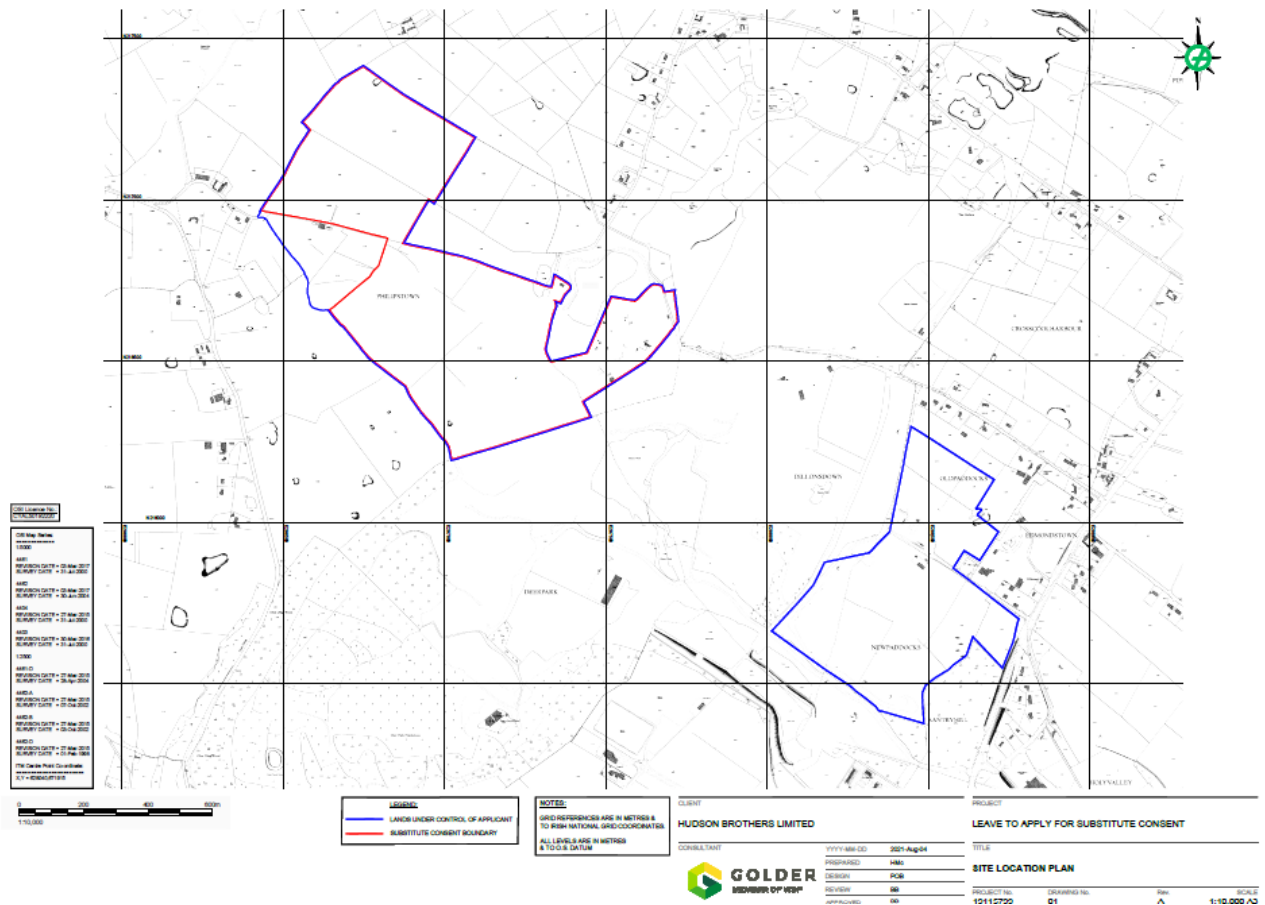
Figure 1: *Extent of this Substitute Consent Application*



As indicated above the extent of the site boundary originally sought under 311622 and presented within Figure 1 has been modified slightly, with reference to a receiving pond, as referred to above. The extent of the site boundary initially submitted to the Board under 311622 is shown in Figure 2 below.

As indicated above, given that our client purchased land as recently as 2023 that now forms part of the discharge pond, and the pond is prone to fluctuation in terms of depth and extent, and is used by another adjacent quarry for the same purpose, we have extended the red line boundary of this application site to the north to incorporate a lane running west to east over which our client also has access rights and frequently uses.

Figure 2: *Extent of Boundary for Leave to Apply Application lodged with An Bord Pleanála under Your Reg. ref. 311622.*



4. Planning history, context and requirement for a substitute consent application

Hudson Brothers Ltd. is a family run aggregate and aggregate products company that is headquartered outside Blessington, Co. Wicklow. It has operated from the application site and adjoining operation since the 1950s. Quarrying has existed in this general/wider location since the 1800s.

Their headquarters operations span two counties, with extraction and aggregate processing operations in both counties Wicklow and Kildare. The operational facility consists of the following: a pit, processing plant and offices at New Paddocks, Blessington, County Wicklow where the main entrance to their operation exists onto a local road that accesses the N81; and a quarry with processing plant and staff welfare facilities to the rear (north west) of their Wicklow lands over the townlands of Philipstown and Redbog in County Kildare. Generally, the facility is approximately 2 km north of Blessington, Co. Wicklow. It should be noted that access to the current quarry operated by Hudson Brothers is shared with J.W Carnegie & Co who operate the existing quarry to the south-east. That shared access is used by both parties in an amicable and cooperative manner.

Hudson Brothers operational facility, though trans-county is not a single, contiguous land unit.

Please note that there is aggregate extraction and processing and ancillary development in each county, with the product from the Kildare land unit being hauled to the Wicklow land unit for onward processing and/or dispatch. The area of quarrying operations located within County Wicklow, and subject to a 25 year permission, is not in dispute.

Table 1 shows that Hudson Brothers Ltd. has its origins in the 1950s, when 3 brothers worked in quarrying businesses in and around Blessington. Through a program of acquisition, these individuals amalgamated existing smaller pits and quarries to form the operational facility as it is today. Over time, succession requirements and the size of the associated business brought about the formation of Hudson Brothers Ltd. in 1971. Hudson Brothers Ltd. has been continuously trading since 1971 and have continued to focus on their aggregate working and processing core competency to be a leading supplier of construction aggregates. This focus is evident in their significant investment in qualified personnel and laboratory equipment to ensure that all products are certified and fit for purpose.

Hudson Brothers Ltd. continues to be run by Hudson family members and, construction recession and Covid-19 suspensions discounted, directly employs nearly 50 people. All employees live locally, and many of them are intergenerational Hudson Brothers employees. The company therefore holds intrinsic knowledge and capabilities about the lands of the facility, the working of its reserve, and its potential. The applicant has sought on several occasions, in the best of faith, to regularise their operation in planning terms, over a period of many years.

Table 1: Hudson Brothers Evolution

Hudson Brothers Ltd. Operational Facility Formation	
Date	Main Event
Early 1950's	Peter, Sean & Patrick Hudson all worked as employees in quarrying business in the Brittas, Ballymore Eustace and Blessington areas.
1955	Owen McDermott's, owner and operator interest of quarry at Philipstown Townland, Co. Kildare comes to Hudson Brothers.
1960's	William Headon owned quarry at Philipstown Co. Kildare that was taken over by Hudson Brothers.
1971	The Hudson Bros. Ltd. Company was formed (Peter, Sean & Patrick Hudson all Directors)
ca. 1982	Hudson Bros. Ltd. purchased existing quarries at Philipstown and Redbog, both located in Co. Kildare, and continued extracting at these townlands.
1986/87	Hudson Bros. Ltd. purchased existing quarries at New Paddocks, Old Paddocks and Santryhill, located in Co. Wicklow, and continued extracting at these townlands.

The proposed northern extension, the subject of an accompanying S37L application is for the extraction of sand and gravel. The proposed western extension is not only for sand and gravel but also rock extraction. The extension areas are proposed to be extracted on a phased basis that are incorporated into the existing extraction and restoration plans. The proposed lateral extension areas of sand and gravel and rock will be processed using existing site processing facilities and are intended to maintain the extraction and aggregate production capabilities of the existing construction aggregate production operation. Extraction in the main void is above the prevailing water table in that location.

Extensive research of the planning history over that part of the existing quarry operation and associated activities located within County Kildare has been carried out. Additionally, a planning search, based on documentation available on the KCC website has also been utilised for development in proximity to the subject substitute consent application site. The planning history of adjacent aggregate activities in the locality has also been ascertained. Those planning histories and the status of structures and activities has determined the content of this application.

Setting aside the grant of planning permission for 25 years by WCC under their reg. ref. 06/6932 the key planning decisions are as follows:

- S261 registration by KCC and WCC;
- Planning permission granted under KCC reg. ref. 07/267;
- Refusal of planning permission for retention under KCC reg. ref. 19/1230 for a maintenance shed by An Bord Pleanála on appeal which was initially approved by KCC;
- Invalidated planning application under KCC reg. ref. 20/511 for continuation of development granted under 07/267 and extended area of quarrying extraction;
- Invalidated planning application under KCC reg. ref. 20/532 for continued use for quarrying of aggregates and ancillary plant and welfare facility; and
- The grant of leave to apply for Substitute Consent conferred on the applicant by ABP under your Reg. Ref. 311622.

As outlined above, and indicated below in further detail, there are a number of extenuating circumstances that impose a unique set of considerations upon our client, the applicant, where they are now in a position where they have to lodge this subject substitute consent application. This is set out below.

S261 registration by KCC and WCC

Aggregate extraction and processing are historic activities with aggregate production and aggregate processing occurring in this general area since at least the 1800s prior to Hudson's presence there. The current business has operated since the 1950's ie. well before 1963. Following the coming into force of section 261 of the PDA in 2004, the applicant registered their facility with both WCC under their reg. ref. QY/43, and KCC under their reg. ref. QR/42. The applicant's operational facility was correctly and properly registered in accordance with section 261 of the PDA and both registrations related to pre 1963 quarrying.

Planning permission granted under KCC reg. ref. 07/267

Following the correct registration of the applicant's existing operation under S261, see above, by both local authorities, respective planning applications for the continuance of the extraction area were submitted to WCC under their reg. ref 06/6932 and KCC under their reg. ref. 07/267. As indicated above, the application to WCC was successful and was granted permission for 25 years and falls outside this application. Had the same duration of permission been granted by KCC the applicant would no doubt not be in the current predicament that they are in, where an application for substitute consent has to be lodged with, and determined by, the Board. We fully respect the right of KCC to grant permission for any period they see fit, however.

Planning permission was granted by KCC under their reg. ref. 07/267 for the following: continuation of aggregate extraction and processing at Philipstown and Redbog, by mechanical means, blasting, aggregate processing, washing, screening, crushing, power house, control rooms, office building, portacabin/canteen, water recycling plant, lagoons, landscape berms and all associated site works. As indicated above the term of that permission was for 10 years.

Permission for 07/267 was granted subject to a number of planning conditions, the most notable of which included conditions 3 and 5:

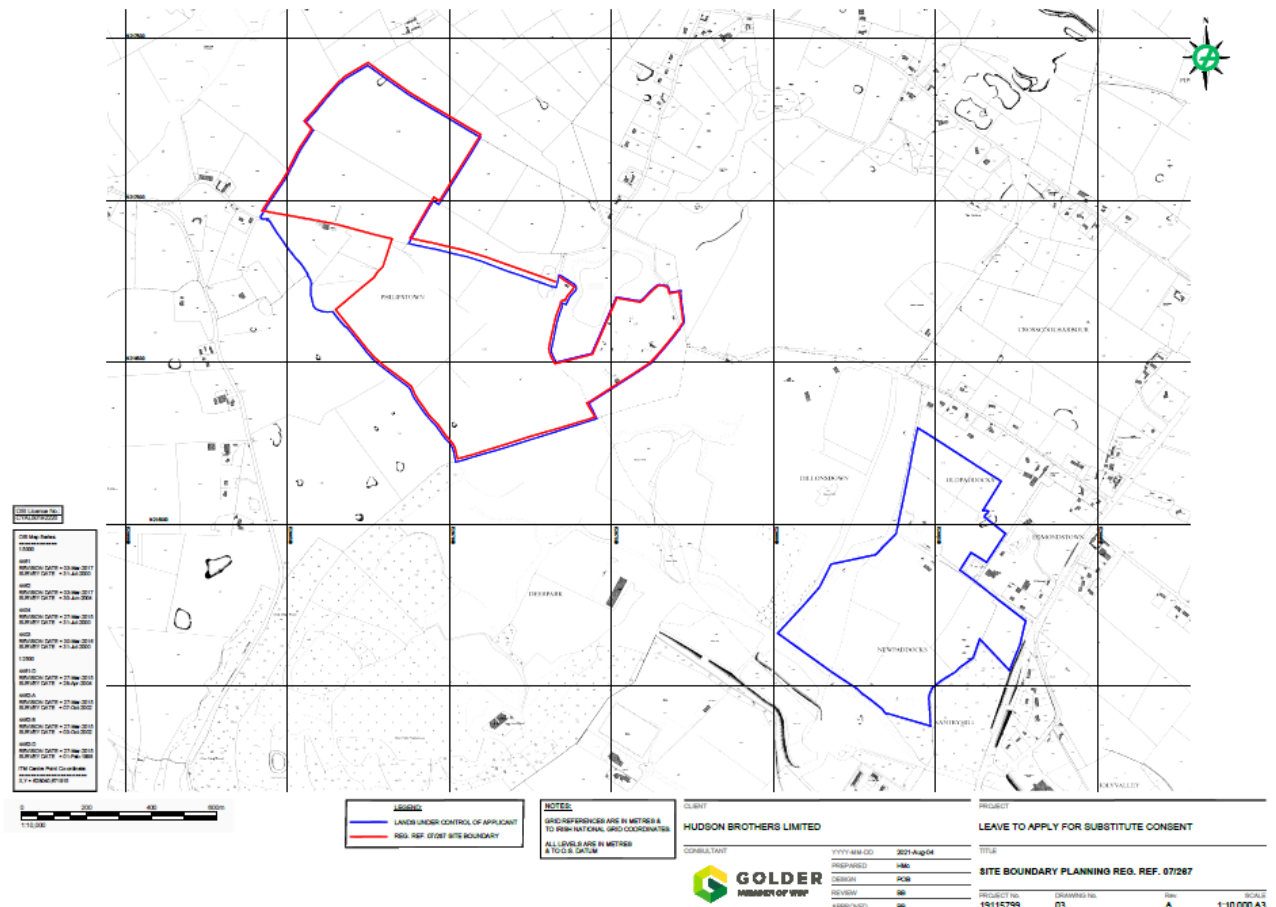
'3. Activities at the facility shall be restricted to the excavation, processing, haulage and storage of rock, sand and gravel material and their transportation off site.

5. This permission is for a period of 10 years from the date of this permission unless at the end of this period a further permission has been granted for its continuance on site.'

The significance of condition 3 is returned to below when considering the retention of a maintenance shed on site.

The extent of the 07/267 permission is shown in Figure 3 below. Since the grant of permission in November 2009 under 07/267 the economic downturn of circa 2008 had already occurred where aggregate demand slumped, and consequently, the construction industry all but collapsed. This resulted in lower-than-expected aggregate sales volumes and therefore lower than expected extraction rates.

Figure 3: Extent of 07/267 planning permission granted by KCC



As indicated in the leave to apply application to the Board under 311622, by 2019 there was an economic recovery, and the possibility to extend the life of 07/267 presented itself to our client. There is no provision for an extension of duration application for quarries to be made and therefore a 'fresh' application was required to be lodged. Mindful of the fact that their planning permission under 07/267 expired in September 2020 Hudson Brothers lodged a planning application to essentially renew the 07/267 permission under a separate application under WCC reg. ref. 20/511 earlier that year and well before the expiry of the 07/267 permission. That application (20/511) was invalidated.

Finally, under 07/267 it should be noted this applicant solely appealed the contributions sought from KCC under ABP reg. ref. PL09.235502.

It is this 07/267 planning permission that expired on 18th September 2020 that our client is seeking to extend through the S261A process.

Refusal of planning permission under KCC reg. ref. 19/1230 for a maintenance shed

Whilst considering the preparation of a renewal of 07/267, this applicant became aware that a key component of their operation, namely a maintenance shed did not have the benefit of planning permission and in order to rectify this, this applicant applied for retention of that shed under KCC reg. ref. 19/1230. The planning permission sought was for the following:

'Retention of a single storey truck and plant maintenance shed of circa 432 square metres gross floor area that includes staff welfare facilities of a shower and W.C.; an underbody truck wash located on the concrete apron surrounding the shed; proprietary wastewater treatment system; interceptor; soakaway; and all ancillary works.'

That above application for a truck and plant maintenance shed also comprised staff welfare facilities, underbody truck wash located on a concrete apron surrounding the shed, proprietary wastewater treatment system and soakaway, and all ancillary works. Through Further Information submitted, the application was readvertised as it consisted of a new water purification system for the retained welfare facilities.

The local planning authority granted planning permission for that maintenance shed but this was appealed by a third party under the leave to appeal process (ABP reg. ref. ABP-307456-20) on the basis that the inclusion of a maintenance shed was considered a material difference to the permission expressly limited or prescribed by way of condition no. 3 attached to 07/267. The Board in determining the subsequent third party appeal under their reg. ref. 307870 and deciding to refuse planning permission, considered that it was not in a position to grant planning permission for a shed that was to extend an unauthorised development in the first place. The Board presented the following reason for refusal in its Order:

'The truck and plant maintenance shed relates to a site the use of which is unauthorised for quarrying activity. The development to be retained would facilitate and support this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for retention for the development in such circumstances.'

When that application for retention was refused, attention focussed on the part of the applicant to extending the life of 07/267 and to extend the spatial extent of prospective quarrying. In doing so Hudson Brothers were mindful of the fact that they had received confirmation from KCC in a letter dated 9th September 2020 that the effective date of expiry of 07/267, based on 9 no. additional days over each Christmas over a period of 10 years (90 days) and a further 56 days due to emergency Covid 19 legislation, was 18th September 2020.

Invalidated planning application under KCC reg. ref. 20/511 for continuation of development granted under 07/267 and extended area of quarrying extraction

On 22nd May 2020, before the expiry of 07/267, confirmed by KCC as being 18th September 2020, Hudson Brothers lodged their planning application 20/511, to effectively regularise all planning matters on site. That application was declared as invalid by KCC in their letter of 26th May 2020 for the single reason being that a site characterisation report was required for the then proposed wastewater treatment system to serve the canteen and kitchen facilities.

Invalidated planning application under KCC reg. ref. 20/532 for continued use for quarrying of aggregates and ancillary plant and welfare facility

This was a further attempt to regularise planning for the subject quarry and related activities under

20/532 having had 20/511 invalidated and whilst waiting on a decision from the Board on 19/1230. That latest application was lodged on 27th May 2020 with a Request for Further Information issued on 22nd July 2020 and with Further Information received by KCC on 1st October 2020. As part of the assessment of that FI the planning case officer undertook a site visit on 30th October 2020. As part of that site visit, he/she was able to identify that activity granted under 07/267 was still occurring beyond the effective expiry date of 18th September 2020. The applicant genuinely believed that they could continue their operations beyond 18th September 2020 with a planning application presented to KCC and live well before that date.

The planning officer in his/her report identified that the following elements were being conducted without the benefit of planning permission, as 07/267 had expired, and from that site visit he/she identified the following components as being unauthorised:

- Continuation of aggregate extraction and processing;
- Aggregate processing;
- Washing;
- Screening;
- Crushing;
- Power house;
- Control rooms;
- Office building;
- Portacabin/canteen;
- Water recycling plant; and,
- Lagoon;

It was acknowledged, at the same time, that no blasting had occurred over the subject period and that extraction had moved to an area of land within the applicant's ownership and within the functional area of WCC for which a 25 year permission applied.

The planning officer in his/her report indicated that the then ongoing works contravened condition no. 5 of 07/267 and that therefore under section 34(12) of the PDA that a local authority shall refuse to retain unauthorised development of land where either or both an EIA or NIS is required – which applied in that case.

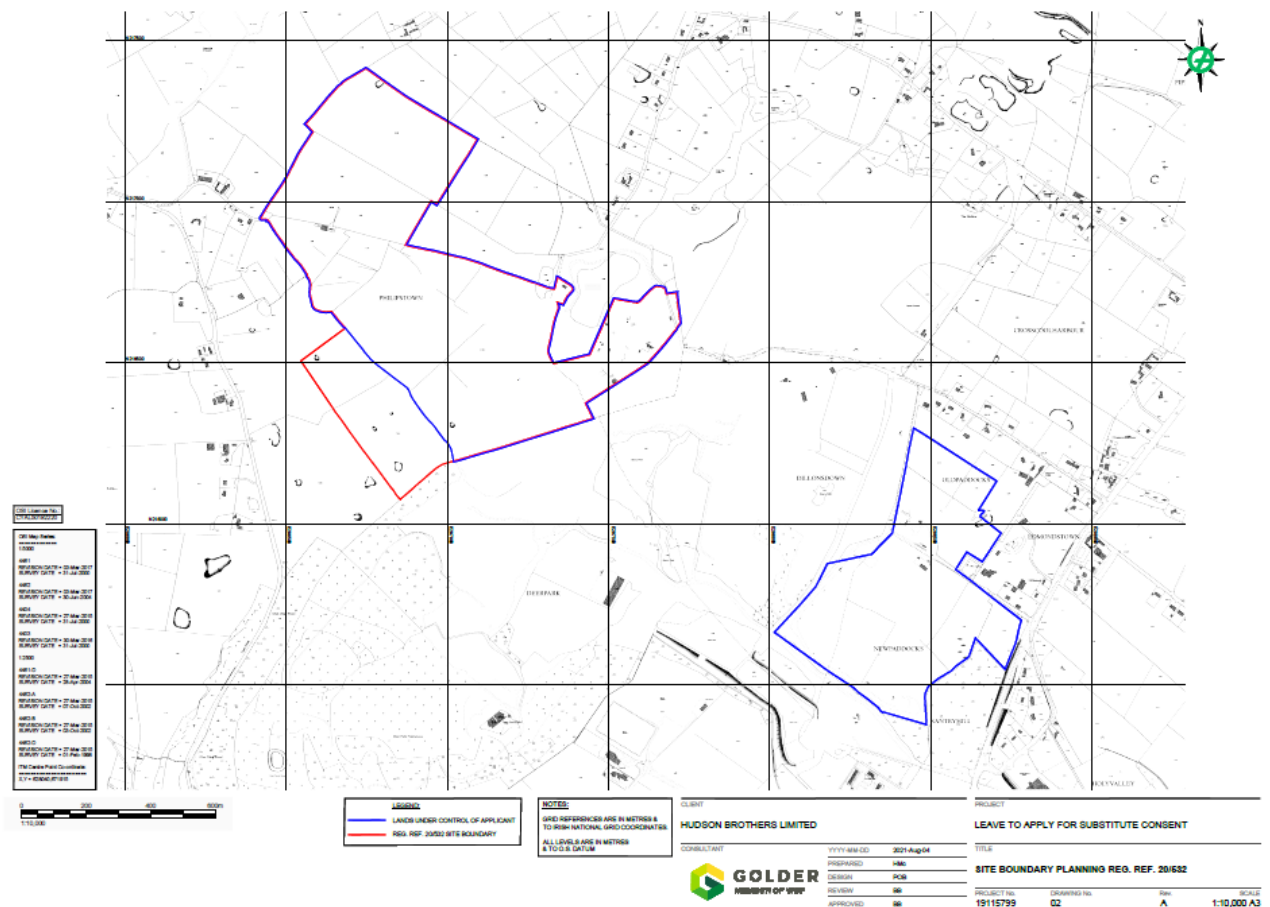
As was pointed out in the planning statement accompanying the application for leave to apply to the Board, the applicant had no recourse to any appeal in circumstances where the rejection of their application was entirely unexpected. In those circumstances Hudson Brothers received legal advice that the WCC determination of 20/532 was contrary to law and in those circumstances an application for Judicial Review was made to the High Court under court reference 2021/01 in

January 2021. The Board will be aware, from the planning statement accompanying the leave to apply application already submitted to the Board, that those legal proceedings have been adjourned with the agreement of KCC pending the lodgement and determination of a substitute consent application.

As indicated previously to the Board, suspensions (plural) of construction sites induced by Covid 19, were reducing and normal demand and pressures for aggregates were returning and the applicant had to consider their own financial obligations to its staff and creditors. Given that no application for 'normal' planning permission was possible, it was no longer financially viable for the suspension of extraction operations on the KCC lands to continue. Accordingly, business and extraction recommenced in the south west within the 07/267 boundary where there was, and remains, economic reserve. As indicated previously, there is no alternative available other than seeking substitute consent in light of the rejection of 20/532.

The extent of 20/532 is shown in Figure 4 below.

Figure 4: The Spatial Extent of 20/532



Planning application 20/532 was considered over a sufficiently long period by KCC to enable assessment of that application up to the Further Information stage, at which point it was considered by KCC to be deemed invalid. The current substitute application is based on the 07/267 planning permission. However, that 2020 application with an EIAR undertaken to support it provides valuable insights into the preparation of this substitute consent application. That

application has been of some use therefore in the preparation of this substitute consent application having been submitted a relatively short period of time ago (mid 2020) and against which objections and concerns were received.

The 20/532 application was sufficiently advanced in its process of assessment by Kildare County Council that the following was presented by the applicant in key planning based, technical and EIAR submissions:

- The subject site was properly secured, made more safe and its boundaries reinforced;
- Installation of a surface water collection sump to collect surface water runoff emanating from the location of the weighbridge and site office;
- A stage 1 and stage 2 Road Safety Audit (RSA) was carried out and the results submitted to KCC;
- Many hedgerows and internal field boundaries were found to be sparse with a low species identity;
- A buffer zone of 10m was to be provided to the Deerpark Wall which was identified as having some archaeological significance. No buffer to the south is required as the Deerpark Wall is no longer in place in that location;
- An Environmental Management System (EMS) was updated and accompanied the 20/532 planning application;
- A substantial submission from the Environmental Health Office of the Health Service Executive, was carefully considered by this applicant, and a substantial response provided, and which has also been considered by the applicant, in the self-critiquing and preparation of this application;
- There was shown to be no significant impact on Glen Ding in terms of its status as a Geological Site of Significance, and in terms of impact on general and visual amenity, air quality and noise;
- There was considered to be no cumulative noise, dust and visual impacts between the quarry operations (all of these in the area) and prospective roadworks for the upgrade of the N81 which was at an early stage of detail. The duration of such road works were considered to be short term in duration (effects lasting one to seven years) and it was assumed that the construction operations of any proposed roadworks would be conducted in line with appropriate environmental plans, approvals and standards. Cumulative impact with other quarries and the N81 upgrade would result in 'not significant' environmental impacts should the road scheme and the application site be in close proximity;
- Impact on ground water was found to be 'not significant';
- There was considered to be no significant impact on the relatively adjacent gas transmission gas line;

- Impact of major accidents and disasters was considered in the submitted revised EIAR;
- There was considered to be no significant impact on Peregrine Falcons on site;
- A peregrine falcon management plan was prepared for the site facilitating the reporting of suspicious activities or unknown visitors to the site, avoidance of reckless disturbance to nesting areas, undertake to engage with NPWS regarding changes in nesting sites and alterations in activity on site.
- Habitat, flora and biodiversity enhancements were identified by this applicant for the 20/532 application and carried forward into this application;
- Exceedances in air quality were considered highly unrepresentative of the typical conditions at that subject site.
- Replacement of hedgerows along development boundaries and replacement linear woodland features were to be connected to the existing hedgerow and treeline network along the site boundary. Management and hedgerow improvements were to provide for an overall net gain in biodiversity.
- The restoration plan proposed was to include buffer zones surrounding Pond K.
- In terms of air quality there was considered a potential for a slight adverse effect on the Red Bog SAC and the Glen Ding Woods amenity area.

The 2020 application was sufficiently well advanced towards determination by KCC, for public and interested party consultation to have been undertaken, and for a number of observations and objections to have been lodged against that application. The issues raised on that occasion, were publicly available, and have informed the preparation of this application prior to statutory consultation being undertaken in this instance.

Planning Issues Arising from 20/532

Upon lodgement of this application to the Board under S261A there will be an opportunity for interested parties and members of the public to comment on this application. This application and the subject development cover the subject period 19th September 2020 to the present day. The previous application, which was after all, an attempt by the applicant to secure both retrospective and prospective planning permission has informed the formulation of this application.

We have reviewed the details and supporting documentation of that previous application (KCC Reg. ref. 20/532) to inform the content of this application, including the rEIAR, and to further inform the S37L application to be determined concurrently with this S261A application. The key points raised in the context of the 20/532 application are set out below.

Please note that there were 83 submissions or observations lodged previously on 20/532. Of these, some 46 (more than half) were submissions in support of the Hudson Bothers previous planning application and some 37 were against that planning application.

The previously stated key points of concern on impacts were as follows:

- Too many quarries in the immediate area – 3 no. in close proximity to each other;
- Landscape character of the area, to the Kildare Eastern Uplands an Area of High Amenity and High Sensitivity and protected views;
- Need to protect the rural landscape and farming land;
- Impact on tourism in the area including Blessington, Glen Ding, nearby tourism features and activities, pedestrian and cycling trails;
- Redbog SAC and pNHA being so close to the subject site;
- Impact on heritage;
- Impact on Protected Species;
- Impact on Glen Ding Forest which is also an Area of Geological Significance;
- Little evidence of remediation or restoration following grant of permission under KCC Reg. Ref. 07/267;
- Water supply and potential pollution of private wells;
- Residential amenity;
- Structural damage to nearby homes from blasting;
- Potential damage from blasting to the high-pressure gas pipeline that runs to the north of the subject site;
- Inadequate site notices;
- Non-compliance with previous planning conditions imposed under 20/532 including incomplete or unsatisfactory fencing of the perimeter and breach of operating hours;
- Noise, dust and air pollution;
- This location is free from development;
- Increase in expected traffic volumes on local roads, prospect of HGVs going through Blessington, and road safety concerns;
- Safety hazards on site, condition of the existing quarry and public accessibility into it, opportunities for trespass, existing premises are not secure, and absence of adequate safety measures including fencing in areas of danger including cliff faces;
- Impact on property values;
- Hydrological concerns and impact on the water table;

- Project splitting;
- Existing silt pond is full of debris from gravel washing and other quarry activity;
- The silt pond is outside the applicant's ownership;
- Contravention of County Development Plan 2017-2023 policies and objectives particularly in regard to landscape and visual impact, impact on natural heritage and Designated Sites, and unsuited development on ridgelines;
- Impact on Poulaphouca SPA located some 2.2km away;
- Montages presented in the landscape and visual assessment are too strategic and not sufficiently representative with protected views not considered including Scenic Route 12 through Rathmore) and no view taken from the hill at Wolfestown.

The Environmental Health Service within the HSE (Health Service Executive) reviewed the EIAR previously submitted for 20/532 and highlighted the following points:

- Number of years the existing facility is to be extended is not clear;
- Numerical increase in traffic to be identified;
- A designated member of site staff is to be responsible for dealing with any complaints or queries from members of the public during the operation of the facility;
- Lack of community consultation notwithstanding this is an ongoing operation;
- More emphasis on health was advocated when considering the 'social pillar' of sustainable development;
- Mention to be made of private wells within 150m of the boundary of the site. Any wells identified should be sampled prior to the commencement of works to extend the extraction facility. Sampling should be undertaken at least bi-annually during the extraction period and twice within the first year following cessation of operations on site to establish if there are any changes in water quality.
- Generation of dust on haul roads must be fully considered and addressed through appropriate and detailed mitigation measures;
- Dust monitoring to be undertaken at the location of the nearest occupied dwellings in addition to locations at the site boundary. Monitoring should be considered at locations of sensitive receptors along haul routes, including where appropriate at schools, houses, creches and outdoor sports facilities or playing fields;
- Numerous mitigation measures regarding dust are advanced by the HSE;
- Noise monitoring to be undertaken at the nearest occupied dwelling and at other noise sensitive locations in the vicinity of the quarry and the haul route;

- Corrective noise action to be incorporated into the Environmental Management Plan if exceedances of permitted limits are recorded;
- A series of mitigation measures are advocated from the HSE in respect of vibration and blasting;

These points of concern are addressed not only later in this cover letter/planning statement but also in the rEIAR lodged as part of this application.

The key points in support of continued operation by our client were as follows:

- Hudson Brothers provide significant employment in the area (50+ employees);
- The business is long established in the area going back 100 years;
- The historic and current operation is a strong component of the local business network, social activity and community sponsoring local sports teams, providing vehicles and staff time to clear roads of snow etc.
- The subject business is a main supplier to other related businesses in the 'construction food chain' such as crane hire, building supplies, construction firms, sand and gravel suppliers and those businesses rely on the aggregates provided by our client.
- The aggregate supplied by our client is used in the provision of homes, offices, community facilities ultimately used by blue chip companies such as PJ Hegarty, Bennetts, John Sisk, and Cairn Homes.
- Several supporters of previous application 20/532 highlight the fact that aggregates and quarry produce are required to ensure that an adequate level of homes in particular are provided in a time of ongoing or worsening housing crisis.

We accept that each application should be considered on its own merits but the points raised above as previous concerns from local residents have been carefully considered in the formulation of this application and the technical assessment provided on this occasion.

5. The application site, the existing operation and rEIAR boundary

The site the subject of this application for substitute consent extends to approximately 71.9 hectares (ha.) over the townlands of Philipstown and Redbog within the Civil Parish of Rathmore, in the Barony of North Naas Co. Kildare.

This land unit (the site) is spatially defined by the boundary of Kildare County Council Reg. Ref. 07/267 that permitted *"continuation of aggregate extraction and processing at Philipstown and Redbog, Co. Kildare by mechanical means, blasting, aggregate processing, washing, screening, crushing, powerhouse, control rooms, office building, portacabins/canteen, water recycling plant, lagoons, landscaping berms and all associated work."*

The site encompasses its quarry void occupying the majority of the site, and a plant and processing area to occupying the south-eastern quadrant of the site.

The existing quarry void has not progressed to the northern reaches permitted under Reg. Ref. 07/267, as there remained reserve in the southwestern margin of the void that was to be extracted before that northern progression. That northern progression is the subject of the companion S37L application for prospective quarrying.

It is estimated that, at this current time, economic reserve formerly permitted under Reg. Ref. 07/267 consists of approximately 3.5 million tonnes of sand and gravel and rock.

The plant and processing area includes the following site infrastructure:

- Canteen and welfare facilities;
- Power house;
- Control rooms (2 no.);
- Maintenance shed (with storage for oils) and welfare facilities;
- Aggregate processing plant (with recycling facility);
- Water recycling plant; and
- Fuel tanks.

6. Key legislation in respect of quarries

The principal Act in this case is the Planning and Development Act 2000, as amended, the 'PDA', which replaced the 1963 Act, referenced above.

Section 261 of the PDA was commenced in 2004 and required that all owners and operators of quarries (rock quarries and sand pits) that held pre-1963 status, or whose planning permission was more than 5 years old, had to register basic information about their site with the appropriate local authority. Each local authority then determined whether revised operating conditions would be imposed, or the quarry was required to seek planning permission for continuation with EIAR by reason of the land use exceeding EIA thresholds or the site would be required to close where it was not established as pre-1963 or found to hold planning permission. S261 registration of quarries was to be completed by 2005 with it being an offence not to register.

European Court of Justice case C-215/06 *Commission v. Ireland* found that the Irish State was in breach of the EIA Directive inter alia by permitting retrospective planning permission for development that required, but did not have an EIA. This judgement was effective from 8th July 2008. The effect of that decision was to place retention applications beyond the reach of proposals that required EIA or AA and either, or both, were not carried out. The Planning and Development (Amendment) Act 2010, made several amendments, including ensuring that the European requirements for environmental assessments were complied with. The Amendment Act included provision for substitute consent where planning permission could be sought for development that had already occurred that required EIA or AA, or both, but those amendments had not been carried out. Previously substitute consent could only be sought from An Bord Pleanála where an application for leave to make a substitute consent application had been granted for an applicant as has been the case in this instance under ABP ref. 311622. This no longer the case as per amendments to the PDA brought about by the enactment of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No. 2) Order 2023 (SI 645 of 2023).

S261A was also part of the Planning and Development (amendment) Act 2010 and commenced

in 2011. This required each local planning authority to review the quarries within its administrative area and make a determination first of all as to their planning status (ie whether they were registered under S261 and in compliance). The local authority was then required to assess each site/quarry and its development over time to determine whether an EIA or AA would have been required, on or after the appointed dates, and 2008 when the above ECJ judgement was made. Quarries were either found to require no further action, close or remediate, or seek planning permission in the form of substitute consent accompanied by remedial EIAR (rEIAR) and/or remedial NIS (rNIS).

As substitute consent applications were being made and assessed it became evident that unlike other land uses, quarry developments consisted of a dynamic land use that functions to remove land in order to produce aggregates for use in construction projects, unlike other developments seeking substitute consent that will not alter in appearance (ie a building). In 2015 therefore the PDA was further amended by the insertion of S37L that allows for the making of a planning application to further develop a quarry where concurrent with an application for substitute consent made under S261A.

There have been relatively recent amendments in relation to substitute consent provisions. On 1st July 2020, the Irish Supreme Court made findings relevant to the substitute consent process. These findings were in respect of three joined proceedings all related to quarries by An Taisce and Peter Sweetman against collectively An Bord Pleanála, McQuaid Quarries and the Attorney General in respect of: the 'McQuaid' case regarding a quarry in Lemgare, Co Monaghan (S.C. Record No. 42/19; HC record No. 2016/868 JR and 43/19, HC Record No. 2016/542 JR). This Supreme Court decision provides a detailed rendition of the information provided in this section of this letter to date and its ramifications in respect of those specified quarry cases. The Court left certain matters rest but in respect of two matters made the following abridged findings:

“ . . . that section 177C(20(a) and its corresponding provision, section 177D(1)(a) are inconsistent with the EIA Directive as interpreted by the Court of Justice, in that they fail to provide adequately for the exceptionality test as demanded by that court;” and,

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

In response, the PDA and PDR were amended in respect of substitute consent procedures. The amendments required that any decision made in respect of an application for leave being granted are not part of the substitute consent application consideration process. S177K(1A) further stated that *‘(a) the Board shall not grant substitute consent (whether subject to conditions or not unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board.’*

Circular Letter EUIPR 02/2023

This circular letter follows the enactment of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (no.2) Order 2023 (SI 645 of 2023) which was signed onto law on 15th December 2023 and came into effect on 16th December 2023. This letter set out the amendments to the PDA and PDR to facilitate a more

streamlined substitute consent process providing for a single-stage application process without the need for seeking leave to apply for substitute consent to the Board.

In this case such seeking leave process has already been undertaken and leave approved through ABP's determination under their ref. 211633, although legislation identified above has somewhat overtaken this former .

SI 465 now indicates that the criteria previously under S177D (2) are contained within S177K(1J) and are the exceptional circumstances criteria which the Board must have regard to, in being satisfied that whether exceptional circumstances exist in order to justify a grant of substitute consent. The performance of this S261A development against those 'exceptional criteria' is set out below.

7. Planning guidance and policy

National Planning Framework (Project Ireland 2040) and National Development Plan 2018-2027

These joint documents set out a vision for the future development of the State and support the sustainable development of rural areas by encouraging growth. National Policy Objective 23 seeks to *'Facilitate the development of the rural economy through supporting, amongst other sectors, a sustainable and economically efficient extractive industry sector, whilst at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.'*

On page 78 under the heading 'Aggregates and Minerals' the importance of the aggregates and minerals sector to the Irish economy and to development in general is recognised where it stated in the NPF that:

'Extractive industries are important for the supply of aggregates and construction materials and minerals to a variety of sectors, for both domestic requirements and for export. The planning process will play a key role in realising the potential of the extractive industries sector by identifying and protecting important reserves of aggregates and minerals from development that might prejudice their utilisation.'

Aggregates and minerals extraction will continue to be enabled where this is compatible with the protection of the environment in terms of air and water quality, natural and cultural heritage, the quality of life of residents in the vicinity, and provides for appropriate site rehabilitation.'

Quarries and Ancillary Activities: Guidelines for Planning Authorities

These guidelines were issued by the Department of Environment, Heritage and Local Government in April 2004, and whilst relatively outdated, are of relevance insofar as they are the only national planning guidance available covering the control and development of quarries and the extractive industries. They provide guidance to planning authorities on planning applications and development plan policy as well as section 261 of the 2000 Act. The importance of quarries is emphasised and the continued need for aggregates is highlighted. The potential for environmental impacts is strongly recognised as being a key consideration.

Since aggregates can only be worked where they occur, these guidelines acknowledge the priority to be given to identifying the location of major deposits, and to including a commitment to safeguard valuable unworked deposits for future extraction. The Guidelines recognise that quarries and development around the extractive industries generate often generate unique environmental impacts and require environmental assessments and the application of appropriate planning conditions such as relating to noise and vibration, dust, water supplies and groundwater, traffic, archaeology, water, environmental monitoring, waste management, contributions, extraction limits.

Section 1.3 of these guidelines state that:

‘aggregates are an essential input to the construction industry, worth about €20billion to the Irish Economy each year’

It is further stated that:

‘there will be a continuing need for some new or expanded aggregate quarrying operations on land to meet regional and local requirements. There is thus a need to identify and protect aggregate resources areas through the planning system, to ensure an adequate supply of aggregates to meet the likely scale of future demand, while at the same time protecting Ireland’s natural and cultural heritage.’

Whilst the guidelines recognised the importance of the supply of aggregates to the Irish economy the guidelines are also sensitive to the potential environmental effects of quarries, sand and gravel pits, and provide guidance on appropriate mitigation measures for each identified effect. Guidance is also provided on restoration and after-use.

Eastern and Midlands Regional Assembly Regional Spatial and Economic Strategy

The Eastern and Midlands Regional Assembly (EMRA) Regional Spatial and Economic Strategy (RSES) 2019-2031 sets out regional goals and objectives deriving from the NPF.

Under the title ‘Enabling and Sustaining the Rural Economy’ the RSES states that *‘The rejuvenation of rural towns and villages requires that appropriate job creation can be supported in rural areas. Traditional sectors such as agriculture, tourism, extractive industries and forestry are complemented by diversification in [other] sectors’*. There is an explicit recognition of the need to accommodate and maintain extractive industries in the countryside.

Regional Policy Objective 6.7 also encourages extractive industry development where it states that the regional authority will:

‘Support local authorities to develop sustainable and economically efficient rural economies through initiatives to enhance sectors such as agricultural and food, forestry, fishing and aquaculture, energy and extractive industries, the bioeconomy, tourism, and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage.’

The need to reconcile rural based employment and activity with the needs of tourism and protecting the environment is recognised in these guidelines such as building on strengths to

sustain a strong economy and support the creation of jobs and to ensure a good standard of living for all.

It is interesting to note that page 94 of the RSES indicates that Blessington is one of those towns recording the highest growth rate in the country over the 10 years prior to the adoption of the RSES at >32% but with lower levels of employment provision.

Kildare County Development Plan 2023-2029

The relevant statutory development plan currently covering the application site is the Kildare County Development Plan which took effect from February 2023.

The subject site is zoned Objective I Agriculture.

Chapter 9 'Our Rural Economy' recognises in section 9.1 that activities in the countryside, such as extractive industries, whilst although in some cases absolutely necessary, represent competing demands on the rural resource and while there are economic opportunities associated with these, they require very careful management.

Section 9.9 (**Mineral Resources and Extractive Industry**) states the following key points.

- Mineral resources are generally located within the rural area. Reserves of suitable material are finite, and the nature of the extractive industry is such that the industry must be developed where the resource occurs.
- The industry can have damaging environmental effects and permission will only be granted where the council is satisfied that residential and natural amenities will be protected, pollution will be prevented, and aquifers and ground water safeguarded.
- Whilst the environment must be protected there must be adequate supplies of aggregates and to facilitate the exploitation thereof to meet the future needs of the county and region in line with the principles of sustainable development and environmental management.
- Aggregate resources are important to the general economy with over 500 active quarries nationally in 2018, directly employing over 5,000 people.
- The industry provides a valuable source of employment in some areas of the county and the sector is vital to ensure provision of raw materials for the construction industry to facilitate construction of infrastructure to accommodate the existing and anticipated population growth in the county over the lifetime of the Plan and beyond.
- Extraction sites have long term environmental impacts and can significantly alter the landscape and therefore there is a need to manage this impact particularly in sensitive landscapes as outlined in Chapter 13 of the Plan – Landscape, Recreation & Amenity. While siting is based on resource locations, the Council will protect high amenity/special/unique sensitivity areas and limit new and/or extending existing extractive industries in these areas.

Section 9.9.1 sets out the County Council's 'after use' strategy for quarries. Rehabilitating ecology

and biodiversity and restoration plans will provide for a mosaic of habitats. Infilling and backfilling may be preferable than reverting to agricultural grassland for ecological and biodiversity purposes.

Policy RD P8 states that the County Council will:

‘Support and manage the appropriate future development of Kildare’s natural aggregate resources in appropriate locations to ensure adequate supplies are available to meet the future needs of the county and the region in line with the principles of sustainable development and environmental management and to require operators to appropriately manage extraction sites when extraction has ceased.’

The following **extractive industry specific** objectives are particularly relevant to this application:

‘RD O42 Ensure that development for aggregate extraction, processing and associated concrete production does not significantly impact the following: - Special Areas of Conservation (SACs) - Special Protection Areas (SPAs) - Natural Heritage Areas (NHAs) - Other areas of importance for the conservation of flora and fauna. - Zones of Archaeological Potential. - The vicinity of a recorded monument. - Sensitive landscape areas as identified in Chapter 13 of this Plan. - Scenic views and prospects. - Protected Structures. - Established rights of way and walking routes. - Potential World Heritage Sites in Kildare on the UNESCO Tentative List, Ireland.

RD O43 Consult with the Geological Survey of Ireland (GSI), with regard to any developments likely to have an impact on sites of Geological Importance listed in Chapter 12 of this Plan.

RD O44 Require applications for mineral or other extraction to include (but not limited to):

- An Appropriate Assessment Screening where there is any potential for effects on a Natura 2000 site (see Chapter 12).*
- An Environmental Impact Assessment Report (EIAR).*
- An Ecological Impact Assessment may also be required for subthreshold developments to evaluate the existence of any protected species / habitats on site.*
- A detailed landscaping plan to be submitted indicating proposed screening for the operational life of the site. The predominant use of native plant species in the proposed landscaping plan will be expected.*
- Detailed landscaping and quarry restoration plans. Habitats and species surveying shall be carried out and shall influence the restoration plan for the site.*
- Comprehensive Site Restoration Plan and/or After-Use Strategy having regard to the principles of ‘Rehabilitation Ecology’*
- Transport Impact Assessment*

RD O45 Require, where permission is granted for quarrying/extraction of aggregates, the submission by the developer of a bond (cash deposit, bond from an insurance company or other security acceptable to the planning authority) to ensure the satisfactory completion and restoration of the site.

RD O46 Require road re-instatement work to be on-going during operations, in the interests of road and traffic safety. Works undertaken to re-instate/improve the public road should be undertaken by the quarry developer or paid by them and completed by the Council.

RD O47 Protect and safeguard the county's natural aggregate resources from inappropriate development.

RD O48 Manage the finite aggregate resources being mined by the extractive industries in the county to supply the future needs of our region while working to reach our climate change targets.

RD O49 Have regard to the following guidance documents (as may be amended, replaced, or supplemented) in the assessment of planning applications for quarries, ancillary services, restoration and after-use:

- Quarries and Ancillary Activities: Guidelines for Planning Authorities, DEHLG (2004). - Environmental Management Guidelines*
- Environmental Management in the Extractive Industry (Non-Scheduled Minerals), EPA (2006).*
- Archaeological Code of Practice between the DEHLG and ICF (2009). - Geological Heritage Guidelines for the Extractive Industry (2008).*
- Wildlife, Habitats, and the Extractive Industry – Guidelines for the protection of biodiversity within the extractive industry, NPWS (2009).*

RD O50 Ensure the satisfactory and sensitive re-instatement and/or re-use of disused quarries and extraction facilities, where active extraction use has ceased. Future uses should include amenity, recreation and biodiversity areas shall be informed by an assessment of the specific site/lands and shall be subject to an ecological impact assessment or other environmental assessments as appropriate. Where it is proposed to reclaim, regenerate, or rehabilitate old quarries by filling or re-grading with inert soil or similar material, or to use worked-out quarries as disposal locations for inert materials, the acceptability of the proposal shall be evaluated against the criteria set out in Section 15.9.6 of this Plan. The Council will resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling/ reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and / or not give rise to adverse impacts.

RD O51 Require that quarry remediation plans provide for environmental benefit, biodiversity and re-wilding in all instances. The 80% requirement for environmental/biodiversity may be waived at sites closer to urban areas where a significant portion of the site is being provided for sports, recreation, and amenity.'

Section 15.9.6 (**Extractive Industry**) states that:

'When assessing planning applications for quarry and ancillary developments, the Council will have regard to:

- Section 261 and Section 261A of the Planning and Development Act, 2000 (as amended);*
- the Quarries and Ancillary Activities Guidelines 2004 and any amendments to the Guidelines which may be made, and*
- the Environmental Protection Agency's (EPA) publication 'Environmental Management in the Extractive Industry (non– scheduled minerals)' 2006.*

In addition to the above, all planning applications for quarry and ancillary developments, such as batching plants, crushing and screening, shall appropriately detail the environmental baseline of the area in which extraction is proposed, the likely impacts and proposed mitigation measures relating to;

- Human health;*
- Groundwater, surface water and important aquifers and compliance with the objectives of the Water Framework Directive;*
- Natura 2000 sites (Special Areas of Conservation and Special Protection Areas), Natural Heritage Areas, proposed Natural Heritage Areas and other sites for environmental or ecological protection such as Statutory Nature Reserves, Ramsar Sites, Wildfowl Sanctuary and Biogenetic Reserves;*
- Flora and fauna;*
- Sensitive local receptors such as residences, Areas of High Amenity, Landscape Sensitivity Areas, Key Scenic Views and Prospects, and Key Amenity Routes as outlined in Chapter 13 of this Plan;*
- Landscaping, berms and screening proposals;*
- Local transportation networks with particular reference to details of haul routes, trip movements and articulated lorry weights;*
- Noise, vibration, and dust emissions; and*
- Archaeological and architectural heritage of the area.*

Planning applications shall also include general details on the proposed development as follows:

- Project description:*
- Map(s) showing (a) total site area, (b) area to be excavated, (c) any ancillary proposed development, (d) nearest dwellings or any other development (within 1 km of the site);*

Description of aggregate to be extracted and / or processed;

- *Description of cumulative impact when taken together with all other quarries in the vicinity;*
- *Method of extraction and equipment to be used;*
- *Details of storage of materials and overburden;*
- *Total and annual tonnage of extracted aggregates, expected life of the extraction, maximum extent and depth of working;*
- *Details of any blasting;*
- *Fuel and chemical storage;*
- *Floor levels showing depths of extraction;*
- *Phasing programme for extraction and rehabilitation;*
- *Restoration and after care proposals for the site (plans and section drawings), including long-term quarry face stability, long-term water pollution potential and control, removal of buildings, plant and machinery, fencing and security.*
- *Remediation plans provide for environmental benefit, biodiversity, and re-wilding rather than simply re-grassing and reverting back to agricultural use / sheep grazing.*

In order to facilitate the sustainable development of the extractive industry, the Council will require the lodgement of a financial bond to ensure the satisfactory reinstatement of the site following the completion of extraction and the payment of an adequate contribution towards the upgrading or repair of the local road network.

Traffic Assessments and Road Safety Audits may be required as part of any application. Proposals for batching plants, crushing, and screening on exhausted quarry sites are required to provide details on the source of aggregate and also the number of expected trips from source to plant and then from plant to offsite.'

In addition to the above, against which the subject development is assessed below, there is an additional, very helpful, note which states the following:

- *The Council favours the use of existing authorised and planning compliant quarries over proposals for extraction from green field sites.*
- *The Planning Authority, may in certain instances, depending on the size and characteristics of the proposed development, require the preparation of a Natura Impact Statement, Environmental Impact Statement, and other assessments. However, it should be noted that the Council may require additional information, as necessary, on a case-by-case basis.'*

Section 1.8.1 (**Key Guiding Principles**) states that a key principle for the 2023 County Development Plan is identified as '(vii) *To recognise the role of the rural countryside in supporting*

the rural economy and its role as a key resource fortourism, recreation, mineral extraction, and rural based enterprises’. The balance between providing for rural enterprises including aggregate working and quarrying and promoting tourism is therefore recognised. There are also key principles to protect the quality of the landscape, open space, recreational resources, natural, architectural, archaeological, and cultural heritage and the material assets of the county under key principle (ix); to facilitate the delivery of objectives contained in the Kildare Local Economic and Community Plan (LECP) 2016- 2021 and any succeeding Plan under key principle (x); and finally to promote co-ordinated spatial planning to conserve and enhance biodiversity under key principle (xi).

The **preferred development strategy** for the county (section 2.11.1) indicates that a priority of the County Plan is to diversity rural enterprise and economic activity and to protect the environment by recognising the various environmentally sensitive zones within the county but not to exclude appropriate and otherwise acceptable uses and development.

Policy RE P1 is a positive presumption in terms of employment creation and therefore it is Council policy to examine such proposals within non-designated employment locations on a case-by-case basis for example employment related development in a location clearly linked to a rural resource activity, such as in this case.

Policy RE P2 supports and facilitates the economic development of the county in accordance with the Kildare 2025 (Economic Development Strategy).

Section 9.1 of the current CDP recognises that traditional sectors such as agriculture, extractive industries, and forestry will be important in helping Kildare reach targets in relation to climate change and will play a vital role over the coming years, and the period of this CDP to help Ireland reach its climate targets particularly in relation to food security, carbon storage, provision of renewable energy, reducing emissions, protection of water bodies and increasing biodiversity.

The Kildare CDP seeks to upgrade the N81 within the county of Kildare. Objective TM A24 states that it is an objective to:

‘Upgrade the section of the N81 National Secondary Road (Tallaght/Baltinglass) that is located within County Kildare subject to funding and in accordance with the requirements of TII and subject to AA screening and where applicable, Stage 2 AA so as to ensure and protect the favourable status of European sites and their hydrological connections.’

In respect of **biodiversity** there are a number of relevant policies and objectives. These include the following:

‘Policy BI P1 Integrate in the development management process the protection and enhancement of biodiversity and landscape features by applying the mitigation hierarchy to potential adverse impacts on important ecological features (whether designated or not), i.e. avoiding impacts where possible, minimising adverse impacts, and if significant effects are unavoidable by including mitigation and/or compensation measures, as appropriate. Opportunities for biodiversity net gain are encouraged.

Objective BI O6 Apply the precautionary principle in relation to proposed developments in

environmentally sensitive areas to ensure that all potential adverse impacts on a designated NHA or Natura 2000 Site arising from any proposed development or land use activity are avoided, remedied, or mitigated.

Objective BI O7 Pursue insofar as possible and practical, a policy of biodiversity net gain through strategies, plans, developments, mitigation measures, appropriate offsetting and/or investment in Blue-Green infrastructure.

Policy BI P2 Seek to contribute to maintaining or restoring the conservation status of all sites designated for nature conservation or proposed for designation in accordance with European and national legislation and agreements. These include Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Natural Heritage Areas (NHAs), Ramsar Sites and Statutory Nature Reserves.

Objective BI O9 Avoid development that would adversely affect the integrity of any Natura 2000 site and promote favourable conservation status of habitats and protected species including those listed under the Birds Directive, the Wildlife Acts and the Habitats Directive, to support the conservation and enhancement of Natura 2000 Sites including any additional sites that may be proposed for designation during the period of this Plan and protect the Natura 2000 network from any plans and projects that are likely to have a significant effect on the coherence or integrity of a Natura 2000 Site.

Objective BI O10 Ensure an Appropriate Assessment Screening, in accordance with Article 6(3) and Article 6(4) of the Habitats Directive, Section 177A of the Planning and Development Act (2001-2022) or any superseding legislation and with DEHLG guidance (2009), is carried out in respect of any plan or project not directly connected with or necessary to the management of a Natura 2000 site to determine the likelihood of the plan or project having a significant effect on a Natura 2000 site, either individually or in combination with other plans or projects and to ensure that projects which may give rise to significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites will not be permitted (either individually or in combination with other plans or projects) unless for reasons of overriding public interest.'

Table 12.2 of the current CDP identifies the Natural Heritage Areas in Co. Kildare which includes Red Bog NHA. Poulaphouca Reservoir is also identified in the same Table 12.2 as an NHA. The following policies and objectives apply to **Designated Sites**.

'Policy BI P3 Ensure that any proposal for development within or adjacent to a Natural Heritage Area (NHA), Ramsar Sites and Nature Reserves is designed and sited to minimise its impact on the biodiversity, ecological, geological and landscape value of the site, particularly plant and animal species listed under the Wildlife Acts and the Habitats and Birds Directive including their habitats.

Objective BI O12 Require the preparation of an Ecological Impact Assessment (EclA) by a suitably qualified professional for proposals for development within or adjacent to a Natural Heritage Area (NHA)/proposed Natural Heritage Areas (pNHA), to ensure the development is designed and sited to minimise its impact on the biodiversity, ecological, geological and landscape value of the site, particularly plant and animal species listed under the Wildlife

Acts. Such assessments shall be carried out in line with the CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine.

Objective BI O14 Conserve, preserve and protect the integrity of and maintain the favourable conservation value/status within or adjacent to Ramsar Sites, Statutory Nature Reserves, Biogenetic Reserves, Wildfowl Sanctuaries, all existing and proposed NHAs. They should be designed and sited so as to minimise their impact on the ecological and landscape values of these sites under National and European legislation and International Agreements.'

In respect of **protected habitats and species** it is stated that:

'Policy BI P4 Ensure that any new development proposal does not have a significant adverse impact, incapable of satisfactory mitigation on plant, animal or bird species which are protected by law.

Objective BI O15 Ensure that any new development proposal does not have a significant adverse impact on rare and threatened species, including those protected under the Wildlife Acts 1976 and 2012, the Birds Directive 1979 the Habitats Directive 1992 and the Flora Protection Order species and any species listed under the national red lists or that could be listed on a national red list.

Objective BI O16 Ensure appropriate species and habitat avoidance and mitigation measures are incorporated into all new development proposals.

Objective BI O17 Require a derogation licence, where necessary, issued by the DHLGH, in the event of a proposed development impacting on a site known to be a breeding or resting site of species listed in the Habitats Directive (Annex IV species).

Objective BI O18 Require all applications for new developments to identify, protect and sensitively enhance the most important ecological features and habitats, and incorporate these into the overall open space network, keeping free from development and to provide links to the wider Green Infrastructure network as an essential part of the design process and by making provision for local biodiversity (e.g. through provision of swift boxes or towers, bat roost sites, hedgehog highways, green roofs, etc.).

Objective BI O22 Identify and protect areas of high nature conservation value (including but not limited to SAC/SPA/pNHA) and support the landscape features which act as ecological corridors/networks and stepping-stones, such as river corridors, hedgerows, and road verges so as to minimise the loss of habitats and features of the wider countryside which are of major importance for wild fauna and flora in accordance with Article 10 of the Habitats Directive.'

Table 12.5 of the CDP entitled 'County Kildare Wetland Survey Sites - Rating of Importance of Ecological Sites' includes both Red Bog SAC and Poulaphouca Reservoir Spa cNHA. In regard to **wetland areas** the following policies and objectives are relevant.

'Policy BI P8 Ensure that Kildare's wetlands and watercourses are retained for their

biodiversity, climate change mitigation properties and flood protection values and at a minimum to achieve and maintain at least good ecological status for all wetlands and watercourses in the county by, at the latest, 2027 in line with the Water Framework Directive and Ramsar Convention.

Objective BI O49 Protect wetland sites that have been rated A (International), B (National) C+ (County) and C (Local) importance as identified in the County Kildare Wetlands Survey 2012-2014, (See Tables 12.5 & 12.6). Any development within the zone of influence of these listed wetland sites should be subject to EclA and where appropriate, hydrological impact assessment.

Objective BI O50 Protect and conserve wetlands from infilling, drainage, fragmentation, degradation, and resist development that would destroy, fragment, or degrade any wetland identified as part of the County Kildare Wetland Survey 2012-2014, (See Table 12.6).

Objective BI O52 Require the preparation and submission of a Hydrological Report/Assessment for significant developments within and in close proximity to protected raised bogs and to take account of same in the assessment of impacts on the integrity of peatland ecosystems.

Objective BI O55 Protect, conserve, and manage the character and appearance of ecological and archaeological heritage and amenity values of peatland landscapes and historic/ancient walkways through bogs, by promoting high environmental standards.

Objective BI O56 Ensure that development proposals or activities that may impact on sensitive water habitats, in particular wetlands (identified as part of the County Kildare Wetland Survey 2012-2014, (See Table 12.6), shall not be permitted without the introduction of mitigation measures agreed in writing with the Council to eliminate negative environmental impacts.'

In terms of **geology**, Glen Ding is identified in Table 12.7 as a Site of Geological Importance. The following geology based policies and objectives apply therefore.

'Objective BI P10 Maintain and protect the conservation value of geological sites of national or local importance and seek the sustainable management of the county's geological heritage resource as listed in Table 12.7.

Objective BI O60 Consult with the Geological Survey of Ireland regarding any development proposals within or likely to have an impact on Sites of Geological Importance set out in Table 12.7.

Objective BI O61 Contribute towards the protection from inappropriate development of Geological Natural Heritage Areas that become designated during the lifetime of this Plan.

Objective BI O60 Consult with the Geological Survey of Ireland regarding any development proposals within or likely to have an impact on Sites of Geological Importance set out in Table 12.7.

Objective BI O74 Strengthen ecological networks between urban areas to create greater

linkages to Natura 2000 sites, proposed Natural Heritage Areas, parks and open spaces and the wider regional Green Infrastructure network.'

In respect of **green infrastructure**, which is located in relative close proximity to the application site it is stated:

'Objective BI 077 Integrate nature-based solutions and climate change considerations into the design, planning, and implementation of infrastructure provision/ works and development proposals at the earliest possible stage of the design process.'

Objective BI 078 Actively promote and encourage nature-based approaches and green infrastructure solutions as viable mitigation and adaptation measures to surface water management.'

In terms of **landscape and visual amenity** there are a number of relevant sections, designations, policies and objectives in the 2023-2029 CDP. These are set out below.

The relevant policies and objectives and permissibility of development within the county according to acceptability in principle within now well established landscape character areas are set out below.

Table 13.3 of the 2023 CDP is reproduced below as our Table 2 below.

Table 2: *Landscape Areas, Landscape Sensitivity Areas and Appropriateness of Uses and Activities*

Compatibility Key		Sensitivity Class	Agriculture and Forestry		Housing	Urbanisation		Infrastructure	Extraction		Energy	
Most	Least											
High	Medium											
Low	Least											
Principal Landscape Character Areas												
Sub-ordinate Landscape Areas												
North Western Lowlands	1											
Northern Lowlands	1											
Southern Lowlands	1											
Central Undulating Lands	1											
Western Boglands	3											
Eastern Transition	2											
Eastern Uplands	3											
South-Eastern Uplands	2											
Northern Hills	4											
Chair of Kildare	4											
The Curragh	5											
Pollardstown Fen	5											
Allen Bog	4											
River Liffey	4											
River Barrow	4											
Dun Ailinne	5											

Table 13.3 - Likely compatibility between a range of land-uses and Principal Landscape Areas.

The subject application site is located within the **Eastern Uplands Landscape Character Area (LCA)**. The Eastern Uplands LCA is categorised as sensitivity class 3, of 5, which would indicate a median level of sensitivity – classes 4 and 5 being more sensitive. Within the median sensitivity level of 3, extraction of sand, gravel and rock is shown in yellow as being of median appropriateness and specifically as ‘Likely to be compatible with great care’.

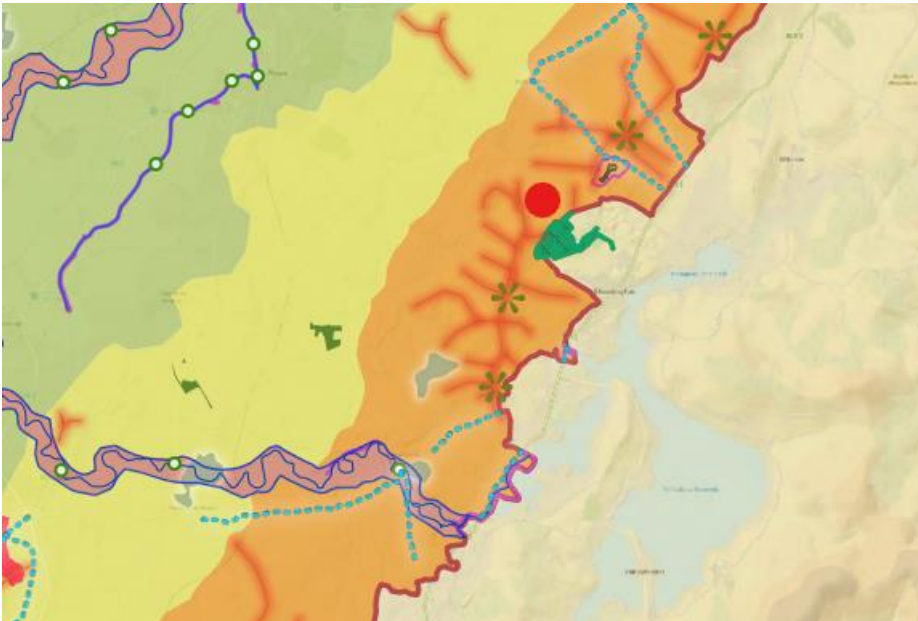
Table 3: Likely Compatibility of Proposed Land Uses Within Landscape Sensitivity Areas

5 - Likely to be very compatible in most circumstances. 4 - Likely to be compatible with reasonable care. 3 - Likely to be compatible with great care. 2 - Compatible only in certain circumstances. 1 - Compatible only in exceptional circumstances. 0 - Very unlikely to be compatible.	Agriculture and Forestry		Housing		Urbanisation		Infrastructure	Extraction		Energy	
	Agriculture	Forestry	Rural Housing	Urban Expansion	Industrial Projects	Tourism Projects	Major Powerlines	Sand and Gravel	Rock	Windfarm	Solar
Proximity within 300m of Principal Landscape Sensitivity Factors.											
Major Rivers and Water bodies	5	5	2	2	2	3	2	1	0	1	0
Canals	5	5	2	2	2	3	2	1	0	1	1
Ridgelines	5	5	1	1	1	1	1	0	0	2	0
Green Urban Areas	4	5	2	0	0	4	3	3	3	2	2
Broad-Leaved Forestry	3	5	2	2	2	4	3	2	3	1	2
Mixed Forestry	3	5	2	2	2	4	3	2	3	1	2
Natural Grasslands	5	2	2	1	1	4	2	1	1	2	2
Moors and Heathlands	2	2	1	0	0	1	2	1	0	2	1
Agricultural Land with Natural Vegetation	5	5	2	2	2	3	3	3	3	4	2
Peat Bogs	0	0	0	0	0	3	2	0	0	2	1
Scenic View	5	5	2	1	1	5	1	3	0	0	2
Scenic Route	5	5	2	1	1	5	1	3	0	0	2

Table 13.4 - Likely compatibility between a range of land-uses and proximity to Principal Landscape Sensitivity Factors.

In terms of compatibility with key landscape features sand, gravel and rock extraction is identified as being very unlikely to be compatible with ridgelines. The site is located within 300m of a defined ridgeline as shown in Figure 5 below which accompanies CDP Table V1-13.2 entitled Landscape Sensitivity Area but as demonstrated later does not impact upon any ridgeline.

Figure 5: The application site in the context of defined Landscape Character Areas



In section 13.5.1 (Views to and from Hills) the County Council recognise that as the landform of the county is generally flat, with very little variation in topography and predominantly low vegetation, extensive views can be obtained from hilltops, allowing vistas over long distances, and similarly from the lowland areas the eye is drawn to the primary and secondary ridgelines that define the skyline throughout the county.

It is stated in 13.5.1 that *‘Ridgelines are conspicuous features of the natural landscape as they perform an important role as dominant landscape focal points. It is important that development does not interrupt the integrity of ridgelines. Development on steeply sloping land can be viewed over greater distances.’*

In terms of landscape protection and enhancement it is council policy to:

‘Policy LR P1 Protect and enhance the county’s landscape, by ensuring that development retains, protects and, where necessary, enhances the appearance and character of the existing local landscape.’

Furthermore, it is a council objective to:

‘Objective LR O2 Require a Landscape/Visual Impact Assessment to accompany proposals that are likely to significantly affect:

- *Landscape Sensitivity Factors;*
- *A Class 4 or 5 Sensitivity Landscape (i.e. within 500m of the boundary);*
- *A route or view identified in Map V1 - 13.3 (i.e. within 500m of the site boundary).*

Objective LR O4 Ensure that local landscape features, including historic features and buildings, hedgerows, shelter belts and stone walls, are retained, protected and enhanced

where appropriate, so as to preserve the local landscape and character of an area.

LR 07 Restrict the quarrying of sensitive sites within the Landscape Character Areas in line with Table 13.3 and Table 13.4 above and to protect and conserve the ecological, archaeological, biodiversity and visual amenity surrounding quarry sites.

Objective LR 08 Ensure that all quarrying activities and projects associated with the extractive industry comply with all relevant Planning and Environmental Legislation and the Guidelines for the Protection of Biodiversity within the Extractive Industry document 'Wildlife, Habitats & the Extractive Industry'.

Objective LR 012 Recognise that boglands, including cutaway and cut-over bogs, are critical natural resources for ecological and environmental reasons, particularly for climate mitigation and adaptation. Development proposals for boglands that reduce biodiversity and increase greenhouse gas will not be considered. Appropriate environmental assessment should be carried out for any development proposals which impact on boglands.

Objective LR 014 Maintain the visual integrity of Eastern Transition Lands which have retained an upland character.

Objective LR 015 Continue to facilitate appropriate development in the Eastern Transition Lands, in an incremental and clustered manner, where feasible, that respects the scale, character and sensitivities of the local landscape, recognising the need for sustainable settlement patterns and economic activity within the county.'

Section 13.4 (**Areas of High Amenity**) states that '*In addition to Landscape Character Areas and the sensitivity of these areas to development, there are certain special landscape areas within the county, some of which overlap with sensitive landscapes. For the purposes of this Plan these areas have been defined as Areas of High Amenity. They are classified because of their outstanding natural beauty and/or unique interest value and are generally sensitive to the impacts of development.*'

The site in question is not within a defined Area of Amenity. However, Redbog SAC nearby is defined as such an Area. Section 13.4.11 (Red Bog SAC) Red Bog SAC is located 3 km north of the village of Blessington in east Co. Kildare. It comprises a wetland complex of lake, fen and bog situated in a hollow between ridges of glacially deposited material and underlain by rocks of Ordovician age. The site is a Special Area of Conservation (SAC) selected for Transition Mires. Red Bog is of ornithological significance and breeding birds recorded from the site include Mute Swan, Mallard, Tufted Duck, Coot, Moorhen, Snipe and Black-headed Gull.

Section 13.4.12 references to the **Eastern Uplands specifically** and states as follows:

'The Eastern Uplands are located in the east of the county and are part of the Wicklow Mountain complex. The topography rises from the lowland plains, through undulating terrain to the highest point of 379m above sea level (O.D.) at Cupidstownhill, east of Killeel. The elevated nature of this area provides a defined skyline with scenic views over the central plains of Kildare and the neighbouring Wicklow Mountains which further define the skyline and the extent of visibility. The East Kildare Uplands are rural in character with a number of

scenic views from elevated vantage points. The general land use on the uplands is pasture, with some tillage, quarrying and forestry.'

It is further stated that *'Along a number of roads, which cross the upper and lower slopes of the uplands, there are long-distance views towards the Kildare lowlands and the Chair of Kildare. The sloping land provides this area with its distinctive character and intensifies the visual prominence and potential adverse impact of any feature over greater distances. Public roads traversing the slope provides an increased potential for development to penetrate primary and secondary ridgelines when viewed from lower areas and in a few areas the recent pattern of ribbon development obscures views across the plains of Kildare. In the Eastern Kildare Uplands, nearly all ridgelines are secondary when viewed from the lowland areas, as the Wicklow Mountains to the east define the skyline (i.e. form primary ridgelines). Gently undulating topography and shelter vegetation provided by conifer and woodland plantation can provide a shielding of built form. Views of the River Liffey Valley as well as of the Poulaphouca Reservoir are available from the hilltops and high points on some of the local roads.'* There are two public roads at 1km each from the subject site to the north east and south west that go over the ridgeline that runs to the south of the substitute consent area. There are no long distance views looking over the Kildare lowlands Chair of Kildare. The substitute consent development is capable of being seen from points of those roads but the primary views are those afforded by the direction of the road northwest and south east direction which is in the opposite direction to the subject quarry and not therefore in the viewing arc of road users. The subject site is not actually on any ridgeline. There is no impact on views of the River Liffey Valley or Poulaphouca Reservoir.

The following policies and objectives are significant in the context of assessing impact of development on **designated high amenity areas**.

'Policy LR P2 Protect High Amenity Areas from inappropriate development and reinforce their character, distinctiveness and sense of place.

Objective LR O17 Control development that will adversely affect the visual integrity of Areas of High Amenity by restricting the development of incongruous structures that are out of scale with the landscape within the Areas of High Amenity including advertising signs, hoardings, fencing etc. which create visual clutter and disrupt the open nature of these areas.

Objective LR O18 Facilitate appropriate development in areas of high amenity that can utilise existing structures, settlement areas and infrastructure, taking account of the visual absorption opportunities provided by existing topography and vegetation.

Objective LR O30 Sensitively consider developments in the Upland Character Areas including East Kildare Uplands that have a functional and locational requirement to be situated on steep or elevated sites (e.g. reservoirs, telecommunication masts or wind energy structures) where it can be explicitly demonstrated that residual adverse visual impacts are minimised or mitigated.

Objective LR O31 Have regard to the potential for screening vegetation when evaluating proposals for development within the Upland Character Areas including East Kildare Uplands.'

In regard to **scenic routes and protected views** there are a number of policies and objectives that must be considered. These are summarised below.

Figure 6 below is an excerpt of Map V1-13.3 (Scenic Routes) with the location of the subject site identified with a red dot.

Figure 6: Location of the subject site in relation to designated scenic routes



Table 13.5 (Scenic Routes in County Kildare) is excerpted below as our Table 4 and shows 3 no. scenic routes worthy of consideration in respect of assessing the impact of the subject development and as being within the study area. These are identified as scenic routes 12 and 22. Viewpoint 29 is on the verges of the study area the direction of the protected view is eastwards facing away from the subject site and therefore is of no relevance.

Table 4: Excerpt of Scenic Routes in County Kildare 2023-2029

No.	Description	Location
12	Views West of Kildare Plains from Redbog Area and Views towards Caureen; from Rathmore Cross Roads to Pipershall Views west of the Kildare Plains from the Redbog Area and views towards Caureen from Rathmore crossroads to Pipershall along the L6038 road.	Greenmount, Redbog, Pipershall, Wolfestown, Rathmore west and Punchestown lower.
20	Views to the north-west of the open countryside, from Killeel Village to Rathmore Village.	Furryhill, Killeel upper and lower, Rathmore east and west and Segravescastle.
30	Views to and from the Ridgeline of East Kildare Uplands and views of the Central Plains along the L6030.	Oldtown, Killeel upper, Rathbane, Punchestown upper and lower, Furryhill, Caureen, Slatequarries, Hempstown common and Pipershall.

There are two hilltop views worth consideration in this instance and which are presented in the following Table 5, which is an excerpt of Table 13.6 in the CDP.

Table 5: Hill Top Views taken from the 2023 CDP Table 13.6

No.	Hilltop Views
7.	Kilteel Hill
8.	Caurcen Hill

It is policy under LR P3 to

‘Policy LR P3 Protect, sustain and enhance the established appearance and character of all important views and prospects.’

It is stated in respect of protected views and prospects that:

‘Objective LR O32 Avoid any development that could disrupt the vistas or have a disproportionate impact on the landscape character of the area, particularly upland views, river views, canal views, views across the Curragh, views of historical or cultural significance (including buildings and townscapes), views of natural beauty and specifically those views listed in Tables 13.5 – 13.7 of this plan.

Objective LR O33 Ensure developments (due to excessive bulk, scale, inappropriate siting or siting on steep slopes i.e. >10%) do not have a disproportionate visual impact or significantly interfere with or detract from scenic upland vistas when viewed from nearby areas, scenic routes, viewpoints and settlements.

Objective LR O35 Encourage appropriate landscaping and screen planting of developments along scenic routes. Where scenic routes run through settlements, street trees and ornamental landscaping may be required.’

In terms of recreation the following is stated:

‘Policy LR P4 Protect and maintain the existing recreation infrastructure in County Kildare and support the diversification of the rural economy through the development of the recreational potential of the countryside in accordance with the forthcoming National Outdoor Recreation Strategy, subject to all relevant and cumulative environmental assessments and planning conditions.’

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The period covering this substitute consent is that from 19th September 2020 (ie the expiry of the 2007 consent on 18th September to the date of determination of that same application). The S37L application covers the period of 15 years from that date of S261A determination plus an additional 3 years for restoration.

The following are the key requirements of the 2017-2023 County Plan which covers the period 2020 to 2023 of the substitute consent and prior to the adoption, and taking effect, of the current 2023 CDP.

Section 10.4.9 of the 2017 CDP recognises that **mineral extraction** is generally located within rural areas and that the nature of the extractive industry is such that the industry must be developed where resources occur. The 2017 CDP also recognises that the industry can have damaging environmental effects and states that planning permission will only be granted where the County Council is satisfied that residential and natural amenities are protected, pollution will be prevented, and aquifers and groundwater safeguarded.

Section 10.7 of the 2017 CDP states that the local authority's aim regarding mineral extraction is *'To ensure that adequate supplies of aggregates are available to meet the future needs of the county and region in line with the principles of sustainable development and environmental management.'*

The following policies contained within the 2017 CDP are considered relevant in the context of this substitute consent application.

'Policy EI 1 Have regard to Section 261A of the Planning and Development Act 2000 (as amended) and related provisions, Guidelines for Planning Authorities, DECLG (2012) and Quarries and Ancillary Activities Guidelines for Planning Authorities (2004).

Policy EI 2 Recognise the role and facilitate the exploitation of County Kildare's natural aggregate resources in a manner which does not duly impinge on the environmental quality and the visual and residential amenity of an area, while continuing to regulate the extraction of aggregates and to seek the delivery of environmental benefits in the form of sustainable habitat creation in conjunction with the restoration phases of development.

Policy EI 3 Facilitate the sourcing of aggregates for and the operation of the extractive industry in suitable locations, subject to the protection of landscape, environment, road network, heritage, visual quality and amenity of the area.

Policy EI 4 Ensure that extraction activities address key environmental, amenity, traffic and social impacts and details of rehabilitation. In the assessment of planning applications for new development, intensification of use or diversification of activity, the Council will have regard to the nature of the proposal, the scale of activity proposed, the impact on the adjoining road network, the effect on the environment including important groundwater and aquifer sources, natural drainage patterns and surface water systems and the likely effects that any proposed extractive industry may have on the existing landscape and amenities of the county, including public rights of way and walking routes.

Policy EI 5 Ensure that development for aggregate extraction, processing and associated concrete production does not significantly impact the following:

- *Special Areas of Conservation (SACs) – Special Protection Areas (SPAs).*
- *Natural Heritage Area (NHAs).*

- *Other areas of importance for the conservation of flora and fauna.*
- *Zones of Archaeological Potential.*
- *The vicinity of a recorded monument.*
- *Sensitive landscape areas identified in Chapter 14 of the Development Plan.*
- *Scenic views and prospects.*
- *Protected Structures.*
- *Established rights of way and walking routes.*

Policy EI 6 Consult with the Geological Survey of Ireland (GSI) with regard to any developments likely to have an impact on Sites of Geological Importance listed in the County Development Plan (Chapter 12).

Policy EI 7 Require submission of an Appropriate Assessment under Article 6 of the Habitats Directive where any quarry/sand and gravel extraction is likely to have an impact on a Natura 2000 site (see Chapter 13.)

Policy EI 8 Require relevant planning applications to be accompanied by an Environmental Impact Statement. An Ecological Impact Assessment (EclA) may also be required for sub-threshold development to evaluate the existence of any protected species/habitats on site.

Policy EI 9 Require a detailed landscaping plan to be submitted with a planning application indicating proposed screening for the operational life of the site. The predominant use of native plant species in the proposed landscaping plan is encouraged.

Policy EI 10 Require detailed landscaping and quarry restoration plans to be submitted with each application. Habitats and species surveying shall be carried out and shall influence the restoration plan for the site.

Policy EI 11 Ensure that the full cost of road improvements including during operations and at time of closure, which are necessary for the quarrying of sand and gravel, shall be borne by the industry itself and that the industry shall also contribute to the recreation and amenity of the county.

Policy EI 12 Ensure that all existing workings are rehabilitated to suitable land-uses and that extraction activities allow for future rehabilitation and proper land-use management.

Policy EI 13 Require, where permission is granted for quarrying/extraction of aggregates, the submission by the developer of a bond (cash deposit, bond from an insurance company or other security acceptable to the planning authority) for the satisfactory completion and restoration of the site.

Policy EI 14 Consider, in certain circumstances, granting planning permission for quarrying/sand and gravel extraction for a temporary period. Such a period to be decided

by the planning authority depending on the merits of the application.

Policy EI 15 Protect and safeguard the county's natural aggregate resources from inappropriate development, by seeking to prevent incompatible land-uses that could be located elsewhere from being located in the vicinity of the resource, since the extraction of minerals and aggregates is resource based.

Policy EI 16 Have regard to the following guidance documents (as may be amended, replaced or supplemented) in the assessment of planning applications for quarries and ancillary facilities:

- Quarries and Ancillary Activities: Guidelines for Planning Authorities DEHLG (2004).*
- Environmental Management Guidelines: Environmental Management in the Extractive Industry (Non- Scheduled Minerals), EPA 2006.*
- Archaeological Code of Practice between the DEHLG and ICF (2009).*
- Geological Heritage Guidelines for the Extractive Industry (2008)*
- Wildlife, Habitats and the Extractive Industry - Guidelines for the protection of biodiversity within the extractive industry, NPWS (2006).'*

The above policies in the 2017 CDP in relation to **aggregate extraction and quarrying** are broadly consistent with the policies and objectives of the current 2023 CDP. The following objectives are contained within the 2017 CDP and are considered relevant.

'Objective EO 1 Continue to implement the provisions of S261A of the Planning and Development Act 2000 (as amended), including taking enforcement action against quarry owners/operators who do not comply with the requirements of the Act.

Objective EO 2 Support regional policy for the adequate supply of aggregate resources to ensure continued growth of the county and region.

Objective EO 3 Ensure that the extractive industry minimises and/or mitigates any adverse visual and/or environmental impacts on the built or natural environments through adherence to the EPA publication Environmental Management in the Extractive Industry (Non-scheduled minerals) (2006) and any subsequent revisions and the requirements of the Programme of Measures from the River Basin Management Plans.'

The 2017 CDP recognises the requirement for the **mainly upland or elevated location of quarries** which it also acknowledges has the potential for significantly affecting the local landscape by visual intrusion, especially when the development reaches primary ridgelines. The 2017 CDP goes on to state that *'Major ridgelines (i.e. skylines) are visible over a wide area and consequently are vulnerable features because any development on or in the vicinity of skylines has the potential to affect the visual integrity of a wide area.'* It is also stated that *'In some cases, visibility can be partially screened by occurring topography (i.e. the quarry will only be visible on one side of the hill, or screened by undulating lands) and vegetation (i.e. forestry and planting will*

screen the lower quarry faces). Nevertheless, the visual impact of quarry works is likely to be significant on the local landscape.'

In response to the above recognised potential concerns with quarries and the extractive industry generally, section 10.7.2 (Layout and Design of Extractive Industries) sets out the practical means by which visibility of such operations including overburden (topsoil, subsoil and waste) may be minimised by being located to enclose and screen the proposed development from the surrounding countryside. Section 10.7.2 of the 2017 CDP states that this objective must take account of the operation's reasonable requirement to minimise the length of haulage routes and to avoid double handling of material within the site. The long-term objectives of the applicant for the subject quarry is consistent with section 10.7.3 which requires a long-term vision of the site to ensure a non-intrusive development at all stages of the operational process through to restoration.

Section 13.2 prioritises the **protection and conservation of nationally important and EU designated sites** including Special Protection Areas, candidate Special Areas of Conservation and proposed Natural Heritage Areas; to promote conservation and development measures while promoting the orderly and sustainable development of County Kildare; to avoid undue negative impacts upon the natural environment; to promote appropriate enhancement of the natural environment as an integral part of future development; to mitigate the effects of harm where it cannot be avoided.

Section 13.3 seeks to protect and enhance national heritage and promote the enhancement of biodiversity.

In terms of general **natural heritage** the following policies are relevant:

'Policy NH 1 Facilitate, maintain and enhance as far as is practicable the natural heritage and amenity of the county by seeking to encourage the preservation and retention of woodlands, hedgerows, stonewalls, rivers, streams and wetlands. Where the removal of such features is unavoidable, appropriate measures to replace like with like should be considered, subject to safety considerations.'

'Policy NH 2 Promote the carrying out of basic habitat assessments to inform the design of new developments in order to ensure that proposals for development integrate the protection and enhancement of biodiversity and landscape features wherever possible, by minimising adverse impacts on existing habitats (whether designated or not) and by including mitigation and/or compensation measures, as appropriate.'

'Policy NH 3 Require compliance with Article 10 of the Habitats Directive with regard to encouraging the management of features in the landscape which are of major importance for wild fauna and flora. Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.'

It is an objective of the Council to:

'Objective NHO 1 Identify and protect, in co-operation with the relevant statutory agencies

and other relevant groups, sites of local biodiversity importance (Local Biodiversity Areas), not otherwise protected by legislation.

Objective NHO 2 Implement the actions contained in the County Biodiversity Plan through the identification of priority actions subject to the availability of funding.

Objective NHO 3 Integrate biodiversity considerations into Local Area Plans, programmes and activities.

Objective NHO 4 Identify, conserve and provide guidance on development in important local biodiversity sites.

Objective NHO 5 Carry out habitat mapping on a phased basis (including wetlands) within the plan area. This habitat mapping will identify Local Important Biodiversity areas in cooperation with NPWS, DAHG and Inland Fisheries Ireland.'

Table 13.1 of the 2017 CDP identifies **Natura 2000 Sites** in Co Kildare include Red Bog SAC/NHA and Poulaphuca Reservoir SPA and NHA.

Under the 2017 CDP the Council will: support the conservation and enhancement of Natura 2000 Sites and to protect the Natura 2000 network from any plans/projects that are likely to have a significant effect on the coherence or integrity of a Natura 2000 Site under NH4; prevent development that would adversely affect the integrity of any Natura 2000 site located within and immediately adjacent to the county and promote favourable conservation status of habitats and protected species including those listed under the Birds Directive, the Wildlife Acts and the Habitats Directive under NH 5; ensure Appropriate Assessment under Article 6(3) and Article 6(4) of the Habitats Directive and with DEHLG guidance (2009) in terms of assessing whether there will be a significant effect on a Natura 2000 site, either individually or in combination with other plans or projects and to ensure that projects which may give rise to significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites will not be permitted (either individually or in combination with other plans or projects) unless for reasons of overriding public interest under NH 6.

In respect of **NHAs** it is the policy of the Council to: contribute towards the protection of the ecological, visual, recreational, environmental and amenity value of the county's Natural Heritage Areas and associated habitats under NH 7; ensure that any proposal for development within or adjacent to a Natural Heritage Area (NHA), Ramsar Sites and Nature Reserves is designed and sited to minimise its impact on the biodiversity, ecological, geological and landscape value of the site, particularly plant and animal species listed under the Wildlife Acts and the Habitats and Birds Directive including their habitats under NH 8; ensure the impact of development within or adjacent to national designated sites Natural Heritage Areas, Ramsar Sites and Nature Reserves that is likely to result in significant adverse effects on the designated site is assessed by requiring the submission of an Ecological Impact Assessment (EclA) prepared by a suitably qualified professional, which should accompany planning applications and council developments, as not all developments are likely to result in adverse effects under NH 9.

Protected Habitats and Species are covered under Policy NH 11 ensuring no significant adverse impact on rare and threatened species, including those protected under the Wildlife Acts

1976 and 2012, the Birds Directive 1979, the Habitats Directive 1992, and the Flora Protection Order species; under NH 12 ensure that, where evidence of species that are protected under the Wildlife Acts 1976-2012, the Birds Directive 1979 and the Habitats Directive 1992 exists, appropriate avoidance and mitigation measures are incorporated into development proposals as part of any ecological impact assessment. Under Policy NH 12 in the event of a proposed development impacting on a site known to be a breeding or resting site of species listed in the Habitats Regulations or the Wildlife Acts 1976 -2012 a derogation licence, issued by DAHRRGA, may be required.

In terms of **geology** Policy NH 16 maintains the conservation value and seeks the sustainable management of the county's geological heritage resource. Objective NHO 9 seeks to protect Geological Natural Heritage Areas that become designated during the life-time of the plan from inappropriate development.

It is a **green infrastructure** policy of the Council under GI 1 to ensure the protection, enhancement and maintenance of Green Infrastructure and recognise the health benefits as well as the economic, social, environmental and physical value of green spaces through the integration of Green Infrastructure (GI) planning and development in the planning process and through GI 2 to develop and support the implementation of a Green Infrastructure Strategy for County Kildare.

Trees, woodlands and hedgerows are protected through Policy GI 8 where they are of amenity or biodiversity value and/or contribute to landscape character and where they strengthen local networks. Policy GI 9 seeks to ensure that proper provision is made for the consideration, protection and management of existing networks of woodlands, trees and hedgerows when undertaking, approving or authorising development. Policy GI 10 seeks to ensure that a Tree Management Plan is provided to ensure that trees are adequately protected during development and incorporated into the design of new developments. Policy GI 11 seeks to ensure that hedgerow removal to facilitate development is kept to an absolute minimum and, where unavoidable, a requirement for mitigation planting will be required comprising a hedge of similar length and species composition to the original, established as close as is practicable to the original and where possible linking in to existing adjacent hedges. Native plants of a local provenance should be used for any such planting. Policy GI 12 restricts the period of the cutting of hedges during the bird-nesting season.

Policy GI 15 encourages the protection of historic hedgerows or significant hedgerows which serve to link habitat areas to each other and the surrounding countryside. Policy GI 16 encourages the planting of woodlands, trees and hedgerows as part of new developments using native plants of local provenance.

Table 14.1 **Landscape Sensitivity Classification** to Landscape Character Areas and Table 14.2 Landscape Sensitivity Areas are the same as the current 2023 CDP. Table 14.3 Likely compatibility between a range of land-uses and Principal Landscape Areas also replicate what is in the current 2023 CDP as does Table 14.4 Likely Compatibility between a range of land-uses and proximity to Principal Landscape Sensitivity Factors.

Section 14.5.5 repeats section 13.4.2 of the 2023 CDP regarding the characteristics of the East Kildare Uplands.

Section 14.6 (Scenic Routes and Protected Views) of the 2017 CDP indicates that **scenic routes and protected views** consist of important and valued views and prospects within the county. Table 14.5 of the 2017 CDP lists the specific scenic routes which provide views of the landscape of the county and many built and archaeological features. Maps 14.2 and 14.3 of the previous CDP also outline the scenic routes within the county. In addition to scenic routes there are a number of protected views throughout the county. These are located particularly along water corridors and to and from the hills in the countryside. The Council recognises the need to protect the character of the county by protecting views and scenic routes. However, it is acknowledged that in certain circumstances, some development may be necessary.

Scenic routes are identified in Table V1-14.3 of the 2017 CDP. Those that are relevant are set out in our own Table 6 below:

Table 6: Scenic Routes in the 2017 CDP

No.	Name	Location
12	Views West of Kildare Plains from Redbog Area and Views towards Caureen; from Rathmore Cross Roads to Pipershall	Greenmount, Redbog, Pipershall, Rathmore West
22	Views to the North-West of the Open Countryside; from Killeel Village to Rathmore Village	Furryhill, Killeel Lower, Rathmore East

It should be noted that 2 no. prospects are located within the landscape and visual study area with no.21 falling outside consideration as it is east facing and facing away from the application site. Prospect 21 is identified as 'Prospect of Poulaphouca' and the subject site is more than 2km away from Poulaphouca Reservoir. It should be noted that viewpoint 29 is relatively close to the subject application site but faces away from the site. It should also be noted that views 33 and 34 of the Wicklow County Development Plan 2016-2022 are located within the application study area, but neither of which is orientated in the general direction of the application site.

There are 2 no. Areas of Outstanding Natural Beauty (AONBs) within the study area but both the Mountain Uplands and Poulaphouca Reservoir AONB are located some 2km away from the application site.

Section 14.8 contains the following **landscape** policies:

'Policy LA 1 Ensure that consideration of landscape sensitivity is an important factor in determining development uses. In areas of high landscape sensitivity, the design, type and the choice of location of proposed development in the landscape will also be critical considerations.

Policy LA 2 Protect and enhance the county's landscape, by ensuring that development retains, protects and, where necessary, enhances the appearance and character of the existing local landscape.

Policy LA 3 Require a Landscape/Visual Impact Assessment to accompany significant

proposals that are likely to significantly affect:

- Landscape Sensitivity Factors;*
- A Class 4 or 5 Sensitivity Landscape (i.e. within 500m of the boundary);*
- A route or view identified in maps 14.2 and 14.3 (i.e. within 500m of the boundary).*

Policy LA 4 Seek to ensure that local landscape features, including historic features and buildings, hedgerows, shelter belts and stone walls, are retained, protected and enhanced where appropriate, so as to preserve the local landscape and character of an area, whilst providing for future development.

Policy LA 5 Prohibit advertising structures and hoardings in the open countryside. The Council will use its enforcement powers under the Planning Acts to secure the removal of unauthorised advertising signs and hoardings including those that are affixed to trailers, wheeled vehicles etc.

Policy LA 7 Be informed by consideration of the County Landscape Character Appraisal.'

There is also a suite of landscape based policies within Section 14.8.3 of the 2017 CDP entitled Upland Character Areas including East Kildare Uplands (Area of High Amenity) where it is stated that it is policy to:

'Policy LU 1 Ensure that development will not have a disproportionate visual impact (due to excessive bulk, scale or inappropriate siting) and will not significantly interfere with or detract from scenic upland vistas, when viewed from areas nearby, scenic routes, viewpoints and settlements.

Policy LU 2 Ensure that developments on steep slopes (i.e. >10%) will not be conspicuous or have a disproportionate visual impact on the surrounding environment as seen from relevant scenic routes, viewpoints and settlements.

Policy LU 3 Facilitate, where appropriate, developments that have a functional and locational requirement to be situated on steep or elevated sites (e.g. reservoirs, telecommunication masts or wind energy structures) where residual adverse visual impacts are minimised or mitigated.

Policy LU 4 Maintain the visual integrity of areas which have retained a largely undisturbed upland character.

Policy LU 5 Have regard to the potential for screening vegetation when evaluating proposals for development within the uplands.'

The following objectives contained within section 14.10 also apply to **high amenity areas**:

'Objective LO 1 Have regard to the Landscape Sensitivity Factors in the vicinity of sites in the consideration of any significant development proposals.

Objective LO 2 Ensure landscape assessment will be an important factor in all land-use proposals.

Objective LO 4 Protect the visual and scenic amenities of County Kildare's built and natural environment.

Objective LO 5 Preserve the character of all important views and prospects, particularly upland, river, canal views, views across the Curragh, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty.

Objective LO 6 Preserve and protect the character of those views and prospects obtainable from scenic routes identified in this Plan, listed in Table 14.5 and identified on Map 14.3.

LO 7 Encourage appropriate landscaping and screen planting of developments along scenic routes. Where scenic routes run through settlements, street trees and ornamental landscaping may also be required.'

Section 14.11 (Recreation and Amenities) seeks to develop **recreation** areas and the amenities of County Kildare in an equitable, environmental and sustainable way. Objective CR 1 supports the diversification of the rural economy through the development of the recreational potential of the countryside in accordance with the National Countryside Recreation Strategy.

8. Planning merits of the subject development

The planning merits of the subject development are identified below in this section under the following headings:

- Lack of Significant Environmental Impact;
- Lack of Significant Impact on Designated Sites;
- Meeting Previously Stated Concerns (registered under KCC 07/267);
- Compliance with Planning Policy and Guidance; and,
- Exceeding the Threshold for Exceptional Circumstances.

Our case under these headings is as follows:

Lack of Significant Environmental Impact

The accompanying remedial EIAR indicates that the environmental impact of the subject development is not significant and in most cases is imperceptible either on its own, or in combination with the existing quarries operating in the area, and other projects or plans including the realignment of the N81.

Population and Human Health

The impact of the subject development is not, and has not been, significant in terms of impact on health over the assessment period and has ensured the retention of the direct employment of c.

46 Hudson's staff and will enable a number of ancillary businesses in the area including hauliers, construction and excavation equipment suppliers, construction companies to continue their own business activities. The subject development has, and will continue, to assist in the construction of much needed infrastructure and homes not just locally, but in the region, and across the State.

There is no negative impact on human health and it is noted that there is no interference with water supply or private wells and no noise and disturbance to existing residents in the area. It is noted that no blasting has been undertaken post 19th September 2020 to the current day. There is no significant increase in traffic from the subject development over that assessed for both the 07/267 and 20/532 planning applications. Air quality and noise is within recognised standards.

A number of health and safety mitigation measures are already in place to prevent/minimise accidents. A number of health and safety measures have been enforced since 2020, and the expiry of planning permission 07/267, and these include:

- Dust monitoring locations in numerous field areas within distance of the quarry to check dust levels monthly. These are reported quarterly by an external environmental consultant.
- Water sprinklers and a water bowser utilised to help keep dust levels low during drier periods.
- All plant and machinery are serviced regularly.
- Generators are maintained regularly and any leakages repaired almost immediately.
- Edge protection in place on wash plant.
- More lighting.
- A new health and safety officer started in August 2023.
- Guards and protection put in place on large wash plant.
- All fire extinguishers tested yearly.
- First aid kits stocked and checked regularly.
- All employees trained and receive regular safety training.
- Safety talks held regularly with employees.
- Defibrillators on site checked and serviced when required.
- All safety data sheets on file for oils and chemicals.
- All stockpiles are monitored, and grounds assessed for large machinery.
- The 07/267 hours of operation are maintained.

- Wheel wash for all vehicles exiting the quarry.
- Road sweeper cleans access roads.
- Company safety emphasised and health and safety officer is on site full time and undertakes daily checks in the quarry.

It is concluded that the subject development has had no significant impact on tourism, amenity and recreation in the area. It is considered that there is a negligible effect from dust and a 'not significant, impact on the amenity of Glen Ding Woods from noise. There is an imperceptible visual impact on Glen Ding Woods.

Potential impacts to human health from the effects of discharges to the underlying groundwater may occur. This could result in a change to water quality but would not have occurred in this instance over the assessment period. There has been no potential for impacted underlying ground water to migrate to local ground water wells and effect the users of such water supplies as extraction has been, and is, limited to a depth of 1m above the maximum water table experienced in the seasonal maximum thereby ensuring that there is no significant impact on water supply or water quality.

Impacts to air include dust generating activities on the site and an increase in concentration of airborne particles and nitrogen dioxide due to exhaust emissions from diesel powered vehicles and equipment. Traffic volumes associated with the subject development over the assessment period has not increased and therefore traffic borne, or generated dust does not nor has it occurred over the assessment period. Regarding both dust and noise there is an insignificant impact over the assessment period. In the context of noise and dust and potential harm to human health it should be noted that blasting has not been undertaken on site during the assessment period of September 2020 to the present day.

Over the assessment period site security and boundary treatment has been enhanced to the betterment of safety to the surrounding population and livestock over the assessment period.

Ecology and Biodiversity

The substitute consent development has been assessed for its potential to result in significant impacts to important ecological features (IEFs). The impact assessment has examined survey data gathered in 2019/2020, and compared it with survey data gathered recently (November 2023). It has also used aerial imagery and environmental emissions monitoring data to inform conclusions as to the types of impacts likely to occur. It was found that significant impacts can potentially occur from unmitigated surface water emissions, habitat loss and the spread of invasive species. Dust and noise monitoring data indicates that these emissions do not, and have not, resulted in significant impacts. Groundwater monitoring has indicated that there is no groundwater connectivity with the nearby Red Bog, Kildare SAC and pNHA. There is no surface water connectivity between the Site and anywhere offsite.

Mitigation, compensation and enhancement measures have been proposed in the form of pollution control, supplementary surveys, timed avoidance of sensitive areas where possible and the reinstatement of habitats in the form of a Restoration Plan. The implementation of these measures would result in any identified impacts over the assessment period being negated or reduced to an insignificant impact.

No other impacts were identified over the assessment period, from the substitute consent development alone, nor cumulatively with other plans or projects.

A number of enhancement measures are identified in the concept landscape restoration plan presented as part of this application which would improve habitat quality over and above the current situation and would create additional opportunities for fauna within the site following decommissioning of the quarry. Please see the accompanying restoration plan submitted with the substitute consent application.

When cumulatively considering the mitigation, compensation and enhancement measures there would be a net gain for biodiversity in the medium to long term restoration stage.

Land, Soils and Geology

This area is acknowledged as rich in aggregate resources. This is recognised in assessments undertaken by the applicant's geologists and in successive Kildare County Development Plans. Chapter 5 of the rEIAR identifies the geological impact taking into account embedded mitigation as ranging from imperceptible, to slight to moderate at worst. There are no effects on the land, soils and geology from the activities on the Site over the assessment period that would require remedial measures. The assessment concludes that the subject development has not given rise to significant adverse effects on the land, soil or geology at or surrounding the Site during the assessment period of September 2020 to present. In all cases the residual adverse effect is Not Significant and not greater than Slight. There are no cumulative effects.

The subject development has not had, nor will it have, any perceptible impact on either Blessington Delta Geological Heritage Site nor on Glen Ding which is also identified as a Geological Heritage Area, either on its own or in combination with any project or plan.

Water

Section 6.7.1 (Embedded Mitigation) confirms that to avoid the potential impacts to the water environment during activities at the site, embedded design and commonly undertaken good practice mitigation measures were in place over the assessment period. This includes the prohibition on excavation taking place below the ground water table.

Combined with the negligible, low or medium sensitivity of the identified receptors, the potential adverse effects caused by the site through the review period are mostly imperceptible or slight. A slight adverse effect is attributed to the flooding with pooling of rainwater within the base of the pit, which required extraction activities in certain areas to be paused / moved during wetter periods.

There have not been any effects on the water environment or human health, from the site activities that require remediation over the assessment period.

The assessment concludes that the activities at the site have not given and do not give rise to significant adverse effects on the water environment at or surrounding the site during the assessment period of September 2020 to present. In all cases the residual adverse effect is not significant and not greater than slight.

Due to the predominant lack of hydraulic connectivity and mostly imperceptible or slight nature of the effects assessed, there is not considered to be significant potential for cumulative impacts to occur over the assessment period.

Air Quality

Chapter 7 of the rEIAR assessed the potential impacts of the operation of the site between September 2020 and the present day on Air Quality. The possible sources of emissions to air were identified as particulates only. The impact of coarse particulates (dust) on the surrounding area as a result of the previous activities at the site over the assessment period is considered to be and to have been 'slight' and therefore Not Significant. The assessment considered the employed mitigation measures which have been and will continue to be in place. With regards to fine particulates, it is considered that there may have been the potential for an increase in PM10 and PM2.5 concentrations at the residential receptors downwind in the vicinity of the site, due to the moving of the extraction area, but the predicted environmental concentration is still predicted to be below the annual Air Quality Standards, with headroom. The impact of fine particle process contribution from the site over the assessment period is therefore considered to be imperceptible and therefore Not Significant.

Taking into consideration the mitigation measures which have been employed at the site throughout the assessment period, it is not considered necessary that any additional remedial measures are put in place.

Residual impacts of deposited dust and particulates generated during the operations at the site since September 2020 on air quality are considered to be slight. During long spells of dry weather, dust emissions may have had the potential to be elevated, however dust nuisance from the operation is expected to have been unlikely as the above mitigation measures were implemented during construction and operation. The overall impact from the operation of the site since September 2020, in terms of dust emissions and particulates, is considered 'slight' to the air environment and Not Significant.

Cumulative air impact has considered other sites operating in the area including a shared haul road with an adjacent quarry operation. The level of mitigation which has been employed at the site over the assessment period, for example, covered aggregate trucks, dampening, ceasing particularly dusty activities during dry weather, and perimeter bunds, are considered sufficient to have prevented a significant level of dust from interacting with other quarries, over the assessment period.

Finally, on air quality, it is pointed out that there has been no blasting since the 07/267 planning permission expired on 18th September 2020.

Climate

The development is not considered to be of a sufficient scale to have had the potential to impact the regional or local climate in any significant manner. In addition, the operation of plant and traffic movements at the site are estimated to have generated on average less than 50 kt CO₂e per annum during the assessment period.

The site has not had any significant effects on local prevailing weather conditions, nor has the Development increased the potential of flooding in the surrounding area.

Quarry operations during the assessment period had the potential to result in a loss of soil organic carbon in form of CO₂. Given the small area of stripping that occurred (approximately 1.5 ha, Chapter 5 Land, Soils and Geology), the liberation of soil organic carbon and impact on the climate is considered to be 'imperceptible' adverse over the assessment period.

Furthermore, the proposed planting regime at the site and the conceptual restoration of the land is considered to have positive 'Imperceptible' impacts on the climate during and post development. Therefore, the impacts on climate and climate change are considered to be Not Significant over the assessment period.

The applicant has committed over the assessment period to achieving and maintaining industry leading environmental standards and consider environmental management to be a priority. They have aimed for continuous improvement with regard minimising the environmental impact of their activities, conserving mineral and energy resources, reducing their visual impacts and minimising waste generation. They seek to exist as a good neighbour and have an open communication policy on environmental performance.

No remedial measures to address potential impacts to climate during the assessment period are required. The residual effect identified over the assessment period is Not Significant.

The impacts identified during the assessment period were mitigated by design or good practice. Effects from the site in isolation have been deemed in all instances to be Not Significant. Assuming other developments in the area have incorporated widely adopted good design, practice and mitigation measures. It is considered that there have been no significant cumulative effects of the subject development with other similar developments in the locality.

Noise and Vibration

Although the effects of blasting have been scoped out of the accompanying rEIAR (see Section 9.1.2 of the rEIAR), an overview of monitoring undertaken prior to the assessment period has been provided. Vibration and air overpressure (AOP) monitoring of quarry blasting has been undertaken on site at five vibration monitoring locations over a period between February 2018 and August 2020. No blasting has taken place at the site since August 2020 so no data is available after this time and during the assessment period of the accompanying rEIAR.

The noise assessment contained in Chapter 9 considers historical noise from the quarry between September 2020 and the present. No blasting was undertaken during this period and so ground borne vibration and air overpressure resulting from quarry blasting was scoped out of the assessment. Baseline noise monitoring at five locations (four being representative of nearby dwellings and one being at the quarry boundary) has been undertaken at least bi-annually (i.e. twice a year) between April 2019 and January 2024. The baseline noise environment included contributions from road traffic noise, quarrying activities, other traffic sources, e.g., occasional overhead aircraft, and other sources typical of a rural environment, e.g., birdsong and rustling trees. With the exception of N1K, the average measured noise level at each location did not exceed the permitted level. At N1K, the exceedance was due to road traffic noise from the R410

rather than from quarrying activities. Using a 3D environmental noise model, operational noise from the quarry has been predicted for the current operational activities undertaken at the quarry. These activities occurred during daytime periods only; night-time operations did not take place. The modelled operational scenario has followed a conservative approach to determine the likely 'worst-case' noise levels at NSRs. The predicted noise levels at each Noise Sensitive Receptors (NSRs) are within the permitted daytime limits and the levels recommended by the EPA Environmental Management Guidelines – Environmental Management in Extractive Industry. As such, the specific noise levels from quarry operations resulted in a negligible adverse impact at all NSRs which is not significant over the assessment period. In conclusion, no significant noise or vibration impacts have been identified throughout the operation of the quarry between September 2020 and present.

It should also be noted that the quarry did not, nor does it currently, operate in the night-time period or on Sundays or public holidays. Potential impacts of quarrying activities on the noise climate in the vicinity of the site were therefore limited to the weekday daytime period, which limited potential impacts on local residential amenity during the more sensitive evening, weekend and night-time hours over the assessment period.

A historical programme of minimum bi-annual (i.e. twice per year) noise monitoring surveys undertaken by the quarry operator established routine compliance with noise limits at the closest receptors. Monitoring was undertaken at two-monthly intervals during Q2, Q3 and Q4 of 2023. A number of noise control and mitigation techniques have historically been implemented at the quarry and are currently operated. These are listed in Section 9.5 of the accompanying rEIAR.

Cultural Heritage

Examination of the Record of Monuments and Places for County Kildare indicate that there are no Sites and Recorded Monuments (SMR) located within the application area. There is one undesignated monument in the study area (ie within 1km of the site) which is a deer park wall. Mitigation measures to set back extraction by 10m from the deer park wall have already, and will continue, to ensure that there will be no significant impact on cultural heritage.

To prevent any direct impact the set back has been honoured over the assessment period. There have been no indirect effects on archaeological, architectural or cultural heritage and no mitigation is required. There have been and there are no residual effects identified. There is no cumulative impact.

Landscape and Visual

A full landscape and visual assessment has been undertaken of recent (post 2020) and current quarry development over the assessment period. It identifies that in terms of landscape character of the immediate area several quarries including this and other numerous adjacent quarries contribute to the established landscape character of the area. The subject development is not new, nor an uncharacteristic form of development, within this current landscape setting.

There are 13 viewpoints presented for assessment in Chapter 11 (Landscape and Visual Impact) of the rEIAR. These viewpoints were previously agreed with KCC for the 20/532 application. The latest assessment would indicate that there is relatively little change to the landscape and visual

assessment carried out in and since 2020.

Landscape and visual

The Site is located within an area of modified landscape in the form of established quarrying activity and existing farmed pastureland on the Kildare/Wicklow county border.

The landscape effects of the extraction activity that has occurred within the site since 2020 is contained within a small geographic area of the overall study area. This has ensured that the works have not impacted on the surrounding field boundaries within the site and the agricultural use of these lands has remained in place. The only changes to have occurred within the site since September 2020 has been a relatively minor lateral extension in the northwest area of the main pit; the alternation of the site levels within the southeastern end of the quarry, because of the continued extraction, as well as some indirect alternations to the manmade water bodies from fluctuating ground water/surface water levels. Indirect changes within the immediate landscape include the continued movement of the vehicles to/from the quarry, as the finished processed material is removed off site. This movement has continued since September 2020, collectively with the other adjoining quarries.

As the quarry has remained active since 2020 it has not been possible to implement the original restoration plan of the 2007 application, which included restoring the affected quarry lands back to agricultural lands and a wetland area. These mitigation measures would still be fully implemented once works ceased and would help revert any negative landscape and visual impacts of the development.

Overall, the landscape changes since September 2020 have been very localised due to containment of the works within the existing quarry limits. They have had a local Moderate-Slight, Short Term and Neutral effect around the area of the Application site. However, these reduce to Not Significant, Short Term and Neutral across the wider landscape of the study area.

The visual assessment considered whether the continuation of the quarrying activity within the site since the September 2020 visual baseline has resulted in any increased views of the quarrying works from the same 13 visual receptors across the locality and wider study area.

This previous 2020 application had determined that the site's existing quarry limits, and some of its pastoral lands, were not visible from the vast majority of the 13 selected viewpoints. This was due to these views being obscured by local landforms and intervening vegetation.

The additional site works which has occurred on site to date since September 2020 has resulted in the lowering of the quarry floor, with a relatively minor lateral extension in the northwest area of the main pit. Meanwhile, there have been no alternations to the wider pasture lands or berms on the existing boundaries. This meant that the majority of receptors have experienced no additional views of the site works since September 2020, as the quarry walls and mounds have helped to contain the ongoing quarry activities occurring within the site.

On review of the 13 no. viewpoints, in 12 no. such viewpoints, the magnitude of visual change was deemed to be 'None,' resulting in 'No Change' to the significance and quality of visual effects. The only discernible visual change occurs from Viewpoint 10, due to changes to the workings on

the site, but only partially visible through a small gap between tall vegetation. Receptors at this viewpoint have experienced only a Negligible magnitude of visual change, resulting in an Imperceptible significance of visual effects and a Neutral quality of visual effect, in relation to the quarrying activity that has occurred between September 2020 and the present.

In conclusion, the continuation of quarrying activities from September 2020 to the present have not resulted in any significant landscape or visual effects.

Traffic and Transportation

There is a relatively low impact of traffic generated over the assessment period on the N81. The local L8373 road has sufficient capacity to accommodate the subject development over the period September 2020 to the current day.

The effect of operational traffic from the site during the assessment period is considered to be 'Imperceptible' or 'An effect capable of measurement but without significant consequences', (EPA, 2022). As such, road impacts of the subject development over the assessment period are 'Not Significant'. Road safety is not impacted by the subject development.

There are no remedial measures required to be undertaken. There are no residual effects as a result of effects during the assessment period. Periodic checks of vehicles and internal traffic safety arrangements are undertaken as part of the site's management. No other monitoring of traffic and transport is recommended.

Major Accidents and Disasters

The assessment carried out in Chapter 14 considers the potential impacts and effects of the subject development on major accidents and disasters over the assessment period from September 2020 to present. The main receptors that could be affected by major accidents or disasters due to activities undertaken at the site through the review period were identified and potential effects have been assessed. The assessment concludes that the activities at the site during the assessment period of September 2020 to present have not resulted in accidents or disasters that are deemed to be 'Major'.

Assuming other developments in the area have incorporated widely adopted good design, practice and mitigation measures it is considered that there have been no significant cumulative effects of the Development with other similar developments in the locality.

In terms of residual effects the assessment in Chapter 14 of the rEIAR concludes that the activities at the site during the assessment period of September 2020 to present have not resulted in accidents or disasters that are deemed to be 'Major'. Therefore, there has been an 'Imperceptible' effect (including no effect) of the site activities on the surrounding environment in regard to major accidents and disasters.

Lack of Significant Impact on Designated Sites

Remedial Stage 1 Screening For Appropriate Assessment has been undertaken.

The Screening exercise was completed in compliance with the relevant European Commission

and national guidelines. Article 42 (7) of the European Communities (Birds and Natural Habitats) Regulations 2011 states that: “The public authority shall determine that an Appropriate Assessment of a plan or project is not required [...] if it can be excluded on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.”

The potential impacts of the activities at the site during the assessment period have been considered in the context of the European sites potentially affected. It has been concluded that the risks posed by noise and dust emissions over the assessment period did not have significant effects on Red Bog SAC or Poulaphouca Reservoir SPA, which were the two European sites deemed to have connectivity with the site. This was found to be the case for the site alone and in combination with other plans or projects.

As significant effects on European sites from the unauthorised activities at the site have been deemed unlikely, over the assessment period, it is therefore determined that Remedial Appropriate Assessment is not required.

Meeting Previously Stated Concerns (registered under KCC 20532)

This substitute consent application will be the subject of statutory public consultation in due course. At this stage obviously no submissions have been received for the applicant to consider. In respect of this substitute consent application there were numerous comments received on the previous similar planning application under KCC Reg. ref. 20/532 for continued quarry operation in much the same manner as this current, substitute consent application.

Our response to those previously raised concerns is as follows:

Too many quarries in the immediate area – 3 no. in close proximity to each other

There are 3 no. quarries in this locality and these existing quarries are considered in the landscape and visual assessment as being a key component of the landscape in this location. Each quarry is an established part of the landscape in this location. Successive CDPs indicate that this eastern part of the county is rich in aggregate resources which are crucial for the construction of infrastructure, development generally, and homes in a period of housing crisis.

Landscape character of the area, to the Kildare Eastern Uplands an Area of High Amenity and High Sensitivity and protected views

As indicated immediately above, this is a part of the county that is synonymous with extraction of aggregate resources. It is accepted that this uplands area is of a sensitive landscape character where gravel, sand and rock extraction need to be carefully considered. But such activities are not prohibited in such high amenity and high sensitivity areas. The application site is not located within a designated high amenity area and although it is located within 300m of a ridgeline, it is not located on a ridgeline and will have no impact on any ridgeline.

Need to protect the rural landscape and farming land

There is no significant negative impact on the visual amenity and landscape of the area. The

magnitude of operational impact is classified as medium and the magnitude of landscape impact within 2km of the site is identified as low to negligible.

Recent, post 2020, and current quarrying activity is largely obscured from most visual receptors by either existing landform or intervening vegetation.

Tourism in the area including Blessington, Glen ding, nearby tourism features and activities, pedestrian and cycling trails

The tension between preserving the character of rural areas, accommodating rural enterprise such as mineral extraction, and ensuring that rural areas are available for recreation and tourism activity is recognised. However, this is an established area of quarrying activity over many decades. The transport and traffic assessment indicates that the volume of traffic generated by the recent and current quarrying activity and placed upon the local road network including into Blessington town, is not significant. The subject quarry has had and continues to have no significant impact on recreation and tourism in this area and that is expected for the entire assessment period. The impact on tourism and recreation will be even less once the restoration process is initiated and it is further anticipated that recreational activity in the area could potentially be enhanced following restoration.

Redbog SAC and pNHA being so close

The reader is referred to the Remedial Appropriate Assessment Screening Report accompanying this substitute consent application. It is acknowledged that Red Bog Designated site is a distance of 240m away from this application site. However, notwithstanding the distance itself, a detailed assessment of the potential hydrological and hydrogeological connections or pathways between the site and this Designated Site reveal that there are no such connections. Excavation has not, and would not, continue over the assessment period below the water table mark.

The nearest surface water features are unnamed streams to the south (1.3km south west of the application boundary), Red Bog and Poulaphouca Reservoir some 2.2km away, and a small pond contained within this application site. None of those existing streams, Red Bog or the reservoir are linked hydrologically to this application site by any surface water features, and as excavation does not occur below the water table, there is no connection and consequently no risk of potential pollution from the recent post 2020 and continued operation of the application site.

Impact on heritage

There has been, and there is currently, no significant impact on either natural or built heritage. There are no Recorded Monuments located within the application area. There is one undesignated monument in the study area (ie within 1km of the site) which is a deer park wall. Mitigation measures to set back extraction by 10m from the deer park wall would ensure no significant impact on cultural heritage.

The principal natural habitats on site are hedgerows and trees. The existing trees on site are not and have not been impacted. The ecological surveys found that the majority of hedgerows and treelines within the study area were located upon or adjoined by earth banks and were adjoined by improved grassland habitats. All hedgerows surveyed were single line hedges, were not stock

proof and most earth banks exhibited local erosion and exposure due to tracing/sheltering by sheep. Most hedgerow shrubs within the study area are overgrown and have significant gaps and generally lack management. The condition of most hedgerows surveyed were classified as either relict or overgrown.

Hedgerows were considered to be slightly significant in terms of historical significance, structure and habitat connectivity due to their age, structure (established on earth banks) and interconnectivity with other linear woodland habitats within the study area. Hedgerows were deemed to be of low significance in relation to species diversity, ground flora and landscape due to poor species diversity in the shrub and ground layers.

In terms of ecological significance, hedgerows and treelines on site are considered to be of Local Importance (lower value). This is due to their lack of species diversity (in both the ground and shrub layers) and diminished structural integrity. They do, however, provide the main source of ecological connectivity and transit for faunal species, particularly avifauna within the site. Their loss is not considered significant when considered in the context of the presented restoration plan for the subject development.

Impact on Protected Species

There has been no unacceptable impact on any protected species. There is evidence of a badgers sett on site but located outside of the excavation area. The location of which can be provided as a separate confidential document. There is also a peregrine falcon on site which has resided in the quarry for some time and throughout the assessment period. Further breeding bird surveys and the development of a Peregrine Falcon Management Plan in conjunction with the NPWS is proposed.

Impact on Glen Ding Forest which is also an Area of Geological Significance

This is not considered to be significant in terms of air quality, noise or water as indicated in this document and in the rEIAR.

Little evidence of remediation or restoration following grant of permission under KCC Reg. Ref. 07/267

Remediation and restoration progress as parts of the site become exhausted for extraction purposes. That process of excavation was delayed due to restrictions of Covid 19. It is considered premature for restoration to be undertaken in full at this stage. However, restoration will be undertaken on an ongoing or phased basis where possible and where operational faces are at full extents. Restoration will only occur after quarrying activities are sufficiently advanced.

Water supply and potential pollution of private wells

The rEIAR indicates that there has been no significant impact on water quality nor has there been any significant impact on any private wells.

Residential amenity

It is considered that there has been no unacceptable impact on residential amenity and the attached rEIAR indicates that there has been, and that there is currently, no unacceptable impact on any residence in close proximity to the substitute consent development. It should be noted that no blasting occurred over the subject period of this substitute consent.

Structural damage to nearby homes from blasting

There cannot have been any structural damage caused to nearby homes over the period of time in question as there was no blasting occurring. There was, and is currently, no current blasting over the substitute consent period from 19th September 2020 to the current day.

Potential damage from blasting to the high-pressure gas pipeline that runs to the north of the subject site

Blasting did not, and currently does not occur over the assessment period, and there cannot have been any possible damage to this pipeline over the same period. We contest the view that any damage to the pipeline has been or will be caused in respect of this specific application.

Inadequate site notices

We believe there to be no issues regarding site notices for this substitute consent application based on the initial validation of the 20/532 planning application.

Non-compliance with previous planning conditions imposed under 20/532 including incomplete or unsatisfactory fencing of the perimeter and breach of operating hours

Previous concerns regarding fencing and boundary security have been addressed and we believe there is no issue in that regard. The applicant will abide by any planning conditions imposed regarding hours of operation.

Noise, dust and air pollution

The reader is directed to the appropriate chapters of the submitted rEIAR where no such significant impact has been identified from the subject substitute consent development over the assessment period.

This location is free from development

This is factually incorrect. As indicated above this location is not free from development and in fact is synonymous with quarrying and aggregates operations over many years.

Increase in expected traffic volumes on local roads, prospect of HGVs going through Blessington, and road safety concerns

There is no significant increase in trips over the assessment period. It should be noted that the subject quarry is located at the western periphery of the town and the majority of the applicant's business and traffic movements are away from, and not towards, the town centre.

Safety hazards on site, condition of the existing quarry and public accessibility into it, opportunities for trespass, existing premises are not secure, and absence of adequate safety measures including fencing in areas of danger including cliff faces

Following receipt of comments and concerns from third parties under 20/532, a number of boundary repairs and enhancements have been undertaken to enhance security of the site over the period in question (i.e. from 19th September 2020 to the current day)

Property values

This is not a planning consideration. It is considered that there have not been and are currently no impacts on property values in the area in any case.

Hydrological and impact on the water table

The applicant is maintaining a differential of 1m between the deepest excavation or extraction and the water table at winter height. There is no impact on the water table. The reader is referred to the water chapter of the rEIAR.

Project splitting

There is no project splitting that can be justifiably levelled at our client on this occasion. Project splitting is most frequently used to avoid EIA assessment. The applicant is statutorily required in this instance to provide a rEIAR.

Existing silt pond is full of debris from gravel washing and other quarry activity

As noted above and in the rEIAR, water is used in the processing of sand and gravel in a closed circuit 'wet' aggregate processing plant where water is recycled throughout the process. Silt is washed from clean aggregate and during the assessment period the silt laden water has been disposed of in a silt lagoon located south east of the processing plant. This system of processing (washing and screening) sand and gravel remains the same as that which was approved in Reg. Ref. 07/267.

The silt pond is outside the applicant's ownership

The silt pond is located within the Application site for a full and proper environmental assessment to be undertaken for the period in question. This application is accompanied by a letter of consent by an existing quarry operator who has a controlling interest in the area of that pond.

Contravention to County Development Plan 2017-2023 policies and objectives particularly in regard to landscape and visual impact, impact on natural heritage and Designated Sites, and unsuited development on ridgelines

The subject development is not contrary to any landscape, visual or protected view policies or objectives identified in either the 2017 or 2023 CDP as set out in this document. It is also not located on a ridgeline. It is located within 300m and sufficiently away from the nearest ridgeline but the impact on that ridgeline is assessed as not significant. The reader is directed to the landscape and visual impact assessment carried out in Chapter 11 of the rEIAR.

Impact on Poulaphouca SPA located some 2.2km away

This is not considered to be significant. The reader is referred to the accompanying remedial Appropriate Assessment Screening report.

Montages presented in the landscape and visual assessment are too strategic and not sufficiently representative with protected views not considered including Scenic Route 12 through Rathmore) and no view taken from the hill at Wolfestown

The landscape and visual assessment conducted for this submitted substitute consent application is considered robust. The visual and landscape impact of the subject development is considered not to have been, nor is it currently, considered to be significant.

The Environmental Health Service within the HSE (Health Service Executive) reviewed the EIAR previously submitted and highlighted the following points:

Numerical increase in traffic to be identified

This been identified in the roads and traffic assessment contained within the rEIAR. Any traffic increase is not considered substantial. It states that there has been no substantial increase in traffic generated from that previously assessed and there is no consequential increase in impact which is considered not significant over the assessment period.

A designated member of site staff should be responsible for dealing with any complaints or queries from members of the public during the operation of the facility

This previous concern has been addressed and a point of contact has been identified by the applicant to engage with members of the public and interested parties in the locality.

Lack of community consultation notwithstanding this is an ongoing operation

There is no statutory requirement to consult the public prior to lodgement of a substitute consent application under S261A of the PDA.

More emphasis on health was advocated when considering the 'social pillar' of sustainable development

This concern had been addressed in Chapter 3 of the submitted rEIAR.

Mention to be made of private wells within 150m of the boundary of the site. Any wells identified should be sampled prior to the commencement of works to extend the extraction facility. Sampling should be undertaken at least biannually during the extraction period and twice within the first year following cessation of operations on site to establish if there are any changes in water quality.

- *Generation of dust on haul roads must be fully considered and addressed through appropriate and detailed mitigation measures;*
- *Dust monitoring to be to be undertaken at the location of the nearest occupied*

dwellings in addition to locations at the site boundary. Monitoring should be considered at locations of sensitive receptors along haul routes, including where appropriate at schools, houses, creches and outdoor sports facilities or playing fields;

- Numerous mitigation measures regarding dust are advanced by the HSE;*
- Noise monitoring to be undertaken at the nearest occupied dwelling and at other noise sensitive locations in the vicinity of the quarry and the haul route;*
- Corrective noise action to be incorporated into the Environmental Management Plan if exceedances of permitted limits are recorded;*
- A series of mitigation measures are advocated from the HSE in respect of vibration and blasting.*

These requirements have all been addressed in the submitted material supporting this substitute consent application and in the rEIAR in particular.

Compliance with Planning Policy and Guidance

A very substantial list of planning policies and guidance documents are identified above. Compliance with those policies and objectives is set out below and reference should be made to the rEIAR submitted.

National Planning Framework (Project Ireland 2040) and National Development Plan 2018-2027

In the absence of any significant impact both currently, or in the period since the expiry of 07/267, the proposal is consistent with National Policy Objective 23 which facilitates the development of the rural economy including a sustainable and economically efficient extractive industry sector whilst at the same time noting the importance of maintaining and protecting the natural landscape which are vital to rural tourism. There is no negative impact on rural tourism in this location. The importance of the Aggregates and Minerals sector to the Irish economy and the delivery of development, one assumes including much needed housing, is recognised on page 78 of the NPF. Such extraction will continue to be enabled where this is compatible with the protection of the environment (air quality, natural and cultural heritage, the quality of life of residents in the vicinity and where appropriate site rehabilitation is also proposed).

Quarries and Ancillary Activities: Guidelines for Planning Authorities

These guidelines also emphasise the importance of quarries and the continued need for aggregates is highlighted. The potential for environmental impacts is strongly recognised as being a key consideration but so too is the fact that aggregates can only be worked where they occur. There is also a priority therefore to be given to identifying the location of major deposits and to safeguarding valuable unworked deposits for future extraction. These guidelines recognise that quarries and development around extractive industries generate often unique environmental impacts and require environmental assessments and the application of appropriate planning conditions such as relating to noise and vibration, dust, water supplies and groundwater, traffic, archaeology, water, environmental monitoring, waste management, contributions, and extraction limits.

The guidelines also state that:

‘there will be a continuing need for some new or expanded aggregate quarrying operations on land to meet regional and local requirements. There is thus a need to identify and protect aggregate resources areas through the planning system, to ensure an adequate supply of aggregates to meet the likely scale of future demand, while at the same time protecting Ireland’s natural and cultural heritage.’

Eastern and Midlands Regional Assembly Regional Spatial and Economic Strategy

The EMRA RSES 2019-2031, which comfortably covers the period in question, recognises the need to accommodate and maintain extractive industries in the countryside. Regional Policy Objective 6.7 seeks to support local authorities to develop sustainable and economically efficient rural economies through initiatives to enhance the extractive industries sector whilst at the same time noting the importance of maintaining and protecting the natural landscape.

The need to reconcile rural based employment and activity with the needs of tourism and protecting the environment is recognised in these guidelines such as building on strengths to sustain a strong economy and support the creation of jobs and to ensure a good standard of living for all.

It is interesting to note that page 94 of the RSES indicates that Blessington is one of those towns recording the highest growth rate in the country over the 10 years prior to the adoption of the RSES at >32% but with lower levels of employment provision. Hudson Brothers supply significant direct and indirect employment as indicated in Chapter 3 of the rEIAR.

Kildare County Development Plan 2023-2029

Chapter 9 indicates that extractive industries require sensitive management. Section 9.9 (Mineral Resources and Extractive Industry) identifies the following:

- The extractive industry can only be developed where the required resources occur;
- Residential and natural amenities will be protected, pollution will be prevented, and aquifers and ground water safeguarded;
- Principles of sustainable development and environmental management;
- Aggregate resources are important to the general economy;
- The industry provides a valuable source of employment in some areas of the county;
- Environmental and landscape impact must be managed or minimised insofar as siting is based on resource locations, and the Council will protect high amenity/special/unique sensitivity areas and limit new and/or extending existing extractive industries in this area;
- Rehabilitating ecology and biodiversity and restoration plans will provide for a mosaic of habitats. Infilling may be considered preferable to reverting to agricultural grassland for ecological and biodiversity purposes.

The proposal is consistent with Policy RD P8 which supports and manages appropriate future development of Kildare's natural aggregate resources in appropriate locations to ensure that there are adequate supplies to meet future needs of the county and the region consistent with the principles of sustainable development and environmental management.

The following **extractive industry specific objectives** are met:

The subject development complies with RD O42 as there is no significant impact on any Designated Site; RD O43 as there is no impact on any site of Geological Importance; RD O44 requiring AA Screening; EIAR; EclA; detailed landscape plans indicating proposed screening for the operational life of the site; the predominant use of native plant species in proposed landscaping; detailed landscape and quarry restoration plans; habitats and species surveys will be carried out; comprehensive site restoration plan and /or after use strategy having regard to the principles of 'Rehabilitation Ecology'; and finally a transport impact assessment. Policy RD O45 can be met through imposition of a bond or equivalent to ensure satisfactory completion and restoration of the site. If any road re-instatement work is required then this will be undertaken in accordance with Policy RD O46.

The granting of substitute consent in this instance is consistent with RD O47 protecting and safeguarding the county's natural aggregate resources from inappropriate development. As there is no negative impact on climate the subject development accords with RD O48.

The subject development is consistent with RD O49 as it is consistent with the Guidelines on Quarries and Ancillary Activities; Environmental Management Guidelines, Environment Management in the Extractive Industry (non-scheduled minerals); the Archaeological Code of Practice between the DEHLG and ICF; Geological Heritage Guidelines for the Extractive Industry; and Wildlife, Habitats and the Extractive Industry Guidelines for the protection of biodiversity within the extractive industry.

The submitted restoration plan indicates clearly compliance with RD O50 requiring the satisfactory and sensitive re-instatement and/or re-use of disused quarries and extraction facilities where extraction has ceased and seeking consistency with the criteria set out in Section 15.9.6 of that CDP. There is no significant or unnecessary alteration of the natural landscape and topography in this instance.

The subject development is in broad accordance with RD O51 requiring that quarry remediation plans provide for environmental benefit, biodiversity and re-wilding in all instances.

The subject development meets the requirements of Section 15.9.6 which sets out the requirements for assessing planning applications under Section 261A of the PDA and in particular accordance with the previously cited guidelines as well as the requirements for impact assessment including the environmental baseline of the area in which extraction is imposed, the likely impacts and proposed mitigation measures in relation to: human health; groundwater; Natura 2000 sites, Natural Heritage Areas, proposed Natural Heritage Areas and other sites for environmental or ecological protection; flora and fauna; sensitive local receptors including residences, Areas of High Amenity, Landscape Sensitivity Areas, Key Scenic Views and Prospects, and Key Amenity Routes, landscaping, berms and screening proposals; local transport networks including haul routes, trip movements and articulated lorry heights; noise, vibration and

dust emissions; and archaeological and architectural heritage of the area. All of these potential effects and impacts are assessed and found to be Not Significant.

There are several **economic based policies** all of which support the subject development as an existing quarry including RE P1 seeking to facilitate employment creation and RE P2 supporting economic development in the county.

In terms of **access and transport** the subject development and assessments are mindful of Objective TM A24 which seeks to upgrade the N81 National Secondary Road.

In terms of **biodiversity** the subject proposal is consistent with the following biodiversity based policies and objectives: BI P1 requiring the protection and enhancement of biodiversity and landscape features by applying the mitigation hierarchy to potential adverse impacts on important ecological features, including mitigation and/or compensation measures as appropriate; BI O6 applying the precautionary principle in relation to developments in environmentally sensitive areas, and which seeks to ensure that all potential impacts on a designated NHA or Natura 2000 site can be avoided, remedied or mitigated; BI O7 where there is a biodiversity net gain; BI P2 seeking the maintaining or restoration of the conservation status of all designated or proposed designated sites; BI O9 avoiding development that would adversely affect the integrity of any Natura 2000 site. The subject development is also compliant with BI O10 requiring AA Screening.

In respect of **natural heritage areas**, including Red Bog NHA, and Poulaphouca Reservoir, the subject development is consistent with the following BI P3 ensuring that any proposal adjacent to any NHA is designed and sited to minimise its impact on the biodiversity, ecological, geological and landscape value of the site, particularly plant and animal species listed under the Wildlife Acts and the Habitats and Birds Directive including their habitats.

The subject development is also consistent with BI O12 requiring ecological impact assessment in accordance with the appropriate guidance by a suitably qualified professional for proposals adjacent to a NHA so that development is designed and sited to minimise impact on biodiversity, ecological, geological and landscape value of the site and particularly plant and animal species listed under the Wildlife Acts. The subject development is consistent with BI O14 as the subject minimising impact on ecological and landscape values on sites under National and European legislation and International Agreements.

In respect of **protected habitats and species** the subject development accords with BI P4 ensuring development does not have a significant adverse impact on plant, animal or bird species which are protected by law; BI O15 ensuring that there is no significant adverse impact on rare and threatened species; BI O16 ensuring that appropriate species and habitat avoidance and mitigation measures are incorporated into all new development proposals; BI O17 requiring a derogation licence where necessary; BI O18 requiring developments to identify, protect and sensitively enhance the most ecological features and habitats and incorporate these into the overall open space network and making provision of local diversity; BI O22 identifying and protecting areas of high nature conservation value (including but not limited to SAC, SPA, pNHA) and supporting landscape features which act as ecological corridors/networks and stepping-stones such as river corridors, hedgerows etc so as to minimise loss of habitats and features of wider countryside which are of major importance for wild fauna and flora.

In respect of **ecologically important sites** the subject development has no impact on Kildare's wetlands and watercourses as per BI P8. The subject development is also onsite with BI O49 requiring that any development within the zone of influence of listed wetland sites should be subject to EclA and where appropriate hydrological assessment; BO O50 protecting and conserving wetlands and resisting development that would destroy, fragment or degrade any identified wetland in the county; BI O52 requiring preparation and submission of a hydrological report/assessment for significant developments within and in close proximity to protected raised bogs and the assessment of impact on the integrity of peatland ecosystems; BI O55 protecting conserving and managing the character and appearance of ecological and archaeological heritage; and BI O56 preventing impact on sensitive water habitats without mitigation measures.

In the terms of **geology** the subject development complies with BI P10 which maintains and protects the conservation value of geological sites and which seeks the sustainable management of the county's geological heritage resource.

There is conflict with Objective BI O60 as there is no impact on any Site of Geological Importance.

The proposal is also consistent with BI O74 which seeks to strengthen ecological networks between urban areas to create greater linkages to Natura 2000 sites, proposed Natural Heritage Areas, parks and open spaces and the wider regional Green Infrastructure network.'

In respect of **green infrastructure** the subject development is consistent BI O77 seeking nature based solutions and climate change considerations into the design and implementation of proposals. The subject development is consistent with BI O78 which also encourages nature based solutions to surface water management.

In terms of **landscape character** and **landscape and visual impact** the application site is located within an area of medium landscape sensitivity where extraction of sand, gravel and rock is shown of medium appropriateness and is 'likely to be compatible with great care'. The landscape and visual assessment undertaken identifies clearly that Policy KR P1, Objective LR O2, LR O4, LR O7, LR O8, LR 12, LR 14 and LR 15 are all met.

In respect of assessing impact on designated **high amenity areas** the subject development, although not within such a defined area, is consistent with LR P2 which protects High Amenity Areas from inappropriate development and LR O17 which controls development adversely affecting the visual integrity of Areas of High Amenity. Under LR O17 the subject development will not impact upon the open nature of any Area of High Amenity. The subject development meets the requirements of LR O30 by being naturally screened by existing topography and vegetation. For similar reasons the subject development is consistent with LR O31.

Since the subject has no significant impact on any **protected views and prospects** the subject development is consistent with LR P3, LR O32 and LR O33. No screening is required and the subject development is considered consistent with LR O35.

In terms of **recreation** the subject development, as it has no significant impact on recreation in the area is consistent with LR P4.

The subject development is also consistent with 2017 CDP in place over part of the assessment

period.

Kildare County Development Plan 2017-2023

The designations currently directly involving or potentially affecting the subject development are all basically the same from 2017. The 2017 CDP supports the subject development where there is no significant negative impact on the environment or on any Designated Site, which is the case. There is also general encouragement to quarrying and extractive industries. The importance of aggregates to meeting the needs of the county and region is also recognised.

The subject development in the period immediately after the expiry of 07/267, and before the adoption of the relatively recent 2023 CDP, is supported by Policy EI 1 seeking compliance with planning and environmental guidelines; Policy EI 2 recognising the need to exploit the county's natural aggregate resources; EI 3 facilitating the sourcing of aggregates subject to the necessary protections all of which are in place on this occasion and in the absence of significant impacts (EI 4); EI 5 in the absence of any impact on any Designated Site or other area of conservation importance; EI 7 requiring Appropriate Assessment; EI 8 requiring EIA; EI 9 and EI 10 requiring landscape and restoration plans following necessary habitats and species surveys; EI 11 ensuring the cost of road improvements are borne by the quarry or extractive industries operator.; EI 12 that encourages all existing workings be rehabilitated. The applicant will accept a bond consistent with Policy EI 13. There is no requirement for a temporary permission in his instance under EI 14. It is interesting to note that KCC seek to protect and safeguard natural aggregate resources from inappropriate development such is their disposition to favouring aggregate based development in the absence of any significant impact under EI 15. The subject development is also consistent with EI 16 in that it is consistent with quarry and ancillary activities guidance.

The subject development is also consistent with EO 1 continuing to implement the provisions of S261A of the PDA and is in accordance with EO 2 supporting regional policy for the adequate supply of aggregate resources to ensure continued growth of the county and region. There are no significant negative impacts to render the subject development contrary to EO 3 (landscape and visual).

In respect of **natural heritage** the subject development conforms to Policy NH 1 minimising the loss of woodlands, hedgerows and acknowledging that there can be like for like, or better, replacement of existing natural features.

NH 1 facilitating, maintaining and enhancing as far as is practicable the natural heritage of the county by seeking to encourage the preservation and retention of woodlands, hedgerows, stone walls, rivers, streams and wetlands. Where the removal of such features is unavoidable, appropriate measures to replace 'like with like' should be considered, subject to safety considerations. The subject application accords with NH 2 as the necessary habitat surveys have been undertaken in the assessments provided. There is no significant impact on wild fauna and flora nor on any Natura 2000 sites in accordance with NH 3 and NH 4/NH 5. The undertaking of Appropriate Assessment to accompany this application is consistent with NH 6.

NH 6 ensuring that Appropriate Assessment is carried out to ensure that there will be no significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites unless for reasons of overriding public interest. The subject development is also consistent with NHO 1 seeking to

protect sites of local biodiversity importance not otherwise protected by legislation and NHO 2 which seeks to implement the actions of the County Biodiversity Plan. The subject development is otherwise consistent with NH 7 protecting the ecological, visual, recreational, environmental and amenity value of the county's NHAs. In design and recommended mitigation measures the subject development is consistent with NH 8 which seeks to ensure that any development within or adjacent to a NHA or nature reserves are designed and sited to minimise impact on biodiversity, ecological, geological and landscape value of the site and particularly plant and animal species listed under the wildlife Acts and the Habitats and Birds Directive. The subject application is also consistent with NH 9 requiring the carrying out of an EcIA to ensure that there will be no adverse effect on any NHA. The subject development is also consistent with policies NH 11 and NH 12 in respect of **protected habitats and species**.

In terms of **geology** the following policies and objectives are complied with: NH 16 maintaining the conservation value and which seeks the sustainable management of the county's geological heritage resources and NHO 9 seeking to protect Geological Natural Heritage Areas from inappropriate development.

The subject development is consistent with **green infrastructure** policy GI 1 seeking to protect Green Infrastructure.

In regard to **trees, woodlands and hedgerows** the subject development is consistent with GI 8 which seeks the protection or replacement of lost trees, woodlands and hedgerows where they are of amenity or biodiversity value and/or contribute to landscape character and where they strengthen local networks. It is also consistent with GI 9 seeking to ensure the consideration, protection and management of existing networks of such woodlands, trees and hedgerows. The subject development is also consistent with GI 10, GI 11 and GI 15 in that there was no tree felling or hedge cutting during the assessment period. It is also noted that Policy GI 16 encourages the planting of woodlands, trees and hedgerows as part of new developments using native plants of local provenance which will be the case as set out in the concept restoration plan.

In terms of **landscape and visual amenity** the following is of importance in the context of the 2017 CDP.

The accompanying landscape and visual assessment undertaken and contained within the rEIAR indicates no significant impact on the landscape generally, nor on protected views or prospects including those listed in Table V.1-14.3 of the 2017 CDP. It has also been noted above that there are 2 no. AONBs within the study area, but both the Mountain Uplands and Poulaphouca Reservoir AONB, are located some 2km away from this application site, and are unaffected by the subject development.

In the context of there being no significant impact on either the landscape, its character or sensitivities, nor on views nor protected prospects the subject development is considered to be fairly and squarely within the following key landscape and visual amenity planning policies of the 2017 CDP.

It should be noted that LA 1 does not prohibit development in areas of high landscape sensitivity but emphasises that the design, type and choice of location will be critical considerations. In the absence of any significant landscape or visual impact the proposal is consistent with LA 2

protecting and enhancing the appearance and character of the county's landscape. The provision of a landscape and visual assessment meets the requirements of LA 3. Local landscape features are not impacted upon as required by LA 4. There is no advertising in accordance with LA 5. In assessing the landscape and visual impact significant regard was paid to the County Landscape Character Appraisal in accordance with LA 5.

In addition to the above more general landscape and visual policies there are a number of **East Kildare Uplands** policies recognising this area's status as an Area of High Amenity.

LU 1 ensuring there is no disproportionate visual impact (due to excessive bulk, scale or inappropriate siting) and does not significantly interfere with or detract from scenic upland vistas, when viewed from areas nearby, scenic routes, viewpoints and settlements. The submitted landscape and visual impact indicates clearly no significant impact on any of these features of the landscape – indeed the existing operation is barely noticeable.

LU 2 whereby the subject development is not on a defined steep slope (ie >10%) is not conspicuous nor does the subject development have or has had a disproportionate visual impact on the surrounding environment as seen from relevant scenic routes, viewpoints and settlements.

LU 3 facilitating developments that have a functional or locational requirement to be situated on elevated sites where residual adverse visual impacts are minimised or mitigated.

LU 4 maintaining the visual integrity of areas which have retained a largely undisturbed upland character. In this instance and in this specific location the upland character is certainly not undisturbed.

LU 5 having regard to the potential for screening vegetation when evaluating proposals for development within the uplands. In this case no screening is necessary as the existing operation is barely noticeable from any public road or vantage point.

The subject development is considered consistent with Objective LO 1 (having regard to Landscape Sensitivity Factors); LO 2 requiring landscape assessments be an important factor in all land use proposals; LO 4 protecting the visual and scenic amenities of County Kildare's built and natural environment; LO 5 preserving the character of all important views and prospects and views of natural beauty; LO 6 preserving and protecting the character of those view and prospects obtainable from scenic routes identified in the 2017 CDP. No landscape screening or screen planting is required in the context of this substitute consent development.

9. Exceeding the substitute consent threshold for 'exceptional circumstances'

The Board is required under Section 177K(1J) of the PDA as amended by the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (no.2) Order 2023 mandates the Board to assess whether a sufficient case has been presented to it warranting exceptional circumstances that would justify the grant of substitute consent in this instance. We note that the Board are also not duty bound to take account of, or have regard to, any previous decision on this case and will consider this case forthwith with a Board constituted of members not previously involved in assessing this case.

The Planning and Development Act 2000 is amended by Section 8(b) of the Planning and

Development and Residential Tenancies Act 2020, which introduces into the principal act the following requirement under Part XA section 177K(1A)(a) states that:

‘The Board shall not grant substitute consent (whether subject to conditions or not) unless it is satisfied that exceptional circumstances exist that would justify the grant of such consent by the Board.’

Section 177K(1J) now states that the Board when:

‘considering whether exceptional circumstances exist the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) 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 for public participation in such an assessment has been substantially impaired;

(d) 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;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

(g) such other matters as the Board considers relevant.

Our response to the exceptional circumstances that clearly exist in this case are as follows:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive

It can be definitively stated that the development concerned would not in any way circumvent the objectives of either the Environmental Impact Assessment Directive or the Habitats Directive. The process for determining the effect on the environment and on any Designated Site, from an individual or cumulative impact perspective, historically, currently or into the future, has been carried out in accordance with best practice and appropriate regulations. This application is accompanied by a remedial EIAR and remedial Stage One Appropriate Assessment Screening

indicating clearly that a remedial NIS is not required in this instance.

Para 7.4 of the inspector's report on the application for leave to lodge an application for substitute consent acknowledges that the applicant gave a very clear and unambiguous statement of intention to prepare an rEIAR and rNIS as part of a substitute consent application. It is also acknowledged by the inspector that *'The planning authority agrees that an application for substitute consent would not undermine the objectives of the EIA Directive or the Habitats Directive.'* The inspector then concluded in his report that an EIA and Appropriate Assessment could be carried out and that the purposes and objectives of the EIA Directive or Habitats Directive would not be circumvented by making an application for substitute consent.

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised

The applicant in this case has tried best endeavours over several prior attempts to regularise and extend planning permission 07/267 on site and for a variety of reasons has not succeeded.

The applicant previously stated most clearly in the application for leave to apply and which was accepted by the inspector in his para 7.5 that *'in 2020 while a decision was pending under planning register reference 20/532 he continued removing material that had been stockpiled and this removal facilitated restoration of lands under a previous permission and that furthermore after April 2021 some extraction was carried out when covid related restrictions on the construction industry were being lifted. The applicant states he believed that at least some of this work was authorised and only became aware that it was not following an approach from the planning authority.'* We concur with the previous inspector under ABP-311622 that the applicant's position on the non-need for a new application was a reasonable one for them to reach in the circumstances prevailing at that time. The inspector stated further in para 7.6 of his report on the leave to apply application that:

'I accept that the applicant considered that the work carried out including removal of stockpiled aggregate was within the terms of a previous permission. On the basis of the material on file, the various delays in processing applications for permission, the intervention on the covid pandemic and the complexity of distinction between quarrying aggregate and processing it thereafter I conclude that the applicant could reasonably have had a belief that the development, at least in part, was not unauthorised and, notwithstanding that this assumption appears to have been mistaken, that it does not require refusal of leave to make an application for substitute consent.'

We support the previous inspectors view that the applicant had very valid reasons to assume that the works they had undertaken were not unauthorised.

(c) 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 for public participation in such an assessment has been

substantially impaired

The planning history of the substitute consent site included the lodgement of an EIAR under planning application reg. ref. 07/267 to Kildare County Council and that this was followed up by an EIAR for planning application 20/258. The ability to carry out an assessment of environmental or appropriate assessment at this site has clearly not been compromised in this instance but actually assisted.

This position taken by the applicant is supported by the inspector in the determination of the leave to apply application where he states in his report that:

'The provision of an rEIAR will allow for an assessment of the environmental impacts of the development as it has been carried out/will be carried out in accordance with any future permission. Additionally, the effects on any European site will be examined in a rNIS, if submitted with an application for substitute consent. Where an application is made to the Board significant amounts of environmental information will be made available through the application process because provision will be made for giving the public notice of the making of the application and inviting submissions in relation to the application. I conclude therefore that public participation in the assessment process will not be substantially impaired.'

We emphasise from the above that public participation in the assessment process is not compromised. In fact, under section 261A it is mandated. We note additionally, that the inspector leaves the door open as to whether an rNIS is required for a S261A application and the applicant's ecologist's view is that it is not.

(d) 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

In para 7.8 the inspector under ABP reg. ref. 311622 states that:

'There are a number of sand and gravel extraction sites in different ownerships in this area along the border between County Kildare and County Wicklow. As pointed out in the planning authority's submission in this case there is some doubt as to the hydrogeological relationship between the nearest European site (Redbog SAC) and these sand and gravel pits. The planning authority refers to a submission from the DAU in the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media dated December 2020 in relation to an application 19/1438 which was not appealed to the Board and referred to a nearby sand/gravel/stone quarry. The significant point in this letter is the reasonable possibility that the aquifer underlying the Redbog SAC may be isolated from the surrounding area and therefore not subject to loss arising from quarrying operations in the area.'

We draw attention to the last sentence of the quote above from the previous inspector under 311622 and that the aquifer underlying the Redbog SAC may be isolated from the surrounding area and therefore not subject to impact arising from quarrying operations in the area. This applies

to Hudson's quarry as much as it does to any of the other quarries in the vicinity of the subject site. This is particularly important in the context of whether a remedial NIS is required. Quarrying has not been carried out and is not being carried less than 1 full metre above the existing water table at the seasonal maximum levels.

It is thereafter concluded by the inspector that:

'it is not reasonable to ascribe actual or likely significant environmental impacts or adverse effects on the integrity of a European site arising from a grant of leave to make an application for substitute consent in this case.'

From this text we deduce from the previous inspector that he is of the opinion that actual or likely significant environmental impacts or adverse effects on a Designated Site can only be established at this definitive substitute consent determination stage.

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated

There have been no significant effects on the environment over the assessment period. This is clear from the submitted rEIA.

There are no adverse effects anticipated on the integrity of any European site. This is clear from the remedial Stage 1 Appropriate Assessment carried out.

The inspector in the leave to apply determination stated that:

'Such mitigation measures generally include the protection of ground and surface water quality during the sand/gravel extraction period. Restoration plans generally include landscaping/contouring the works which mitigate the visual impact on the worked-out areas and enhancement of overburden to protect groundwater quality. I conclude on this point that it would not be reasonable, outside of a full application for substitute consent, to conclude that environmental impacts or adverse effects on a European site would occur or could not be remediated.'

As indicated above and as shown in the remedial Stage One Appropriate Assessment there is no impact on any Designated Site.

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development

The planning authority as the competent authority in determining if there is unauthorised development had not referred the Board in their consideration of the leave to apply application to any outstanding enforcement matters and this is acknowledged by the inspector in para 7.11 of his report that:

'The planning authority is the competent authority in determining if unauthorised development has taken place on the site, has not referred to any enforcement actions currently being taken in relation to this development. Additionally, the planning authority recognises that difficulties have arisen in the timing of applications, in determining applications, delays in site inspections and that the problems associated with covid-19 have delayed assessments of planning applications.'

The inspector further stated that:

'I am satisfied on the basis of the planning authority's submission that the applicant has substantially complied with previous planning permissions and not carried out an unauthorised development in a manner as to require the refusal of this application for leave to apply for substitute consent.'

There is no current enforcement action against the applicant and this is confirmed by the previous inspector under ABP reg. ref. 311622.

It is worth noting that in their determination to grant leave for substitute consent the Board indicated that:

'Furthermore, having regard to Section 177D(2) of The Act, the Boards examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development by granting leave to make an application for substitute consent.'

In this regard the Board considered that:

- (a) this application for leave to apply for substitute consent has demonstrated that the regularisation of the development would not circumvent the purposes and objectives of the Environmental Impact Assessment Directive or the Habitats Directive because it would allow the provision of information and an analysis of the likely significant effects of the development on the environment and on European sites in the vicinity of the development site,*
- (b) The applicant had, or could reasonably have had, a belief that the development was authorised,*
- (c) The ability to carry out an assessment of the environmental impacts of the development for the purposes of an Environmental Impact Assessment and to carry out an Appropriate Assessment, and provide public participation in such assessments, has not been substantially impaired,*
- (d) The submission of a remedial Environmental Impact Assessment and remedial Natura Impact Statement would facilitate an assessment of the potential for the remediation of*

any significant effects on the environment or adverse [sic] effects the integrity of European sites, and

- (e) The applicant is making reasonable efforts to regularise the planning status of the development and noted that the planning authority is not currently pursuing enforcement proceedings.'*

It is further stated, in the last paragraph of the 311622 Order that:

'Having regard to the foregoing, it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application.'

- (g) such other matters as the Board considers relevant*

The inspector indicated in para 7.13 of his report in his consideration of the leave to apply application that he considered there were no other such matters considered relevant. We beg to differ with the inspector on this and have a number of points to make which we believe constitute exceptional circumstances, and merit the grant of substitute consent in this instance.

It surely makes sense to grant substitute consent in this instance, in those circumstances where there is no negative impact on the environment and the remedial Stage One AA undertaken by WSP concludes forcefully that the subject development with identified mitigation measures **did not** and **does not** have a significant adverse effect on the qualifying interests, special conservation interests and on the integrity and extent of any Designated Site.

In addition to the above requirements there are also requirements for compliance with Section 177(K)2 of the Act as amended.

The Board are duty bound to determine this application for substitute consent in accordance with section 177(K)(2) of the Act. This section states the following:

'(2) when making its decision in relation to an application for substitute consent the Board shall consider the proper planning and sustainable development of the area, regard being had to the following matters:

(a) the provisions of the development plan or any local area plan for the area;

(b) the provisions of any special amenity area order relating to the area;

(c) the remedial environmental impact assessment report, or remedial Natura impact statement, or both that report and that statement, as the case may be, and, where section 177E(2A)(b) applies, the environmental impact assessment report or Natura impact statement or both that report and that statement, as the case may be, submitted with the

application;

(d) the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was or is proposed to be carried out;

(e) the report and the opinion of the planning authority under section 177I;

(f) any submissions or observations made in accordance with regulations made under section 177N;

(g) any report or recommendation prepared in relation to the application by or on behalf of the Board, including the report of the person conducting any oral hearing on behalf of the Board;

(h) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c), that fact;

(i) conditions that may be imposed in relation to a grant of permission under section 34(4), 282(3) or 293(7);

(j) the matters referred to in section 143;

(k) the views of a Member State where the Member State is notified in accordance with regulations under this Act;

(l) any relevant provisions of this Act and regulations made thereunder.'

Our response is as follows:

(a) the provisions of the development plan or any local area plan for the area

The proposal is in accordance with the provisions of the County Development Plans in force over the period 19th September to the current day. Please see above compliance statement in regard to the 2017-2023 and 2023-2029 respective Kildare County Development Plans.

(b) the provisions of any special amenity area order relating to the area

There is no amenity order covering this application site. Impact on landscape and visual amenity is assessed in the submitted remedial EIAR. There is no impact on any amenity area served by an order or otherwise. This is clear from the submitted landscape and visual impact assessment contained in Chapter 11 of the rEIAR.

(c) the remedial environmental impact assessment report, or remedial Natura impact statement, or both that report and that statement, as the case may be, and, where section 177E(2A)(b) applies, the environmental impact assessment report or Natura impact statement or both that

report and that statement, as the case may be, submitted with the application

Both a rEIAR and remedial Stage One Appropriate Assessment are submitted with this application. They both conclude respectively that there is no significant impact on the environment with adherence to appropriate and identified mitigation measures contained within the application, and that there was, and there is currently, no significant impact on any Designated Site or qualifying interest.

(d) the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was or is proposed to be carried out

Significant potential effects on the environment, any European Designated Site have been carefully considered as indicated elsewhere in this application and there is no significant impact with mitigation identified by WSP.

(e) the report and the opinion of the planning authority under section 177I

Obviously, the County Council has not had the opportunity to respond to this application just yet under section 177I. When their comments are received on this application no doubt there will be passed on to us for comment on behalf of the applicant.

There are however references in the inspector's report on the determination of the application for leave to consent under ABP Reg. Ref. 311622-21 that would indicate the local planning authority's position on the subject development (and potentially not just the application for leave to apply for substitute consent itself). We realise that this does not at all prejudice the County Council making comments to the Board on this substitute consent application and we await their comments with great interest.

The inspector within section 6.1 of his report on the application for leave to apply for substitute consent noted the following in respect of Kildare County Council's position on that leave to apply application:

- KCC decided that they could not consider 20532 because it involved unauthorised development which may require EIA, screening for EIA or AA;
- Insofar as the applicant has stated his willingness to submit a full rEIAR and rNIS (or Stage One remedial AA Screening we respectively suggest) the planning authority is satisfied that the objectives of the EIA Directive and/or the Habitats Directive would not be compromised by granting leave to apply for substitute consent.
- Granting leave to make an application for substitute consent would allow for public participation in the planning/environmental assessment process.
- The effects on the closest European Site (Red Bog SAC) are unclear and may arise from

more than one sand/gravel extraction operation in the wider area. Granting leave, and presumably the lodging and determination of such an application would allow for further assessment of this issue.

- A thorough rNIS with appropriate mitigation measures could prove without scientific doubt that the subject development would not affect the Red Bog SAC. Please note that the strong advice from WSP ecologists and engineers is that a rNIS is not required.
- And perhaps most significantly,

‘The planning authority supports the applicant’s efforts to regularise the situation in the quarry.’

(f) any submissions or observations made in accordance with regulations made under section 177N

We note the Minister’s ability to impose regulations to make provision for such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of this Part XA of the Act including section 177. The subject development is in accordance with the various regulations in our opinion.

(g) any report or recommendation prepared in relation to the application by or on behalf of the Board, including the report of the person conducting any oral hearing on behalf of the Board

The Board’s decision under 311622 to grant leave to lodge substitute consent is noted and it is accepted that this cannot prejudice an objective decision on this substitute consent application.

(h) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c)

The subject site is not located within a European Designated site but is located within a Zone of Influence of same and this is carefully considered by WSP in their supporting documents provided elsewhere in this substitute consent application. The subject development is compliant with section 10(2)(c) which seeks the conservation and protection of the environment including, in particular, the archaeological and natural heritage and the conservation and protection of European sites and any other sites which may be prescribed. There is voluminous material submitted by the applicant on this currently.

(i) conditions that may be imposed in relation to a grant of permission under section 34(4), 282(3) or 293(7)

Our client will accept planning conditions imposed by An Bord Pleanála in any positive determination of this substitute consent application. However, section 282(3) does not apply in this instance as neither the proposal nor the location are maritime and there is no maritime or coastal authority involved. Section 293(7) does not apply for broadly the same reasons.

(j) the matters referred to in section 143

The Board are required under this section of the Act to carry out their function, including determine substitute consent applications in accordance with prevailing government advice policies and objectives, the NPF and the appropriate RSES, consistent with the proper planning and sustainable development of the site and the area, and the national interest. We very much welcome that fact and seek a positive determination in this case on that basis and in the absence of any significant environmental harm having been caused or currently being caused.

(k) the views of a Member State where the Member State is notified in accordance with regulations under this Act

This criterion does not apply in this instance.

(l) any relevant provisions of this Act and regulations made thereunder

We believe that the subject application is in accordance with the principal act as amended and is in accordance with the appropriate regulations.

10. Conclusions

Our case is summarised under the following headings taken from the main body of this submission.

- This substitute consent application;
- Context – planning history and requirement for a substitute consent application;
- No significant environmental impact from the subject development;
- Lack of significant impact on Designated Sites;
- Compliance with national, regional and local planning policy and guidance;
- Exceeding the substitute consent threshold for 'substitute circumstances'.

Our position is as follows:

This substitute consent application

Substitute consent applications typically cover many years and present difficulties over such periods whereby the need for environmental assessment presents significant challenges over such periods. In this instance the period covered by the substitute consent is (a) relatively recent and (b) covers a relatively short period of the last 4 years approximately. An added positive in this case is that an EIAR was undertaken for planning application 20/532 as recently as mid-2020. The period over which environmental assessment is required to span is from as relatively recently as 19th September 2020.

The relatively recent lodgement of 20/532, which was a retention application in much the same manner as a substitute consent application, prior to invalidation by KCC also presented a number of objections and observations from interested, third and prescribed parties. This has given the applicant an insight into the concerns and issues that need to be addressed in this application. The applicant has responded accordingly.

There is also a baseline of information which has also been gathered, critically assessed, and supplemented since it was originally carried out in 2019/2020.

The applicant took one very sensible precaution since the expiry of planning permission 07/267 and that was to discontinue blasting and the absence of that activity has greatly simplified the assessment of environmental impacts accruing from the subject development from 19th September 2020 to the current day, which we understand fully is not a fixed point in time. There will be no further blasting until such time as substitute consent is in place to do so.

Context – planning history and requirement for a substitute consent application

Our client's operation spans land over two county council's jurisdictions. A discrepancy has occurred between the length of planning permission granted by WCC under 06/6932 for 25 years and that granted by Kildare County Council at broadly the same time for a period of 10 years. Several issues that can be attributed to quarries and the aggregates or extractive industries generally are not at issue as they lie within the jurisdiction of WCC and therefore fall outside the consideration of the Board on this occasion.

Whilst the inability to extend the duration of planning permission of 07/267 as per a 'normal' application was not available to our client, following receipt of that 07/267 planning permission, it was discovered that permission was limited to excavation, processing, haulage and storage of rock, sand and gravel material and transportation off site. Unfortunately that permission did not include reference to the maintenance shed on site, and consequently planning consent for retention of a maintenance shed on site was not received. Unfortunately also for our client, Hudsons got 'less than full value' of that 07/267 permission as there was an economic downturn in 2008 resulting in the collapse of the construction industry in Ireland over a substantial period of the permitted 10 years. Consequently, there were lower than expected aggregate sales volumes and therefore lower than expected extraction rates.

Well in advance of the expiry of 07/267 this applicant sought planning permission for retention of their activities under 20/511 but that application was invalidated as set out above. Our client's position on planning was further complicated and compromised by the refusal of planning permission by An Bord Pleanála for the maintenance yard on the basis basically that retention planning permission could not be granted if it was ancillary to or supportive to a use that was unauthorised. The invalidation of 20/511 resulted in application 20/532 having to be lodged and this application included an EIAR and this has proven beneficial for assessing the impact of the proposal following expiry of the 07/267 planning permission.

We believe that the above presents an unfortunate and exceptional range of circumstances, leaving our client with no viable or acceptable planning alternative, but to apply for substitute consent.

The Board will no doubt be aware that leave was granted by the Board for our client to apply for substitute consent under your reg. ref. ABP311622.

No significant environmental impact from the subject development

As required in law a remedial EIAR has been carried out. It concludes the following under the required and customary headings.

Population and Human Health

The impact of the proposed development is not significant in terms of impact on health and would have ensured the retention of the direct employment of 46 full time Hudson's staff and would have enabled a number of ancillary businesses in the area including hauliers, construction and excavation equipment suppliers, construction companies to continue their own business activities and will assist in the development of much needed infrastructure and homes not just locally, but in the region, and across the State.

There is no anticipated impact on human health with all activities operating below recognised environmental standards.

Ecology and Biodiversity

There is no significant impact identified on ecology or biodiversity.

When cumulatively considering the mitigation, compensation and enhancement measures there will be a net gain for biodiversity in the medium to long term restoration stage.

Soils and Geology

This area is acknowledged as rich in gravel. This is recognised in assessments undertaken by the applicant's geologists and as recognised in successive County Development Plans.

There is current extraction of sand, gravel and rock with positive impacts on economic geology, guaranteeing the future of the quarry and employment at the site, thereby providing a source of valuable aggregate to the metropolitan region.

The subject development has not had, nor will it have, any perceptible impact on either Blessington Delta Geological Heritage Site nor on Glen Ding which is also identified as a Geological Heritage Area, either on its own or in combination with any project or plan.

Water

As the existence of both sand and gravel and rock occurs at least 1m above the highest winter water table no discharge to the environment takes place. There is no impact on water.

No streams overrun on the site or the immediate surroundings, due to the underlying sand and gravel.

The risks of pollution to surrounding water bodies including private wells is imperceptible.

Air Quality

The impact of coarse particulates (dust) on the surrounding area as a result of the previous activities at the site over the assessment period is considered to have been 'slight' and therefore Not Significant. The assessment considered the employed mitigation measures which have been and will continue to be in place. With regards to fine particulates, it is considered that there may have been the potential for an increase in PM10 and PM2.5 concentrations at the residential receptors downwind in the vicinity of the site, due to the moving of the extraction area, but the predicted environmental concentration is still predicted to be below the annual Air Quality Standards, with headroom. The impact of fine particle process contribution from the site over the assessment period is therefore considered to be imperceptible and therefore Not Significant.

Taking into consideration the mitigation measures which have been employed at the site throughout the assessment period, it is not considered necessary that any additional remedial measures are put in place.

Residual impacts of deposited dust and particulates generated during the operations at the site since September 2020 on air quality are considered to be slight. During long spells of dry weather, dust emissions may have had the potential to be elevated, however dust nuisance from the operation is expected to have been unlikely as the above mitigation measures were implemented during construction and operation. The overall impact from the operation of the site since September 2020, in terms of dust emissions and particulates, is considered 'slight' to the air environment and Not Significant.

Finally, on air quality, it is pointed out that there has been no blasting since the 07/267 planning permission expired on 18th September 2020.

Climate

The development is not considered to be of a sufficient scale to have had the potential to impact the regional or local climate in any significant manner.

The site has not had any significant effects on local prevailing weather conditions, nor has the Development increased the potential of flooding in the surrounding area.

Quarry operations during the assessment period had the potential to result in a loss of soil organic carbon in form of CO₂. Given the small area of stripping that occurred (approximately 1.5 ha, Chapter 5 Land, Soils and Geology), the liberation of soil organic carbon and impact on the climate is considered to be 'imperceptible' adverse over the assessment period.

The proposed planting regime at the site and the conceptual restoration of the land is considered to have positive 'Imperceptible' impacts on the climate during and post development. Therefore, the impacts on climate and climate change are considered to be Not Significant over the assessment period.

The applicant has committed over the assessment period to achieving and maintaining industry leading environmental standards and consider environmental management to be a priority.

No remedial measures to address potential impacts to climate during the assessment period are

required. The residual effect identified over the assessment period is Not Significant.

The impacts identified during the assessment period were mitigated by design or good practice. Effects from the site in isolation have been deemed in all instances to be Not Significant. Assuming other developments in the area have incorporated widely adopted good design, practice and mitigation measures. It is considered that there have been no significant cumulative effects of the subject development with other similar developments in the locality.

Noise and Vibration

The noise assessment contained in Chapter 9 considers historical noise from the quarry between September 2020 and the present. No blasting was undertaken during this period and so ground borne vibration and air overpressure resulting from quarry blasting was scoped out of the assessment.

The predicted noise levels at each Noise Sensitive Receptors (NSRs) are within the permitted daytime limits and the levels recommended by the EPA Environmental Management Guidelines – Environmental Management in Extractive Industry. As such, the specific noise levels from quarry operations resulted in a negligible adverse impact at all NSRs which is not significant over the assessment period. In conclusion, no significant noise or vibration impacts have been identified throughout the operation of the quarry between September 2020 and present.

Cultural Heritage

Examination of the Record of Monuments and Places for County Kildare indicate that there are no Recorded Monuments located within the application area. There is one undesignated monument in the study area (ie within 1km of the site) which is a deer park wall. Mitigation measures to set back extraction by 10m from the deer park wall would have ensured no significant impact on cultural heritage.

Landscape and Visual

The Site is located within an area of modified landscape in the form of established quarrying activity and existing farmed pastureland on the Kildare/Wicklow county border.

Overall, the landscape changes since September 2020 have been very localised due to containment of the works within the existing quarry limits. They have had a local Moderate-Slight, Short Term and Neutral effect around the area of the Application site. However, these reduce to Not Significant, Short Term and Neutral across the wider landscape of the study area.

The additional site works which has occurred on site to date since September 2020 have resulted in the lowering of the quarry floor, with a relatively minor lateral extension in the northwest area of the main pit. Meanwhile, there have been no alternations to the wider pasture lands or berms on the existing boundaries. This meant that the majority of receptors have experienced no additional views of the site works since September 2020, as the quarry walls and mounds have helped to contain the ongoing quarry activities occurring within the site.

In conclusion, the continuation of quarrying activities from September 2020 to the present have not resulted in any significant landscape or visual effects.

Traffic and Transportation

There is a relatively low impact of traffic generated over the assessment period on the N81. The local L8373 road has sufficient capacity to accommodate the subject development over the period September 2020 to the current day.

The effect of operational traffic from the site during the assessment period is considered to be 'Imperceptible'. As such, road impacts of the subject development over the assessment period are 'Not Significant'. Road safety is not impacted by the subject development.

There are no remedial measures required to be undertaken. There are no residual effects as a result of effects during the assessment period. Periodic checks of vehicles and internal traffic safety arrangements are undertaken as part of the site's management. No other monitoring of traffic and transport is recommended.

Major Accidents and Disasters

The major accidents and disasters assessment concludes that the activities at the site during the assessment period of September 2020 to present have not resulted in accidents or disasters that are deemed to be 'Major'.

Assuming other developments in the area have incorporated widely adopted good design, practice and mitigation measures it is considered that there have been no significant cumulative effects of the Development with other similar developments in the locality.

In terms of residual effects the assessment in Chapter 14 of the rEIAR concludes that the activities at the site during the assessment period of September 2020 to present have not resulted in accidents or disasters that are deemed to be 'Major'. Therefore, there has been an 'Imperceptible' effect (including no effect) of the site activities on the surrounding environment in regard to major accidents and disasters.

Lack of Significant Impact on Designated Sites

The remedial Appropriate Assessment Screening undertaken concludes that no Natura 2000 conservation sites have been, or are being, affected by the subject development. Some potential has been identified for indirect effects to Designated Sites and this is dealt with in the accompanying remedial Appropriate Assessment Screening Report accompanying this application. This subject development is not significant either on its own or in combination with the existing quarries operational in the area, permitted and existing development in the area, nor indeed with the proposed realignment of the N81 which will not occur for some years yet.

It is proven in the accompanying rEIAR and remedial Appropriate Assessment Screening Report that there is no hydrological or hydrogeological pathway or link between the site and either the Red Bog SAC or Poulaphouca Reservoir Designated Sites. If excavation does not occur below the current 1m level of excavation above the highest winter water table there can be no discharge to the surrounding environment taking place. There are no streams on or near the subject site due to underlying sand and gravel. With excavation continuing above the water table there is no connection to any designated site and consequently no risk of potential pollution from the recent and current operation of the site.

Compliance with national, regional and local planning policy and guidance

National Planning Framework (Project Ireland 2040) and National Development Plan 2018-2027

In the absence of any significant impact both currently, or in the period since the expiry of 07/267, the proposal is consistent with National Policy Objective 23 which facilitates the development of the rural economy including a sustainable and economically efficient extractive industry sector whilst at the same time noting the importance of maintaining and protecting the natural landscape which are vital to rural tourism. There is no negative impact on rural tourism in this location. The importance of the Aggregates and Minerals sector to the Irish economy and the delivery of development, one assumes including much needed housing, is recognised on page 78 of the NPF. Such extraction will continue to be enabled where this is compatible with the protection of the environment (air quality, natural and cultural heritage, the quality of life of residents in the vicinity and where appropriate site rehabilitation is also proposed).

Quarries and Ancillary Activities: Guidelines for Planning Authorities

These guidelines also emphasise the importance of quarries and the continued need for aggregates is highlighted. The potential for environmental impacts is strongly recognised as being a key consideration but so too is the fact that aggregates can only be worked where they occur. There is also a priority therefore to be given to identifying the location of major deposits and to safeguarding valuable unworked deposits for future extraction. These guidelines recognise that quarries and development around extractive industries generate often unique environmental impacts and require environmental assessments and the application of appropriate planning conditions such as relating to noise and vibration, dust, water supplies and groundwater, traffic, archaeology, water, environmental monitoring, waste management, contributions, and extraction limits.

The guidelines also state that:

“there will be a continuing need for some new or expanded aggregate quarrying operations on land to meet regional and local requirements. There is thus a need to identify and protect aggregate resources areas through the planning system, to ensure an adequate supply of aggregates to meet the likely scale of future demand, while at the same time protecting Ireland’s natural and cultural heritage.”

Eastern and Midlands Regional Assembly Regional Spatial and Economic Strategy

The EMRA RSES 2019-2031, which comfortably covers the period in question, recognises the need to accommodate and maintain extractive industries in the countryside. Regional Policy Objective 6.7 seeks to support local authorities to develop sustainable and economically efficient rural economies through initiatives to enhance the extractive industries sector whilst at the same time noting the importance of maintaining and protecting the natural landscape.

The need to reconcile rural based employment and activity with the needs of tourism and protecting the environment is recognised in these guidelines such as building on strengths to sustain a strong economy and support the creation of jobs and to ensure a good standard of living for all.

It is interesting to note that page 94 of the RSES indicates that Blessington is one of those towns recording the highest growth rate in the country over the 10 years prior to the adoption of the RSES at >32% but with lower levels of employment provision.

Accordance with the provisions of both the 2017 CDP and the current 2023 CDP

As the substitute consent period straddles two county development plans we have assessed the subject development against the policies and objectives of both plans. The proposal is consistent with all relevant policies and objectives in both plans.

Exceeding the substitute consent threshold for ‘substitute circumstances’

There is a statutory requirement imposed upon the Board to consider the grant of substitute consent in only exceptional circumstances as per Section 177K(1J) of the PDA as amended recently. The subject development meets each of those 177K(1J) exceptional criteria as follows:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive

The subject development clearly does not circumvent the purpose and objectives of the Environmental Impact Assessment Directive. In fact, the proposal is consistent with both directives and the various assessments undertaken are also consistent with both Directives. The planning inspector in his report on the leave application supports the view of the local authority *‘that an application for substitute consent would not undermine the objectives of the EIA Directive or the Habitats Directive.’*

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised

The applicant in this case has tried best endeavours over several applications to regularise and extend the life of planning permission on 07/267 on site and has not been successful. The previous inspector accepted this in his para 7.5 of his report on the leave application where he stated: *‘I conclude that the applicant could reasonably have had a belief that the development, at least in part, was not unauthorised and, notwithstanding that this assumption appears to have been mistaken, that it does not require refusal of leave to make an application for substitute consent.’*

(c) 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 for public participation in such an assessment has been substantially impaired

The ability to carry out an EIAR or appropriate assessment in this case has not been compromised. In fact, in this instance, an EIAR was undertaken under 20/532 as recently as 2020. An EIAR was also undertaken prior to that for 07/267. Impact on Designated Sites was previously

undertaken for both applications 07/267 and 20/532 even though the latter application was subsequently invalidated. These previous assessments greatly assist the more recent assessments over the current assessment period.

(d) 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

The attached remedial Appropriate Assessment Screening Report indicates no significant adverse effect on any Designated Site.

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated

In this case no remediation is required for any adverse effect on any European Site because there is no significant adverse effect on any Natura 2000 site. The accompanying rEIAR indicates no adverse impact on the environment from the subject development either on its own or in combination with other plans or projects.

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development

Para 7.11 of the previous inspector's report indicated that was satisfied that *'the applicant has substantially complied with previous planning permissions and not carried out an unauthorised development in a manner as to require the refusal of this application for leave to apply for substitute consent.'*

(g) such other matters as the Board considers relevant

All the above requirements are met under 177(K)(1J).

The subject development is also consistent with other provisions of S177 namely:

(a) the provisions of the development plan or any local area plan for the area

The subject development is consistent with both the 2017 and the 2023 CDPs as set out above.

(b) the provisions of any special amenity area order relating to the area

There is no special amenity order in the immediate area. The subject site is not located in an amenity area and there is no impact on any designated amenity area. The impact of the subject development on the landscape and visual amenity of the area is insignificant.

(c) the remedial environmental impact assessment report, or remedial Natura impact statement, or both that report and that statement, as the case may be, and, where section 177E(2A)(b) applies, the environmental impact assessment report or Natura

impact statement or both that report and that statement, as the case may be, submitted with the application

The submitted rEIAR indicates no significant impact from what has occurred by way of development and operations on site between 19th September and the current period. The remedial Appropriate Assessment indicates clearly that there is no justification for a rNIS.

(d) the significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was or is proposed to be carried out

There is no such significant effect on the environment or any European Site.

(e) the report and the opinion of the planning authority under section 177I

The local planning authority's points raised to this point previously are noted and are welcomed by the applicant.

(f) any submissions or observations made in accordance with regulations made under section 177N

These are awaited with great interest and we have identified and formulated this application and generated the various assessments on the basis of previous consultation for a similar development under 20/532.

(g) any report or recommendation prepared in relation to the application by or on behalf of the Board, including the report of the person conducting any oral hearing on behalf of the Board

This is also awaited with great interest by our client.

(h) if the area or part of the area is a European site or an area prescribed for the purposes of section 10(2)(c)

The subject site is not located within a European Designated site but is located within a Zone of Influence of same and this is carefully considered by WSP in their supporting documents provided elsewhere in this substitute consent application. The subject development is compliant with section 10(2)(c) which seeks the conservation and protection of the environment including, in particular, the archaeological and natural heritage and the conservation and protection of European sites and any other sites which may be prescribed.

(i) conditions that may be imposed in relation to a grant of permission under section 34(4), 282(3) or 293(7)

Our client will accept planning conditions imposed by An Bord Pleanála in any positive

determination of this substitute consent application. However, section 282(3) does not apply in this instance as neither the proposal nor the location are maritime and there is no maritime or coastal authority involved. Section 293(7) does not apply for broadly the same reasons.

(j) the matters referred to in section 143

The Board are required under this section of the Act to carry out their function, including determine substitute consent applications in accordance with prevailing government advice policies and objectives, the NPF and the appropriate RSES, consistent with the proper planning and sustainable development of the site and the area, and the national interest. We very much welcome that fact and seek a positive determination in this case on that basis and in the absence of any significant environmental harm having been caused or currently being caused.

(k) the views of a Member State where the Member State is notified in accordance with regulations under this Act

This criterion does not apply in this instance.

(l) any relevant provisions of this Act and regulations made thereunder

We believe that the subject application is in accordance with the principal act and is in accordance with the appropriate regulations.

We await the Board's determination of this application.

Yours sincerely,



Eamonn Prenter MIPI MRTPI

Director

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