



Comhairle Contae Thiobraid Árann  
Tipperary County Council

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Cluain Meala,  
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Tipperary County Council,  
Civic Offices, Clonmel,  
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**AN BORD PLEANÁLA**  
LDG- 032718-20  
ABP- \_\_\_\_\_  
**13 NOV 2020**  
Fee: € 110 Type: CHEQUE  
Time: \_\_\_\_\_ By: REG POST

Our Ref  
S5/20/78

Your Ref

Date

12<sup>th</sup> November, 2020

**Re: Continued Quarry Operations at Ballydine and Butlerstown, Kilsheelan, Co Tipperary.**

A Chara

In accordance with Sections 5(4) & 127 of the Planning & Development Act 2000 (as amended) this Council is seeking a determination from An Bord Pleanala, in respect of the above.

### Background

An application was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended in respect of lands at Ballydine and Butlerstown, Kilsheelan, Co. Tipperary operated by Kilsheelan Blue Limestone.

### Subject

An issue has arisen regarding;

- Whether continued quarry operations, including extraction beyond that for which Substitute Consent was sought and received under SU23.SU009 is or is not exempted development
- Whether the continued substantial discharge of quarry water and use of site infrastructure for this purpose is or is not exempted development

The Planning Authority is seeking a determination as follows;

- Are the continued quarry operations authorised under condition 1 of 23.SU009

The attached report sets out the location, description, assessment, history; 23.SU009, PL23.117178, PL23.128959, TUD-16-127

### Grounds for Referral

This determination is being sought on the basis that your Board is an independent body empowered to deal with such matters. The Planning Authority has issued a Warning Letter on the matter.

Paying Order in the sum of €110.00 enclosed.

Please let us have your comments in due course.

Yours faithfully



for Director of Services

AN BORD PLEANALA	
LDG- _____	ABP- _____
13 NOV 2020	
Fee: € _____	Type: _____
Time: _____	By: _____

**An Bord Pleanala**  
**64 Marlborough Street**  
**Dublin 1**



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Our Ref:  
TUD-16-127

Your Ref:

Date  
18th October 2019

PLANNING AND DEVELOPMENT ACT 2000 (as amended)

WARNING LETTER

SECTION 152 PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Re: **Development at Butlerstown and Ballydine,  
Kilsheelan, Clonmel, Co. Tipperary**

Dear Sir

It has come to the attention of the Planning Authority that unauthorised development consisting of non-compliance with **Conditions 1 & 3 of the grant of Substitute Consent under An Bord Pleanála PI 23.SU.23009** under which **Substitute Consent was granted conditionally on 10/10/2013** for a quarry development, may have been, is being or may be carried out by you at **Butlerstown and Ballydine, Kilsheelan, Clonmel, Co. Tipperary**.

**Said Development has not been** carried in conformity with Substitute Consent Reference SU23.SU 0009 which was granted on 10/10/2013 and **Condition Numbers 1 & 3** attached to **SU23.SU0009** in that;

The requirements of **Condition 1** have not been complied with. This condition requires that the development be undertaken in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 18th day of December, 2012. The plans and particulars submitted to An Bord Pleanála with the application on the 18th day of December, 2012 included a remedial Environmental Impact Statement (rEIS) and remedial Natura Impact Statement (rNIS).

The rEIS and rNIS sets out proposed mitigation measures that have not been implemented i.e.

- Proposed mitigation measures under Section 6.167 of the rEIS and Section 6.5 of the rNIS that relate to drainage management.
- Proposed mitigation measures relating to Specific Remedial Ecological Mitigation and Enhancement set out under Section 4.128 of the rEIS,
- Proposed mitigation measures relating to landscape as set out under Section 10.72-10.74.

The requirements of **Condition 3** have not been complied with in that the agreed details of the surface and ground water management system for the site have not been implemented, in accordance with the agreed timeframe.

Please note that in accordance with Section 152, subsection 4 (b) of the Planning and Development Act 2000 (as amended), you may make submissions or observations in

writing to the Planning Authority regarding the above, not later than 4 weeks from the date of service of this Warning Letter.

This letter is a Warning Letter issued under Section 152 of the Planning and Development Act 2000 (as amended) and a decision in relation to enforcement under Section 153 will be taken in due course having due regard to any representations from you within the 4 week period specified above.

Please note that an Enforcement Notice requiring the cessation, demolition or discontinuance of the development may be issued if the Planning Authority considers that unauthorised development may have been, is being or may be carried out.

Please further note that officials of the Planning Authority may, at all reasonable times enter onto the lands for the purposes of inspection.

Please also note that in the event of a decision to institute enforcement proceedings you will be liable for penalties as set out in Section 156 of the Planning and Development Act 2000 (as amended), details of the penalties involved for failure to comply with an Enforcement Notice are:

1. On conviction on indictment, to a fine not exceeding €12,700,000 or to imprisonment for a term not exceeding 2 years, or to both and to a fine not exceeding €12,700 or to imprisonment for a term not exceeding 2 years or both for each day on which the offence so continues.
2. On summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both and to a fine not exceeding €1,500 or to imprisonment for a term not exceeding 6 months or both, for each day on which the offence so continues.
3. On conviction on indictment of the construction of an unauthorised structure, to a fine of €12,700, or the cost of construction of the structure, whichever is the lesser.
4. On summary conviction of the construction of an unauthorised structure, to a fine of €2,500 or the cost of construction of the structure, whichever is the lesser.

In addition to these penalties, any costs reasonably incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person to whom an Enforcement Notice is served, or against whom Court Action is taken.

Yours faithfully



for Director of Services

**Brian Kehoe**  
**Ballydine**  
**Kilsheelan**  
**Clonmel**  
**CO. TIPPERARY**



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Our Ref:

TUD-16-127

Your Ref:

Date

21<sup>st</sup> June 2019

PLANNING AND DEVELOPMENT ACT 2000 (as amended)

WARNING LETTER

SECTION 152 PLANNING AND DEVELOPMENT ACT 2000 (as amended)

**Re: Development at Ballydine & Butlerstown, Kilsheelan, Clonmel, Co Tipperary**

Dear Sir/Madam

It has come to the attention of the Planning Authority that unauthorised development consisting of **non-compliance with Condition(s) 1 & 3 of the grant of Substitute Consent issued by An Bord Pleanála under reference PL 23.SU.0009**, under which substitute consent was granted conditionally on 10/10/2013 for a quarry development at **Butlerstown and Ballydine, Kilsheelan, Co Tipperary**

The said development has not been carried out in conformity with Substitute Consent Reference PL 23.SU.0009 which was granted on 10/10/2013 and Condition Numbers 1 & 3 attached to PL 23.SU0009 in that;

**The requirements of Condition 1 have not been complied with. This condition requires that the development be undertaken in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 18th day of December, 2012. The plans and particulars submitted to An Bord Pleanála with the application on the 18th day of December, 2012 included a remedial Environmental Impact Statement (rEIS) and remedial Natura Impact Statement (rNIS).**

The rEIS and rNIS sets out proposed mitigation measures that have not been implemented i.e.

- Proposed mitigation measures under Section 6.167 of the rEIS and Section 6.5 of the rNIS that relate to drainage management and obtaining a discharge licence,
- Proposed mitigation measures relating to Specific Remedial Ecological Mitigation and Enhancement set out under Section 4.128 of the rEIS,
- Proposed mitigation measures relating to landscape as set out under Section 10.72-10.74.

The requirements of Condition 3 have not been complied with in that the agreed details of the surface and ground water management system for the site have not been implemented, in accordance with the agreed timeframe.

Please note that in accordance with Section 152, subsection 4 (b) of the Planning and Development Act 2000 (as amended), you may make submissions or observations in writing to the Planning Authority regarding the above, not later than 4 weeks from the date of service of this Warning Letter.

This letter is a Warning Letter issued under Section 152 of the Planning and Development Act 2000 (as amended) and a decision in relation to enforcement under Section 153 will be taken in due course having due regard to any representations from you within the 4 week period specified above.

Please note that an Enforcement Notice requiring the cessation, demolition or discontinuance of the development may be issued if the Planning Authority considers that unauthorised development may have been, is being or may be carried out.

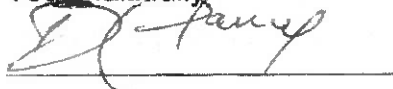
Please further note that officials of the Planning Authority may, at all reasonable times enter onto the lands for the purposes of inspection.

Please also note that in the event of a decision to institute enforcement proceedings you will be liable for penalties as set out in Section 156 of the Planning and Development Act 2000 (as amended), details of the penalties involved for failure to comply with an Enforcement Notice are:

1. On conviction on indictment, to a fine not exceeding €12,700,000 or to imprisonment for a term not exceeding 2 years, or to both and to a fine not exceeding €12,700 or to imprisonment for a term not exceeding 2 years or both for each day on which the offence so continues.
2. On summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both and to a fine not exceeding €1,500 or to imprisonment for a term not exceeding 6 months or both, for each day on which the offence so continues.
3. On conviction on indictment of the construction of an unauthorised structure, to a fine of €12,700, or the cost of construction of the structure, whichever is the lesser.
4. On summary conviction of the construction of an unauthorised structure, to a fine of €2,500 or the cost of construction of the structure, whichever is the lesser.

In addition to these penalties, any costs reasonably incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person to whom an Enforcement Notice is served, or against whom Court Action is taken.

Yours faithfully,



for Director of Services

**Paschal O'Shea**  
Director  
Kilsheelan Limestone Quarries Ltd  
Lismatigue  
Higginstown  
Co. Kilkenny



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Ref. S5/20/78

7<sup>th</sup> October, 2020

SCANNED

Re: Declaration under Section 5 of the Planning and Development Act 2000  
Ballydine and Butlerstown, Kilsheelan, Co. Tipperary

Dear Sir/Madam,

I refer to application received from you on the 15<sup>th</sup> September, 2020 requesting a Declaration from this Planning Authority as to whether or not certain works constitute development within the meaning of the Planning and Development Act 2000, as amended.

The Planning Authority having reviewed the documentation recommend, pursuant to Section 5 (4) of the Planning and Development act 2000, as amended that the case be referred to An Bord Pleanala for determination.

This decision is based on the information presented as part of the Section 5 Declaration Application received on 15<sup>th</sup> September, 2020

Yours faithfully,

for Director of Services.





FILE

TIPPERARY COUNTY COUNCIL

DELEGATED EMPLOYEE'S ORDER

File Ref: **S5/20/78**


Delegated Employee's Order No: \_\_\_\_\_

**SUBJECT: Section 5 Declaration**

I, Eamon Lonergan, A/Director of Services, Tipperary County Council, by virtue of the powers delegated to me in accordance with the provisions of Section 154 of the Local Government Act 2001, as amended by Schedule 1, Part 1 of the Local Government Reform Act 2014 under Chief Executive's Order No. 21058 dated 6<sup>th</sup> January, 2020 hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from Abaigeal Smyth, Cartron South, Ballyhaunis, Co. Mayo as to whether continued quarry operations, including extraction beyond that for which Substitute Consent was sought and received under SU23.SU009 is or is not exempted development and as to whether the continued substantial discharge of quarry water and use of site infrastructure for this purpose is or is not exempted development at Ballydine and Butlerstown, Kilsheelan, Co. Tipperary is been referred to An Bord Pleanala for determination.

**SCANNED**

Signed: \_\_\_\_\_

  
Eamon Lonergan,  
A/Director of Services,  
Planning & Water Services.

Date: 7<sup>th</sup> October, 2020



## TIPPERARY COUNTY COUNCIL

### Application for Declaration under Section 5

Planning & Development Act 2000, as amended  
Planning & Development Regulations 2001, as amended

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**Planning Ref.:** S5/20/78

**Applicant:** Abaigeal Smyth

**Development Address:** Ballydine and Butlerstown, Kilsheelan, Co. Tipperary

**Proposed Development:** Whether continued quarry operations, including extraction beyond that for which Substitute Consent was sought and received under SU23.SU009 is or is not exempted development

Whether the continued substantial discharge of quarry water and use of site infrastructure for this purpose is or is not exempted development

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SCANNED

#### 1. GENERAL

On 15/9/2020 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended in respect of lands at Ballydine and Butlerstown, Kilsheelan, Co. Tipperary operated by Kilsheelan Blue Limestone:

*Whether continued quarry operations, including extraction beyond that for which Substitute Consent was sought and received under SU23.SU009 is or is not exempted development*

*Whether the continued substantial discharge of quarry water and use of site infrastructure for this purpose is or is not exempted development*

#### 2. PLANNING HISTORY:

P 3.7954 Conditional grant of permission to excavate stone and level lands on this site. Decision dated 11th February 1982. Site sized 1 acre.

PI Ref 95/731 Conditional grant of permission to extract rock from quarry and including blasting operation, provision of crushing plant and erection of office block and stores. Decision dated 27th May 1996. Condition 19 of the permission limits the permission to a period of 15 no. years from the date of permission grant.

PI Ref 99/460 Conditional grant of permission to R J Rocks for the construction of a concrete batching and concrete block plant including block storage area and workshop/canteen and new entrance alongside the existing quarry. Application refused on appeal to An Bord Pleanála PI. 23.117178. Quarry site has extended beyond the site boundaries identified in this application.

PI Ref 01/811 Conditional grant of permission to R J Rocks for the construction of a concrete batching and concrete block plant including a well, a block storage area,

workshop/canteen, conveyors/hoppers and a biological effluent treatment system. Application granted on appeal to An Bord Pleanála. PI 23.128959.

PI Ref 12/398 Grant of permission for installation of portacabin type shipping office, weighbridge and wheel wash system adjacent to recently constructed new site entrance planning ref 01/811 and PL23.128959, existing weigh bridge will be decommissioned and the existing welfare facilities will be maintained in their current position on site

ENF 124/07 Relates to condition compliance at this site. Case closed 20th May 2011. QY 20 / An Bord Pleanála PI QC23.QC2103 Section 261 Registration of quarry site at Ballydine. Conditions attached.

Conditions of registration that development be in accordance with parent permission PI 95/731

An Bord Pleanála SU0009. Conditional Grant of Substitute Consent on 10/10/2013 for quarry development on the site. Condition no. 1 states as follows:

This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 18th day of December, 2012. This grant of substitute consent relates only to development undertaken as described in the application and does not authorise any future development on this site.  
**Reason: In the interest of clarity.**

The grant of substitute consent was subject to 6no. conditions.

TUD-16-127 Warning Letter issued regarding on-compliance with conditions attached to An Bord Pleanála SU0009.

### **3. CONSIDERATION**

*Whether continued quarry operations, including extraction beyond that for which Substitute Consent was sought and received under SU23.SU009 is or is not exempted development*

I note in reply to the Warning Letter that issued on 19th October 2016 a legal opinion on compliance with condition 1 of SU0009 was submitted. The legal opinion was prepared by Dr Yvonne Scannell, Planning and Environmental Group, Arthur Cox Solicitors.

The key points made in the submission are that the continued quarrying within the limits indicated in Fig 2.1 of the details provided with the Substitute Consent application is permitted by the substitute consent PL23.SU0009.

This consideration was accepted by the Planning Authority.

I note there is ambiguity under condition no. 1 attached to An Bord Pleanála SU0009 in that there is a clear obligation on the operator to ensure the development accords with the plans and particulars submitted to An Bord Pleanála with the application on the 18th day of December, 2012. It appears that doing this requires further extraction within the limits of the drawings provided to An Bord Pleanála namely Fig 2.1 and 2.3.

*Whether the continued substantial discharge of quarry water and use of site infrastructure for this purpose is or is not exempted development*

*In view of the position regarding condition 1 the grant of substitute consent appeared to permit further extraction and quarry development.*

**4. RECOMMENDATION**

I recommend, pursuant to Section 5 (4) of the Planning and Development act 2000, as amended that the case be referred to An Bord Pleanala for determination,

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Signed:   
Jonathan Flood  
EP

Date: 6/10/20

Signed:   
Ann Marie Devaney  
A/SEP

Date: 06/10/2020

8



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Ref. S5/20/78

17<sup>th</sup> September 2020



SCANNED

**Application for a Section 5 Declaration –  
Ballydine and Butlerstown, Kilshelan, Clonmel, Co. Tipperary**

Dear Sir/Madam,

I wish to acknowledge receipt of application for a Section 5 Declaration received on 15<sup>th</sup> September 2020 in connection with the above.

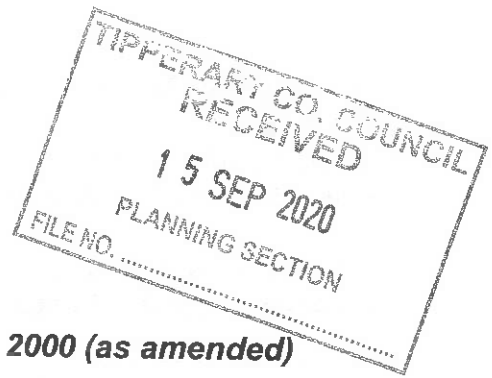
I wish to advise that you will be notified of a decision on your application in due course.

Yours faithfully,

For Director of Services







**PLANNING & DEVELOPMENT ACT, 2000 (as amended)**

**Application for a Section 5 Declaration**  
**Development / Exempted Development**

**SCANNED**

**1. Applicant's address/contact details:**

Applicant	[REDACTED]
Address	[REDACTED]
Telephone No.	[REDACTED]
E-mail	[REDACTED]

**2. Agent's (if any) address:**

NOT APPLICABLE

Agent	
Address	
Telephone No.	
E-mail	
Please advise where all correspondence in relation to this application is to be sent;	
Applicant [ ]	Agent [ ]

**3. Location of Proposed Development:**

Postal Address or Townland or Location (as may best identify the land or structure in question)	BALLYDINE AND BUTLERSTOWN, KILSHEELAN (SEE DETAILED SUBMISSION OF 28/8/20 AS ACKNOWLEDGED BY TIPPERARY C.C. ON 1 <sup>ST</sup> SEPTEMBER 2020)
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4. **Development Details:**

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

SEE DETAILED REQUEST FOR SECTION 5 DECLARATION	
W.R.T. ONGOING QUARRYING BEYOND THAT COVERED BY	
SU23. SNOO9 AND CONTINUED DISCHARGE OF QUARRY	
WATER FROM SAME DEVELOPMENT AT BALLYOING AND	
BUTLERSTOWN AS SUBMITTED 28/8/20 AND ACKNOWLEDGED 1/9/20	
Proposed floor area of proposed works/uses:	sqm

5. **Legal Interest of Applicant in the Land or Structure:** NONE

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Occupier
	C. Other (Now-LEGAL) ✓	
Where legal interest is 'Other', please expand further on your interest in the land or structure	CONCERNED MEMBER OF PUBLIC	
If you are not the legal owner, please state the name and address of the owner	Name: Address:	

Signature of Applicant(s) Abigail Smyth Date: 11/9/20

SCANNED

**Note: If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.**

**GUIDANCE NOTES**

(1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.

*SUBMITTED 28/8/20*

(2) This application should be accompanied by **TWO COPIES** of the following documentation

*SUBMITTED 28/8/20*

- OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
- ~~Floor Plans & Elevations at a scale of not less than 1:200~~
- Site layout plan indicating position of proposed development relative to premises and adjoining properties
- Other details e.g. brochures, photographs if appropriate.

(All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)

(3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

**This application form and relevant fee should be submitted to:**

<b>Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary</b>	<b><u>OR</u></b>	<b>SCANNED</b> <b>Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary</b>
<b>Enquires:</b>		
<b>Telephone 0761 06 5000</b>		
<b>E-Mail <a href="mailto:planning@tipperarycoco.ie">planning@tipperarycoco.ie</a></b>		

**FOR OFFICE USE ONLY**

**DATE STAMP**

**Fee Recd. €** \_\_\_\_\_

Receipt No \_\_\_\_\_

Date \_\_\_\_\_

Received by \_\_\_\_\_





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Tipperary County Council

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2<sup>nd</sup> September 2020

Re: Section 5 referral – Ballydine and Butlerstown, Kilsheelan, Clonmel

A Chara

I refer to your letter received on 31<sup>st</sup> August 2020 regarding the above.

I would be obliged if you could complete the attached form and return to the Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary. Upon receipt of same, your Section 5 will be processed.

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For Director of Services

**SCANNED**

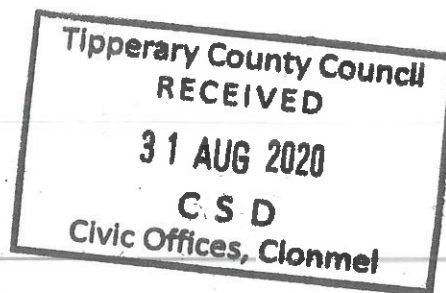


Abaigéal Smyth  
Cartron South, Ballyhaunis, Co. Mayo, F35 X890  
Campaigning for a better environment

PLN 040  
€80.00 paid  
31/8/2020

RN: ~~1804008~~

139465



Administrative Officer,  
Planning Section,  
Tipperary County Council,  
Civic Offices,  
Emmet Street,  
Clonmel,  
Co. Tipperary  
2020

28<sup>th</sup> August

Re: Section 5 Declaration sought in relation to quarrying including extraction of rock and discharge of water at Ballydine and Butlerstown townlands, Kilsheelan, Clonmel, Co. Tipperary.

Dear Sir or Madam,

**Section 5 Referral**

A quarry is being operated at Ballydine and Butlerstown townlands, Kilsheelan, on the site owned and occupied by Cemex, and which underwent Substitute Consent, ref SU23.SU0009. This land appears to be owned by Mr. Brian Kehoe, but is operated by Mr. Pascal O'Shea who also now owns part of the 'Cemex' site where the concrete manufacturing facilities are situated.

This question is with regards to the ongoing quarrying works, as defined in Section 2 of the Planning & Development Act 2000, as amended, for which clarification is sought by way of Section 5 Declaration of Exempt Status.

Consequently, I request that Tipperary County Council make declaration under Section 5 of the Planning & Development Act 2000 whether:

- (i) *The continued quarrying operations, including extraction, within this site, beyond that for which Substitute Consent was sought and received by way of SU23.SU0009 is or is not exempted development under the Planning & Development Act, as amended;*
- (ii) *The continued substantial discharge of quarry water, and use of site infrastructure for this purpose, is or is not exempted development under the Planning & Development Act, as amended.*

I now set out the grounds for why I believe this ongoing quarrying operation, and associated discharge, is unauthorised, and has once again offended at least the Habitats legislation, and has almost certainly offended the EIA legislation once more. These fresh offences, post ECJ C-215/06 of 3<sup>rd</sup> July 2008, not only are the result of continuing unauthorised but constitute flagrant breaches of the most important environmental legislation and cannot be seen as justified or done in innocence, given the explicit language of the grant of substitute consent SU23.SU009.

SCANNED





### Planning History to Section 261A

The original permission from then South Tipperary County Council, P.7954 of 11<sup>th</sup> February 1982, was to excavate stone and level the site. The subsequent permission, 95/731, was obtained in May/June 1996 and was to extract rock from the quarry; this included blasting, crushing, and erection of offices and was for a period of 15 years, and this expired on 27<sup>th</sup> June 2011, so no further extraction or quarry works were authorised within the footprint of that permission after that date.

Permission 99/460 of 1999 would have provided for concrete readymix and concrete block manufacturing and an entrance but An Bord Pleanala refused the permission on appeal as the quarrying had exceeded its authorised limits by that time. However, permission 01/811 granted permission for these manufacturing facilities and this was confirmed by An Bord Pleanala on appeal. This is only of relevance in highlighting how early on the quarrying had exceeded its boundaries.

The site had been registered under Section 261, QY20 refers, but the eventual conditions did not and could not have provided for authorised extraction/quarrying beyond the expiry of 95/731 nor could it authorise any extraction or any manner of quarrying development beyond the bounds of that permission, see *Pierson v. Keegan Quarries* [2010] IEHC 404. There appears to have been an enforcement file opened with regards to compliance with these conditions, ENF 124/07 refers.

In 12/398, South Tipperary County Council went on to authorise offices, a weighbridge and a wheelwash in the absence of prospective permission for quarrying on the site, as the Section 261A process was far from finished at that time. The ongoing authorisation of those structures does not give any entitlement to quarrying nor does it give legitimate expectation to the operator/owner as such expectation does not exist in planning law, see *McGrath Limestone Works v. An Bord Pleanala* [2014] IEHC 382.

### Section 261A and Substitute Consent

By the time Section 261A came about, the site was 11.2 hectares, over double the permitted area. It also had begun discharging water into a stream to the south of the site which drains into the River Suir SAC. Consequently, South Tipperary County Council made determinations under Section 261A(2) that both EIA and NIA offences were present, and then, on the basis of the past permissions and Section 261 registration, went on to make a decision under Section 261A(3) that an application for Substitute Consent was required with rEIS and rNIS.

Whatever area was deemed to have been extracted in an unauthorised manner was the subject of the determinations and decision and formed the basis for the application by them owner/operator Cemex.

It is important to note that all permissions for quarrying were expiry or completed at that point and that no prospective authorisation for quarrying/extraction existed there after June 2011, and remains the same position today. Inexplicably, the Planning Authority made a submission to An Bord Pleanala during that application, SU23.SU009 refers, suggesting a range of ongoing operational control conditions which were entirely inappropriate given that the legislation clearly states that substitute consent was for past development, and di not provide for prospective development. Indeed, the Board's inspector, at page 9 of 19 of his report, states clearly that 'this application for substitute consent will not authorise further extraction and in this context operational conditions cannot generally be deemed to be necessary'.



In assessing the application, it was decided that there was no evidence of the discharge having an impact within the Rive Suir SAC; one must remember that the burden of proof for this, no impact on a Natura site, has changed dramatically for this since this substitute consent application was processed (see below).

The Board granted substitute consent for the past works, thereby cleaning the slate for works carried out up to the date of application for substitute consent, 18<sup>th</sup> December 2012.

No application for prospective extraction/quarrying has been made or granted by either South Tipperary County Council or its successor Tipperary County Council since that time.

### Limitation of Substitute Consent

Many quarries continued to operate during and after the Section 261A/Section 177E process, i.e. post the grant of substitute consent and on areas or at depths not provided for under the grant of substitute consent.

On this particular site, Condition 1 of SU23.SU009 is crystal clear:

*This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 18<sup>th</sup> December 2012. This grant of substitute consent relates only to development undertaken as described in the application and does not authorise any future development on this site.*

So, it is clear that, without the benefit of a further permission for prospective quarrying/extraction, all such development work and use after the date of application, being 18<sup>th</sup> December 2012, has been unauthorised.

A large number of quarries kept to their old tricks and sought to dissemble suggesting that operations within the existing footprint (area in which substitute consent had been applied for and granted) was authorised. These claims were in direct conflict with the text of the legislation, and the clear express condition of each and every grant of substitute consent by An Bord Pleanála where the first condition in all cases stated the limitation of the grant of substitute consent.

These farcical claims of ongoing authorisation were maintained until finally the Supreme Court killed them off, see *An Taisce v. McTigue Quarries* [2018] IESC 54, even referring to the clear and unambiguous condition applied by An Bord Pleanála regarding the retrospective nature of the grant, as exists in this case.

I submit that the realities of this were well known to the quarry industry and this case, which had to be initiated and carried through by an ENGO, served to provide shelter for blatant unauthorised development until 2018.

However, this ongoing and blatant unauthorised has consequence and this is now examined in the light of the known unauthorised works and use of this site since 2012.



## Consequences of Continued Development Post 2012

Therefore, it appears clear that the lack of prospective permission for any form of development other than the works under weighbridge, offices and wheelwash structures authorised under 12/398 has been unauthorised. As such, there was no permission for any activity which would require the use of the weighbridge, offices and wheelwash. Thus, every tonne of rock extracted since that time and the processing, stockpiling and despatch of same was unauthorised, as was the ongoing discharge of water to facilitate the ongoing extraction.

The development, both works and uses, since 2012 must be assessed in the light of the provisions of Section 34(12) of the Planning & Development Act, 2000, as amended, as set out in the following terms:

*A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that of 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 is required, or*
- (c) an appropriate assessment.*

### *(i) New EIA Offence*

The area on which extraction has taken place since 2012 is, therefore, technically a vertical (downward) extension to the old development and must be assessed in that light. In my opinion, the development since that time has been so extensive as to warrant at least a determination for sub-threshold EIA. The use of non-extraction areas for other aspects of quarrying (processing, stockpiling etc) also requires retention.

As retention (for anything) is required, the Planning Authority is now precluded from even validating an application to regularise this site where such a determination for sub-threshold EIA is required, see Section 34(12)(b) of the Planning and Development Act 2000, as amended.

### *(ii) New Appropriate Assessment Offence*

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The discharge of water, using a constructed channel passed the burden of proof as existed in 2012 in that the quality of the water and visual examination of the River Suir did not give rise to concerns at that time that an actual offence had taken place. I suggest that was the time for the operator to get a discharge licence.

In *Kelly v. An Bord Pleanála* [2014] IEHC 400, which had the effect of transposing the European Court of Justice case C-258/11 *Sweetman v. An Bord Pleanála* into Irish national law, established the standard for Appropriate Assessment at paragraph 67 as requiring 'complete, precise and definitive findings and conclusions which the Board considers capable of removing all reasonable scientific doubt as to the effects of the proposed development'.

The standard of 2012 does not meet this standard in terms of looking at a point in time to see if there's evidence of impact and effectively relying on the grace of God for lack of evidence! There must be no reasonable scientific doubt that any discharge over the course of the unauthorised discharge that a surge



in silt or other contamination did not occur such as to cause some (any) damage to the River Suir SAC. Consequently, it is extremely unlikely that the decision of the Board in SU23.SU0009 would be made today.

More importantly, the ongoing discharge since 2012 cannot be screened out for potential impact to the River Suir SAC and, therefore full Stage 2 Appropriate Assessment (NIS) would undoubtedly be required since *Kelly* in 2014. Such a requirement is contra the provisions of Section 34(12)(c) and the Planning Authority is precluded from dealing with such an application.

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### Conclusion

The evidence is that unauthorised quarrying including extensive extraction has taken place on the site, and that new offences against European law appear to be present.

Moreover, given the clear text of Condition 1 of SU23.SU009, all such development has been done in the clear knowledge of it being unauthorised or as the Board usually states in these cases 'the operator could not reasonable have believed that such development was not unauthorised'.

Any EIA offence, including a requirement or sub-threshold determination, and/or NIA offence means that any such works cannot be exempted development, see Section 4(4) of the Planning & Development Act, 2000, as amended.

I look forward to your decision in due course.

Yours faithfully,



Abaigéal Smyth

- Encl.: 1. Section 5 Application Fee (€80)  
2. Maps identifying the site (2 copies)  
3. SU23.SU0009 An Bord Pleanála Inspector's Report  
4. SU23.SU0009 An Bord Pleanála Decision

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# The Property Registration Authority An tÚdarás Clárúcháin Maoinne



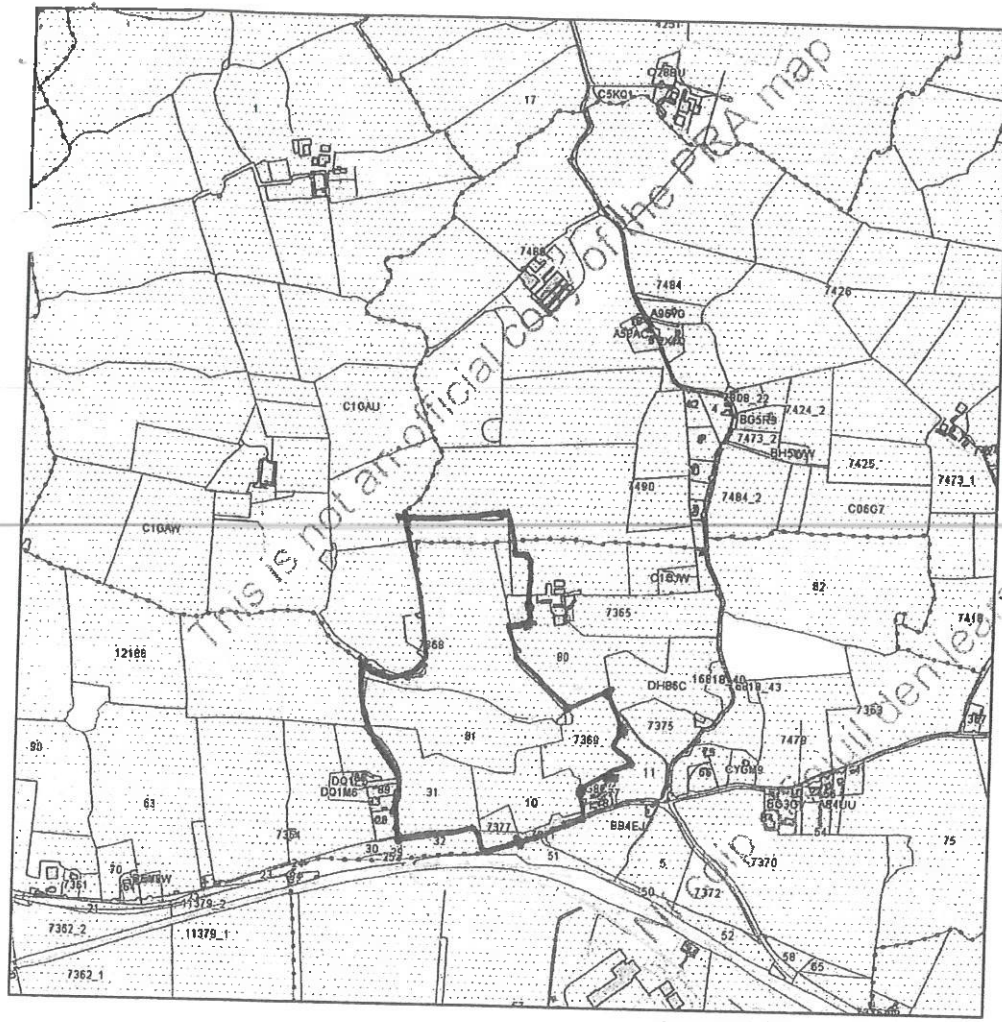
Official Property Registration Map

This map should be read in conjunction with the folio.

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(Scale: line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold
- 'S' Register

(see Section 8(b)(8) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- ▽ Soak Pit

A full list of burdens and their symbology can be found at: [www.landdirect.ie](http://www.landdirect.ie)

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(see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.

Creation Date: 27 August 2020 15:24:09



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# Untitled Map

Write a description for your map.

## Legend

-  Dove Hill Irish Design Centre
-  Feature 1
-  Feature 2
-  Feature 3
-  Kilkieran Cottage Restaurant
-  Kilsheelan
-  Kilsheelan Quarry
-  Nagles Bar & Guesthouse
-  Rathgormack Hiking Centre
-  The Carraig Hotel
-  Untitled Path



5 km

Google Earth

Image © 2020 CNES / Airbus  
Image © 2020 Maxar Technologies





# Untitled Map

Write a description for your map.

## Legend

- Ballydine
- 📍 Kilsheelan Quarry

Kilsheelan Quarry

Google Earth

Image © 2020 Maxar Technologies



300 m

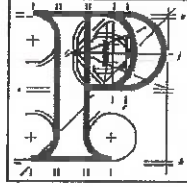






An Bord Pleanála Ref.: SU23.SU0009

## An Bord Pleanála



### Inspector's Report

**Development:** Quarry at Ballydine, Kilsheehan, Co. Tipperary.

**Planning Application**

Planning Authority: South Tipperary County Council

Planning Authority Reg. Ref.: GEO.ID.158

Applicant: Cemex Ltd.

Type of Application: Application for Substitute Consent

Date of Site Inspection: 8<sup>th</sup> May 2013

**Inspector:** Kenneth Moloney

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## **1.0 SITE DESCRIPTION**

The subject site is located between Carrick-On-Suir and Kilsheelan and access is from a local road off the N24 national primary road. The subject site is an established working limestone quarry.

The size of the subject site is approximately 11.2 ha and the shape of the site is irregular. The area of the extraction is situated to the rear (north) of the subject site and there are some portacabins used to accommodate offices and staff facilities situated to the front of the site. There is a fixed processing plant situated to the front of the site adjacent to the entrance to the site.

There are several overburdens within the subject site. The main quarrying area is situated to the rear of the site where the quarry floor meets the water table. The quarrying activity includes blasting and crushing. There is a mobile crusher and this reduces rock to 4 inch in size and larger rocks are crushed at the fixed processing plant situated to the front of the site.

There is an existing farm located immediately east of the quarry site and there is a detached two-storey house situated to the rear of the site.

There is overburden situated to the rear of the site and there are some power lines that traverse the site. The weight bridge / office and toilet are situated to the west of the site.

## **2.0 DESCRIPTION OF PROPOSAL**

The proposed development includes the following;

- a. extraction of rock from existing quarry including
  - blasting operations
  - provision of crushing plant
  - erection of office block and stores
  - extraction of limestone
- b. overburden soil stripping and storage
- c. ancillary facilities / works
  - fixed and mobile crushing / screening plant
  - weightbridge
  - water management system
  - portacabin site facilities (office, canteen & toilet)
  - storage containers
  - screening berms and landscaping

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### 3.0 PLANNING POLICY CONTEXT

#### South Tipperary County Development Plan 2009

Section 5.6.2 refers to the extractive industry and notes its economic importance and supports its development subject to planning considerations. The Council will require compliance with relevant guidance including the Quarry Planning Guidelines, Guidelines for Environmental Management in the Extractive Sector and Codes of Practice. Applications will also be considered in the context of landscape quality, land uses, heritage, roads, phasing and rehabilitation. The direction of operation should be screened from public view and should minimise noise propagation and dust emissions.

#### National Guidelines

The Quarries and Ancillary Activities Guidelines for Planning Authorities (April, 2004) offers guidance to Planning Authorities on planning for the extractive industry through the development plan process and determining applications for planning permission for quarrying and ancillary activities. The following sections are relevant to the current appeal.

- Section 3.4 outlines the potential environmental effects caused by quarrying on water supplies and ground water.
- Section 4.7 sets out possible planning conditions.
- Section 4.9 advises on the life of planning permission.

### 4.0 PERSCRIBED BODIES SUBMISSION

The following is a summary of submissions received;

#### Geological Survey Ireland

- No comments in relation to Chapter 5 (Soils and Geology) and Chapter 6 (Surface Water and Groundwater) of the rEIS.

#### An Taisce

- The original permission under L.A. Ref. 95/731 was obtained in June 1996 with expiry date 27<sup>th</sup> June 2011.
- The site area is not stated with a reference made to Fig 2.1 of the rEIS.
- Table 2.1 of the rEIS fails to establish status of any quarrying since expiry of L.A. 95/731 on 27<sup>th</sup> June 2011.
- Section 261 Registration under the Planning and Development Act, 2000, QY20 did not affect temporary permission and expiry date.
- An Bord Pleanala amended permission (23.QC.2103) and this only applied for the lifetime of the permission (95/731).
- It is contended that the applicant, by means of rEIS is seeking to extend the quarrying outside the permitted area under L.A. Ref. 95/731.
- It is considered that additional information is required in relation to (a) the current status of quarrying on the site, (b) compliance with the reinstatement conditions attached 95/731, and (c) reason why 'exceptional circumstance' as defined by the Court of Justice of the European Union in case C215-06 should warrant retrospective E.I.A.



#### National Roads Authority

- The NRA notes the current access arrangements and the traffic analysis undertaken as part of the rEIS.
- The NRA is satisfied with the findings having regard to the location of the subject site.
- It is considered that the recommendations of the TIA should be implemented.
- It is recommended that consultation with the local authority Roads Design Office is undertaken having regard to the proposed N24 Carrick-on-Suir bypass scheme.

#### Inland Fisheries Ireland

- It is acknowledged that groundwater discharge from the quarry to the River Suir results in no significant deterioration of the water quality in this river.
- It is contended that the Ballydine stream is receiving water in terms of discharge from the quarry.
- It is a requirement of the WFD (Water Framework Directive) that all waters achieve a minimum of good status. Accordingly the Ballydine stream must be protected in its own right.
- It is recommended that a more frequent biological and chemical monitoring of the receiving waters (Ballydine stream) be required by An Bord Pleanala.
- It is considered that improved facilities for the treatment of the site discharge should also be required in order to achieve 'good status' in receiving waters.
- It is contended that discharge to the Ballydine stream should be licensed under the Local Government (Water Pollution) Act and an application under the act should be submitted to the Council without undue delay.

### **5.0 REPORT FROM PLANNING AUTHORITY**

The report of the planning authority follows the format set out under Section 177I (1) of the Planning and Development Act, as amended.

#### Information relating to development

- The subject site relates to a limestone quarry with an overall site size of 11.2ha.
- The development comprises of benched limestone extraction by blasting and processing of stone by way of crushing and screening.
- The site is accessed from L2513.
- The facilities at the site include a weightbridge, portacabin containing office, toilet and canteen, a portacabin changing room and storage container.
- The extraction is located at the northern end of the site and the staff facilities are at the southern end of the site.
- The quarry is de-watered with waters discharged from the site into a stream to the south of the site and this stream drains into the River Suir.
- The lands adjoining the quarry are agricultural in use with a number of one-off houses in the area.
- The proposed N24 (Carrick-On-Suir) traverses the site.
- The subject site is located within a zone of influence of a Seveso II facility. The Seveso II facility is a pharmaceutical plant located on the southern side of the N24.



### Planning history

- P.7954 – Planning permission granted to excavate stone and level site (11<sup>th</sup> February 1982).
- L.A. Ref. 95/731 – Permission granted (27<sup>th</sup> May 1996) to extract rock from quarry. Also includes blasting operation, provision of crushing plant and erection of office block. Condition no. 19 limits permission to 15 years.
- L.A. Ref. 99/460 – Permission granted for the construction of a concrete batching and concrete block plant including block storage area and workshop / canteen and new entrance. Following an appeal (appeal ref. 117178) An Bord Pleanála refused permission. It was identified in the application assessment that the quarry operation extended beyond site boundaries.
- L.A. Ref. 01/811 – Planning permission granted for concrete batching plant, block storage area, workshop / canteen, conveyors / hoppers and biological effluent treatment system. Permission granted following an appeal (appeal ref. 128959).
- L.A. Ref. QY20 (ABP ref. QC23.QC2103) – Conditions of registration that development be in accordance with parent permission PI 95/731 which expired on 27<sup>th</sup> June 2011.

### Enforcement

- ENF 124/07 – relates to compliance with conditions on the site.

### Provision of CDP and LAP

The local authority outlines relevant County Development Plan provisions and these include;

- Section 5.6.2 Extractive Industry
- Policy ECON 12: Extractive Industry
- Section 5.7 Prevention of Major Accidents
- Policy ECON 15: Prevention of Major Accidents
- Policy INF 1: Preserving Strategic Road Networks
- Section 7.1.2 Preserving Route Capacity
- Section 9.10 Traffic and Road Safety
- Policy INF 5 relates to Water Supply and Waste Water

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### Effects on the environment or any European site

- There are potential significant effects from noise and dust emissions, impacts on the landscape given visibility of the extraction area.
- This potential for impacts on surface and ground waters.
- The local authority undertook an AA screening of the development and concluded that the development poses potential significant effects on the Lower Suir SAC Natura 2000 site.
- No remedial measures are recommended.





Recommendation and any conditions to be attached to a grant of SC

- The Planning Authority considers having regard to the mitigation measures outlined in the rEIS and rNIS that the substitute consent should be granted.
- The reasons for this consideration include (a) the development is a resource tied development and limestone is available on the site, (b) the site had a previous permission for a stone quarry, (c) the environmental impacts of the quarry can be mitigated to acceptable levels, and (d) the quarry will not pose any significant impacts on a European Site.

Conditions recommended in the report include:

- Topographical survey of the site, which shall be undertaken and submitted to the planning authority. Permanent benchmark to be set up on site in location to be agreed.
- Developer shall be responsible for maintaining public road.
- Activities at the facility to be restricted to the excavation, processing, haulage and storage of stone material won from the site
- Noise limits at sensitive receptors - 55dB(A) daytime and 45dB(A) otherwise
- Dust limits not to exceed 350 mg/m<sup>2</sup>/day
- Fuel and other storage and details of refuelling area and control of contaminated surface water
- Development contribution in amount of €263,200 towards roads and recreation / community - Class 3 of Scheme 2011-2015 adopted on 7<sup>th</sup> February 2011
- Within 12 weeks of grant detailed landscape scheme and programme for implementation to be submitted for area subject to substitute consent and for the overall quarry site
- Cash deposit or bond
- Blasting hours and notification
- Vibration levels from blasting not to exceed 12mm/sec ppv and air overpressure values at sensitive locations not to exceed 125dB(Lin) max peak.

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6.0 FIRST PARTY COMMENT

The applicant has provided a submission relating to a number of conditions recommended by the planning authority;



#### Condition no. 9

- Permission (L.A. Ref. 12/398) was obtained by the applicant on the subject site for the installation of a portacabin type shipping office, weighbridge and wheel wash system adjacent to a new site entrance.
- Condition no. 3 of this permission relates to surface water run-off.
- It is contended that the wording of condition no. 9 recommended by the local authority in relation to the substitute consent would be in conflict with condition no. 3 of L.A. Ref. 12/398.

#### Condition no. 12

- ~~The applicant acknowledges that they are liable for a development contribution.~~
- It is contended that South Tipperary County Council has incorrectly calculated the scale of the contribution.
- It is submitted that the contribution was calculated on the basis of the full size of the substitute consent area, i.e. 11.2 hectares, as opposed to the unauthorised element of the quarry extraction area.
- A contribution of £35,000 was paid by the operator in relation to L.A. Ref. 95/731 and this permission expired in June 2011.
- The applicable area for this contribution is outlined in the submitted drawing, i.e. figure ABP-RFI-1
- Having regard to (a) a contribution was previously paid, (b) any development in this area was carried out prior to expiration of permission, and (c) no extraction is undertaken in the area therefore no contribution should take place.
- It is submitted that the local authority is attempting to impose a financial contribution of €23,500 on lands used for overburden storage and screening (2 ha.). No extraction will occur on these lands.
- It is contended that the unauthorised element of the extraction area measures 5.15 ha and is also outlined in figure ABP-RFI-1.
- It is not considered reasonable or fair to impose a financial contribution on lands where no extraction has occurred.
- It is outlined that the substitute consent will not authorise the applicant to undertake extraction in lands used for overburden storage / screening and it is for this reason that no financial contribution should apply to this area.
- It is contended that financial contributions should only apply to a portion of the site where (a) financial contributions have not been previously levied and (b) where unauthorised extractive operations have been undertaken.
- All overburden storage areas, where no extraction has occurred should be omitted from the contribution calculation.
- On the basis of the above it is submitted that the development contribution liable is €12,025.

#### 7.0 RESPONSES

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The following is a summary of the responses to the submitted observations;



### Department of Arts, Heritage and the Gaeltacht

- In relation to groundwater diversion to surface water the NPWS is not aware of any adverse effects having occurred, or reported to have occurred, from the quarry on the Lower Suir cSAC.
- The lands are situated to the north of the River Suir and south of the subject site. These lands are not known to have historically-continuous or significant area of priority habitat, alluvial woodland, for which the SAC has been designated.
- This riverside habitat could be affected by groundwater diversion to surface water.
- ~~The environmental management proposed for the quarry should be~~ conditioned to ensure that surface water quality is maintained in discharges.
- Section 4.135 of the remedial EIS should be amended to read 'will be undertaken' rather than 'would be undertaken'.

### Local Authority

- It is considered that the determination for an application of substitute consent made in respect of a quarry is correct having regard to Section 261A of the Planning and Development Act, 2000.
- The reasons for this determination are documented in file reference GEO ID 158.
- It is considered that the requirements of the Inland Fisheries Ireland for more frequent monitoring of waters in the Ballydine stream and improved facilities for the treatment of the site discharge are reasonable.

### First Party

- In relation to the submission from the NRA it is submitted that the applicant consulted with the Road Design Office within South Tipperary Co. Co. and the NRA Regional Office in Tramore.
- These consultations were in relation to the proposed Carrick-On-Suir bypass.
- The NRA Regional Design Office responded stating that progress on the proposed Carrick-On-Suir bypass is suspended and that the project has not progressed beyond route selection stage. Therefore a detailed designed remains undeveloped.
- The NRA has indicated that they would liaise with South Tipperary County Council who will respond to the applicants consultation.
- In relation to the submission from An Taisce it is confirmed that the area relating to the previous grant of permission (L.A. Ref. 95/731) is 4.4 ha.
- Due to the European Court of Justice (ECJ) Decision C215-06, of 3<sup>rd</sup> July 2008 the applicant was unable to apply for an application for the continuance of operation of the area relating to L.A. Ref. 95/731 and retention of unauthorised development. This was due to the area exceeding the EIA threshold of 5ha.
- The applicant has continued to operate the quarry only within the extracted area.
- No re-instatement works have been carried out to date, as extraction operations have not yet been completed at the site.

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- It was determined that the quarry development extended outside that permitted under PL Reg. Ref 3.7954 and PI Reg. Ref. 95/731. This therefore is development which will give rise to an EIA and AA.
- The quarry was also registered in accordance with Section 261, fulfilling that requirement (Ref. QY/20).
- A notice was issued by South Tipperary County Council requiring the applicant to apply for substitute consent with an accompanying rEIS and rNIS
- Section 6 of the rEIS sets out the monitoring parameters in respect of the groundwater and surface water.
- ~~Sampling of groundwater will be carried out on the sump of the quarry floor.~~
- Sampling of surface water will be undertaken at three locations upstream of the Ballydine Stream / River Suir confluence and downstream of the Ballydine Stream / River Suir confluence.
- It is confirmed that all water sampling will be carried out on a quarterly basis however this will be determined by the conditions of the discharge licence.
- Currently surface and groundwaters are stored in the quarry floor.
- The water is then pumped to the surface level into a drainage channel which runs through the site in a southerly direction to the site boundary and then turns east.
- The discharge water from the quarry is generally good quality.
- The receiving waters into the River Suir are good quality and this is demonstrated in Table 6-5 of the rEIS.
- Details regarding the treatment of discharge water will be set out in the impending discharge licence application.
- The applicant intends to submit a discharge licence to the local authority in respect of the discharge of water to the Ballydine stream.

## **8.0 ASSESSMENT**

### **Introduction**

The planning authority has recommended that the Board attach a number of planning conditions including requirements to control noise, dust, requirements related to storage of petroleum products, refuelling and blasting. However, this application for substitute consent will not authorise further extraction and in this context operational conditions cannot generally be deemed to be necessary, directly relevant or capable of enforcement. Accordingly, I would consider that any conditions that the Board may impose, in the event of a grant of permission, would be limited in their scope.

The main issues to be considered in this case are: -

- Principle of Development
- Environmental Impact Assessment
- Appropriate Assessment
- Traffic / Access
- Development Contribution

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### Principle of Development

The subject site is located in a rural area where the predominant land-use is agricultural use. Planning permission was granted (1982) on the subject site for the extraction of quarry stone and subsequently permission was granted (1997) for the extraction of rock from the existing quarry including blasting operations, along with the provision of crushing plant and erection of office block and stores. This permission expired on the 27<sup>th</sup> June 2011.

Generally speaking the objectives of the use zoning in a development plan is to serve as a guideline for the control of development so as to achieve the goals set out in this plan. Usually where no specific use zoning is indicated, the primary use can be assumed to be that already existing in the area. In this particular instance the primary use in the vicinity of the appeal site is agricultural use however within the confines of the subject site there is an established quarry.

I would note that it is the policy of the County Development Plan (Policy ECON 12) to support the principle of the expansion of aggregates which offers opportunity for employment and economic development. It is also a policy of the County Development Plan to ensure that any quarry development will not adversely impact on a Natura 2000 site. The national guidelines 'Quarries and Ancillary Activities' recognise that there is a continuing need for some new or expanded aggregate quarrying operations on land to meet regional and local requirements and to ensure adequate supply of aggregates to meet likely scale of future demand.

It is my view based on the policies of the County Development Plan, the national guidelines and the location of the development that the principle of the subject development would be acceptable provided that it does not adversely impact on the amenities of the area.

### Environmental Impact Assessment

The application is accompanied by a remedial environmental impact statement.

In relation to the adequacy of the rE.I.S, I submit that it contains the information specified in Schedule 6 of the Planning and Development Regulations 2001, as amended. In general the information provided is considered to be relatively clear and precise. I would suggest that the statement be seen as a contribution towards the process of making available to the relevant decision maker and the competent authority, in this case the Board, the information necessary to enable the decision to be made. The information flowing from this process also includes information submitted with the application.

In accordance with the requirements of Article 3 of the European Directive 85/337/EEC, as amended by Council Directives 97/11/EC and 2003/35/EC and Section 171A of the Planning and Development Act, 2000 – 2010, the environmental impact statement submitted by the applicant is required to be assessed by the competent authority, at this juncture the Board. In this assessment the direct and indirect effects of the development need to be identified, described



and assessed in an appropriate manner, in accordance with Articles 4 to 11 of the Directive.

Human Beings, fauna and flora

In relation to direct and indirect impacts to **human beings** the development provides for low scale employment opportunities and also indirect employment opportunities which may include service contractors and transportation companies. Indirect employment may have spin-off implications for the local economy. The proposed development is not located near established tourist attractions or amenity areas and therefore will have no direct impacts on tourism and amenity areas. Additionally given the nature of the development the subject development will have health and safety implications for human beings. The quarry will also result in the creation of dust, noise, vibration, visual impact and traffic generation which will indirectly impact on human beings. I would note that Figure 3.1 of the rEIS outlines the location of existing residences within the context of the quarry site.

In relation to **fauna and flora** the appeal site is not within nor adjoining any designated sites. The established habitats on the subject site include hedgerows, spoil mounds, dry meadows and grassy verges, and Japanese Knotwood. The rEIS outlines that during a habitat survey no protected or rare species of flora were recorded on or immediately adjacent to the application site. In relation to fauna the rEIS outlines that there is evidence of rabbit and fox populations on the site. The rEIS outlines that there are no birds of note associated with the subject site. I would note that various activities including noise, light and visual disturbance caused by vehicles and machinery has the potential to impact on local fauna.

Soil, water, air, climate and the landscape

In relation to **soil and geology**, and having regard to the nature of the development, there has been a direct impact on the overlying soil and subsoil, and on the existing in situ bedrock deposits within the extraction area. There are also activities associated with disposal of soils, and bedrock, and the compaction of soil due to heavy goods vehicles. During the operation stage impacts may include accidental emissions, in the form of chemical spills, oil, petrol, and diesel leaks, which could contaminate the soil or enter the bedrock.

There is no water body on the subject site and in relation to **water** the impacts generally relate to discharges of surface and ground waters. The subject development involves the de-watering of the extraction area and the discharge of groundwater from the site. The process involves pumping groundwater to a drainage channel, which is situated immediately south of the quarry void. The water from this channel is piped to the Ballydine Stream and in turn this stream enters the River Suir. During periods of heavy rainfall surface water run-off from around the processing plant is directed to a sump where it infiltrates to the ground. Water supply serving the site is sourced from a borehole and water is used on the site in the crushing and screening process, to prevent dust generation and also for the existing toilet facility. The toilet is served by an existing septic tank and

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percolation area. There is potential for accidental spills or leaks during operation stage which may impact on the existing water environment.

In relation to **air** the development would have implications for air quality due to dust generation associated with blasting and digging and general excavation and associated construction traffic. There is also a potential impact on air quality due to traffic emissions and also the creation of dust from traffic entering and leaving the site.

In relation to impact on **climate** the EIS predicts that there will be no net increase in greenhouse gas emissions from the development which can influence global climate. I would note that the only emissions that would impact on climate would be from traffic.

In relation to **noise** implications the quarry development involves machinery, i.e. excavators and loading shovels, movement of vehicles, the processing plant and blast holes. Noise emissions from blasting will involve two sources and this includes noise from the drill rig and the blast itself. The drilling will occur prior to the blast and blasting will usually occur 2 – 3 times per annum depending on market demand.

In relation to **landscape** the subject site and the immediate environs is characterised generally by a gradient that rises slightly in a northern direction and this is consistent with the wider topography of the area. The landscape characteristics of the development include quarry void, screen berms and planting. The area immediately adjoining the subject site is gently sloping agricultural land.

In relation to **material assets** the proposed development will result in traffic generation and this is discussed below. In relation to **cultural heritage**, I would note that, in accordance with the rEIS, there is a ringfort RMP TS078-052 situated adjoining the northern berm of the subject development.

*The interaction between the factors mentioned in the first, second and third indents*

In my opinion the following interactions are relevant;

Human beings / noise and traffic – the development generates traffic.

Flora & fauna / landscape – the proposed development in terms of the works will result in a material alteration to the landscape.

Air quality / traffic & parking – air quality will be directly affected by emissions from vehicles and excavation works.

**Environmental Assessment**

The following section of the report assesses the likely significant effects identified in the context of the likely impacts on the environment having regard to mitigation measures proposed.

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Human Beings, fauna and flora

Having regard to the rE.I.S. and the information on the file I would consider that a direct impact of the development on **human beings**, would be low-scale employment. I would consider that this impact would be positive in terms of job creation. I would note that humans are likely to be indirectly impacted by traffic, visual impact, noise and dust pollution however these environmental issues are adequately dealt with in the relevant chapters of the rE.I.S.

In relation to **fauna and flora** the appeal site is not within nor adjoining any designated sites. The application site has been stripped of all previous vegetation that existed prior to any quarrying operations. The vegetation is believed to have consisted of agriculturally improved grasslands of low conservation value which was bounded by hedgerows. The removal of hedgerows would reduce habitats in the area and also it is a County Development Plan objective to protect hedgerows. Although the subject site is of low conservation merit I would note that the rEIS states that there is Japanese Knotwood partially situated on the site and this is protected by the Wildlife Act, 1976 (as amended). The habitat survey of the rEIS outlines that there is no significant fauna species on the site however the habitat on the site would support Smooth Newt and the Sand Martin which are both protected species in accordance with the Wildlife Act, 1976 (as amended). The rEIS outlines mitigation measures and I would consider having regard to these measures that the quarry would have an imperceptible impact on the aforementioned species and therefore not significant.

Soil, water, air, climate and the landscape

In relation to **soil and geology** I would note that although soil, subsoil and bedrock has been impacted upon in the affected area I would not consider that the subject development would have implications for geological aspects and soil of the adjoining lands. The mitigation measures include limiting the effects of erosion on the soil material. I would note that the GSI, in their observation, have no objections to the subject development. In conclusion therefore I would consider the impacts on soils and geology would be acceptable.

In relation to **water** there are implications for both surface water and ground water. In relation to surface water the quantity maybe affected by discharge levels and this in turn can have implications for flood risk. In relation to quality the discharge from the quarry is not treated and there is potential for suspended solids in the groundwater discharged from the site. In relation to groundwater the quarry de-waters below the water table and this has resulted in the drawdown of the water table around the site. There is also potential to impact on the quality of the groundwater from storage and refuelling at the site. The rEIS outlines specifically mitigation measures in Section 6.165 to avoid any such accidents and I would consider these satisfactory. Furthermore it is outlined in Section 6.167 that additional remedial measures are proposed and these include (a) the use of a designated sump on the quarry floor and automated pumps to dewater the quarry, (b) the construction of a designated lagoon to treat surface water run-off and groundwater prior to discharge of the site, and (c) the application to the local





authority for a water discharge licence. The rEIS concludes, having regard to the mitigation measures and water management proposals, that the quarry would not have significant impacts on water and I would concur with this conclusion.

In relation to air quality I would consider that there would be potential dust impacts due to extraction. Chapter 8 of the rEIS outlines a dust monitoring survey which measures total dust disposition associated within the existing development from the period Jan. 2011 – September 2012. The guideline used by the applicant to measure the maximum extent of dust disposition is 350mg/m<sup>2</sup>/day and the dust monitoring results from the survey show a dust disposition level lower than this guideline throughout the monitoring survey. There are no adjoining activities that any dust activities would interact with. The mitigation measures in relation to quarry extraction / processing and site entrance and access are outlined in Section 8.25 of the EIS and I would consider them acceptable. I would conclude that the overall impacts on air quality would be acceptable having regard to mitigation measures proposed.

Having regard to the scale of the existing development on the site and the limited traffic from the proposed development, during operation stage, I would not consider that the proposal would have any significant implications for climate and this is consistent with the conclusions of the rEIS.

I would note that the rEIS outlines that both noise emissions and blasting emissions are compliant with condition no. 8 (noise) and condition no. 10 (blasting) of Section 261 Order QY/20. The rEIS includes noise and blasting monitoring results and this confirms that these emissions are compliant with the aforementioned conditions of the Section 261 Order. I would consider that the mitigation measures as outlined in Section 9.46 and Section 9.47 of the rEIS would ensure that the development will not adversely impact on the amenities of the area.

In relation to landscape I note, based on a visual observation of the area, that the immediate landscape is undulating agricultural land. I have examined map no. 11 of the County Development Plan which sets out amenity areas and listed views for the county however the subject site would not be impacted by either of these designations. Overall I would consider that there would be adequate capacity to absorb the subject development without having an adverse impact on the visual amenities of the area.

In relation to material assets I would consider that the proposed development would not have any significant impacts on utility and other services within the local area.

In relation to cultural heritage I would consider that having regards to the subject site and the documentation on the file it is likely that there would be no direct impacts on the existing archaeological environment. I would consider it reasonable that test-trenching should be undertaken in areas where maximum ground disturbance will occur in relation to restoration works. I would not consider that the impact of the development would significantly impact on the cultural heritage of the immediate area.

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*The interaction between the factors mentioned in the first, second and third indents*

I have outlined the interaction between environmental factors above and I would consider, and would be in concurrence with the rEIS, that the interaction of the impacts does not lead to significant environmental impacts beyond those identified for each of the individual environmental topics.

#### Appropriate Assessment

I would note that activities, plans and projects can only be permitted where it has been ascertained that there would be no adverse effect on the integrity of a Natura 2000 site, apart from in exceptional circumstances.

The rNIS outlines that there are three designated European sites within 15km of the quarry site at Ballydine. However the rNIS considers that two of these sites, i.e. Comeragh Mountains SAC and Nier Valley Woodlands SAC are situated a sufficient distance from the quarry site to be outside its potential zone of influence as neither have any obvious environmental pathways connecting to the quarry. I would concur with these conclusions. The appeal site is situated approximately 980m from the Lower Suir SAC and therefore within the potential zone of influence.

Table 2 of the rNIS submitted with the application outlines the assessment of hazards and likelihood of significant effects from quarrying operations at Ballydine. This table concludes that it is not possible to rule out the likelihood of significant effects from the quarrying operation in relation to (a) changes in surface water quality, and (b) increased sedimentation. I would note that currently surface and ground waters are collected and stored on the quarry floor. The water is then pumped to the surface level into a drainage channel which runs through the site in a southerly direction to the site boundary before turning east.

Section 6.0 of the rNIS outlines the results of a chemical water quality assessment and a biological water quality assessment and concludes that the discharge of groundwater from the quarry site has not had or are likely to have any significant adverse impact on the water quality of the River Suir.

In relation to the impact of sedimentation on riverine habitats the rNIS concludes that quarterly monitoring of total suspended solids would indicate that the suspended solids in the discharge water remain within the EQS limit of 25mg/l for salmonid. Although the River Suir at this point is not classified as a Salmonid River.

The rNIS concludes that the quarrying operation has no measurable significant impact and not likely to have a significant adverse effect on the integrity of the Lower River Suir SAC, or any qualifying interests, either as a stand-alone project or cumulatively with other projects.

Although there is potential for the proposed development to adversely impact on the water quality of the Ballydine stream and in turn the River Suir cSAC by the



pathway outlined above I would consider that having regard to the mitigation measures and water management proposals outlined in the rNIS that there no significant impacts are likely from the project on this Natura 2000 site. I also note that it is the intension of the applicant to apply to the local authority for a discharge licence which in turn would provide for a greater degree of protection for surface water quality in the area.

I would conclude that the development would not adversely affect the integrity of the River Suir cSAC (site code 002137) in view of the site's conservation objectives.

### Traffic / Access

The rEIS includes a T.I.A. and this reviews the existing road network, existing traffic situation, anticipated traffic levels, the access arrangements and traffic safety and concludes that the access arrangements satisfactorily operate on the site in terms of traffic from the development.

It is estimated from the rEIS that the extraction rate will be 150,000 tonnes annually and based on vehicle carrying capacity and opening hours (i.e. Monday – Saturday on the basis of 10 hour days) there would be on average 24 loads per day. Additionally considering staff and miscellaneous movements it is estimated that the daily vehicle movement is 64. The rEIS included a manual traffic count (Table 31-1) for the N24 / L2513 junction.

I would note that the Local Authority has no objections to traffic and access issues in relation to the development. Furthermore a submitted observation from the NRA indicates that there are no objections in principle. Overall I would consider that the development would not have an adverse impact on the road network in the area nor would the development endanger public safety by reason of traffic hazard.

### Development Contribution

The local authority has recommended to the Board, by means of condition no. 12, that a financial contribution be imposed on the applicant for the amount €263,200. The first party argues that this amount should be reduced taking account of development contributions previously paid under L.A. Ref. 95/731 and also having regard to the actual extraction area which is 5.15 ha in size rather than 11.2 ha and therefore the development contribution shall only apply to the extraction area.

The relevant Development Contribution Scheme provides for payment under Class 3 *'The use of land for the winning and working of materials, including the extraction of sand, gravel and stone.'* There is no explanation of how to define the site area but calculation of the levy is based on an amount per 0.1 hectare. There is no reference to the calculation being limited to the extraction area, which the applicant considers would be reasonable. In this circumstance and having regard to the definition of a quarry, both in terms of current legislation and the normal meaning of a quarry, I consider that the 11.2ha hectare site is the relevant



one for the purpose of calculation. If the purpose of the Scheme was to levy only for the excavation area then the Scheme would have included a statement to that effect.

If the applicant has already paid a development contribution for quarrying on the site I would consider it reasonable that given that the applicant has already paid a financial contribution he should receive credit for this portion of the previous contribution. I would note from the history file, L.A. Ref. 95/731, that the applicant paid a contribution of £35,000. Accordingly I would consider that the amount recommended in condition no. 12 by the local authority condition shall be revised downwards by ~~£44,450~~ (€35,000 x 1.27) to allow for the previously paid development contribution.

## 9.0 CONCLUSION AND RECOMMENDATION

In conclusion the development which has occurred essentially comprises another phase of the existing quarry at this site. It is concluded above that the quarry has not given rise to significant adverse effects on the environment and that ongoing impacts are limited in type and significance and can be remediated. Therefore, I recommend that the application for substitute consent be granted for the reasons and considerations and subject to the conditions below.

### REASONS AND CONSIDERATIONS

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

### CONDITIONS

1. (a) The grant of substitute consent shall be in accordance with the plans and particulars submitted with the application on the 18<sup>th</sup> December 2012.
- (b) This grant of substitute consent relates only to works undertaken prior to the decision of South Tipperary County Council to serve notice on the 31<sup>st</sup> of May 2012 of the requirement to apply for substitute consent. It does not authorise any excavation which has taken place since that date and does not authorise any future excavation.

Reason: In the interest of clarity.

2. A detailed restoration scheme for the site according to the broad principles indicated on drawing *PL05-Restoration Plan* shall be submitted to the planning authority for written agreement within three months of the date of this order. The following shall apply in relation to the design and timing of the restoration plan :

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- (a) Prior to the commencement of works a further survey of the site by an ecologist shall take place to establish, in particular, the presence of badgers, nesting birds, bats or other species of ecological value, including flora, which may have recently moved onto the site. The restoration plan shall have regard to the results of this survey.
- (b) Details relating to measures to ensure site safety shall be provided.
- (c) A timescale for implementation and proposals for an aftercare programme of five years shall be agreed with the planning authority.

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

- 3. Within three months of the date of this order full details of the surface and ground water management system of the entire site shall be submitted to and agreed in writing with the planning authority.

**Reason:** To ensure protection of groundwater quality and to provide for the satisfactory disposal of surface water.

- 4. Within three months of the date of this order, the following site entrance improvements shall be undertaken in accordance with the detailed requirements of the planning authority:
  - (a) A wheelwash shall be provided.
  - (c) The entrance shall be provided with roadside drainage.
  - (d) Suitable road markings shall be provided.

**Reason:** To ensure a proper standard of development and in the interest of traffic safety.

- 5. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including site restoration) relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.



**Reason:** In order to conserve the archaeological heritage of the site during the site restoration phase and to secure the preservation and protection of any remains that may exist within the site.

6. The developer shall pay to the planning authority a financial contribution of €218,750.00 (two hundred and eighteen thousand, seven hundred and forty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

7. Within three months of the date of this decision, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory restoration of the site, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

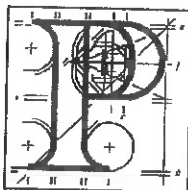
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Kenneth Moloney  
Planning Inspector  
5<sup>th</sup> July 2013

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# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2011

## South Tipperary County

**Planning Register Reference Number: GEO ID. 158**

An Bord Pleanála Reference Number: 23.SU.0009

**APPLICATION FOR SUBSTITUTE CONSENT** by Cemex (ROI) Limited care of SLR Consulting Ireland of 7 Dundrum Business Park, Windy Arbour, Dublin in accordance with section 177E of the Planning and Development Act, 2000, as amended by the insertion of section 57 of the Planning and Development (Amendment) Act, 2010, and as further amended by the European Union (Substitute Consent) Regulations, 2011 and European Union (Environmental Impact Assessment and Habitats) Regulations, 2011.

**QUARRY DESCRIPTION:** An area of circa 11.2 hectares which includes the following: development previously permitted under planning register reference number 95/731, namely extraction of rock from existing quarry including blasting operations, provision of crushing plant and erection of office block and stores; extraction of limestone outside previously permitted planning permission area (planning register reference number 95/731); overburden soil stripping and storage outside previously permitted planning permission area (planning register reference number 95/731); associated ancillary facilities/works including fixed and mobile crushing/screening plant, weighbridge, water management system, portacabin site facilities (office, canteen, toilet) storage containers, screening berms and landscaping at Ballydine and Butlerstown Townlands, Kilsheelan, Clonmel, County Tipperary.

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## DECISION

The Board, in accordance with section 177K of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, decided to **GRANT** substitute consent in accordance with the following conditions.

## MATTERS CONSIDERED

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

## REASONS AND CONSIDERATIONS

The Board had regard, inter alia, to the following:

- (a) the provisions of the Planning and Development Acts, 2000 to 2011, as amended, and in particular Part XA,
- (b) the 'Quarry and Ancillary Activities, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2004,
- (c) the provisions of the South Tipperary County Development Plan, 2009,
- (d) the remedial Environmental Impact Statement and the remedial Natura Impact Statement submitted with the application for substitute consent,
- (e) the report and the opinion of the planning authority under section 177I,
- (f) the submissions/observations made in accordance with regulations made under section 177N,

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- (g) the report of the Board's Inspector, including in relation to potential significant effects on the environment,
  - (h) the planning history of the site,
  - (i) the pattern of development in the area, and
  - (j) the nature and scale of the development the subject of this application for substitute consent.
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The Board completed an environmental impact assessment in relation to the development in question, and considered that the assessment and conclusions of the Inspector's report were satisfactory in identifying the environmental effects of the development in question, and also agreed with his conclusions in relation to the acceptability of mitigation measures proposed and residual effects.

The Board considered the remedial Natura Impact Statement submitted with the application for substitute consent and carried out an Appropriate Assessment of the development having particular regard to the potential for impacts on a nearby Natura 2000 site (Lower River Suir Special Area of Conservation (Site Code: 002137)). The Board completed an Appropriate Assessment and having regard to the nature and scale of the subject development, the nature of the receiving environment and the mitigation measures and water management proposals set out in the remedial Natura Impact Statement, the Board is satisfied that the subject development, either individually or in combination with other plans or projects, has not adversely affected the integrity of a European site.

Having regard to the acceptability of the environmental impacts as set out above, it is considered that, subject to compliance with the conditions set out below, the subject development is not contrary to the proper planning and sustainable development of the area.

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## CONDITIONS

1. This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 18<sup>th</sup> day of December, 2012. This grant of substitute consent relates only to development undertaken as described in the application and does not authorise any future development on this site.

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**Reason:** In the interest of clarity.

2. A detailed restoration scheme for the site according to the broad principles indicated on drawing number PL05-Restoration Plan submitted to An Bord Pleanála on the 18<sup>th</sup> day of December, 2012, shall be submitted to the planning authority for written agreement within three months of the date of this order. The following shall apply in relation to the design and timing of the restoration plan:
  - (a) Prior to the commencement of restoration works, a further survey of the site by an ecologist shall take place to establish, in particular, the presence of badgers, nesting birds, bats or other species of ecological value, including flora, which may have recently moved onto the site. The restoration plan shall have regard to the results of this survey.
  - (b) Details relating to measures to ensure safety during site restoration shall be provided.
  - (c) A timescale for implementation and proposals for an aftercare programme of five years shall be submitted to the planning authority for written agreement.

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

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3. Within three months of the date of this order, details of the surface and ground water management system for the entire site, including a time frame for implementation, and which incorporates the mitigation measures and water management proposals set out in the remedial Environmental Impact Statement shall be submitted to, and agreed in writing with, the planning authority.

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**Reason:** To ensure protection of groundwater quality and to provide for the satisfactory disposal of surface water.

4. Within three months of the date of this order, a scheme of landscaping, including details of the screening and landscaping arrangements along the boundary of the site shall be submitted to the planning authority for written agreement. All planting as agreed with the planning authority shall be carried out within one year of the date of this order.

**Reason:** In the interest of the visual amenities of the area.

5. Within three months of the date of this order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to the Board for determination.

**Reason:** To ensure the satisfactory restoration of the site in the interest of visual amenity.

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6. The developer shall pay to the planning authority a financial contribution of €218,750 (two hundred and eighteen thousand, seven hundred and fifty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within six months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the substitute consent.

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

Dated this            day of            2013.

**SCANNED**



