

An Roinn Pleanála

Comhairle Contae Chiarraí,
Áras an Chontae,
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ
KERRY COUNTY COUNCIL**

Planning Department

Kerry County Council,
County Buildings,
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email plan@kerrycoco.ie Suíomh | Web www.kerrycoco.ie

DO'B/ML

2nd December, 2020

An Bord Pleanála,
64 Marlborough Street,
Dublin

**Planning and Development Acts 2000 – 2020
Declaration on Development and Exempted Development
(Section 5 of the Planning and Development Act 2000 – 2020
Planning Register EX 871**

Dear Sir/Madam

I refer to the above mentioned request for a Section 5 Declaration which was submitted to this Planning Authority on 6th November 2020 by Abaigéal Smyth.

On behalf of this Planning Authority I now wish to refer the question as to whether the past and continuing quarrying at Ballintobeenig, Abbeydorney Co. Kerry is or is not development or is or is not exempted development to An Bord Pleanála (ABP) for a decision as provided for under Section 5(4) of the Planning and Development Act 2000 – 2020.

Attached please find a copy of file register no. EX871 and a paying order in the amount of €110 being the prescribed fee.

Yours Faithfully,

PP

David O'Brien
Administrative Officer

AN BORD PLEANÁLA	
LDG- <u>033278-2a</u>	
ABP- _____	
04 DEC 2020	
Fee: € <u>110</u>	Type: <u>EHQ</u>
Time: <u>—</u>	By: <u>Reg Post</u>

DO'B/ML

2nd December 2020

O Mahoney Quarries,
C/O Caroline and Patrick Joseph O' Mahoney,
Ballintobeenig,
Abbeydorney,
Tralee,
Co Kerry

Planning and Development Acts 2000 – 2020
Declaration on Development and Exempted Development
(Section 5 of the Planning and Development Act 2000 – 2020)
Planning Register EX 871

Dear Sir,

I refer to a Section 5 Application (EX871) which has been received by the Planning Authority, which refers to lands which are registered to you.

I now wish to inform you that this Planning Authority has referred the question as to whether the past and continuing quarrying at Ballintobeenig, Abbeydorney, Co. Kerry is or is not development or is or is not exempted development to An Bord Pleanála (ABP) for a decision as provided for under Section 5(4) of the Planning and Development Act 2000 – 2020.

Yours Faithfully,

David O' Brien
Administrative Officer

DO'B/ML

2nd December, 2020

An Bord Pleanála,
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Attached please find a copy of file register no. EX871 and a paying order in the amount of €110 being the prescribed fee.

Yours Faithfully,

David O'Brien
Administrative Officer

DO'B/ML

2nd December 2020

Abaigéal Smyth,
Cartron South,
Ballyhaunis,
Co Mayo

***Planning and Development Acts 2000 – 2020
Declaration on Development and Exempted Development
(Section 5 of the Planning and Development Act 2000 – 2020)
Planning Register EX 871***

Dear Sir,

I refer to previous correspondence regarding your request for a Section 5 Declaration.

I now wish to inform you that this Planning Authority has referred the question as to whether the past and continuing quarrying at Ballintobeenig, Abbeydorney, Co. Kerry is or is not development or is or is not exempted development to An Bord Pleanála (ABP) for a decision as provided for under Section 5(4) of the Planning and Development Act 2000 – 2020.

Yours Faithfully,

David O' Brien
Administrative Officer

To: AO Planning
From: SEE Planning
Date: 01/12/2020

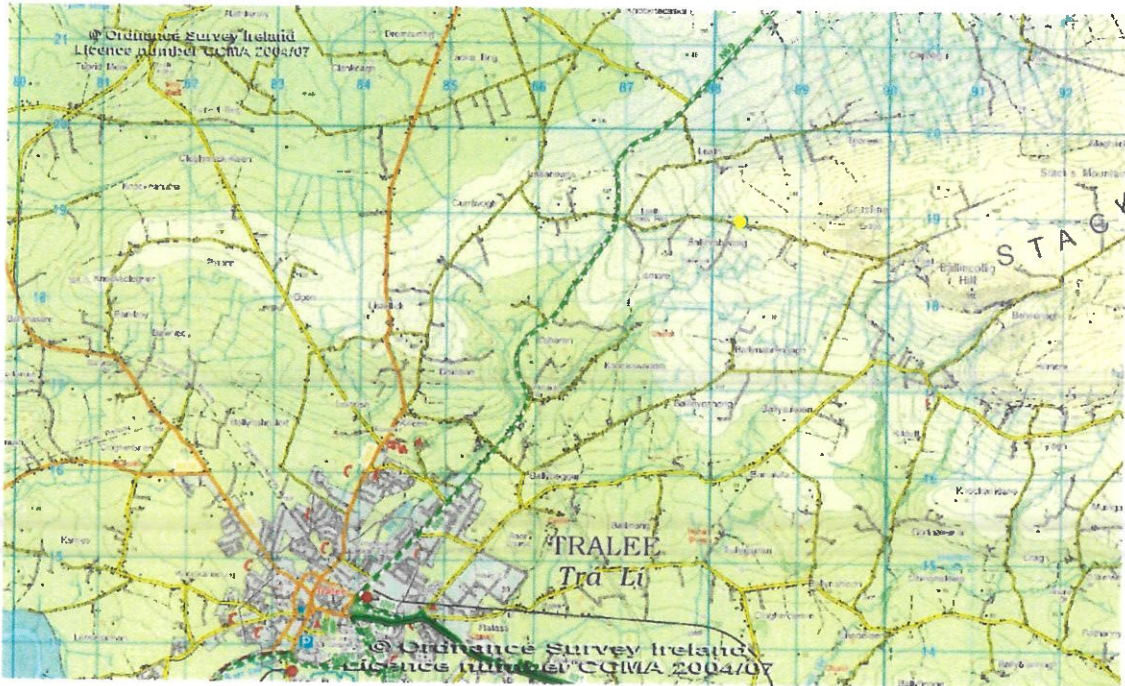
Re: Section 5 Reference EX871 – Abaigeal Smyth, Ballintobeenig, Abbeydorney

Proposed Works

This is a third-party referral in relation to O’ Mahoney’s Quarry, Ballintobeenig, Abbeydorney.

Location of site

The site adjoins a Local Road which connects to the N69 Tralee – Listowel National Secondary Road about 7km north-east of Tralee





Aerial photograph of site and environs

Recommendation

I recommend that this application be referred to An Bord Pleanála as provided for under Section 5(4) of the Planning and Development Act, 2000 (as amended).

Michael J Lynch

Michael Lynch SEE

KERRY COUNTY COUNCIL
Planning Section

COMHAIRLE CHONTAE CHIARRAÍ
An Roinn Pleanála



Memo

13th November 2020

To Michael Lynch, S.E.E.

Re: **EX871**

I attach herewith Section 5 Application received from **Abaigéal Smyth**
Please let me have your observations before 2nd December 2020.

Michelle Lane
A.S.O. Planning.



Kerry County Council,
County Buildings, Tralee, Co. Kerry.
Tel: (066) 7183582 Fax: (066) 7120328
E-mail: plan@kerrycoco.ie

Comhairle Chontae Chiarraí,
Aras an Chontae, Trá Lí, Co. Chiarraí.
Gutháin: (066) 7183582 Faics: (066) 7120328
Web: <http://www.kerrycoco.ie>

13th November, 2020

Abaigéal Smyth,
Cartron South,
Ballyhaunis,
Co. Mayo

**Re: Declaration and Referral on Development and Exempted
Development under and in accordance with Section 5 of the
Planning & Development Acts 2000 – 2020**

Dear Sir,

I wish to acknowledge receipt of your application for a Section 5 Declaration.

Register No. EX871 refers and the Planning Authority will be in touch with you in due course.

I attach herewith receipt for same.

Yours sincerely,

ASO Planning

13th November, 2020

O Mahoney Quarries,
C/O Caroline and Patrick Joseph O' Mahoney,
Ballintobeenig,
Abbeydorney,
Tralee,
Co Kerry

VIA REGISTERED POST.

Re: EX871 – Referral pursuant to Section 5 of the
Planning and Development Act 2000 to 2020.

Dear Sir,

I wish to inform you that a Section 5 Application has been received by the Planning Authority, which refers to lands which are registered to you and relates to whether a development is or is not exempted development within the meaning of the legislation. This application was received from Abaigéal Smyth and refers to **Quarrying at Ballintobeenig, Abbeydorney, Tralee, Co Kerry** .

If you wish to view this file or to submit any further information, in order to enable the Planning Authority to issue the declaration on the question, please do so on or before 26th November 2020.

Yours faithfully

David O' Brien,
A.O. Planning.

Luaigh leas an iarratasóra sa suíomh le do thoil

Please state applicants interest in this site

NO LEGAL INTEREST - PUBLIC INTEREST IN PROTECTION OF
THE ENVIRONMENT, PARTICULARLY NATURA 2000 SITES.

Luaigh ainm agus seoladh an
úinéara murar é/í an
t-iarratasóir

CAROLINE AND PATRICK JOSEPH O'MAHONEY

BALLINTOBEENIG

TRALEE, CO. KERRY

If applicant is not the owner
please provide owner's name
and address

OPERATOR - O'MAHONEY QUARRIES AT SAME ADDRESS

Tabhair faoi deara go n-eiseofar cóip den Dearbhú ar
Fhorbairt agus ar Díolúine Forbartha de réir Alt 5(2a)
den Acht um Pleanáil agus Forbairt 2000 don úinéir/
áititheoir.

Please note that in accordance with section 5(2a) of the
Planning & Development Act 2000 the owner/ occupier
of the site will be issued with a copy of the Declaration
on Development and Exempted Development.

Liosta pleananna, líníochtaí srl
curtha ar fáil leis an iarratas seo.

List of plans, drawings, etc
submitted with this application

SUBMISSION WITH APPENDICES (2 COPIES)

SITE LOCATION MAP (4 COPIES)

Tabhair tuairisc ar na h-oibreacha (má
bhaineann) nó ar an bhforbairt beartaithe.

(Tabhair faoi deara: Is iad na h-oibreacha atá liostaithe
agus sonraithe, agus sin amháin, a dheinfear measúnú
orthu fé Alt 5. Úsáid leathanaigh breise más gá)

Please provide details of works (where
applicable) or proposed development.

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

PAST AND CONTINUING QUARRYING AT QY045

BALLINTOBEENIG, ABBEYDOORNEY, TRALEE, INCLUDING

DESTRUCTION OF AN SPA.

An eol duit aon imeachtaí
forfheidhmithe ar an suíomh seo?
Má tá, tabhair sonraí le do thoil

Are you aware of any enforcement
proceedings connected to this site?
If yes, please supply details

COMPLAINT MADE MAY 2020 AND FOLLOW UP LETTER AUGUST
2020 - FILE REFERENCE U3808 BUT HAVE FAILED TO
FIND OUT OR BE INFORMED OF WHAT ACTION, IF ANY, HAS
BEEN TAKEN TO DATE.

An raibh iarrata(i)s pleanála ar an suíomh seo
cheana? Má bhí, tabhair sonraí le do thoil

Were there previous planning application(s)
on this site? If yes, please supply details

PLANNING FILE IS QY045 AND ASSOCIATED FILES.

Sínithe:
Signed

Aisling Smith

Dáta:
Date

5TH NOVEMBER 2020

NÓTAÍ:

Ní mór 4 chóip de léarscáil den láthair shuímh leis an suíomh imlínte go soiléir i ndearg a chur ar fáil agus táille €80 leis. Cuir 2 chóip de phleananna/tuairiscí breise srl. a theastaíonn uait bheith mar chuid den iarratais.

NOTES:

Application shall include 4 copies of the Site Location Map with the site clearly outlined in red and a fee of €80. Please submit 2 copies of any additional plans/reports etc you may wish to be included as part of the application.

Seol na h-iarratais líonta go 'n seoladh thíos:

Send your completed applications to:

An Roinn Pleanála,
Comhairle Contae Chiarraí,
Ráth Teas, Trá Lí, Co. Chiarraí.

T. (066)7183582
F. (066) 7120328
www.kerrycoco.ie

Planning Department,
Kerry County Council,
Rathass, Tralee, Co. Kerry.

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

Administrative Officer,
Planning Dept.,
Kerry County Council,
County Buildings,
Rathass,
Tralee,
Co. Kerry

5th November 2020

Re: Section 5 Declaration sought with regard to past and continuing quarrying at QY045 Ballintobeenig, Abbeydorney, Tralee, including destruction of an SPA

Dear Sir or Madam,

Section 5 Referral

A quarry is being operated at Ballintobeenig, Abbeydorney, Tralee for which no prospective permission appears to exist. Without authorisation, these ongoing works have led to the unauthorised destruction of an SPA.

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. The fee of 80 euro is enclosed.

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

- (i) *The past quarrying operations, including extraction, within this QY045 site, beyond that for which permission or pre-63 authorisation existed is or is not exempted development under the Planning & Development Act, as amended;*
- (ii) *The continued quarrying operations, including extraction, within this QY045 site, beyond that for which permission or pre-63 authorisation existed is or is not exempted development under the Planning & Development Act, as amended.*

Submission

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 3rd 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 Section 261A determinations and decision by Kerry County Council (2012), and the decision of An Bord Pleanála to refuse Leave to Apply for Substitute Consent (2014).

Any development which offends either the habitats Directive or EIA Directive cannot be exempt development and cannot be regularised by application to Kerry County Council (Section 34(12)).

Note that O'Mahony Quarries continues to quarry at the above address despite having been refused Leave to Apply for Substitute Consent as far back as April 2014, and have continued to operate in the certain knowledge that there is no consent for such extraction and that it results in the destruction of an SPA before and during the period since.

It was my understanding that this site had a limited authorisation pre63/S261 for quarrying but Section 261A in 2012 found that the past works post 1990 and 1997 required rEIS and rNIS respectively with an application for substitute consent, which the operator subsequently failed to submit to An Bord Pleanala.

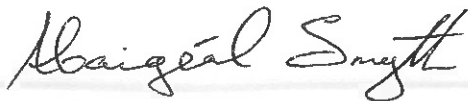
The operator went on to make application for Leave to Apply for Substitute Consent and was refused as no exceptional circumstances were found to exist. On that basis, having exhausted the provisions of the planning code, the site should have ceased operations, indeed should have done so no later than the S261A determinations and decision in 2012.

This appears to be a very serious incursion into the SPA and a very serious breach of the Planning Code. I have attached a photographic history of the development and the relevant planning history.

The appendices to this Section 5 application should be seen as integral to the application. Two copies of this submission and appendices are enclosed with this application as are four copies of the Site location Map, and fee of 80 euro.

I look forward to hearing your decision in due course or to receiving confirmation of a referral of this matter to An Bord Pleanala given Kerry County Council's failure to enforce the Planning Code in this instance.

Yours faithfully,



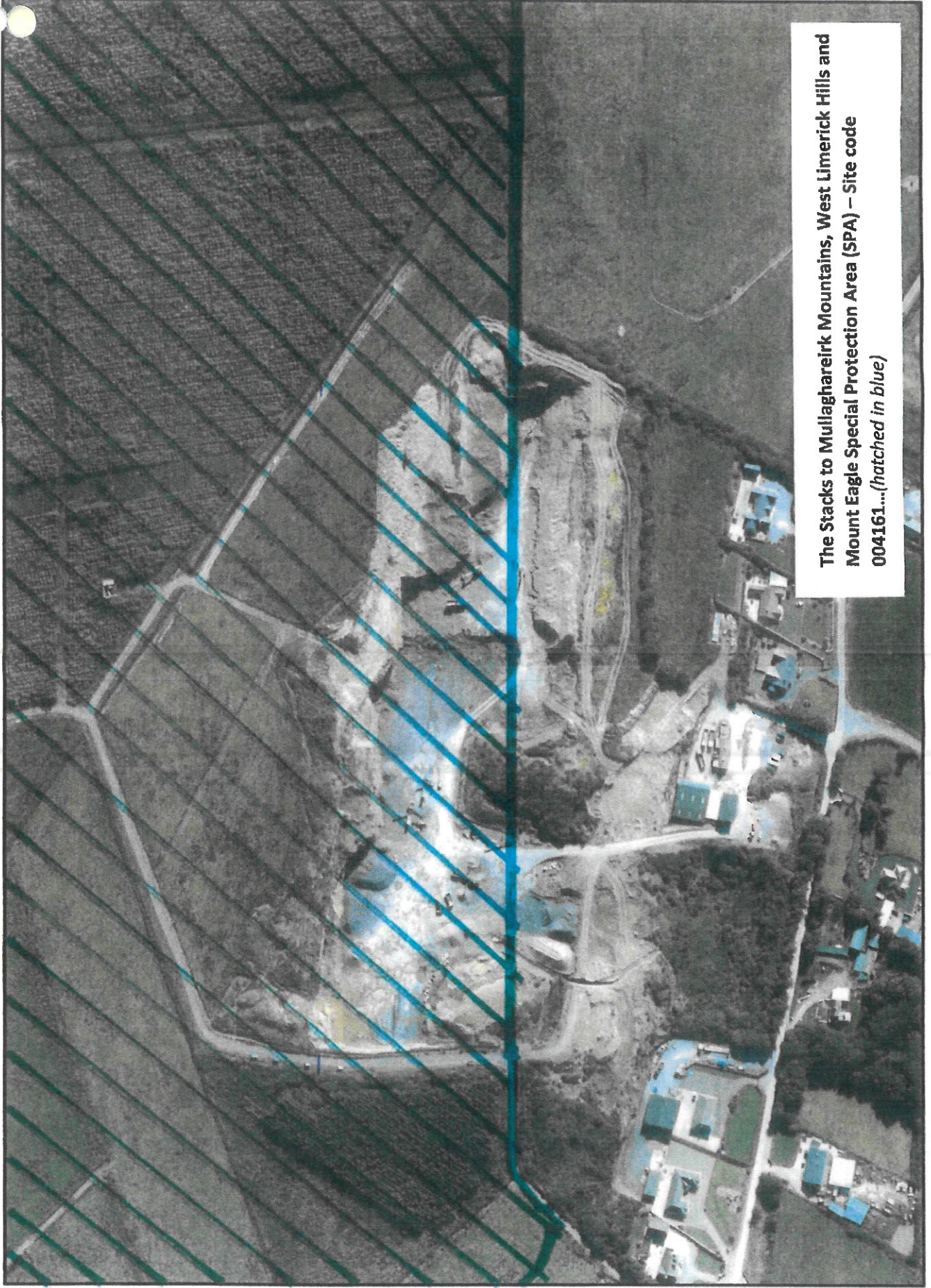
Abaigéal Smyth

Appendices: 1. S261 Documents; 2. S261A Documents; 3. S177C Documents; 4. Historical Photos.

c.c. Ian Lumley (An Taisce), Peter Sweetman (Sweetman & Associates)

Site Location Maps

O'Mahoney Quarry - Tralee - 17th July 2017



The Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (SPA) – Site code 004161... (hatched in blue)

Rural PLACE Map

2000
2000

KT

06804

ITM CENTRE POINT
488424.619141

DESCRIPTION

MAP SHEETS

Digital Map
5458

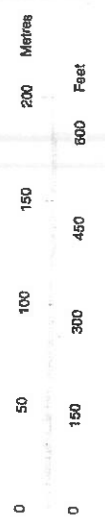


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Scale: 1:2,500
Scale: 1:2,500

Plot Ref. No. 1149266_1_6
Plot Date 22-SEP-2006

118781

118781

88864

Record PLACE Map

BY 045
 120288
 ITM CENTRE POINT RDS
 488424.619141
 DESCRIPTION
 MAP SHEETS
 6 Inch
 KY022 KY029
 KY030 KY021

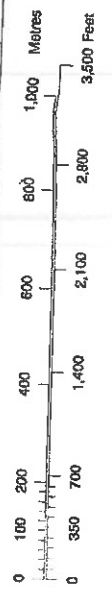
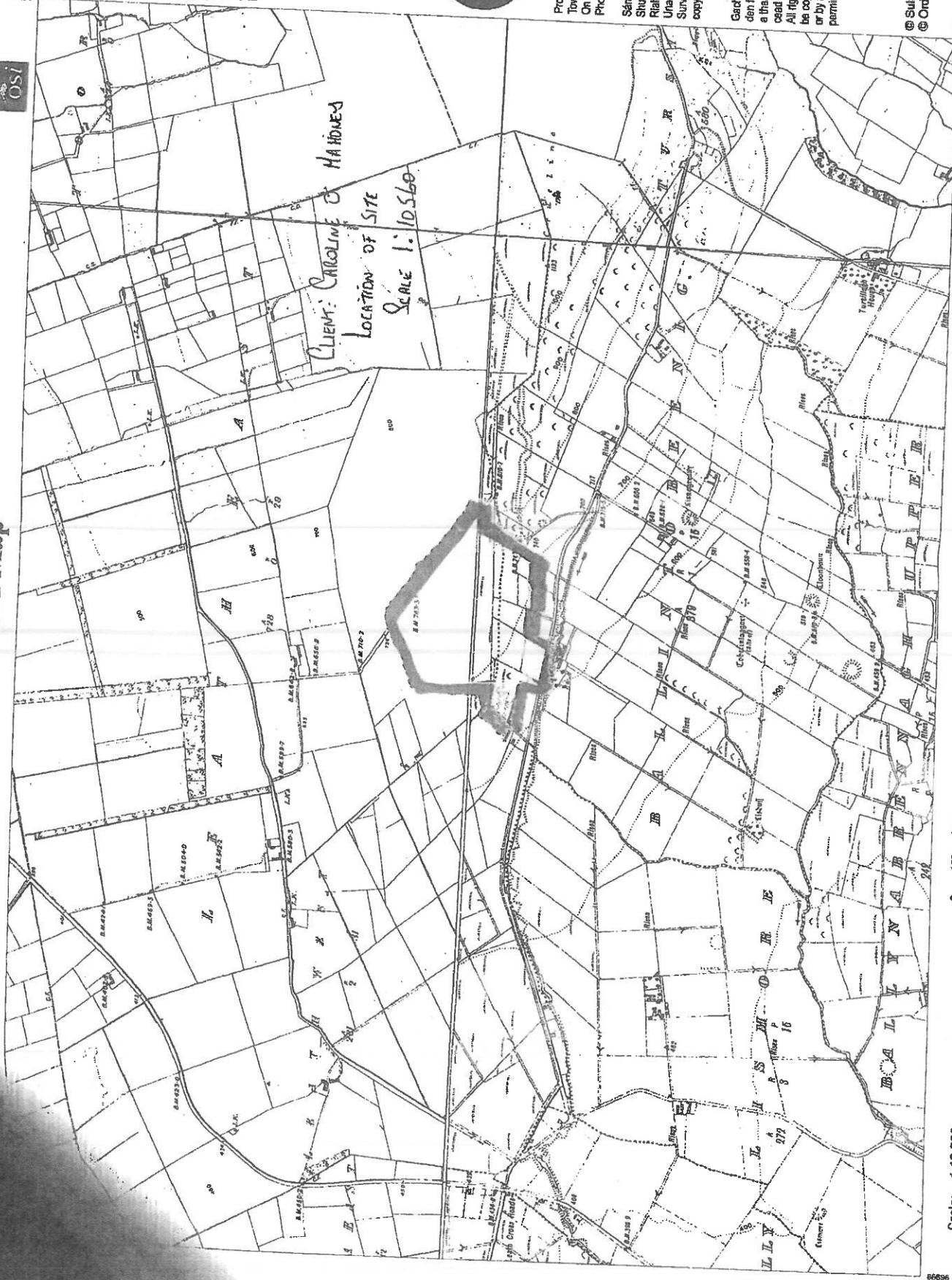


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Scale:- 1:10,560
 Scála:- 1:10,560

Plot Ref. No. 1149266.1
 Plot Date 22-SEP-2006

Appendix 1 – Section 261 Documents

NAME OF OWNER/OPERATOR: O'Mahony Quarries
LOCATION OF QUARRY: Ballintobeenig, Abbeydorney
REGISTRATION NO.: QY 045
DATE OF INFORMATION LODGED: 20/04/2005, 26/09/2006 and 13/04/2007
DATE OF DECISION: 20/4/2007
NUMBER OF CONDITIONS: 47

QUARRY REGISTRATION - IMPOSITION OF CONDITIONS

The conditions set out in the Second Schedule are, for the reasons set out in the First Schedule, imposed on the above development in terms of Subsection (6) (a) (i) of Section 261 of the Planning and Development Act 2000, as amended:

SCHEDULE 1

Having regard to -

- a) *The existing use of the land,*
- b) *The claimed existence of the quarry prior to 1 October 1964,*
- c) *the pattern of development in the area,*
- d) *the strategic role of mineral extraction in the regional construction industry and the provisions of the Kerry County Development Plan 2003 in respect of the extractive industry, and*
- e) *the "Quarries and Ancillary Activities – Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2004,*

it is considered that, subject to compliance with the conditions set out in the second schedule, the quarry development would not result in a serious risk to the environment generally, would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The quarry would, therefore, be in accordance with the proper planning and sustainable development of the area.

These conditions are imposed in accordance with the provisions of the Planning and Development Act 2000 as amended. Please note that quarrying and ancillary activities are subject to the provisions of a number of laws (such as those dealing with health and safety, the environment, heritage, explosives, air pollution, water pollution, waste management, etc.), of which the Planning Act is just one. The onus remains with the owner/operator to ensure compliance with all relevant legislation.

SCHEDULE 2

1. Except where more restrictive time limits are specified in conditions below, or actions are on-going or related only to later stages of development of the site, all actions required to be carried out in the conditions of this decision (including actions required to be carried out in the event that certain thresholds of extraction activity are exceeded) shall be complied with within one year of the date of this decision, or from the date of when the threshold level of extraction is exceeded, unless otherwise agreed to in writing by this planning authority.

Reason: In the interest of orderly development

2. This quarry shall cease operation 25 years from the date of this order. Unless planning permission for further operation is obtained, the site shall then be restored to its final state and use in accordance with the landscape/restoration plan required in terms of these conditions. No further extraction after this date shall be permitted without a prior grant of planning permission.

Reason: In order to control the impact of the development on the area, and allow for further development to be assessed and controlled in terms of more modern standards of operation.

3. The quarry excavations and related activities shall be carried out only on the site shown outlined in yellow on the attached map: "QY045 Site Location Map". No extraction may take outside of the yellow marked area without a prior grant of planning permission.

Reason: In the interests of clarity and orderly development.

4. Activities at the facility shall be restricted to quarrying, primary crushing and screening of materials, and the transportation off site only of such materials. Any other or ancillary activities / uses are not permitted and shall require separate prior planning permission.

Reason: In the interests of clarity and orderly development.

5. On-site operations of the quarry shall take place only between 08:00 hours and 18:00 hours on Mondays to Saturdays only. Deliveries and loading of HGV's only may take place between 07:00 and 19:00 hours on Mondays to Saturdays only. There shall be no quarrying operations on Sundays or public holidays.

Reason: In the interests of orderly development and residential amenity.

6. No excavation or ancillary works (except landscaping) shall occur within 50 metres of any private dwelling plot (not associated with the quarry owner or operator), or within 50 metres of any public road.

Reason: In the interests of visual and residential amenity.

7. Within 3 months of a written demand from the planning authority to this effect, a permanent truck traffic counter shall be erected at the entrance to the quarry in a position where its read-out shall be clearly legible to passing members of the public. This counter shall be to a design approved by the planning authority, and shall be sealed to the satisfaction of the planning authority, in such a way as to prevent any resetting of the running total movements reading.

Reason: In the interests of keeping levels of potential nuisance, damage and emissions to acceptable levels.

8. Vertical quarry faces shall not exceed a height of 15 metres from the base to the top of the face at any point. Each 15m maximum vertical face shall be separated by horizontal step-backs or benches with minimum horizontal width of 2.5 metres.

Reason: In the interests of public safety.

9. No earth berms or stock-piles of materials on this site shall exceed a height of 10 m measured from the average height of the undisturbed land surrounding the pile or berm.

Reason: In the interests of visual amenity and public safety.

10. There shall be no dewatering of the extraction workings. Should the planning authority determine that wells in the vicinity of the site have become contaminated or have suffered reduced flow as a result of the development; the owner or operator shall arrange to have improvements carried out as required to the requirements of the planning authority at his own cost.

Reason: In the interest of the maintenance of underground water resources, and of public health.

11. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. The quarry bed shall be graded to facilitate surface water discharge. Surface water runoff from the access road shall be controlled to the satisfaction of the planning authority, so as to prevent any discharge onto the public roadway or into any adjoining watercourses.

Reason: In the interest of traffic safety and to prevent pollution.

12. The vehicular entrance area and access road serving the quarry shall be amended, improved and maintained to the satisfaction of the Area Roads Engineer. The details of the road works shall be agreed in writing with the Area Roads Engineer, and a copy of such agreement shall be submitted to the planning authority within three months of the date of such agreement.

Reason: In the interest of traffic safety, and to carry out specific improvements to the public infrastructure associated with the operation the quarry.

13. Should any archaeological material be found during the course of quarrying or excavation work, such work shall immediately cease, and the operator shall immediately inform this planning authority. The operator shall employ an archaeologist, licensed under the National Monuments Act (1930 – 1994), to monitor all ground works associated with the find. Work may only resume when the archaeologist is on site to monitor the works.

The archaeologist may also have work on the site in the vicinity of the find stopped, pending a decision as to how best to deal with the archaeology, (e.g. preservation in situ, or excavation). The owner or operator shall also be subject to the requirements of the National Monuments Service with regard to any mitigating action (e.g. preservation in situ, or excavation) and shall facilitate the archaeologist in recording any material found.

The National Monuments Service and the Heritage Section, Kerry County Council shall be furnished with a report by the archaeologist on the results of the monitoring.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site.

14. Equivalent sound levels attributable to all on-site operations associated with the development shall not exceed 55 dB(A) (L_{eq}) over a continuous one hour period between the hours of 08:00 to 18:00 Monday to Saturday inclusive, when measured outside any dwelling house in the vicinity of the site. Sound levels attributable to all on-site operations associated with the development shall not exceed 45 dB(A) at any other time (i.e. outside of the above working hours). No noise level shall exceed the limit value by more than 2 dB(A).

All sound measurements shall be carried out in accordance with ISO Recommendations R 1996, "Assessment of Noise with Respect to Community Response" as amended by ISO Recommendations R 1996/1, 2 and 3, "Description and Measurement of Environmental Noise", as appropriate.

Reason: To protect the amenities of properties in the vicinity of the site.

15. Total dust emissions arising from the on-site operations shall not exceed 350 mg/m²/day (when averaged over a continuous period of thirty days) when measured by the Berghoff method as deposition of insoluble particulate matter at any position along the boundary of the development.

Reason: In the interests of public health and protecting the amenities of properties in the area.

16. In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year) the owner or operator shall monitor and record the equivalent continuous sound level, L_{eq} , attributable to the on-site operations associated with the proposed development.

In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year) the owner or operator shall monitor and record the total dust emission (deposition of insoluble particulate matter) arising from the on-site operations associated with the proposed development.

In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year), the owner or operator shall monitor and record the quality of groundwater and/or any receiving water body or course beneath or adjacent to the quarry.

The number and locations of monitoring and recording stations for noise, dust deposition and water quality shall be as agreed between the owner or operator and the planning authority within three months of the monthly equivalent of 6,300 tonnes per annum being exceeded.

The dates of commencement and the frequency of monitoring and recording operations for noise, dust deposition and water quality shall be agreed between the owner or operator and the planning authority in writing within three months of the monthly equivalent of 6,300 tonnes being exceeded.

All data obtained from monitoring and recording in compliance with the relevant parts of this condition shall be made available to the planning authority on an annual basis.

The planning authority shall, from time to time, be afforded the opportunity to inspect, examine and check or to have inspected, examined and checked all apparatus and equipment used or required to carry out the monitoring and recording operations required by this condition.

The matters referred to and required to be as agreed between the owner or operator and the planning authority in these conditions shall be reviewed at intervals of not more than one year following initial agreement or determination and the matters, or any one or combination of them, may be varied following such review if the planning authority requires the variation and the owner or operator agrees to it or if the owner or operator requests the variation and planning authority agrees to it.

Reason: In the interest of orderly development and residential amenity.

17. During dry weather conditions, the operator shall ensure that dust from the movement of machinery, vehicles and windblown on-site dust is controlled. All stockpiles of excavated material and all roads and haul tracks in the quarry shall be sprayed with water during dry weather conditions, sufficient to ensure that no wind-blown dust is emitted outside the boundaries of the site.

Reason: In the interests of public health and protecting the amenities of properties in the area.

18. All loaded trucks leaving the site with materials having a particle size of smaller than 6 mm shall be covered so as to prevent the spilling or any loss of material. This requirement shall be implemented within three months of the date of this decision.

Reason: In the interests of public health and protecting the amenities of properties in the area.

19. The Owner or operator shall institute appropriate measures to prevent material being drawn from the site onto the public road. No earth, soil or other material from this site shall be drawn or deposited onto the public road.

Reason: In the interests of traffic safety.

20. In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year) an automatic wheel and underbody cleaning facility, including high-pressure pumped washers shall be installed, maintained and operated to the satisfaction of the planning authority at all places where vehicles laden with materials/minerals exit onto public roads. All vehicles carrying material off the sites (haul trucks and mixers) shall pass through the cleaning facilities and shall be washed in such a way so that no material is deposited upon the public road system.

Reason: In the interests of public health, traffic safety and to prevent pollution.

21. In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year) the permanent internal roadway system of the quarry shall be so designed and constructed that all vehicles larger than a passenger car, MPV or jeep shall at all times when leaving the quarry site be routed through the wheel/chassis cleaning facility, with no alternative route bypassing the wash facility being available for such vehicles. Any separate roadway/s for the exiting of the facility for passenger cars, MPV's or jeeps that are not routed through the wheel and underbody cleaning facility shall be fitted with fixed height restriction gates to limit vehicle heights to a maximum of 2.1m, so as to prevent the entry of all goods or utility vehicles.

Reason: In the interests of public health, traffic safety and to prevent pollution.

22. In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year) a minimum of 20 metres of paved roadway shall be provided between the nearest public road and the internal quarry road system / wheel and chassis wash facility required by condition of this order. In any event, the entire roadway between the wheel wash facility and the public road shall be paved roadway. This roadway shall be hard paved and well maintained, with a minimum width of 6 metres. This roadway shall also be kept clear of mud and dust at all times during opening hours of the quarry by means of a sprinkler system or a water bowser, or a water-based road sweeping machine. The road-cleaning equipment must be available for inspection and demonstration as to its proper functioning at any time during opening hours of the quarry.

Reason: In the interests of public health, traffic safety and to prevent pollution.

23. In the event of the mechanical break-down of a pumped water system/s, the rumble grate and access roadway shall be regularly flushed by alternative means such as a water truck or drawn tanker for the entire period of the down-time during the hours that the quarry is open. A hard-paved road between the end of the wash facility and the public road shall also be regularly flushed by similar means, and swept with a road-sweeper machine.

Reason: In the interests of public health, traffic safety and to prevent pollution.

24. In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year), full details and plans (including a site layout plan) of the wheel wash facility and the internal quarry road/circulation system, complying with the requirements and specifications set out in this order, shall be submitted for the written approval of the planning authority within three months of the date of notice to that effect from the planning authority.

Reason: In the interest of limiting the emissions of earth, soil and dust to protect local amenities and in the interests of traffic safety.

25. Adequate water and hose capacity shall be provided on site for the washing and dampening activities required by condition of this decision. Where water pressure/capacity is inadequate, suitable booster pumps shall be provided.

Reason: In the interests of public health and protecting the amenities of properties in the area.

In the event that any treatment waters are discharged outside the boundaries of the site or stored for recycling or reuse, the owner or operator shall provide a settlement lagoon system for the treatment of, and removal of all suspended sediment from surface waters from the site prior to discharge. All waters arising from within the facility shall be directed to the lagoon system prior to discharge. All discharges from the lagoon system shall pass through a Class 1 Full Retention Oil/Water Interceptor system prior to final discharge. Plans, specifications and details of the final location and design of both the lagoon and oil/water interceptor systems shall be submitted for the written approval of the planning authority within three months of a notice from the planning authority to that effect

Reason: To prevent pollution.

27. Sediments shall be removed from any silt traps/settling tanks/washer tanks on an annual basis (or more frequently, as deemed necessary by the rate of deposition) and shall be disposed of in an environmentally safe manner. In the event that any sediment is contaminated with hydrocarbons, the operator shall liaise with the Environment Section of Kerry County Council to agree to a suitable location for the proper and safe disposal of all such sediment. A copy of any agreement reached with the Environment Section shall be forwarded to Planning Authority for their approval within three months of the conclusion of such an agreement.

Reason: To prevent pollution and protect groundwater.

28. No water that is contaminated with silt, soil, oil or any other pollutant shall be discharged outside the boundaries of the quarry workings, into the earth below the quarry workings, or into any drain or watercourse.

Reason: To prevent pollution.

29. No waste water shall be discharged to a watercourse without the prior issue of a Discharge Licence issued by Kerry County Council (Environment Section) under the Water Pollution Acts.

Reason: To prevent pollution.

30. Any fuel supplies and other services on-site shall be used only to service vehicles and machinery directly involved in the extraction of aggregate within the site, and the transport of those materials and products.

Reason: To safeguard public health and to prevent pollution.

31. Any over ground tanks containing liquids other than water shall be contained in a waterproof bunded area, which shall be of sufficient volume to hold 110% of the volume of the largest tank within the area, or 25% of the total storage capacity of the all the tanks in the area (whichever is greater). All water contaminated with hydrocarbons including storm water shall be discharged via a grit trap and three-way oil interceptor with sump to a watercourse. The sump shall be provided with an inspection chamber and shall be installed and operated in accordance with the requirements of the planning authority.

Reason: In the interest of orderly development and to protect the groundwater of the area.

If any refueling of vehicles or machinery takes place at this site, portable spill containment trays/berms/pallets designed specifically for the containment of hydrocarbon spills shall be deployed in accordance with the manufacturers specifications at all locations and times that refueling is undertaken in such a way that no spills of such liquids are permitted to reach the natural ground/ quarry floor. Spillage kits shall also be provided on site where the transferring or temporary storage of hydrocarbons takes place. Spillage kits and spill containments trays/berms/pallets shall be available for inspection by the planning authority at all times during quarry operating hours.

Reason: To prevent pollution and protect groundwater.

33. Any permanent toilets and ablution facilities that may be installed shall be provided with a septic tank and percolation area constructed and maintained in accordance with the guidelines and recommendations of the Environmental Protection Agency for the satisfactory disposal of waste water. Temporary toilet facilities shall not be emptied anywhere on the site or adjacent lands.

Reason: To safeguard public health and to prevent pollution.

34. All waste material (including waste from all temporary toilet facilities) shall be stored and disposed of in accordance with the requirements of the planning authority. Only licensed operators who dispose of waste to authorised facilities only shall be employed for the removal of such waste from the site. Written receipts or invoices of such contractors/operators shall be kept for at least one year for inspection by the planning authority.

Reason: To safeguard the amenities of the area, prevent pollution, and ensure that waste is properly disposed of.

35. Any disused plant, machinery and scrap materials shall be removed from the site within six months of its use being discontinued. Scrap materials shall be deemed to include scrapped trucks, diggers, other scrapped vehicles, appliances, machinery, empty oil barrels, broken or otherwise unusable truck bodies, worn out conveyor belts/chains, vehicle and digger parts, worn out batteries, tires, scrapped or demolished sheds or other structures and worn out conveyor/roller shafts and other machinery parts.

Reason: To safeguard the amenities of the area.

36. Any on-site lighting shall be cowled and directed away from the public road and adjoining dwellings, and shielded horizontally and vertically to prevent glare or light spillage outside the site. All external lighting shall be of the sodium type. No mercury vapour lamps are to be used on this site.

Reason: To safeguard the amenities of the area and prevent light pollution of the night sky.

37. The site perimeter shall be securely fenced with stock-proof fencing, with adequate, durable warning signs affixed thereto at intervals of not less than 100 metres. Details of the proposed boundary fencing, including all proposed warning signage fixed to same, shall be submitted to the planning authority for written agreement within three months of the date of this decision. The fencing and signs shall be erected within 6 months of the date of this order.

The fencing and signage shall at all times during the life span of this permission be maintained in good working order.

Reason: In the interest of public safety.

38. Entrance gates to the site shall be locked shut at all times when the facility is closed/unsupervised, so as to prevent the entry of unauthorised persons and vehicles to the site.

Reason: In the interests of public safety.

39. Warning signs shall be provided as appropriate on the approaches to entrance to the quarry, to the satisfaction of the planning authority and maintained at all time in satisfactory condition throughout the life of the quarry. These signs shall be clearly legible from the public roadway at the entrance to the site, and shall be maintained so as to not be obscured or rendered illegible by dust, mud or vegetation for a distance of at least 100 metres from the signs on approach to the quarry entrance.

Reason: In the interest of public safety.

40. No blasting operations shall take place at this site.

Reason: In the interest of protecting local amenities, property and public safety.

41. Within three months of the date of this decision the owner or operator shall submit for the written agreement of the planning authority a detailed landscaping and restoration plan, having regard to soil conditions and the existing and future landform of the site, in respect of the overall quarry, prepared by a competent and qualified landscape architect or horticulturist. The detailed landscaping plan shall be sympathetic to the existing ecology of the area and should ensure that the existing rural character of the area is respected and enhanced, and shall, among others, address the following:

- the phased restoration of the site, following excavation,
- detailed proposals for buffer zones along the boundaries of the site, which shall provide for earth berms and/or screening planting, adequately provide visual screening of the excavated faces of the quarry as viewed from all public roads and the ground floor levels of any nearby residential properties.
- the planting of the buffer zone areas with suitable screening trees,
- a timescale for implementation of the plan, including a schedule and procedure for the replacement of failed plants.

Reason: In the interests of visual and residential amenity.

43. In the event that the rate of extraction exceeds the monthly equivalent of 6,300 tonnes per annum (300 X 21t loads per year), the owner/operator shall submit for the written agreement of the planning authority a proposal for an **Environmental Management System (EMS)**. This shall include the landscape plan required as condition of this order, plus provisions for the following: -

- proposals for the suppression of on-site noise,
- proposals for the on-going monitoring of sound emissions at dwellings in the vicinity,

- proposals for the suppression of dust on-site and on the access roads and haul road,
- proposals for the bunding of fuel and lubrication storage areas, and details of emergency action in the event of accidental spillage,
- details of safety measures for the land above the quarry, to include warning signs and stock proof fencing,
- management of all landscaping,
- monitoring of ground and surface water quality, levels and discharges, and measures to be adopted in the event of a water supply being disrupted by the quarry development,
- proposals for the provision of unhindered access to officials of the planning authority or its authorised agents to carry out inspections, sampling, monitoring or other investigations as deemed necessary,
- details of the instrumentation, means to be used and the method of measurement of noise and dust emission, and
- full details of site manager, contact numbers (including out of hours), and public information signs on the entrance to the facility.

All actions specified in the EMS shall be implemented within six months of the date of agreement with the planning authority.

In the event of Trigger Levels being reached or exceeded for any of the specified monitoring parameters, including those referred to in conditions of this order, the owner or operator shall notify the planning authority without delay, and shall carry out any remedial measures specified by the planning authority, including, if necessary, cessation of works. The determination of appropriate "Trigger Levels" in relation to the conditions of this permission shall form part of the agreed EMS.

Reason: In the interest of safeguarding local amenities and the protection of public health.

45. On or before the 1st day of March of every year for the lifetime of the facility, the owner or operator or any subsequent owner shall submit to the planning authority three copies of an environmental audit report. The audit shall be carried out by an independent environmental auditor or quarry expert approved by the planning authority. All costs involved in the preparation and compilation of the report shall be borne by the developer/owner. The report shall contain the following:

- Records of any noise, dust and water quality monitoring carried out in the previous 12 month period;
- Records of any and all complaints relating to the quarry operation received in the previous 12 month period, and of any actions taken on each complaint;
- Records of all maintenance works (including de-sludging) of any settlement ponds (including the wheel wash facility required for the development).
- Records of movements of all loaded HGV's leaving the facility.
- Records of quantities of all extracted material for the audit year (1 March to end February), for the purposes of calculating the "Road Infrastructure Contribution – Extractive Industry" levy.
- A site layout map to a recognised scale clearly indicating the area quarried during the previous year (1 March to end February), and the plan of works for the coming year.

the annual audit and all other agreements to be reached between the applicant and the planning authority as required by way of the conditions in this permission shall be in writing.

Reason: In the interest of safeguarding local amenities and the protection of public health and the environment.

46. In the event of the planning authority being required to conduct investigations as a result of complaints received in terms of Section 152 (1) (a) of the Planning and Development Act 2000, or where it appears to the authority that conditions of this order are not being complied with, the full cost of the investigation shall be borne by the owner or operator of the quarry.

Should it be necessary for the equivalent continuous sound level, (Leq), the total dust emissions (deposition of insoluble particulate matter) or surface or groundwater associated with, arising from, or attributable to the on-site operations to be monitored as a result of a complaint or an enforcement action, the full cost of such monitoring shall be borne by the owner or operator of the quarry.

In addition, where any remedial work may be required arising from or as a result of the above, the full cost of the works shall be borne by the owner or operator of the quarry.

Reason: In the interests of the equitable allocation of the costs of non-compliance.

47. The owner or operator shall pay a contribution to Kerry County Council (Planning Authority) in respect of public infrastructure and facilities benefiting the development. This contribution shall be payable annually to the planning authority starting from 28 April 2008, and each year thereafter on the anniversary of the first payment.

The amount of this contribution shall be calculated in accordance with the "Road Infrastructure Contribution – Extractive Industry" in Council's prevailing Standard Development Contribution Scheme and will be increased from January 1st 2008 and annually thereafter (unless previously discharged) in line with the Wholesale Price Index for Capital Goods, Building and Construction as published by the Central Statistics Office, unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

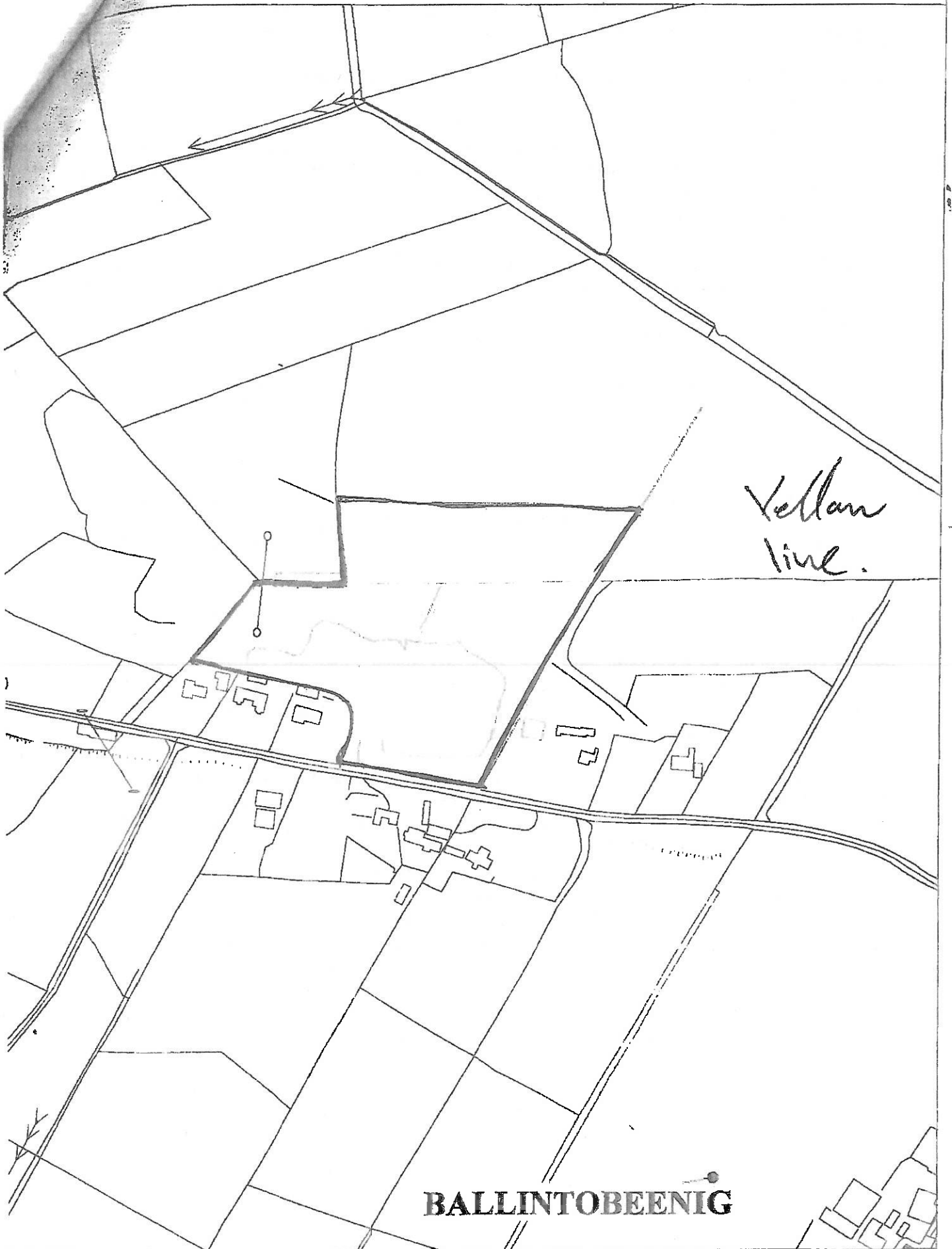
Annual payments shall be based upon the proven extraction of material of the previous year, calculated from 1 March to end February each year. The owner or operator shall provide all necessary certified records to verify the rate of extraction upon which this levy shall be calculated.

REASON : It is considered appropriate that the Owner or operator should contribute towards the cost of public infrastructure and facilities benefiting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act and that the level of contribution payable should increase at a rate in the manner specified in that Scheme.

Note: the current contribution scheme provides for the "Road Infrastructure Contribution – Extractive Industry" to be payable only for rates of extraction in excess of 10,000m³ p.a.

* * * * *

"QYO45 Quarry Site Location Map"



BALLINTOBEENIG

QY045

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

KERRY COUNTY COUNCIL

Name of owner/operator of quarry(s):	<i>O Mahoney Quarries, Caroline O Mahoney</i>
Address:	<i>Ballintobeenig Abbeydorrey Co. Kerry</i>
Telephone Number:	087 1 100 100
Fax Number:	
E-mail address (if any):	
If owner/operator is a company-	
Name of Company:	<i>O Mahoney Quarries</i>
Registered Address of Company:	<i>Ballintobeenig Abbeydorrey Co. Kerry</i>
Companies Office Registration Number:	<i>241576.</i>
Location, Townland or postal address of quarry concerned:	<i>Ballintobeenig Abbeydorrey Co. Kerry</i>
Please indicate an Ordnance Survey Map Ref No. and the Grid Reference where available. A site location map to scale of not less than 1:2500 should also be attached. The map should indicate (a) the site boundary (outlined in red) and (b) the current workable area (outlined in blue).	

RECEIVED
20 APR 2005
PLANNING AUTHORITY
REG No.

KERRY COUNTY COUNCIL
QY 045
PLANNING OFFICE
QUARRY

KCC Photos on File.

<p>Was planning permission under Part IV of the Local Government (Planning and Development) Act, 1933 granted? If YES, please quote the reference number of the permission and include a copy.</p> <p>Plan Ref. No.:</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p>
<p>Did the quarry commence operation before 1st October 1964? If YES, please supply any available documentary evidence:</p>	<p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> <i>Material from this Quarry was used in making the Inlet to Linstowel Road. See letter from Rev J. Flynn Road Engineer.</i></p>
<p>Total site area of quarry (hectares):</p>	<p><i>35 Acres approx.</i></p>
<p>Extraction area of quarry (hectares):</p>	
<p>Types of material being extracted:</p>	<p><i>Shale + stone.</i></p>
<p>Date which quarrying commenced on the land? (If operation of the quarry was only periodic please give details of dates of operation, if known - See Chapter 5 of Guidelines):</p>	<p><i>This was an old Council Quarry. (See Council File) Also enclosed letter from Road Engineer Mtd. Flynn to prove Quarry was operating since 1960.</i></p>
<p>Quarry operating hours:</p> <p>(i) Plant operating hours:</p> <p>(a) Weekdays</p> <p>(b) Saturdays</p> <p>(ii) Loading/Off-site Haulage Hours (if different from above)</p> <p>(a) Weekdays</p> <p>(b) Saturdays</p> <p>(iii) Hours (outside normal opening hours required to services exceptional customer requirements:</p>	<p><i>8 A.M. - 6.00 P.M. 6 days a week.</i></p> <p><i>Same.</i></p>

KERRY COUNTY COUNCIL
 045
 PLANNING OFFICE
 QUARRY

ne traffic generated by the operation of the quarry? (Type and frequency of vehicle entering and leaving the quarry).	Some days no had leaving quarry all depends on demand. Mostly tractors & trailers.
Please give details of emissions (noise, dust, water, etc.) from the quarry where measurements are available.	None.
Please note that any changes to the particulars noted above must be brought to the attention of the planning authority as soon as possible.	
Name (BLOCK CAPITALS):	CAROLINE MAHONEY
Signature:	Caroline Mahoney.
Position with firm/company ²	Owner.
Date:	20/4/05.

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

The following documents MUST be attached:

- 1 Copy of Company Registration Certificate (in the case of companies)
- 2 Copies of the following maps: 1:2500 (site map) and 1:10560 (location map), with the site clearly outlined.
- 3 6 copies of all documentation

I have already explained to Mr Dedar Murphy went to considerable expense with Engineers you Malachy Walsh & Sullivan a few years back. It cost me a lot of money then I do not intend spending more in maps. It you already have from that time.

KERRY COUNTY COUNCIL	
QY	045,
PLANNING OFFICE QUARRY	

Rural PLACE Map

QY045
 ITM CENTRE PT COORDS
 488424,618141

DESCRIPTION

MAP SHEETS

Digital Map
 5458



Produced by Kerry County Council,
 Town Hall, Kilmaley, Co. Kerry
 On behalf of Ordnance Survey Ireland,
 Phoenix Park, Dublin 8.

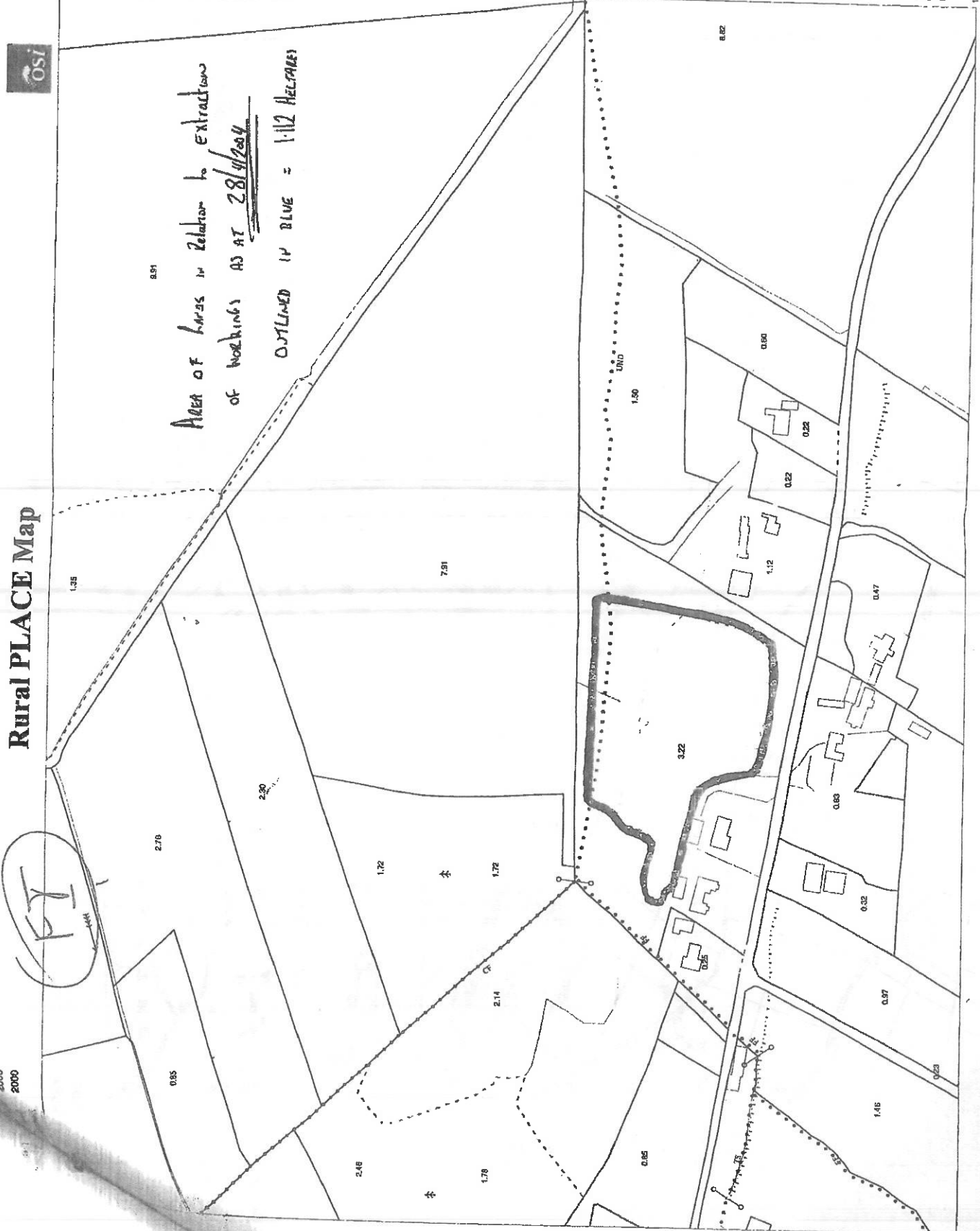
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AREA OF LINES IN RELATION TO EXTRACTS
 OF WORKINGS AS AT 28/1/2004
 OUTLINED IN BLUE = 1:12 HELPPLES



Scale: 1:2,500
 Scale: 1:2,500

Plot Ref. No. 1149266.1_6
 Plot Date 22-SEP-2006

Record PLACE Map

84045

ITM CENTRE PT COORDS
488424,619141

DESCRIPTION

MAP SHEETS

6 inch
KY029
KY030
KY021



Produced by Kerry County Council,
Town Hall, Killeeney, Co. Kerry
On behalf of Ordnance Survey Ireland,
Phoenix Park, Dublin 8.

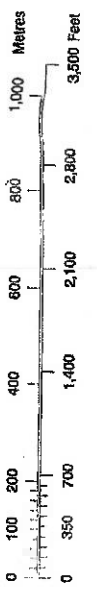
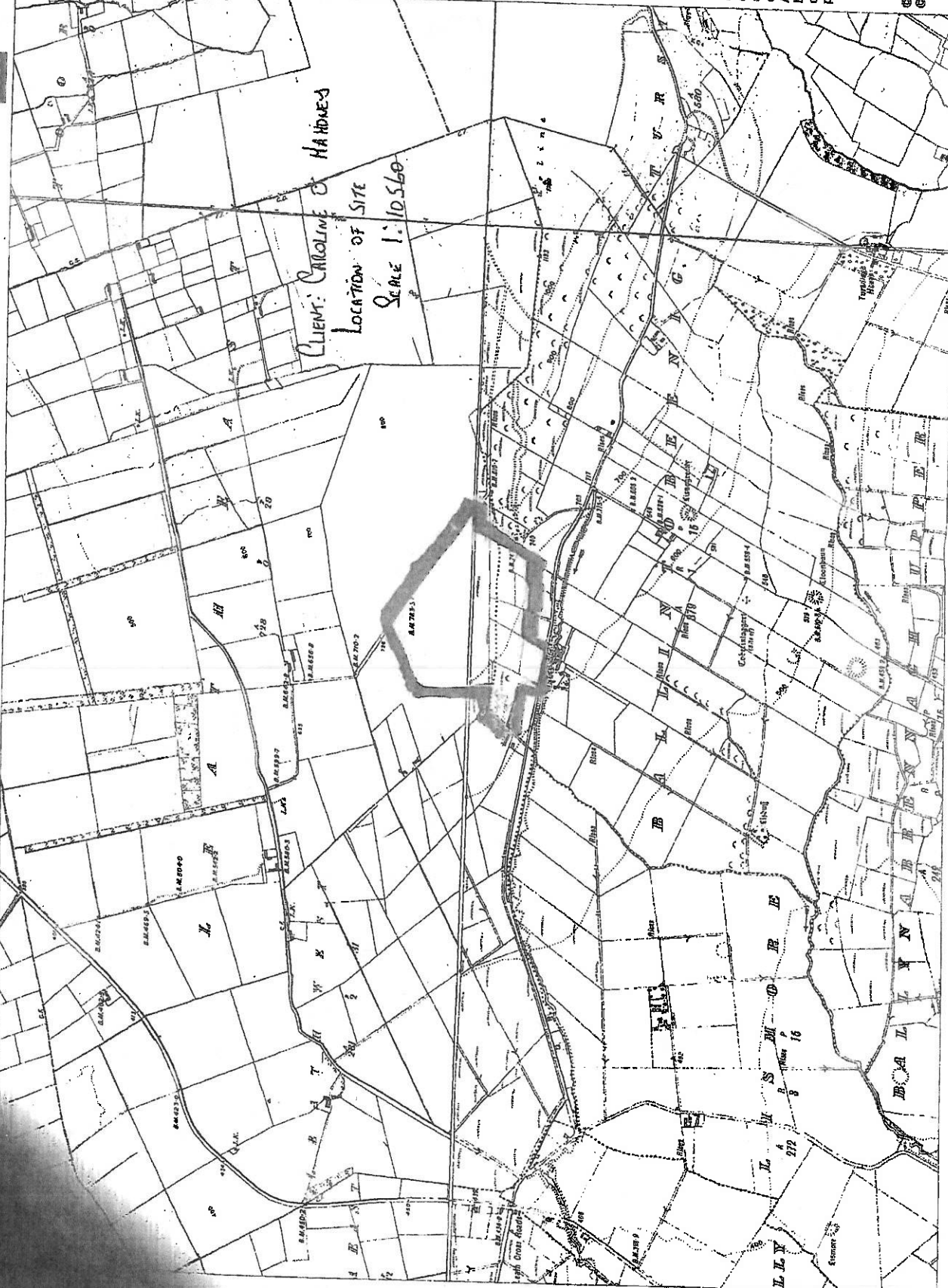
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117790
80202



Scale:- 1:10,560
Scale:- 1:10,560

Plot Ref. No. 1149266_1
Plot Date 22-SEP-2006

117790 86696

Rural PLACE Map

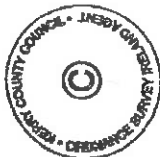
2000
2000



119266
ITM CENTRE PT COORDS
488424,619141
24045
Recorded
2014/05

DESCRIPTION
MAP SHEETS

Digital Map
5458

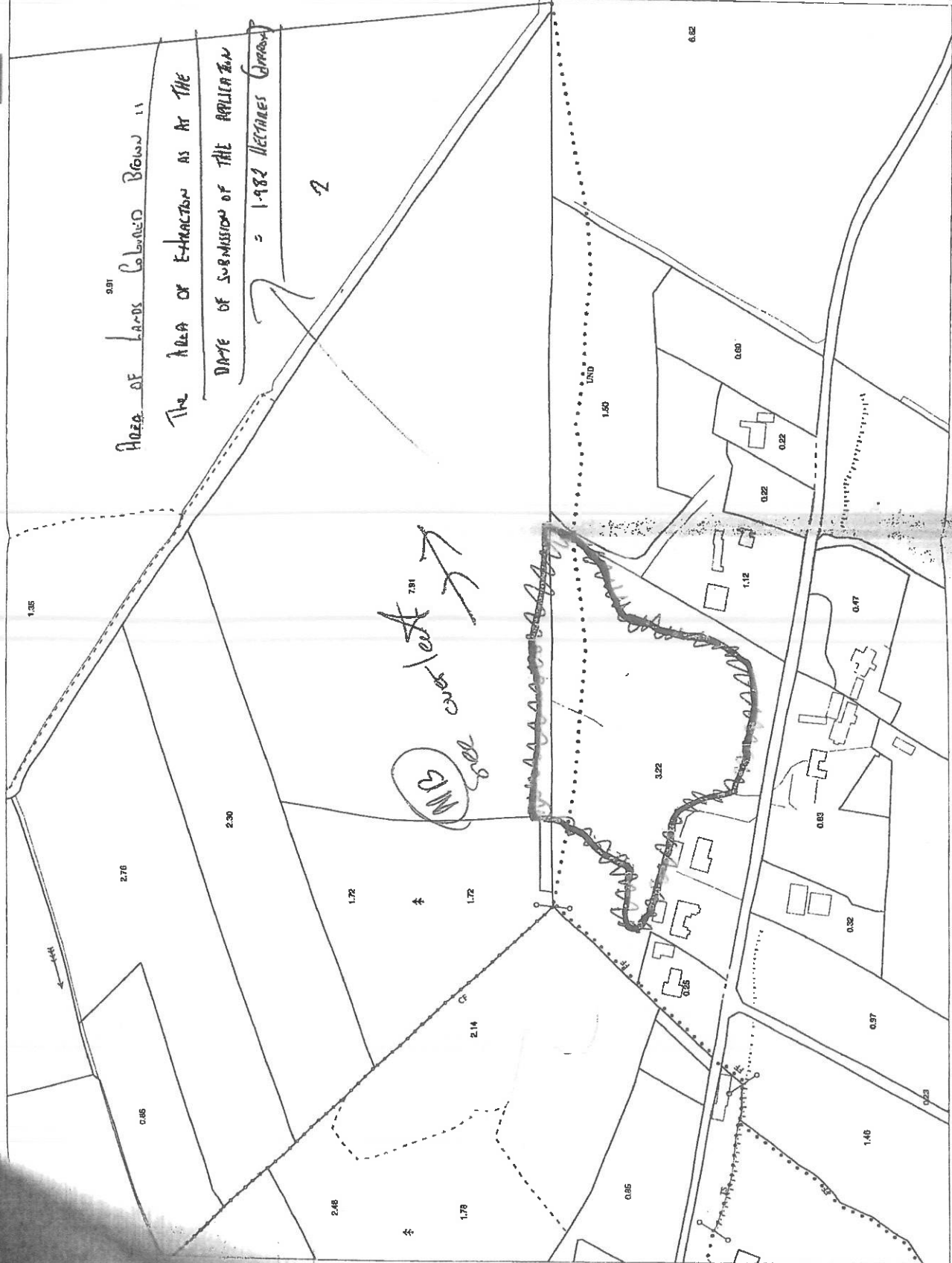


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Scale:- 1:2,500
Scale:- 1:2,500

Plot Ref. No. 1149266_1_2
Plot Date 22-SEP-2006

119266

88864

Appendix 2 – Section 261A Documents

KERRY COUNTY COUNCIL
Section 261A P & D Act 2012

EIA SCREENING REPORT

Ref No:	EUQY045
Owner / operator	O'Mahony's
Location	Ballintobeenig, Abbeydorney.
EIA previously carried out	NO
If yes Pl. Ref. No:	-----
Area of extraction >5 hectares:	NO (3.46Ha)

Quarry location and description:

The existing quarry is located on the Southern slope of Stacks Mountain. The quarry is a sandstone quarry. The existing landscape surrounding the quarry consists of upland peat, upland grazing and at slightly lower contour levels, grassland. Ground water appears not to have been pumped from any extraction areas. Excavation has remained above the ground water table. Ground and surface waters flow through the quarry towards the south west corner. 11

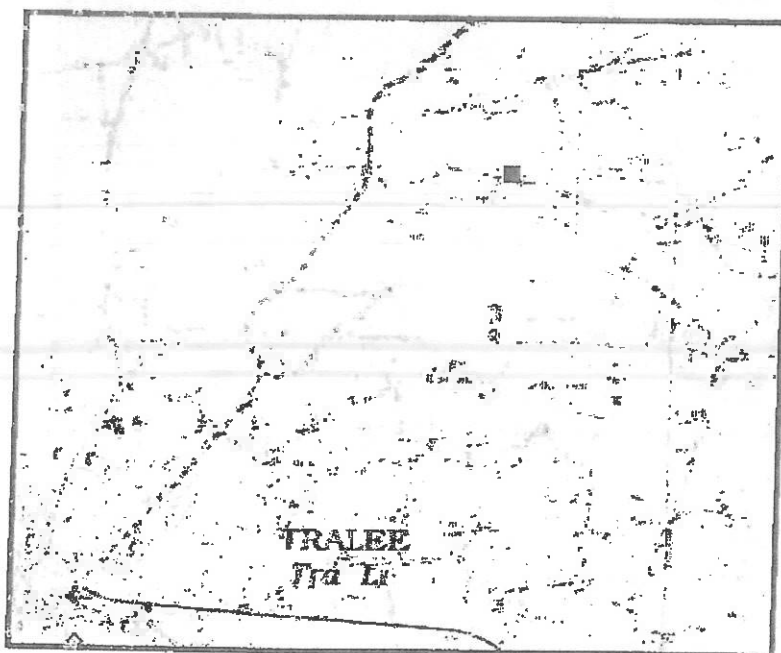


Figure 1: Site Location.

Development after 1st February 1980:

From an analysis of the aerial photos on file, dated 1995, 2000, 2006 and the survey carried out on the 22nd of October 2011, I am satisfied that this quarry has been substantially developed since 1980.

Human Environment:

There are approximately 19 (No.) dwellings located within 500 metres of the boundary of the quarry. The adjacent public road has remained in good condition, but shows some minor signs of deterioration. There is a designated Shell fish Habitat 10 km south west of the site in Tralee Bay. This area is a source of shell fish for human consumption and in particular a source of local employment / economic activity. Surface waters discharging from the quarry ultimately discharge to the Big River and to Tralee Bay.

Ecology:

The quarry is located within and immediately adjacent to a Special Protection area (Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA). The nearest Special Area of Conservation is located approximately 6.3km to the east (Smerlagh River) and 5.3 km to the south (Ballyseedy wood). The Big River while not designated as a Natura 2000 site, is located upstream of the Tralee Bay Natura 2000 sites (Tralee Bay and Magharees Peninsula, West to Cloghane SAC Site Code 002070) and the Tralee Bay Complex SPA [Site Code 004188]).

There is a designated Shell fish Habitat 10 km south west of the site in Tralee Bay.

A separate report dealing specifically with Natura 2000 sites and whether or not an Appropriate Assessment was necessary will be carried out.

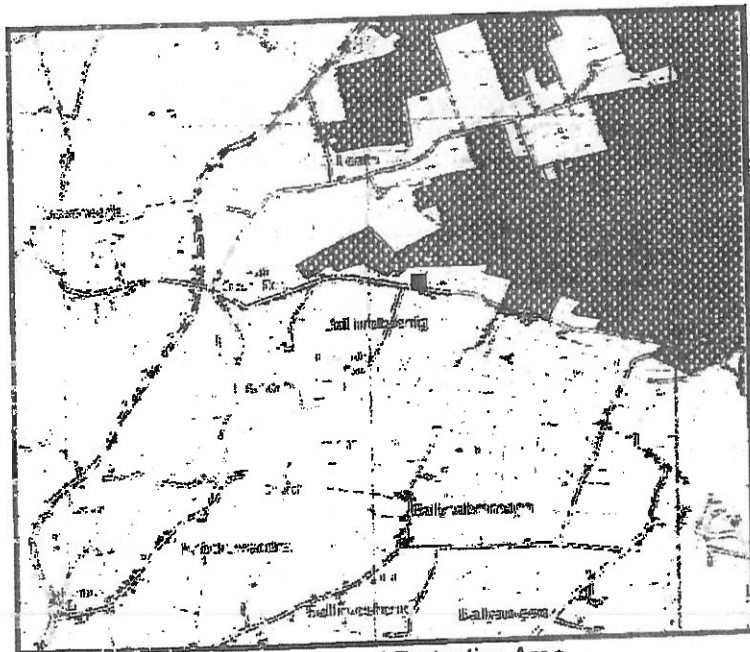


Figure 2: Special Protection Area.

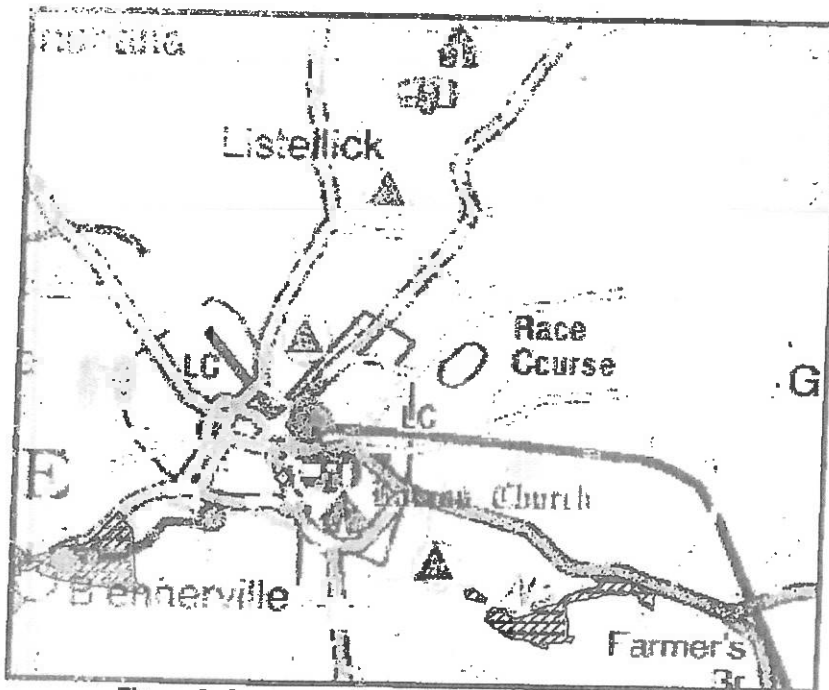


Figure 3: Candidate Special Areas of Conservation.

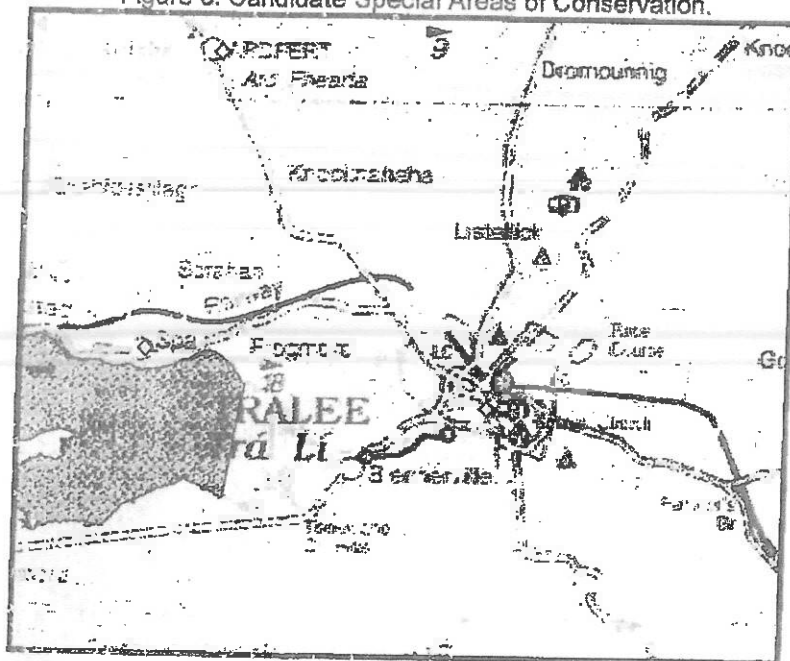


Figure 4: Shell fish habitat.

Water: (Surface Water)

The quarry is located in the Channon River Basin District

Surface water originating from the quarry flows towards the south west ultimately discharging into the Big River. There is no evidence of silt ponds within or surrounding the quarry. Surface water ultimately discharges to the River Lee and to Tralee bay, a designated candidate SAC, SPA and shell fish habitat.

medium: (ground)

According to the Geological Survey of Ireland the ground water aquifer at this location is classified as a *locally Important Aquifer*. In addition the ground water vulnerability is given as *Extreme*. According to the GSI there are ground water wells located within 1.2 km of the quarry.

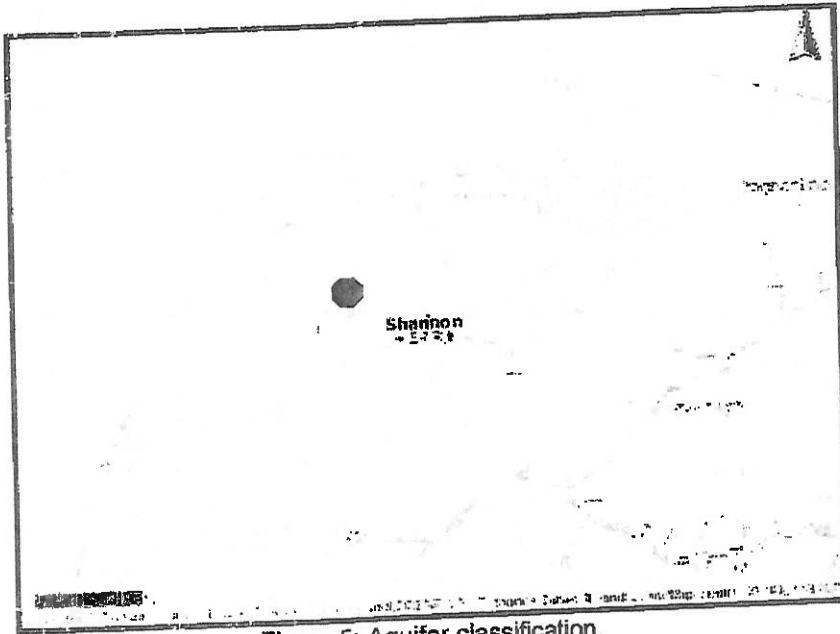


Figure 5: Aquifer classification.

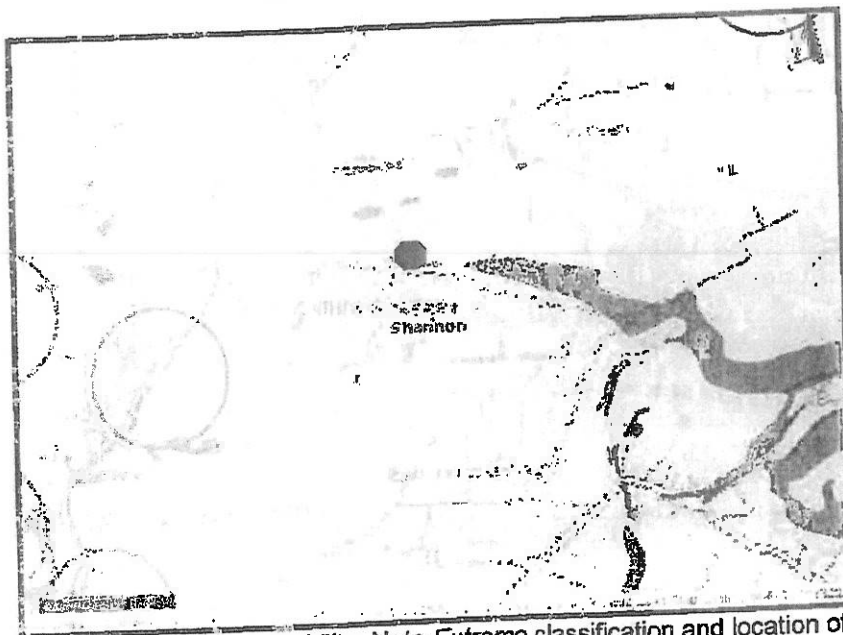


Figure 6: Ground water vulnerability. Note *Extreme* classification and location of wells.

Subsoil:

According to the Teagasc subsoil data (from the GSI) the quarry site previously consisted of Rock outcrops, Blanket Peat and Till derived from Namurian rocks. There is also an area of Blanket peat immediately adjacent to the north and north east of the excavation area. This areas of peat continue to rise towards the north and north east. Quarrying activities could potentially interfere with slope stability of peatlands located on sloping ground either directly via excavation or loading works or more indirectly via vibration or hydrological impacts. Based on the information presently available it is not possible to discount the possibility of a slope failure as a result of quarrying activities at this location.

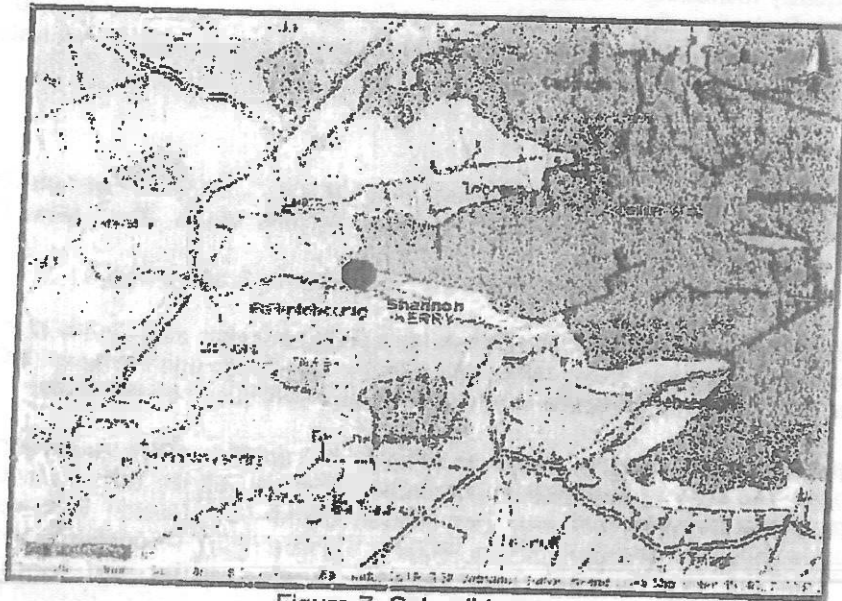


Figure 7: Subsoil types.

Bedrock geology:

Bedrock in the Quarry and surrounding areas consists of Namurian undifferentiated rock (Shale, Sandstone, Siltstone and Coal).

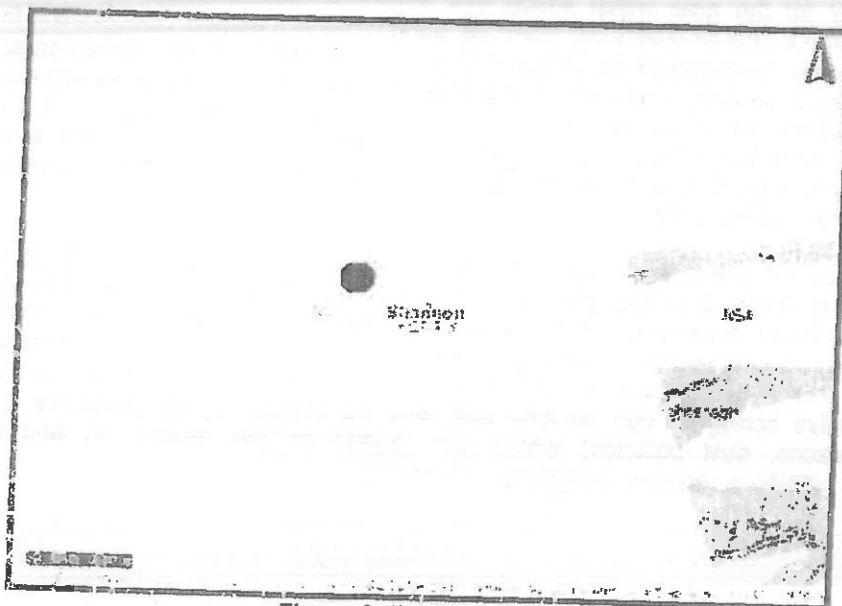


Figure 8: Bedrock type.

Air Quality

The Environmental Protection Agency (EPA) has overall responsibility for the co-ordination of ambient air quality monitoring in Ireland in accordance with EU Directives. Accordingly, the Environmental Protection Agency (EPA) air quality database was consulted to gather information on air quality in the vicinity of the project. In compliance with the legislation, the EPA defined four zones for air monitoring:

- Zone A: The Dublin urban area
- Zone B: The Cork urban area
- Zone C: Other cities and large towns including Galway, Limerick, Waterford, Clonmel, Kilkenny, Sligo, Drogheda, Wexford, Athlone, Ennis, Bray, Naas, Carlow, Tralee and Dundalk
- Zone D: Rural Ireland; the remaining areas excluding A, B and C above.

In general, Ireland has not had serious outdoor air quality problems since restrictions on the burning of coal in many urban areas came into effect in the 1980s and the early 1990s. The biggest threat now facing our air quality is recognised as emissions from road traffic.

The EPA rates air quality using an Index to simplify the analysis of the parameters for a particular zone. The suite of parameters monitored nationally reflects both the regulations and the dependence on fossil fuels and can include Ozone (O₃), Carbon Monoxide (CO), Nitrogen Dioxide (NO₂) and Nitrogen Oxides, Sulphur Dioxide (SO₂), Particulate Matter (PM₁₀ and PM_{2.5}), Benzene, Poly Aromatic Hydrocarbons, Arsenic, Nickel, and Mercury. The pollutants of high concern are derived from the transport sector and include Nitrogen Dioxide and Particulate Matter. Ambient concentrations of lead have decreased in recent years with the introduction of unleaded petrol.

The air quality for the area within which this quarry is located (Zone D) is presently characterised in the EPA air quality database as 'good'. This is a general classification for the zone and is heavily influenced by the absence of large scale heavy industry / urban areas and the prevailing south westerly winds. Quarrying activities and associated activities can result in elevated Particulate Matter concentrations and Nitrogen Dioxide concentrations at a more localised level, both from direct (quarrying, crushing etc) and indirect (transport) sources. Wind can carry dust particles well beyond site boundaries and fine materials from lorries can be deposited along public roads.

These pollutants can affect the health and well-being of sensitive population groups and ecosystems. The DoEHLG (2004) guidance document for planning authorities on quarries and ancillary activities notes that 'residents living in proximity to quarries can potentially be affected by dust up to 0.5km from the source, although continual or severe concerns about dust are most likely to be experienced within about 100m of the dust source (DoEHLG 2004)'. Similarly sensitive ecological communities can also be affected by air pollutants, (NOx, tropospheric ozone, dust pollution) which can impact on soil fertility, pH and other environmental conditions required for ecological integrity.

Archaeology:

A designated Archaeological monument is located 400 metres west of the quarry. In addition there are approximately 7 additional monuments 600-800 metres south of the site. An archaeological Impact Assessment has not been carried out at any stage during the development of the quarry.



Figure 9: Archaeological Monuments in the vicinity of the quarry.

Noise:

Rock is extracted by means of a rock breaker and is crushed and processed on site. The nearest sensitive receptors are dwellings located immediately adjacent on the southern boundary.

Landscape:

The quarry site and surrounding area are classified as Rural General Development in the current County Development Plan.

Assessment:

The most sensitive environmental areas relative to this existing quarry are considered in the table below:

Criteria for determining whether a Quarry would or would not be likely to have a significant effect on the Environment.

1. Characteristics of Quarry	
Size of quarry	3.9Ha
Cumulation with other quarries / developments	No adjacent quarry developments
Use of Natural Resources	<ul style="list-style-type: none"> o Peat and soil overburden removed. o Extraction of sandstone rock.
Production of waste	<ul style="list-style-type: none"> o Peat and soil overburden stored on site. o Waste silt from rock processing stored on site.
Pollution and nuisance	Noise and dust.
The risk of accidents having regard to substances or technologies used	<ul style="list-style-type: none"> o No hazardous activity on site posing a significant risk to a habitat or human environment. o Risk of small scale spillage of oils / hydrocarbons.
2. Location of Proposed Development	
Existing land use	Quarry.
Previous land use	Blanket Peat and upland grassland.
Relative abundance, quality and regenerative capacity of natural resources in the area	Peat and soil overburden removed. Sandstone rock removed. Regenerative capacity minimal.
Absorption capacity of the natural environment, paying particular attention to the following areas:	<ul style="list-style-type: none"> o Nearest resident located on south boundary. 19 (No.) dwellings within 500 metres. Tralee o Town is the nearest densely populated area. o Adjacent Archaeological monument located 400 metres east of site. o Nearest settlements: Tralee 4km. o SAC located 5.3 north, 6.3 km south and 8km south west. o Shellfish Habitat located 10 km south west. o Site located immediately adjacent to and within an SPA. Habitat loss. o Site not considered to be located within the coastal zone o Forestry and wetlands widespread in the Stacks area
<ul style="list-style-type: none"> o Wetlands o Coastal zones o Mountain and forest areas o Nature reserves and parks o Natura 2000 sites o Areas in which environmental quality standards laid down by the EU have already been exceeded o Densely populated areas o Landscape of historical, cultural or archaeological significance 	

3(a) Characteristics of Potential Impacts

Questions to be Considered	Yes / No? Briefly describe:	Likely to result or has it resulted in a significant effect? Yes/No?	Significance of Impact:
Has the construction, operation or decommissioning of the Project involved actions which have caused / will continue to cause / will cause physical changes in the locality (topography, land use, changes in water bodies, etc)?	YES, excavation of 3.9 Ha of sandstone rock and removal of overburden.	YES, removal of rock has resulted in permanent change in topography and effect on landscape.	Profound Impact
Has / will construction or operation of the Project used / use natural resources such as land, water, materials or energy, especially any resources which are non-renewable or in short supply?	YES, sandstone rock.	YES, 3.9 Ha of sandstone rock removed, significant amount of water used for processing.	Moderate Impact
Has the Project involved use, storage, transport, handling or production of substances or materials which could have been / will be harmful to human health or the environment or raise concerns about actual or perceived risks to human health?	YES, processing of rock within the quarry and transport from the quarry results in significant levels of dust.	YES, nearest adjacent located on southern boundary. 19 residencies with 500m.	Significant Impact
Has the Project produced / will the project produce solid wastes during construction or operation or decommissioning?	YES, waste material from rock processing and overburden removed as waste to facilitate access to rock.	YES, significant amount of waste silt dumped surrounding the quarry. Overburden removed stored on site.	Significant Impact
Has the Project released / will the project release pollutants or any hazardous, toxic or noxious substances to air?	YES, dust and emissions from fuel used to operate machinery.	YES, nearest adjacent located on southern boundary. 19 residencies with 500m.	Significant Impact
Has the Project caused / will the project cause noise and vibration or release of light, heat energy or electromagnetic radiation?	YES, significant noise and vibration from rock breakers used to extract rock and from machinery used to process rock.	YES, nearest adjacent located on southern boundary. 19 residencies with 500m.	Significant Impact
Has the Project lead / will the project lead to risks of	YES, surface water flow to adjacent	YES, Further analysis	Significant

contamination of land or water from releases of substances or the discharge of into surface waters or groundwaters of any substances or other substances?	water courses. Absence of silt ponds. Destination of watercourses ultimately SAC, SPA and shell fish habitat. (Tralee bay)	necessary of watercourse discharge points.	Impact
Has there been / will there be any risk of accidents during construction or operation of the Project which could affect human health or the environment?	NO, risk limited to personal injuries of staff working within quarry.	NO	
Has the Project resulted / will the project result in social changes, for example, in demography, traditional lifestyles, employment?	NO. Not a major source of employment. No major social changes anticipated to have occurred or likely to occur.	NO	
Are there any other factors which should be considered such as consequential development which have lead to / will lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality?	YES water table is being lowered due to excavation, with surface waters allowed to flow towards nearby water courses.	YES. Adjacent Blanket Peat bog may be affected.	Significant Impact
Are there any areas on or around the location which are protected under international or national or local legislation for their ecological, landscape, cultural or other value, which could have been / will be affected by the project?	Designated candidate SAC and Shell fish habitat located 8 km and 10km from the development (Tralee bay). Surface waters surrounding quarry ultimately discharge to these areas. Site located immediately adjacent to and within an SPA. Habitat loss has occurred.	YES, impacts to date and potential impacts need to be ascertained.	Significant Impact
Are there any other areas on or around the location which are important or sensitive for reasons of their ecology e.g. wetlands, watercourses or other waterbodies, the coastal zone, mountains, forests or woodlands, which could have been / will be affected by the project?	NO	NO	
Are there any areas on or around the location which are used by protected, important or sensitive species of fauna or flora e.g. for breeding, nesting, foraging, resting, overwintering, migration, which could have	YES, Site located immediately adjacent to and within an SPA. Habitat loss has occurred.	YES impacts to date and potential impacts need to be ascertained.	Moderate to Significant Impact

been / will be affected by the project?	Are there any inland, coastal, marine or underground waters on or around the location which could have been / will be affected by the project?	Are there any areas or features of high landscape or scenic value on or around the location which could have been / will be affected by the project?	Are there any routes or facilities on or around the location which are used by the public for access to recreation or other facilities, which could have been / will be affected by the project?	Are there any transport routes on or around the location which are susceptible to congestion or which cause environmental problems, which could have been / will be affected by the project?	Is the project in a location where it is / or will be highly visible to many people?	Are there any areas or features of historic or cultural importance on or around the location which could have been / will be affected by the project?	Is the project located in a previously undeveloped area where there has been / will be a loss of greenfield land?	Are there existing land uses on or around the location e.g. homes, gardens, other private property, industry, commerce, recreation, public open space, community facilities, agriculture, forestry, tourism, mining or quarrying which could have been / will be affected by the project?	YES Designated candidate SAC and Shell fish habitat located 8km and 10km from the development (Tralee bay). Surface waters emanating from the quarry ultimately discharge to these areas.	YES impacts to date and potential impacts need to be ascertained.	Significant Impact
NO	None.	None.	None.	None.	None.	None.	None.	None.	None.	None.	None.
YES	YES, damage to local roads affects local transportation and damages vehicles.	NO	NO	NO	NO	NO	NO	NO	YES, development impacts on setting. Possible adjacent undiscovered archaeology interfered with.	YES, development impacts on setting. Possible adjacent undiscovered archaeology interfered with.	Significant Impact
YES	YES, nearest adjacent located on southern boundary. 19 residences with 500m. Shellfish habitat 10 km south west. Impacts to	YES, adjacent residents, approximately 19 within 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	YES, adjacent residents, approximately 19 within 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	YES, adjacent residents, approximately 19 within 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	YES, adjacent residents, approximately 19 within 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	YES, adjacent residents, approximately 19 within 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	YES, adjacent residents, approximately 19 within 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	YES, adjacent residents, approximately 19 within 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	YES, nearest adjacent located on southern boundary. 19 residences with 500m. Shellfish habitat 10 km south west. Impacts to	YES, nearest adjacent located on southern boundary. 19 residences with 500m. Shellfish habitat 10 km south west. Impacts to	Significant Impact

date and potential need to be ascertained.		
NO	NO	Are there any plans for future land uses on or around the location which could have been / will be affected by the project?
NO	NO	Are there any areas on or around the location which are densely populated or built-up, which could have been / will be affected by the project?
NO	NO	Are there any areas on or around the location which are occupied by sensitive land uses e.g. hospitals, schools, places of worship, community facilities, which could be / will be affected by the project?
Shellfish Habitat located 10 km to the southwest. Surface waters discharge to this area.	YES, Shellfish habitat.	Are there any areas on or around the location which contain important, high quality or scarce resources e.g. groundwater, surface waters, forestry, agriculture, fisheries, tourism, minerals, which could have been / will be affected by the project?
NO	NO	Are there any areas on or around the location which are already subject to pollution or environmental damage e.g. where existing legal environmental standards are exceeded, which could have been / will be affected by the project?
YES, water table lowered, Blanket peat possibly disturbed, potential for peat slippage, further investigation necessary.	YES, Upland Blanket Bog adjacent.	Is the project location susceptible to earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions e.g. temperature inversions, fogs, severe winds, which could have caused / will cause the project to present environmental problems?
Significant Impact		
3(b) Characteristics of Potential Impacts		
	19 residencies within 500m.	Extent of the impact (geographical area and size of affected population)
	NONE	Transfrontier nature of the impact
	Main impacts include: noise, dust, ground water table interference,	Magnitude and complexity of the impact

Probability of the impact	risk of peat slippage, contaminated surface water run off ultimately to SAC & Shellfish habitat and Habitat loss (SPA).
Duration, frequency and reversibility of the impact	HIGH. Permanent impacts after cessation of activity. No remediation plan.

Note: Significance of impacts defined as follows:

Imperceptible Impact

An impact capable of measurement, but without noticeable consequences.

Slight Impact

An impact that causes noticeable changes in the character of the Environment without affecting its sensitivities.

Substantial Impact

An impact that affects the character of the Environment in a manner that is consistent with existing and emerging trends.

Major Impact

An impact that, by its character, magnitude, duration or intensity alters a sensitive aspect of the environment.

Catastrophic Impact

An impact that obliterates sensitive characteristics.


The following table contains a summary of the main environmental topics and whether an EIS is necessary on the development carried out to date.

Environmental Topic	Proposal Focus	Particular sensitivity	Designations (SAC / SPA / NHA / designated views etc)	EIS relevant?
Area of Extraction >5 Hectares	Extraction area 3.9Ha	Adjacent residents, adjacent Blanket peat and habitat loss.	Located adjacent to and within an SPA.	YES
Human Population	Medium operation	Adjacent residents. Approximately 19 dwellings with 500m. Shell fish Habitat 10 km south west, source of shell fish for human consumption and source of local employment / economic activity.	None.	YES
Ecology (Flora & Fauna)	Excavation, Blasting and extraction can remove and affect habitat.	Natura 2000 sites	Located within an SPA. Habitat loss.	YES
Water	Adjacent streams. Lowering of water table.	Natura 2000 water courses adjacent. (Tralee wetlands)	Water courses ultimately end up in SAC and Shellfish habitat.	YES
Soils and Geology	Extraction of sandstone and removal of overburden.	Up land blanket peat. No designation, however potential risk of peat slippage.	Located within an SPA. Habitat loss.	YES
Air quality	Dust. No blasting, or processing of rock at present.	Adjacent residents. Approximately 19 dwellings within 500m.	Located within an SPA. Habitat loss.	YES
Archaeology	Removal of rock and overburden	Adjacent Archaeological monument 400 metres.	None	YES
Noise	Vehicular movements. Extraction and processing of rock	Adjacent residents. Approximately 19 dwellings within 500m.	Located within an SPA. Habitat loss.	YES
Landscape	3.9Ha quarry with bunds and overburden removal.	None, area designated as rural general development.	None.	NO

Conclusion:

In light of the above, it is considered that an Environmental Impact Assessment should have been carried out on this quarry.

In addition, given the extent of development carried out since 1995, the extracted area of which measures 3.9Ha (78% of the relevant threshold for an EIA) and in particular the intensification of the operations on site during this period, an EIA screening should have been carried out on the development carried out AFTER 1st February 1990.

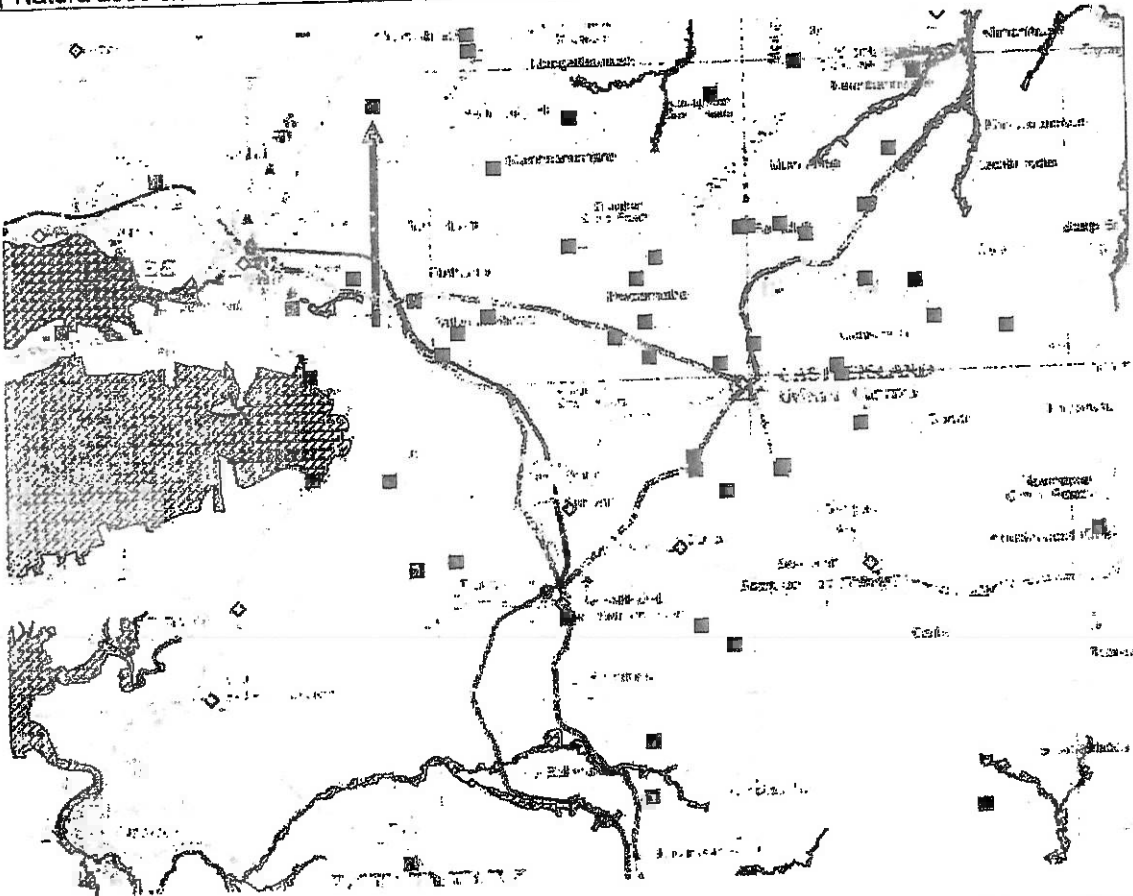


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Executive Planner.

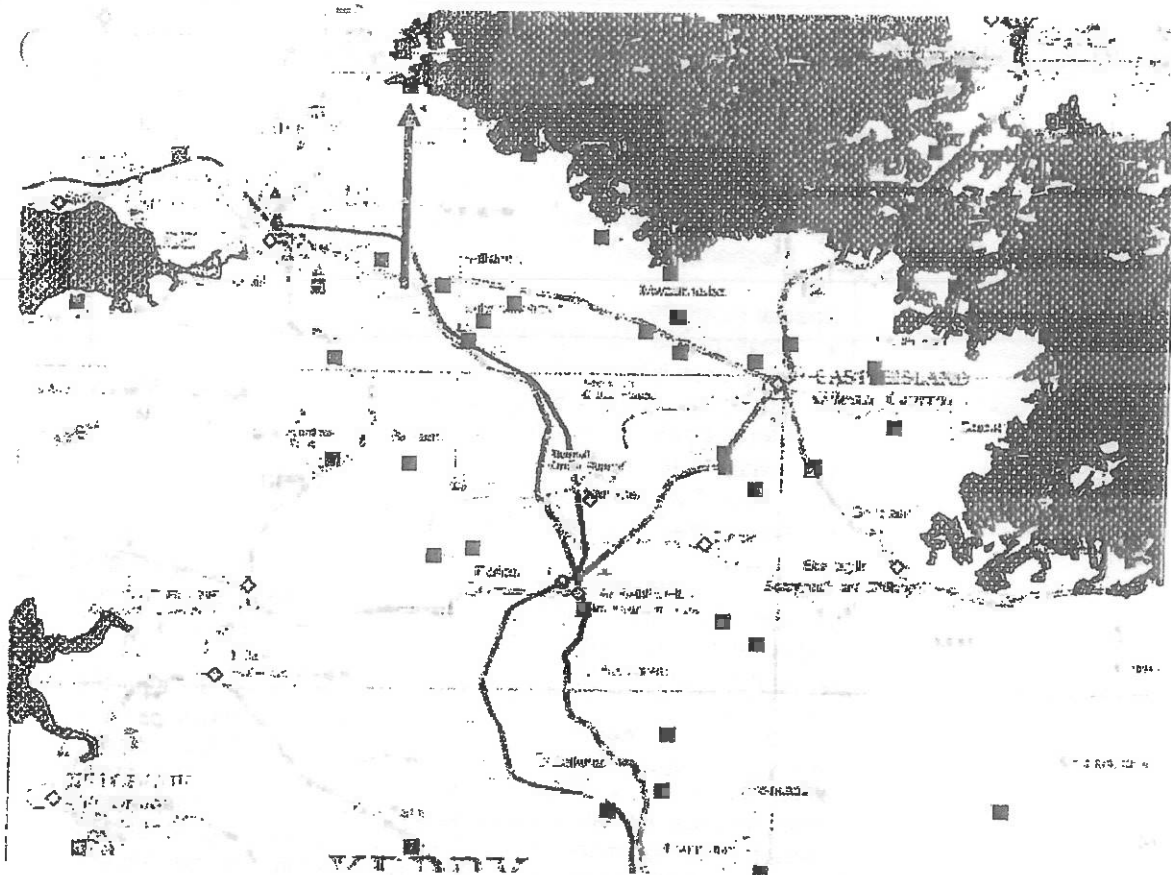
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Appropriate Assessment Screening Report

Quarry Reference Number:	EUQY45 (O' Mahony Quarries, Ballintobeenig, Abbeydorney, Tralee, Co Kerry)
Description of development	As per accompanying Planning Report, it is understood that the quarry has been substantially developed since 1995. The current extraction area is understood to be approx 3.2Ha. This quarry was registered as part of the S261 process and is a Namurian sandstone (pencil) type quarry.
Is the proposed development directly connected with or necessary to the nature conservation management of a Natura 2000 site	No



Above: Location of Quarry relative to other quarries and current SAC Natura 2000 site designations in the area



Above: Location of Quarry relative to other quarries and current SPA Natura 2000 site designations in the area

1. Proposed development site location relative to that of Natura 2000 Sites

<p>Description of the quarry site location and geographical scope relative to Natura 2000 sites, having particular regard to Natura 2000 sites located within 10Km of the proposed site or within the same water catchment as the proposed site</p>	<p>This quarry is located approx 5.5Km to the northeast of Tralee Town.</p> <p>Of the approx 3.2Ha quarry area, approx 1.5 Ha of this falls within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Hen Harrier SPA). Of that 1.5Ha, approx 0.7Ha is located outside of the quarry boundaries demarcated as part of the S261 process.</p> <p>While the S261 boundaries were demarcated before the designation of the SPA, it is understood that an amount of this area (within the SPA) was quarried after the advertisement of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA designation on the 5th of November 2007. The exact amount quarried after that date is not known.</p> <p>The quarry is located upstream of the Big River. The Big River while not designated as a Natura 2000 site, is located upstream of the Tralee Bay Natura 2000 sites.</p> <p>The quarry is located less than 6.5Km from the Lower River Shannon SAC, but as it is located within the catchment of the Big River it is not hydrologically connected to the Lower River Shannon system.</p> <p>Other Natura 2000 sites located in the vicinity include:-</p> <p>Special Area of Conservation</p> <ul style="list-style-type: none"> • Akeragh, Banna and Barrow Harbour SAC (Site Code 000332)
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1. Proposed development site location relative to that of Natura 2000 Sites

- Castlemaine Harbour SAC (Site Code 000343)
- Mount Brandon SAC (Site Code 000375)
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC Site Code 002070)
- Ballyseedy Wood SAC (Site Code 002112)
- Slieve Mish Mountains SAC (Site Code 002185)
- Magharee Islands SAC (Site Code 002261)

Special Protection Area

- Castlemaine Harbour SPA (Site Code 004029)
- Magharee Islands SPA (Site Code 004125)
- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161)
- Dingle Peninsula SPA (004153)
- Tralee Bay Complex SPA (Site Code 004188)
- Kerry Head SPA (Site Code 004189)

Following a review of maps and hydrological data, no other Natura 2000 sites have been identified as being likely to be impacted by this quarry. Particular regard was given to Natura 2000 sites located within 15Km of the quarry.

Full details on qualifying interests, selection species, special conservation interests and sites' conservation objectives are available at www.npws.ie. Tabulated information on Natura 2000 sites within or in the vicinity of County Kerry, including Environmental Conditions considered necessary to support site integrity are contained in Appendix A and B of the Habitats Directive Report prepared and published in support of the South West Regional Planning Guidelines 2010-2022 Document.

Key details considered to be of particular relevance to this current report are outlined below:-

Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161)

Objective: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:-

- Hen Harrier (*Circus cyaneus*) [A082]

Tralee Bay and Magharees Peninsula, West to Cloghane SAC (Site Code: 002070)

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected:-

- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Coastal lagoons [1150]
- Large shallow inlets and bays [1160]
- Reefs [1170]
- Annual vegetation of drift lines [1210]
- Perennial vegetation of stony banks [1220]
- Salicornia and other annuals colonizing mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Otter (*Lutra lutra*) [1355]
- Petalwort (*Petalophyllum ralfsii*) [1395]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Qualifying interests of the Natura 2000 sites concerned (i.e. the habitats and species for which the sites are designated) and the sites' conservation objectives.

4. Proposed development, site location relative to that of Natura 2000 Sites

- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Dunes with *Salix repens* ssp. *argentea* (*Salix arenariae*) [2170]
- Humid dune slacks [2190]
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinia caerulea*) [6410]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Tralee Bay Complex SPA (Site Code: 004188)

Objective: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:-

- Whooper Swan (*Cygnus cygnus*) [A038]
- Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
- Shelduck (*Tadorna tadorna*) [A048]
- Wigeon (*Anas penelope*) [A050]
- Teal (*Anas crecca*) [A052]
- Mallard (*Anas platyrhynchos*) [A053]
- Pintail (*Anas acuta*) [A054]
- Scaup (*Aythya marila*) [A062]
- Oystercatcher (*Haematopus ostralegus*) [A130]
- Ringed Plover (*Charadrius hiaticula*) [A137]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Grey Plover (*Pluvialis squatarola*) [A141]
- Lapwing (*Vanellus vanellus*) [A142]
- Sanderling (*Calidris alba*) [A144]
- Dunlin (*Calidris alpina*) [A149]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Bar-tailed Godwit (*Limosa lapponica*) [A157]
- Curlew (*Numenius arquata*) [A160]
- Redshank (*Tringa totanus*) [A162]
- Turnstone (*Arenaria interpres*) [A169]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Common Gull (*Larus canus*) [A182]
- Wetlands

Lower River Shannon SAC (002165)

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected:-

- [1029] *Margaritifera margaritifera*
- [1095] *Petromyzon marinus*
- [1096] *Lampetra planeri*
- [1099] *Lampetra fluviatilis*
- [1106] *Salmo salar* (only in fresh water)
- [1110] Sandbanks which are slightly covered by sea water all the time
- [1130] Estuaries
- [1140] Mudflats and sandflats not covered by seawater at low tide
- [1150] * Coastal lagoons
- [1160] Large shallow inlets and bays
- [1170] Reefs
- [1220] Perennial vegetation of stony banks

1. Proposed development site location relative to that of Natura 2000 Sites

	<ul style="list-style-type: none"> • [1230] Vegetated sea cliffs of the Atlantic and Baltic coasts • [1310] <i>Salicornia</i> and other annuals colonizing mud and sand • [1330] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) • [1349] <i>Tursiops truncatus</i> • [1355] <i>Lutra lutra</i> • [1410] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) • [3260] Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation • [6410] <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) • [91E0] * Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)
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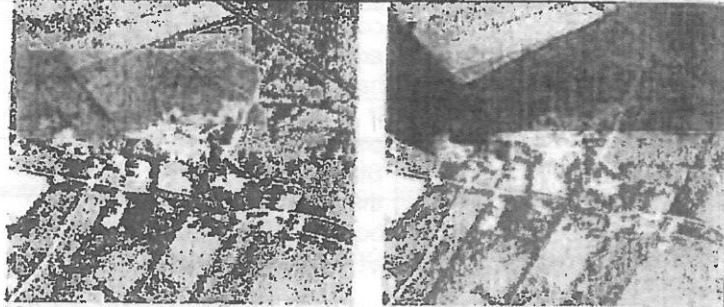
2. Specialist reports, advice and recommendations received (if any)

Brief overview of specialist reports, advice, and recommendations received from NPWS / Heritage Officer / Biodiversity Officer / other Specialists (where appropriate)	-
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3. Consideration of the potential for significant impacts on Natura 2000 sites, having particular regard to potential significance indicators, status information, qualifying interests and conservation objectives for Natura 2000 sites. In line with the precautionary principle, where doubt exists, it should be assumed that effects could be significant.

<p>Extraction activities may effect:</p> <p>(i) Habitat loss and / or degradation</p> <p>(ii) Species loss, disturbance and / or displacement</p> <p>Potential significance indicators include:</p>	<p>Significance will vary depending on:</p> <ul style="list-style-type: none"> • Magnitude of impact • Type • Extent • Distance • Duration • Intensity • Timing • Probability • Cumulative effects
<p>Reduction degradation or representation of key habitat</p>	<p>It is noted that this quarry was in existence and that its S261 boundaries were permitted prior to the advertisement of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA designation on the 5th of November 2007.</p> <p>However it is also understood that quarrying extended into the SPA, and beyond the demarcated S261 boundaries, after that date. The exact amount in question is not known but is understood to be less than 0.7Ha. Nevertheless, this constitutes direct habitat loss within the SPA.</p> <p>Notwithstanding the above, it is noted that the Stacks / Hen Harrier SPA is 56,781.33 Hectares in area and is thus a large and extensive Natura 2000 site. It is considered that the habitat lost, in itself, may not be of significance in this instance, particularly as this area adjoins a quarry in existence / permitted prior to the SPA designation (by way of the S261 process) and having regard to the conservation objectives of the SPA and the requirements of Hen Harriers. It is also noted that the quarry is located on the fringes of the SPA.</p>

3. Consideration of the potential for significant impacts on Natura 2000 sites, having particular regard to potential significance indicators, status information, qualifying interests and conservation objectives for Natura 2000 sites. In line with the precautionary principle, where doubt exists, it should be assumed that effects could be significant.



Above: Quarry (2004 photos) and current SPA designation highlighted in red (2007 designation).

- Hydrological disruptions (loss of groundwater supplies, altered run-off rates etc)

Quarrying at this location may have a localised impact on drainage patterns in the adjoining SPA. However it is understood that these works largely occurred before the designation of the SPA and in any event it is considered that any such localised hydrological disruption would be unlikely to significantly impact on the integrity of Hen Harrier Habitat within the SPA. ✓

The potential for landslides / slippages will be discussed elsewhere in this report.

- Changes in water quality (toxicity / chemistry, turbidity, nutrients, silt content)

Quarry developments by their nature have the potential to impact on water quality downstream. Suspended sediment in run-off can have severe negative impacts on invertebrates and plant life and on all stages of fish life (DoEHLG 2009). Contamination of waters can also occur through spillages of fuels, detergents and other chemicals and residues from blasting and wastewater treatment systems.

It is noted that the closest Natura 2000 sites downstream are the Tralee Bay Natura 2000 sites (approx 9Km downstream). These are estuarine / marine systems and accordingly are considered to be less susceptible to damage by way of sediment input than freshwater systems. Nonetheless, there is a risk of chemical spillages arising from the quarry making their way to designated and non designated sites downstream via surface water run-off.

While the Big River is located outside of the 'Tralee Bay and Magharees Peninsula, West to Cloghane SAC' it may constitute key habitat for species listed for protection within that SAC. A water pollution event, including sedimentation input from quarrying activities, could impact on fish populations downstream, which in turn could indirectly impact on Otter populations by way of reduced prey availability. Otters are listed for protection in the conservation objectives of the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and are known to have territories which can extend for many kilometres. Similar indirect issues could arise for birds associated with the Tralee Bay Complex SPA.

- Facilitation of changes, that may promote invasive species colonisation (including introduction, dispersal and / or creation of favourable habitat)

It is noted that quarry works at this location were regulated / permitted by way of the S261 process which pre-dated the Stacks / Hen Harrier SPA designation. However it is also noted that quarrying extended into this SPA and beyond the quarry boundaries demarcated by way of the S261 process after the SPA was designated.

Disturbed ground (often associated with quarrying) can create favourable habitat for the colonisation of invasive species. If introduced species were to become established at this quarry – it

<p>3. Consideration of the potential for significant impacts on Natura 2000 sites, having particular regard to potential significance indicators, status information, qualifying interests and conservation objectives for Natura 2000 sites. In line with the precautionary principle, where doubt exists, it should be assumed that effects could be significant.</p>	
	<p>could become a base from which they could disperse to the adjoining SPA, which would constitute a potential threat to habitat quality in the SPA for Hen Harriers.</p>
<p>• Noise, vibration and or light disturbance</p>	<p>It is noted that quarry works at this location were regulated / permitted by way of the S261 process which pre-dated the Stacks / Hen Harrier SPA designation. However it is also noted that quarrying extended into this SPA and beyond the quarry boundaries demarcated by way of the S261 process after the SPA was designated.</p> <p>Quarrying activities could disturb Hen Harriers in the area by way of noise, vibration and or light disturbances associated with quarrying activities. Any such disturbance could reduce the quality of the surrounding SPA for Hen Harriers.</p>
<p>• Movement related disturbances, including increased access to / within ecologically sensitive areas (human, traffic, machinery etc)</p>	<p>While it is noted that no Natura 2000 sites are located between the quarry and the National Road Network in this instance, quarrying operations / works at this location are likely to increase access to / within the SPA – which could disturb Hen Harrier activity.</p>
<p>• Dust</p>	<p>Given the proximity of the quarry to the Hen Harrier SPA, the potential exists for dust pollution to be blown from the quarry to the SPA. It is noted however that permitted quarry works at this location pre-date the SPA designation. In addition, it is noted that no particular habitat is protected by way of the SPA designation.</p> <p>Overall, significant impacts are not considered to be likely having regard to the nature conservation objectives of the SPA.</p>
<p>• Landslides and collapses</p>	<p>Peat subsoils are located in the area. Given the scale of the quarry and its location upstream of the Tralee Bay Natura 2000 sites and its proximity to same, it is considered that slope stability warrants further consideration in this instance.</p> <p>Slope slippage could impact on water quality downstream and habitat quality within the Stacks / Hen Harrier SPA.</p>
<p>• Other potential indicators</p>	<p>-</p>
<p>• Interactive / cumulative / in combination impacts including potential climate change impacts and those with other plans and projects</p>	<p>It is noted that there are a number of existing and proposed rural type developments in the area.</p> <p>There are also a number of quarries located within the wider Tralee Bay Catchment and in the vicinity of the Stacks / Hen Harrier SPA. This is one of the larger ones.</p> <p>It is understood that any future quarrying activities at this location, beyond those permitted by way of the S261 process require Planning Permission – this reduces the likelihood of harmful interactive / cumulative / in combination impacts.</p> <p>This report has highlighted a number of areas where quarry works could have impacted on Hen Harrier behaviour or reduced the quality of habitat within the SPA. It is considered that by themselves these factors may not be of significance, however cumulatively significant effects cannot be ruled out.</p>
<p>Overview / Key points</p>	<p>This quarry is in part located within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle (Hen Harrier) SPA and is upstream of the Tralee Bay Natura 2000 Sites. The quarry is thus located in a sensitive area from a Nature Conservation perspective.</p> <p>Quarry operations at this location could impact on the water quality of watercourses downstream, including those within the</p>

3. Consideration of the potential for significant impacts on Natura 2000 sites, having particular regard to potential significance indicators, status information, qualifying interests and conservation objectives for Natura 2000 sites. In line with the precautionary principle, where doubt exists, it should be assumed that effects could be significant.

Tralee Bay Natura 2000 sites and could disturb Hen Harriers or result in Habitat loss / degradation within the Stacks / Hen Harrier SPA.

It is understood that for the most part quarrying activities at this location pre-date the Hen Harrier SPA designation in November 2007. However it is also understood that the footprint of the quarry extended into the SPA since its establishment on the 5th of November 2007 and that part of this quarried area is outside of the boundaries demarcated by way of the S261 process. The exact amount quarried after that date is not known.

4. Determination of which species and habitats could be significantly affected by the activities

The quarry site is located in a sensitive area from a nature conservation point of view, within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle (Hen Harrier) SPA and upstream of the Tralee Bay Natura 2000 Sites.

Adequate water quality is considered to be an environmental condition required for ecological integrity in the Tralee Bay and Magharees Peninsula, West to Cloghane SAC (Site Code: 002070) and the Tralee Bay Complex SPA (Site Code: 004188) Natura 2000 Sites –which contain water dependent habitats and species, such as Otters. A water pollution event arising from quarrying activities at this location could impact on water quality within these sites – which could reduce habitat quality / prey availability. In addition the Big River, which is located downstream of the quarry and which ultimately discharges into Tralee Bay, potentially constitutes key habitat for otters listed for protection in the conservation objectives of the Tralee Bay and Magharees Peninsula, West to Cloghane SAC. Accordingly, degradation of the water / habitat quality within the Big River could also potentially indirectly impact on the conservation objectives of that Natura 2000 site.

This report has also highlighted a number of areas where quarry works could have impacted on Hen Harrier behaviour or reduced the quality of habitat within the SPA. These include direct habitat loss associated with quarrying works as well as potential disturbance associated with quarrying activities (movement related disturbance and noise, vibration and or light related disturbance). It is considered that by themselves these factors may not be of significance to the nature conservation objectives, however cumulatively significant effects cannot be ruled out. In addition, it is considered that the potential for slope failure also warrants further consideration given the peat sub-soils in the area, the scale of the quarry and to the conservation objectives of the Tralee Bay Natura 2000 Sites (located downstream) and of the Stacks / Hen Harrier SPA (within which the quarry is partly located).

Based on the information available it is considered that an Appropriate Assessment ought to have been carried out in order to rule out potential for significant impacts.

5. Conclusion and recommendation

Based on the foregoing, it is considered that the potential for significant effects to Natura 2000 sites cannot be ruled out and therefore that a Stage II Appropriate Assessment is required in this instance.

Completed by:

Eoin Kelleher, Planning Department 25/07/2012

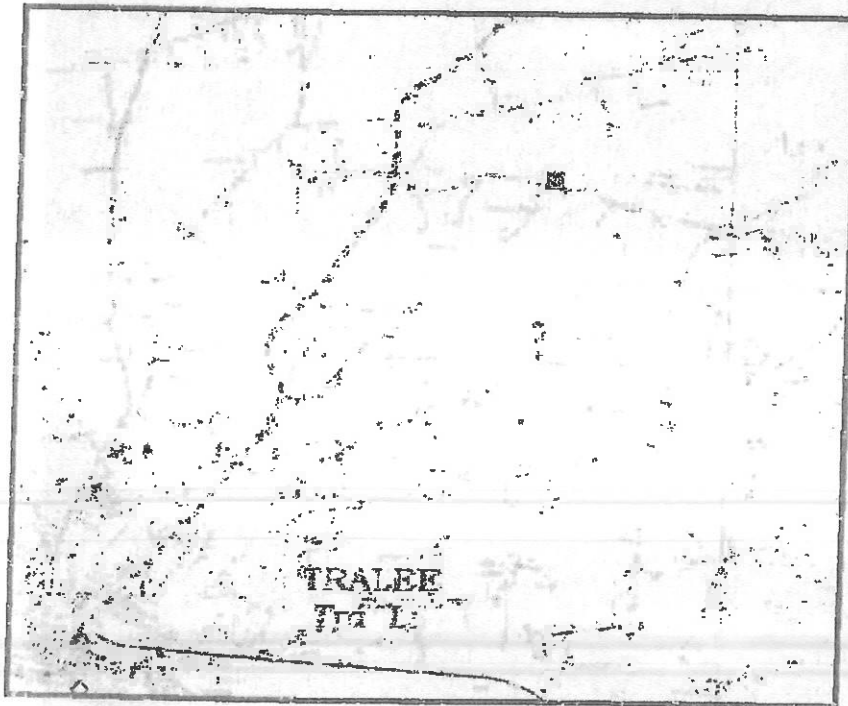
Eoin Kelleher

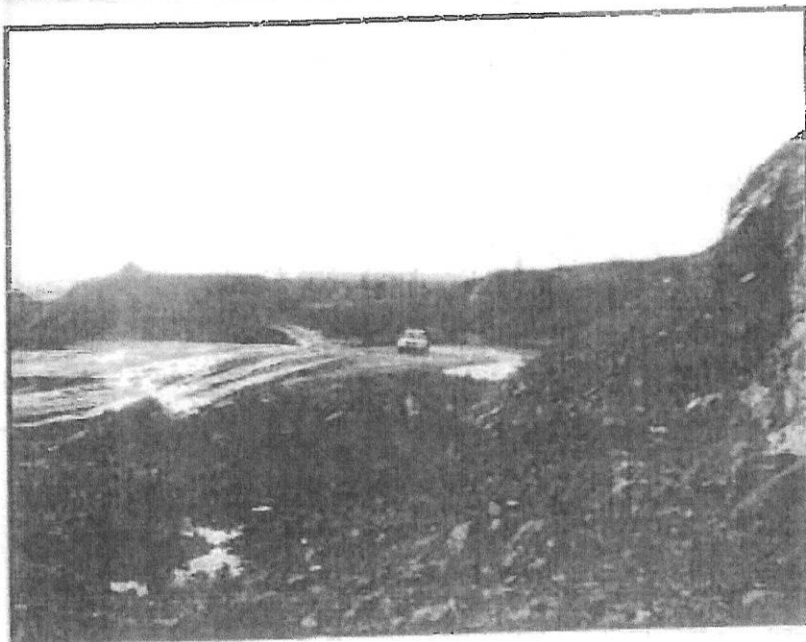
(2)

KERRY COUNTY COUNCIL
Section 261A P & D Acts 2000 - 2012

PLANNING REPORT

Ref No:	EUQY045
Owner / operator:	O'Mahony's
Landowner:	Ballintobeenig, Abbeydorney.
Grid Ref:	X:88,332 Y:118,941
Quarry Address:	Ballintobeenig, Abbeydorney.





Site location and description:

The existing quarry is located on the Southern slope of Stacks Mountain. The existing landscape surrounding the quarry consists of upland peat, upland grazing and at slightly lower contour levels, grassland. There are approximately 19 (No.) dwellings within 500 metres of the quarry.

Quarry type / description:

The Quarry is a sandstone quarry. Aggregate is extracted by a rock breaker and is produced on site. There is no weighbridge or wheel wash serving the quarry. There are no dust suppression measures within the quarry. Excavation / extraction has remained above the ground water table. There are no silt ponds serving the quarry. Surface waters flow towards the western corner of the quarry.

Planning History:

Section 261:

This quarry was registered in accordance section 261 of the Planning and Development Act 2000. Conditions were imposed on its operation under section 261 (6).

Enforcement:

A warning letter was issued regarding the non-compliance with conditions imposed under section 261 (6). The owner / operator subsequently complied with same. Case closed.

Reports:

1. Damien Ginty,
Executive Planner.
EIA screening report,
2. Mr. Eoin Kelleher.
Executive Planner.
AA screening report.

Submissions / Observations:

1. Cadogan O'Regan Solicitors,
22 Denny Street,
Tralee.
On behalf of a client.

Submissions and observations noted.

Determination under Section 261A, (2) (a)

Assessment:

From an analysis of the aerial photos on file, dated 1995, 2000, 2006 and the survey carried out on the 22nd of October 2011, I am satisfied that this quarry has been substantially developed since 1995.

I am also satisfied that the development carried out within this quarry has NOT been undertaken under *pre-1964 authorisation*.

In accordance with the EIA screening report an EIA was necessary on the development carried out AFTER the 1st of February 1990 within this quarry.

In accordance with the EIA screening report a *determination as to whether an EIA is required* is necessary with respect to the development carried out AFTER the 1st of February 1990 within this quarry.

In accordance with the AA screening report an AA was necessary on the development carried out AFTER the 26th of February 1997 within this quarry.

Determination under Section 261A, (2) (a):

In addition to the Assessment above AND having regard to:

- o The submission(s) received,
- o Information submitted under section 261,
- o Other relevant information on the planning register,
- o Other relevant information obtained by Enforcement action,
- o The provisions of the Development Plan,
- o The provisions Environmental Impact Assessment Directive,
- o The provisions Habitats Directive,
- o The provisions of the Planning & Development Acts and the Planning & Development Regulations,
- o Other relevant information,

It is considered that:

- (i) Development was carried out after 01/02/90 which required an EIA, but such an assessment was not carried out.
- (ii) Development was carried out after 01/02/90 which required a determination as to whether an EIA was required, but such a determination was not carried out.
- (iii) Development was carried out after 26/02/97 which required an AA, but such an assessment was not carried out.

Noted

m

**Recommendation in relation to decision under Section 261A
(3), (4) & (5)**

Assessment (decision):

There is NO Planning Permission pertaining to this site authorising a Quarry since 1st of October 1964.

This quarry was registered under Section 261 of the Planning and Development Act 2000. Conditions were imposed on its operation in accordance with Section 261 (6).

Decision:

Having regard to the submission(s) received, information submitted under section 261, other relevant information on the planning register, other relevant information obtained by Enforcement action and any other relevant information, It is considered that:

- (i) The quarry commenced operation before 1st October 1964, and
- (ii) The requirements in relation to registration under section 261 were fulfilled,

Therefore a notice should be issued to the owner / operator under section 261A (3) directing them to make an application for Substitute Consent under Section 177E of the Planning and Development Acts 2000-2010.

noted

K

Damien Ginty.
Executive Planner.

Recommendation

Recommendation:

It is recommended that a notice be issued under section 261A (3) directing the owner / operator to make an application for Substitute Consent under Section 177E of the Planning and Development Acts 2000-2012, with such an application to be accompanied by a Remedial EIS and a Remedial NIS for the following reasons:

Reasons for the determination under Section 261A, (2) (a):

1. The examination carried out by the Planning Authority concluded that development works carried out after the 1st February 1990 would be likely to have significant effects on the environment. Therefore it is considered that an Environmental Impact Assessment (EIA) is required in this instance.
2. The examination carried out by the Planning Authority concluded that the need for an Environmental Impact Assessment (EIA) could not be ruled out in respect of development works carried out after the 1st February 1990, without the carrying out of a substantial screening assessment. Therefore it is considered that a *determination as to whether an EIA is necessary* is required in this instance.
3. The examination carried out by the Planning Authority was unable to rule out the potential for significant effects to Natura 2000 sites in respect of development works carried out after the 26th February 1997. Therefore it is considered that an Appropriate Assessment (AA) is required in this instance.

Reasons for the decision under Section 261A, (3):

1. The Planning Authority is satisfied that the quarry commenced operation before 1st October 1964, and the requirements in relation to registration under section 261 were fulfilled.

Damien Ginty.
Executive Planner.

Noted

2

KERRY COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACTS, 2000 TO 2012

SECTION 261A(3)(a) NOTICE

Quarry Reg. No.: EUQY045
Quarry Owner: John O'Mahony, Leath East, Tralee, Co. Kerry
Quarry Operator: Caroline O'Mahoney, Ballintobeenig, Abbeydorney, Co. Kerry
Quarry Location: Ballintobeenig, Abbeydorney, Co. Kerry

WHEREAS Kerry County Council has examined the above quarry in accordance with Section 261A of the Planning and Development Acts 2000-2012;

AND WHEREAS Kerry County Council, in considering this determination and decision, had regard particularly to –

- (a) Section 261A of the Planning and Development Acts, 2000-2012
- (b) All relevant information available to it including any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under Section 261A(1)(a)
- (c) Any information submitted to the authority in relation to the registration of the quarry under section 261;
- (d) Any relevant information on the planning register;
- (e) Any relevant information obtained by the planning authority in an enforcement action relating to the quarry;
- (f) Any other relevant information.

AND WHEREAS Kerry County Council hereby **determines** – In accordance with Section 261A(2)(a) that:

(i) Development was carried out after 1 February 1990, which would have required, having regard to the Environmental Impact Assessment Directive, an **environmental impact assessment** and such an assessment was not carried out.

and

(ii)

Development was carried out after 1 February 1990 which would have required, having regard to the Environmental Impact Assessment Directive, a **determination** as to whether an environmental impact assessment was required, and such determination was not made.

and

(iii) Development was carried out after 26 February 1997, which would have required, having regard to the Habitats Directive, an appropriate assessment, and such an assessment was not carried out.

Reasons:

1. The examination carried out by the Planning Authority concluded that development works carried out after the 1st February 1990 would be likely to have significant effects on the environment. Therefore it is considered that an Environmental Impact Assessment (EIA) is required in this instance.
2. The examination carried out by the Planning Authority concluded that the need for an Environmental Impact Assessment (EIA) could not be ruled out in respect of development works carried out after the 1st February 1990, without the carrying out of a substantial screening assessment. Therefore it is considered that *a determination as to whether an EIA is necessary* is required in this instance.
3. The examination carried out by the Planning Authority was unable to rule out the potential for significant effects to Natura 2000 sites in respect of development works carried out after the 26th February 1997. Therefore it is considered that an Appropriate Assessment (AA) is required in this instance.

AND WHEREAS Kerry County Council, hereby decides – In accordance with Section 261A(3)(a) that:

(i) The quarry commenced operation before 1 October 1964

and

(ii) The requirements in relation to registration under section 261 were fulfilled

Reasons:

1. The Planning Authority is satisfied that the quarry commenced operation before 1st October 1964, and the requirements in relation to registration under section 261 were fulfilled.

You are therefore directed to apply to An Bord Pleanála, 64 Marlborough Street, Dublin 1 for Substitute Consent in respect of the quarry under section 177E with a remedial environmental impact statement and a remedial natura impact statement in accordance with the determination of the planning authority under subsection (2)(a) not later than 12 weeks after the date of this notice, or such further period as the Board may allow.

You may apply to the An Bord Pleanála, not later than 21 days after the date of this notice, for a review of the determination of the planning authority under subsection 2(a) or the decision of the planning authority under paragraph 3(a). No fee in relation to either application for a review shall be payable.

Referral of this notice to An Bord Pleanála for review, within the time permitted, by the person to whom this notice is issued, or by any other person entitled to be given a copy of the notice, will have the effect of suspending the operation of the notice until the review is disposed of by the Board.

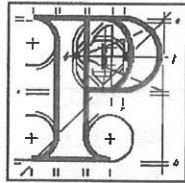
Dated : 03 August 2012


Joan McCarthy

**Senior Executive Officer
Planning Department
Kerry County Council**

Appendix 3 – Section 177C Documents

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2013

Kerry County

An Bord Pleanála Reference Number: 08.LS.0011

APPLICATION FOR LEAVE TO APPLY FOR SUBSTITUTE CONSENT by John O'Mahony, who is the owner/operator of the quarry, care of Malachy Walsh and Partners of Reen Point, Blennerville, Tralee, County Kerry.

DEVELOPMENT: Quarry at Ballintobeenig, Abbeydorney, County Kerry.

DECISION

REFUSE leave to apply for substitute consent under section 177D (4) of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act 2010 based on the reasons and considerations set out below.

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

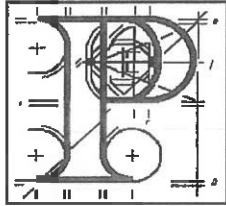
Having regard to the scale of the overall quarry and its extraction area, the rate and extent to which it expanded, the nature and intensity of the excavation and processing activities on this site, the evidence of significant localised impacts on the environment, the location of the quarry partly within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code 004161), and the expansion of the quarry partly within that Special Protection Area after the date of the notification of this European Site, the Board is satisfied that an environmental impact assessment and an Appropriate Assessment were and are required.

In coming to its decision that exceptional circumstances do not exist in respect of the subject quarry, and to refuse leave to apply for substitute consent, the Board had regard to the provisions of Section 177D(2) of the Planning and Development Act, 2000, as amended, to the notice issued by the planning authority in accordance with the provisions of Section 261A(3)(a) of the Planning and Development Act 2000, as amended, which directed that an application for Substitute Consent be made to An Bord Pleanála, and to the failure of the applicant to comply with the requirements of that notice. The Board concluded that exceptional circumstances have not been identified such that it would be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

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

Dated this day of 2014.

An Bord Pleanála



Board Direction

Ref: 08LS.0011

The submissions on this file and the Inspector's report were considered at a meeting of all available Board members held on 28th January 2014. The Board decided by a majority of 4:2, generally in accordance with the recommendation of the Inspector, and in accordance with the draft reasons and considerations set out below, that:

- (i) an environmental impact assessment and an Appropriate Assessment were and are required, and
- (ii) exceptional circumstances do not exist in the subject case, whereby it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent, and,

the Board, therefore, decided to refuse leave to apply for substitute consent.

REASONS AND CONSIDERATIONS

Having regard to the overall scale of the overall quarry and its extraction area, the rate and extent to which it expanded, the nature and intensity of the excavation and processing activities on this site, the evidence of significant localised impacts on the environment, the location of the quarry partly within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code 004161), and the expansion of the quarry partly within that SPA after the date of the notification of this European Site, the Board is satisfied that an environmental impact assessment and an Appropriate Assessment were and are required.

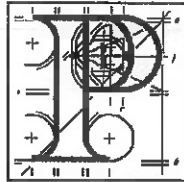
In coming to its decision that exceptional circumstances do not exist in respect of the subject quarry, and to refuse leave to apply for substitute consent, the Board had regard to the provisions of Section 177D(2) of the Planning and Development Act, 2000 (as amended), and to the notice issued by the Planning Authority in accordance with the provisions of Section 261A(3)(a) of the Planning and Development Act 2000, as amended, which directed that an application for Substitute Consent made to An Bord Pleanála, and to the failure of the applicant to comply with that the requirements of that notice. The Board concluded that exceptional circumstances have not been identified such that it would be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

Note:

The Board noted the provisions of Section 261A(18) of the Planning and Development Act, 2000 (as amended), and was satisfied that its requirements had been met.

Board Member: _____ Date: 3rd April 2014
Fionna O' Regan

An Bord Pleanála



Inspector's Report

APPLICATION FOR LEAVE TO APPLY FOR SUBSTITUTE CONSENT

Board Reference: 08.LS.0011

Planning Authority: Kerry County Council

Applicant: O'Mahoney's Quarry
Ballintobeenig,
Abbeydorney,
County Kerry

Site Inspection: 10 January, 2014.

Inspector: B. Wyse.

1.0 INTRODUCTION

- 1.1** This is an application for leave to apply for substitute consent in respect of a quarry under section 177C(2)(b) of the Act, i.e. the applicant is of the opinion that exceptional circumstances exist that should permit an application for substitute consent.
- 1.2** The Board will note that, while the quarry in question was subject to the section 261A process (see Section 4.3 below), amendments to the Act under S.I. No. 246/2012 – European Union (EIA and Habitats) Regulations, 2012, inserting new subsections (16) to (19) into section 261A, expressly provide for the making of this type of application after 15th August, 2012 in respect of such a quarry.

2.0 THE APPLICATION

- 2.1** The application is submitted by Malachy Walsh and Partners, Engineering and Environmental Consultants, on behalf of O'Mahoney's Quarry at Ballintobeenig, Abbeydorney, County Kerry.
- 2.2** The application is stated to be submitted under section 177C(2)(b) and to allow for completion of the remedial EIS and NIS for the quarry.
- 2.3** It is stated that the direction to undertake and complete an EIS within 12 weeks from 3rd August, 2012 was not practical, particularly in relation to the adjacent SPA where an assessment of bird activity would need to be undertaken. It is stated that the appropriate methodology is to assess the habitat within and adjacent to the site for both winter and summer activity and thus complete the EIS.
- 2.4** The main grounds underpinning the application are summarised as follows:
- The quarry has operated in a safe and compliant manner from an environmental perspective.
 - The operator has complied fully with the previous 261 registration process and subsequent directions from KCC.
 - The operator wants to complete the remedial EIS and NIS and bring his quarry within a compliant status and co-operate with KCC as he has done previously.
 - A quarry has existed at this location going back in historical time.

- A quarry has operated at this location pre-1964 and this has been acknowledged by KCC. Accordingly the operator considers that the facility had planning status and was authorised, but acknowledges that there was an expansion.
- There is a planning precedent for quarrying at this location.
- There have been no environmental events, issues or environmental impacts thus far, that can be identified from examination of the records and planning files.
- Any potential issues can be managed by a good management system, on site.
- There can be no further encroachment within the SPA area, given slope and the depth of excavated face.
- The habitat within the SPA and within the operator's ownership has been mainly used for agricultural dairy farming and is not pristine habitat in terms of possible use for species within the SPA conservation objectives. This is not a sensitive site in terms of habitat or species. The surrounding lands are being used for agricultural or planting of coniferous forest and do not have optimal ecological value.
- The site has received no attention from NPWS or IFI in terms of environmental impacts, nuisance or implications for the SPA.
- A focussed remedial EIS can be prepared to deal with scoped and relevant topics and mitigation can be put in place to deal with any negative impacts that could have arisen due to the quarry operations post 1990.
- There is sufficient spoil on site to undertaken remedial measures on portions of the quarry and the remainder of the lands to the north of the quarry could be managed as part of an ecological or habitat restoration plan to the benefit of species that may frequent the SPA.
- No hazardous activities on site pose a risk to habitat or human environment.
- Potential impact on any watercourses with important status is minimal as there are no direct pathways off site and the distance to same is several kilometres.
- Nuisance elements such as dust, noise or traffic can be managed by condition.

- A remediation plan can be developed to address permanent effects on the ground and topography and can include habitat restoration and management measures that can enhance the lands in terms of ecology and wildlife use once the quarry has ceased operations. An agreed quarry life and phased remediation plan can be developed to achieve this.

2.5 It is also indicated that in the event of a positive outcome the applicants would like to agree a timescale to complete their studies, EIS and NIS.

3.0 THE QUARRY

3.1 The subject quarry is located approximately 5.5 kilometres north-east of Tralee at the western edge of the Stacks Mountains (see OS 1:50,000 extract).

3.2 The drawings provided with the leave request, survey date 22/10/2011, indicate an extraction area of approximately 3.46 hectares within an overall landholding of approximately 13.16 hectares. They also indicate the extraction area extended beyond the Section 261 Registration boundary to the extent of 0.69ha.

3.3 The attached Google Earth aerial photograph, image date 27/3/2012, indicates further expansion of the extraction area (in the area indicated). This was confirmed on inspection and it appears that some further extraction eastwards has more recently occurred.

3.4 It will also be noted from the Google Earth image that the total area of disturbed ground, where topsoil has been cleared/pushed back, extends west, north and east beyond the extraction area.

3.5 The quarry, which is active, is for shale and sandstone. Excavation is by digger/rock breaker and activities comprise primary crushing/sorting/screening. There is no washing of aggregate, no wheelwash and no weighbridge. There is no evident breach of the water table.

3.6 Surface water runoff occurs generally from the higher ground to the rear in a west/south west direction. At the time of inspection, which was during/following a period of significant rainfall, three discharges were particularly noted (see attached aerial photograph). The first comprised runoff down the concreted access road to the entrance where it was intercepted by a drain across the entrance, and channelled to the roadside drain running east-west. The water contained a considerable amount of sediment. The second comprised a considerable area of surface water ponding within the lower, older excavated area close to the road frontage. Again sediment was clearly evident. The third comprised a constructed

outlet from the main working area of the quarry south and westwards to a drain that is piped under the public road, as indicated, discharging to a field drain that appears to run generally southwestwards. The volume of water discharging was significant and it was heavy in sediment. It appears likely that this stream eventually discharges to the Big River that runs through Tralee, joining the River Lee and ultimately discharging to Tralee Bay (see O.S. map).

- 3.7 There is a significant amount of housing in the immediate vicinity and also in the wider area generally. Otherwise the surrounding lands are generally agricultural with open bogland and forestry extending over the higher ground to the north.
- 3.8 The quarry is served by a minor, third class road, carriageway width approximately 3-4 metres. The surface condition appears generally good.

4.0 PLANNING HISTORY

4.1 P.A. Ref. OY045 – S.261 Registration (copy file in file pouch)

- 4.1.1 By decision dated 20th April, 2007 47 no. conditions imposed on the quarry development under section 261(6)(a)(i).

Conditions included:

2. Quarry to cease operation 25 years from date of order.
3. Quarry excavations and related activities to be carried out only within area outlined yellow on attached map.
4. Activities restricted to quarrying, primary crushing and screening only.
6. No excavation/ancillary works within 50 metres of any private dwelling plot (not associated with quarry owner/operator) or within 50 metres of the public road.
7. Truck traffic counter.
10. No dewatering of extraction workings.
11. Surface water drainage arrangements.
- 14/16. Noise levels, monitoring if certain extraction rates exceeded.

15/16/

17. Dust levels, monitoring if certain extraction rates exceeded, control during dry weather.
16. Water quality monitoring.
- 20/21. Wheelwash required if certain extraction rates exceeded.
28. No contaminated water to be discharged off site.
29. Any discharge to a watercourse to be subject to licence.
31. Bunding to any tanks.
40. No blasting permitted.
41. Landscaping/restoration plan.
43. Environmental Management System (EMS) required if certain extraction rates exceeded.
45. Environmental Audit Report required.

4.2 P.A. Ref. U380/08 – Enforcement
(copy file in file pouch)

- 4.2.1 This file was opened on foot of issues arising in relation to compliance with conditions imposed under the S.261 Registration process.
- 4.2.2 A Warning Letter issued on 21st October, 2008 with reference to a number of conditions.
- 4.2.3 Following the taking of specified measures by the quarry owner/operator and the submission of information as requested the file was formally closed – letter to quarry owner/operator dated 12th May, 2010 refers.

4.3 P.A. Ref. EUQY 045 – S.261A
(copy on file)

- 4.3.1 The P.A. Section 261A(3)(a) Notice, dated 3rd August, 2012, included the following:

- Kerry County Council hereby determines – In accordance with Section 261A(2)(a) that:

(i) Development was carried out after 1st February, 1990 which would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment and such an assessment was not carried out.

and

(ii) Development was carried out after 1st February, 1990 which would have required, having regard to the Environmental Impact Assessment Directive, a determination as to whether an environmental impact assessment was required, and such determination was not made.

and

(iii) Development was carried out after 26th February 1997, which would have required, having regard to the Habitats Directive, an appropriate assessment, and such an assessment was not carried out.

Reasons:

1. The examination carried out by the Planning Authority concluded that development works carried out after the 1st February, 1990 would be likely to have significant effects on the environment. Therefore it is considered that an Environmental Impact Assessment (EIA) is required in this instance.
2. The examination carried out by the Planning Authority concluded that the need for an Environmental Impact Assessment (EIA) could not be ruled out in respect of development works carried out after the 1st February 1990, without the carrying out of a substantial screening assessment. Therefore it is considered that *a determination as to whether an EIS is necessary* is required in this instance.
3. The examination carried out by the Planning Authority was unable to rule out the potential for significant effects to Natura 2000 sites in respect of development works carried out after the 26th February, 1997. Therefore it is considered that an Appropriate Assessment (AA) is required in this instance.

- Kerry County Council, hereby decides – In accordance with Section 261A(3)(a) that:

- (i) The quarry commenced operation before 1st October, 1964
and
- (ii) The requirements in relation to registration under section 261 were fulfilled.

Reasons:

1. The Planning Authority is satisfied that the quarry commenced operation before 1st October 1964, and the requirements in relation to registration under section 261 were fulfilled.
- Direction to apply to An Bord Pleanála in respect of the quarry under section 177E with a remedial environmental impact statement and a remedial natural impact statement not later than 12 weeks after the date of this notice, or such further period as the Board may allow.

4.4 ABP Letter dated 7th November, 2012

- 4.4.1 This is the letter notifying the Planning Authority that no application for substitute consent had been received and advising that the last day for receiving such an application was 26th October, 2012.

4.5 ABP Refs. SH08.0101 and SI080019
(copies attached)

- 4.5.1 These refer to requests for an extension of time and a pre-application meeting respectively. They were deemed invalid as they were received late by the Board on 8th November, 2012.

4.6 ABP Ref. LS08.0010
(copy attached)

- 4.6.1 Application for leave to apply for substitute consent received on 24th December, 2012. This was deemed invalid as it was not accompanied by the appropriate fee.

4.7 Planning Authority Letter dated 26th November, 2013.

Includes:

- Confirmation that an Enforcement Notice was not yet served following the expiry of the period within which a substitute consent application should have been made.
- Indication that quarrying/extraction has taken place on the site between September and November 2013.

5.0 THE DEVELOPMENT PLAN/NATURAL HERITAGE DESIGNATIONS

5.1 Kerry County Development Plan 2009-2015

5.1.1 Quarry is located in 'Rural General' area (parag. 12.2.9).

5.1.2 Relevant objectives in relation to the extractive industry sector are:

NR 7-5 The supply of aggregates

Facilitate the development of the extractive industry and seek to ensure the ongoing availability of an adequate supply of aggregates for the construction industry.

NR 7-6 Environmental Impacts

Minimise the adverse effects on the environment and the local community associated with aggregate extraction, processing, delivery and associated concrete production.

NR 7-7 Location

Ensure that quarrying and mining does not occur in areas where the visual or other impacts of such works would adversely injure the amenities of the area or create significant adverse effects on the road network in the area.

NR 7-8 Extraction

Promote the appropriate development of aggregate extraction in peripheral areas of the County.

5.2 Natural Heritage Designations

5.2.1 The Stacks's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (SPA) – Site Code 004161 (see attached maps, Conservation Objectives and other documentation). As indicated the quarry extends into this site.

5.2.2 Tralee Bay and Magharees Peninsula, West to Clohane Special Area of Conservation (SAC) – Site Code 002070 (see attached maps, Conservation Objectives and other documentation). Tralee Bay is approximately 10 kilometres to the south west of the quarry site.

5.2.3 Tralee Bay Complex Special Protection Area (SPA) – Site Code 004188 (see attached maps, Conservation Objectives and other documentation).

6.0 ASSESSMENT

6.1 Introduction

6.1.1 Section 177D(1) of the Act specifies that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment was or is required in respect of the development concerned and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

6.1.2 Section 177D(2) provides that in considering whether exceptional circumstances exist the Board must have regard to the following:

- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
- (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;
- (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;
- (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
- (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

- (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
- (g) such other matters as the Board considers relevant.

6.2 Qualifying Development

6.2.1 It follows from the Determination made by the Planning Authority under Section 261A(2)(a) [see section 4.3.1 above] that the subject quarry is one where an environmental impact statement, a determination as to whether an environmental impact assessment is required and an appropriate assessment was/is required in respect of the development concerned. The subject quarry, therefore, does potentially qualify for leave to apply for substitute consent.

6.3 Exceptional Circumstances

6.3.1 Taking each of the tests set down in section 177D(2) in turn I would comment as follows.

6.3.2 Would regularisation of the development concerned circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive?

6.3.2.1 Given the considerable lapse of time in this case between the 26 October 2012, the date on which a substitute consent application should originally have been lodged to the Board, and the lodgement date of the subject application for leave to apply for substitute consent, 12 September 2013, and the considerable lapse of time since the first application for leave to apply for substitute consent, lodged 24 December 2012, and which was deemed invalid due to a failure to lodge the appropriate fee, and the continuation of quarrying at the site in the intervening period, including an apparent further expansion of the extraction area eastwards and immediately adjacent to the SPA, I would find it difficult to conclude that regularisation of the development at this point would not circumvent the purpose and objectives of these Directives. In this connection I would note that the purpose and objectives of the directives are fundamentally predicated on prior assessment of development proposals.

6.3.3 Whether the applicant had or could reasonably have had a belief that the development was not unauthorised

6.3.3.1 It is evident on the basis of the drawings submitted with this application survey date 22 October 2011, and which were before the Planning Authority for the purposes of the Section 261A process (see reference in the Planning Report

under Determination Assessment), that the quarry had at that stage expanded substantially beyond the Section 261 boundary and in contravention of Condition 3 imposed on the operation of the quarry as part of that process (see section 4.1.1 above).

6.3.3.2 By reference to Section 261(6)(aa), Planning and Development Act 2000, as amended, failure to comply with conditions imposed under Section 261(6)(i) renders the quarry unauthorised.

6.3.3.3 Having regard to this and the considerable lapse of time since, during which the quarry has remained active and expanded further, and notwithstanding the failure of the Planning Authority to issue an Enforcement Notice following the expiry of the initial period within which a substitute consent application should have been made (see Section 4.7 above), I consider that it could not be concluded that the applicant had or could reasonably have had a belief that the development was not unauthorised.

6.3.4 Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.

6.3.4.1 I do not consider that the ability to carry out the relevant assessments or to provide for public participation has been substantially impaired.

6.3.5 The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development.

6.3.5.1 Detailed assessments in relation to these matters were carried out by the Planning Authority as part of the Section 261A process – see EIA Screening Report and AA Screening Report on file.

6.3.5.2 In relation to EIA I would refer the Board, in particular, to the summary table towards the end of the report. I would note, in particular, the references to the issues of; habitat loss within the adjacent SPA; the significant number of adjacent residences; the linkage to the Tralee Bay SAC and shell fish habitat; and potential for peat slippage associated with disturbance to upland blanket peat.

6.3.5.3 In relation to AA I would refer the Board, in particular, to Section 4 of the report. I would note, in particular, the sensitivity of the quarry site by reference to the adjacent SPA, noting that the quarry is located partly within this SPA, and its location upstream of the Tralee Bay Natura 2000 sites.

6.3.5.4 In relation to the adjacent SPA issues arise in relation to effects on the Hen Harrier, the subject of the Conservation Objective for the site. These include, direct habitat loss; potential disturbance; and the potential for peat slope failure.

6.3.5.5 In relation to the Tralee Bay Natura 2000 sites the central issue relates to potential effects on water quality resulting from the direct hydrological connection (see Section 3.6 above). Adequate water quality is an essential environmental condition within the Natura sites which contain water dependent habitats and species and which are the subject of the Conservation Objectives for the sites.

6.3.6 The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

6.3.6.1 Any conclusive comment on this matter would require that the necessary environmental and appropriate assessments be carried out. However, having regard to section 6.3.5 above I would be of the view that it is likely that significant effects that have arisen could be satisfactorily remediated in this case. Measures are likely to include curtailing any further significant lateral expansion of the quarry; landscaping/restoration works; and the installation of a water management system to address, in particular, the issue of surface water drainage and discharge from the site.

6.3.7 Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.

6.3.7.1 Though not a permission as such the only relevant reference under this heading would appear to be that referred to at Section 6.3.3.1 above, i.e., the evident failure to comply with Condition 3 imposed under section 261(6)(i).

6.3.8 Such Other Matters as the Board Considers Relevant

6.3.8.1 There are no other matters that occur to me and that would assist the Board in deciding if exceptional circumstances exist in this case.

6.3.9 Conclusion in relation to Exceptional Circumstances

6.3.9.1 It is noted that the legislation does not provide any guidance as to the weight to be attributed to each of the matters considered above or whether a positive outcome must be recorded in relation to all or just some of them in order for the Board to conclude that exceptional circumstances exist. I conclude, therefore, that the Board must come to an overall judgement having regard to all of the aforesaid matters.

6.3.9.2 It is my conclusion that exceptional circumstances do not exist in this case. In coming to this conclusion I would place particular emphasis on; the fact that the applicants had the opportunity to apply for substitute consent on foot of the Section 261A process and failed to do so; the significant delay in applying for leave to apply for substitute consent; the continuation of quarrying at the site, including an apparent expansion of the extraction area in a known environmentally sensitive location; and the evidence that the applicant could not reasonably have had a belief that the development was not unauthorised.

6.4 Recommendation

6.4.1 I recommend that leave to apply for substitute consent should be refused for the following reasons and considerations.

While the Board is satisfied by reference to the Section 261A(2)(a) Determination made by the Planning Authority that the subject quarry should have been subject to environmental impact assessment, a determination as to whether an environmental impact assessment is required and an appropriate assessment it does not consider that exceptional circumstances exist having regard to the following:

- (a) The failure to apply for substitute consent on foot of the Section 261A process, the significant delay thereafter in applying for leave to apply for substitute consent, and the continuation of quarrying at the site, including an apparent expansion of the extraction area, in a known environmentally sensitive area that includes the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA, within which the quarry is partly located, and the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and The Tralee Bay Complex SPA, with which the quarry has a direct hydrological link via surface water discharges contaminated with sediment, adjacent upland blanket peat with potential for slippage and a significant number of nearby houses. It is considered, therefore, that the regularisation of the development would circumvent the purpose and objectives of the Environmental Impact Assessment Directive and the Habitats Directive.

- (b) Having regard to the significant expansion of quarrying beyond the boundary specified in Condition 3 imposed under Section 261(6)(i) it is not considered that the applicant could reasonably have had a belief that the development was not unauthorised.

The Board should note that I do not consider that section 177L (Direction to cease etc.) should be invoked in this case.

Brendan Wyse
Assistant Director of Planning

14 Jan, 2012.

ym

Appendix 4 – Historical Photos



2000

2000 aerial



OSI Home OSI Shop Shopping Cart Your Orders

- BUY MAP
- SEARCH
- LEGEND
- HISTORIC LAYERS
- RESET VIEW
- PAN
- ZOOM IN
- ZOOM OUT

- PREVIOUS MAP SERIES
- STREET MAP (beta)
 - ORTHO 2005
 - ORTHO 2000
 - ORTHO 1995
 - WIND REPORT
 - HISTORIC 6"
 - HISTORIC 6" BSW
 - HISTORIC 25"

STATUS
 Scale 1:5000
 XY 488596, 618741
 ©2014 Ordnance Survey Ireland

EN 11:08 06/01/2014

2005 aerial

2005



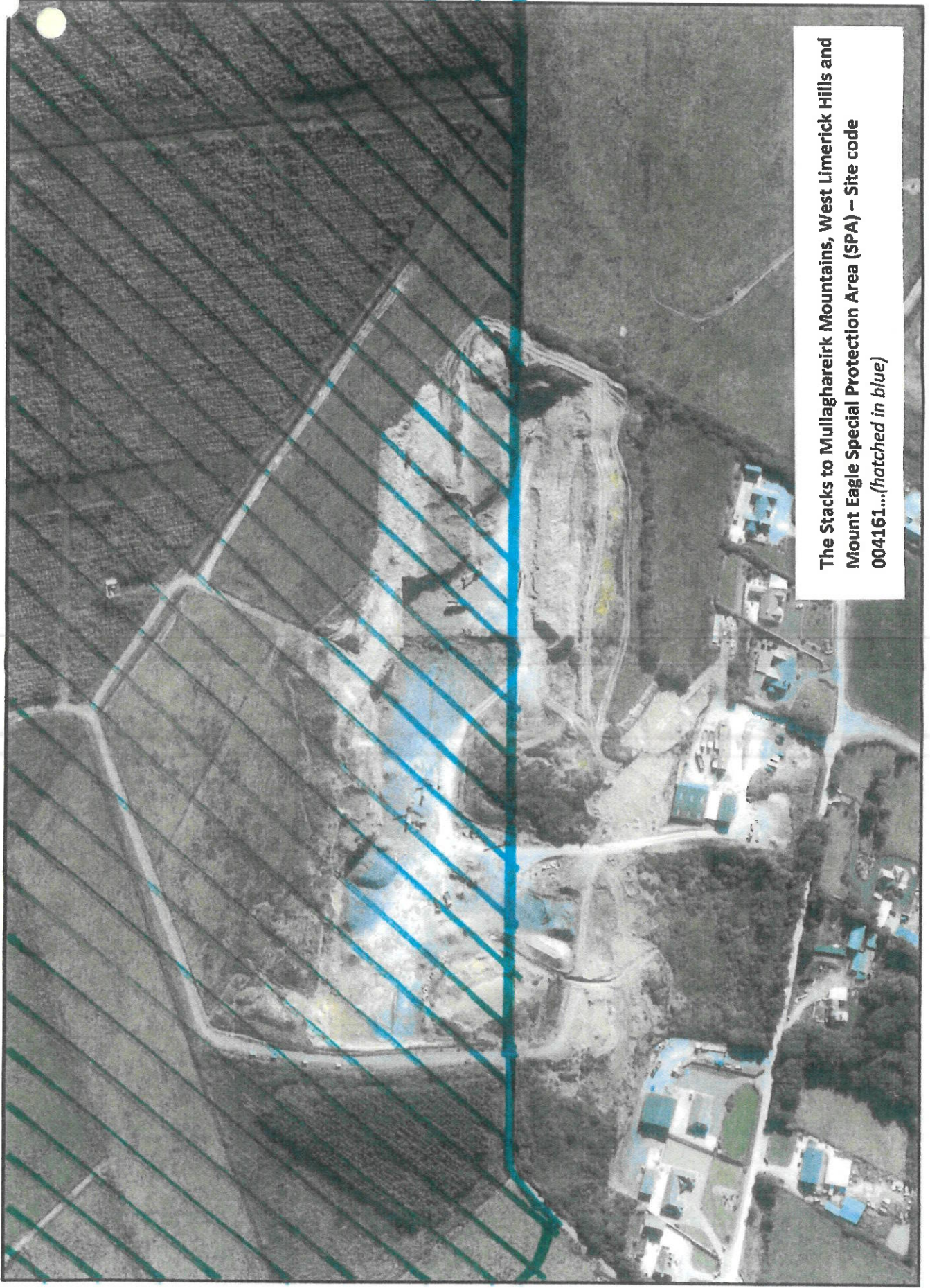
© 2013 Microsoft Corporation. Available Exclusively by DigitalGlobe. © 2013 iobis.

2013/2014 - Aerikil

further expansion - post 261 boundary

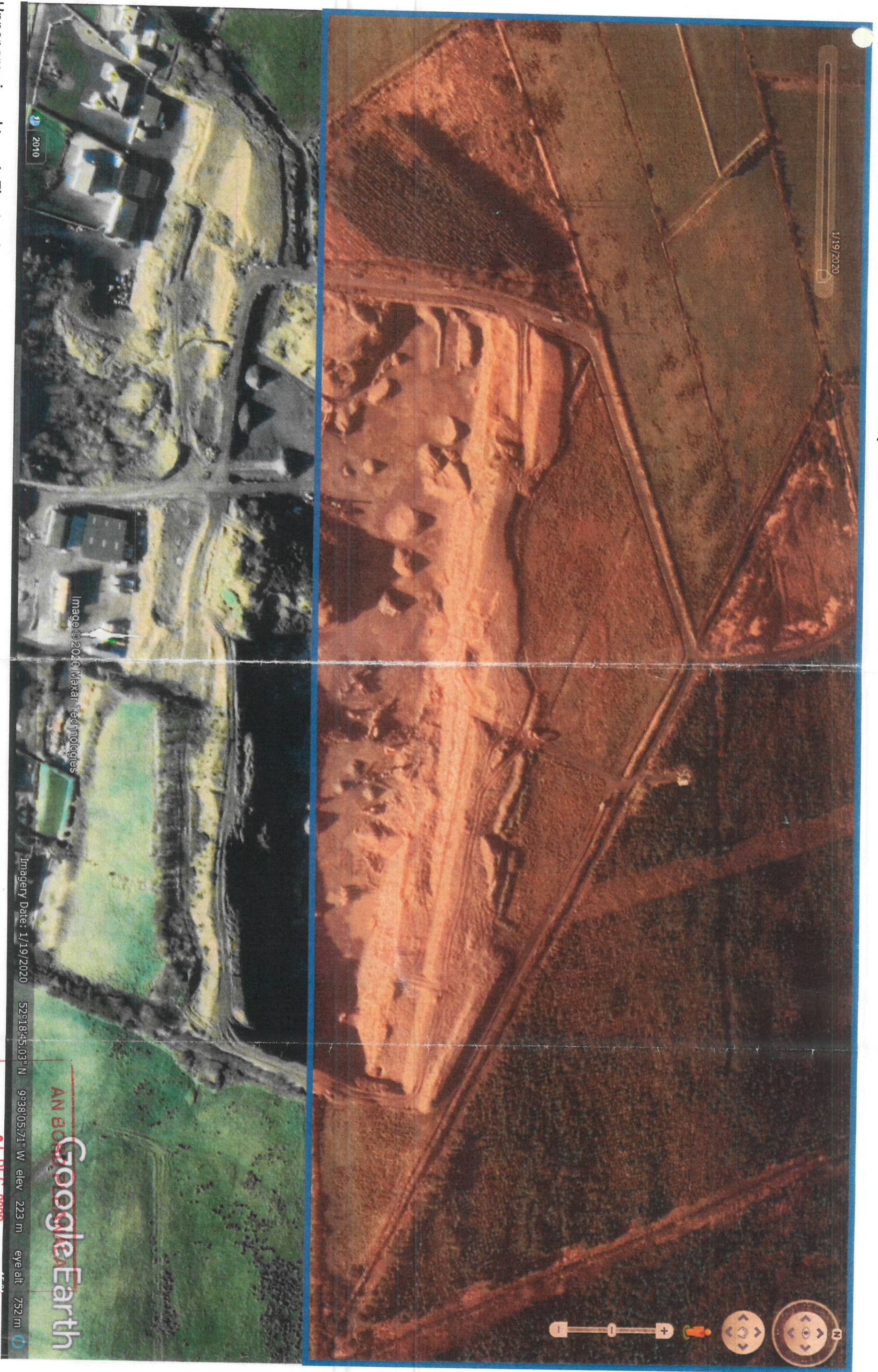
261 boundary

O'Mahoney Quarry - Tralee - 17th July 2017



The Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (SPA) – Site code 004161...(*hatched in blue*)

OMahoney Quarry – Tralee – 19th January 2020



Upper area in red tone is The Stacks To Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (SPA) Site Code 004161