

16th March 2022.

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

AN BORD PLEANÁLA	
LDG-	<u>050488-22</u>
ABP-	
22 MAR 2022	
Fee: € <u>220.</u>	Type: <u>cheque</u>
Time: _____	By: <u>reg post</u>

**RE: Referral under Section 5(4) of Planning & Development Act 2000 (as amended)
'Lands at Lismaine, Jenkinstown, Co. Kilkenny.'**

A Chara,

Kilkenny County Council hereby refers the following question(s) to be determined by the Board:

1. *Whether excavation of land to create a lagoon system, including associated pipe work and mounding to facilitate ground water lowering and discharge of water from the quarry at Lands at Lismaine, Jenkinstown, Co. Kilkenny is or is not development and is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).*
2. *Whether the operation of the quarry at Lismaine (which is an established use under the P&D Act 2000 as amended) with discharge of water from the quarry to land outside the site ownership boundary at Lands at Lismaine, Jenkinstown, Co. Kilkenny with hydrological connection to the River Barrow/River Nore SAC and Inchbeg pNHA is or is not development and is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).*

Background

The subject site comprises a quarry located in the townland of Lismaine, approx. 4.5kms south of Ballyragget. The site is accessed off the local primary road L-1818-19, close to its junction with the N77-141. It is located approx. 450m east to the River Barrow And River Nore Special Area of Conservation (SAC site code 002162) and Inchbeg pNHA (site code 000836). There are a number of residential dwellings in the area and a petrol filling station at the junction of the LP 1818-19 and the N77-141, close to the site.

Quarrying in this area started prior to 1964 and aerial photos from the 1970s show the quarry as extant. The lands in the original ownership of James Treacy in 1964 would have constituted all the lands currently in the ownership and use by both Brenstone (William and Liam Brennan), Lismaine concrete and Asphalt Roofing (Donal O'Regan and Doni O'Regan). This land was sold off in batches in the 1970s and 1980s, to The Brennan Bros others. The current landownership breakdown is indicated on the Folio Map Lismaine in the exhibit 13.

The map attached shows the area of land currently in the ownership/under control of Mr. Don O'Regan, Mr Doni O'Regan and the Asphalt Roof company where the business of Asphalt Roofing is being carried on and where the current quarrying activity is being carried on.

In 2012 the current operators of quarry activities, attempted to register under the quarry registration provisions of section 261A of the Planning and Development Act 2000 (as amended). However, the application to register was submitted a day late (28th April 2005) which was outside the period allowed for such applications under this legislation and accordingly the application was rejected. The quarrying activities were considered unauthorized development.

On a number of occasions in the past, 2009, 2010, 2012, and 2014 Kilkenny County Council has issued Enforcement Notices against the developers with regard to quarrying activities at Lismaine on the basis that it is unauthorised development. On each occasion, the developer ceased the unauthorized activities in response to the Enforcement Notices. (see planning history below)

In 2020 the Council received a further complaint in relation to unauthorised quarrying activity at the subject site. Ultimately Kilkenny County Council was of the view that the quarrying activities constituted unauthorized development. The Council subsequently made an application for an injunction under Section 160 of the Planning and Development Act 2000 (as amended). This case is currently active with the respondents arguing that by virtue of the provisions of Section 251 of the P&D Act 2000 as amended the period of one year referred to in Section 261(1) has to be read as one year and nine days and that therefore the information was submitted within the period prescribed in the PDA 2000.

This is currently an active case and is presently before the Circuit Court awaiting a hearing date.

The Council subsequently received a further complaint in October 2021 regarding excavations to create a lagoon system and associated works to facilitate water discharge at the subject site. An Enforcement Notice regarding said works was issued on 10th December 2021 under section 154 of the P&D Act. This most recent complaint is the subject of question 1 of this referral to the Board under Section 5(4) of Planning & Development Act 2000 (as amended).

The owner of the site is contending that the lagoons and associated discharge of water is exempted development. (see attached submission by Malcolm Lane planning consultant exhibit 5)

Relevant Planning History

790/82 – Permission granted for an asphalt Processing plant as Lismaine to Donal O'Regan and John O'Brien. Granted 11/11/1982 (copy of decision and drawings attached exhibit 11)

08/1233 - to extend our existing yard by 1.5 Hectares to be used for the storage of asphalt, roofing insulation and other roofing materials and all ancillary site works. Granted 10/07/2009 (copy attached exhibit 12)

AN BORD PLEANÁLA	
22 MAR 2022	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

Enforcement History

ENF20103 - Alleged unauthorised quarry activity and alleged unauthorised construction of lagoon system

Under investigation.

Section 160 proceedings issued.

Separate Enforcement Notice under section 154 issued in relation to the unauthorised excavation of land associated pipework mounding and all associated site works to facilitate groundwater lowering and discharge of water from the quarry at Lismaine, Jenkinstown.

ENF14024 - Alleged unauthorised quarry.

Case closed Sept 2014

ENF12111 – Alleged unauthorised quarry.

Case closed

ENF12110 – Alleged unauthorised quarry.

Case closed

ENF10046 – Alleged unauthorised quarry.

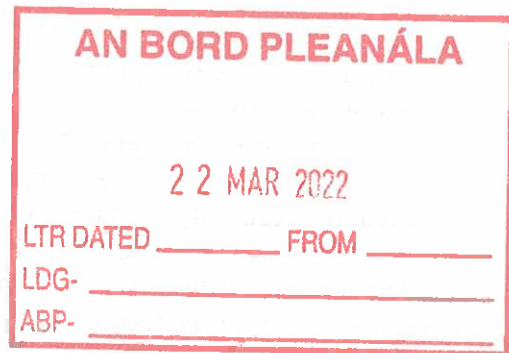
Case closed Dec 2010

ENF09177 – Alleged unauthorised quarry.

Case closed April 2010

ENF09176 – Alleged unauthorised quarry.

Case closed June 2016



Planning Authority View Q1

1. The Planning Authority has accepted that the quarry has existed at Lismaine, Jenkinstown, Co. Kilkenny prior to 1964. However, excavations to create a lagoon system and associated works to facilitate water discharge subject to the most recent Enforcement Notice issued on 10th December 2021 have now been carried out on site. The question now arises as to whether the work s or is not development and is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended). The establishment of a quarry use prior 1964 at Lismaine is not disputed by the Planning Authority. It is the contention of the Planning Authority that due to the recent excavations to create a lagoon system and associated works to facilitate ground water lowering and discharge of water from the quarry to an area located outside the site ownership boundary, that there is a potential significant impact on the surrounding environment, particularly the Special Area of Conservation: River Barrow River Nore SAC (site code 002162) and the Inchbeg pNHA (site code 000836) The quarry entrance from the local primary road L-1818-19 is located approx. 448m from the SAC/pNHA. At the entrance to the quarry site there is an existing roadside drain which is hydrologically

connected to the environmentally sensitive sites. (See exhibit 15 attached). Site inspections carried out by the Planning Authority have been included with this submission (Exhibits 6, 7, & 8) and show that water from the quarry through the constructed lagoon system is being discharged at said quarry entrance adjacent to the road, to the roadside drain with the water flowing towards the direction of the SAC/pNHA. Please see exhibit 4 ref ENV-W-21-03 The ground water within the active quarry area is being pumped to the lagoon system and from there is being discharged off site to the existing roadside drain. The Planning Authority being the competent authority in relation to appropriate assessment has determined that the impact of works carried are uncertain and cannot be screened out from the requirement of a Natura Impact statement (stage 2 appropriate assessment). Having regard to the proximity of the subject development to the River Barrow And River Nore SAC, the hydrological connection from the site to the SAC and pNHA the lack of detail regarding the construction of the lagoons, the lack of detail in relation to existing land drainage regime within the quarry site and the management of water disposal from the quarry site results in the uncertainty. Likely significant effects of the water discharge on the SAC and the requirement for an Appropriate Assessment cannot be ruled out. It is therefore considered that Stage 2 AA would be required. Under Section 4(4) of the Planning and Development Act 2000 (as amended), any development that cannot be screened out cannot be exempt from the requirement for planning permission. Part 2, Article 9(1) (a) (viiB) of the Planning and Development Regulations 2001 (as amended) also provides a restriction on exemption (under Article 6) where development would require an appropriate assessment. The Planning Authority therefore considers that the subject works is not exempted development in this regard.

2. The Planning Authority rejects the assertion put forward by Malcolm Lane in relation to development of the lagoon system as being exempted development. Mr Lane contends that the ponds/ lagoons constructed at the quarry site associated with the quarry fall under Article 6 schedule 2 Part 3 Exempted Development – Rural, Class 3 (minor works and structures) being “Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works.”
“Rural” is not defined in the P&D Act or Regulations. The dictionary definition of rural is “relating to, or characteristic of the country or country life.” The Planning Authority is of the view that these exemptions are clearly for rural works associated with agriculture or other rural activity and not applicable to commercial uses such as quarrying, which has the potential to seriously impact the Environment and are not minor in nature as is required by the regulations.

Further, the Planning Authority considers that the subject works relating to the lagoon and disposal of water off site have resulted in a significant change to the character and operation of the use of the quarry site and is subsequently affecting the proper planning and sustainable development of the area to such an extent that it can be considered material in planning terms.

AN BORD PLEANÁLA	
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Planning Authority View Q2

The Planning Authority accepts that a quarry use on lands at Lismaine was established prior to 1st Oct 1964 as defined within the Planning and Development Act 2000 as amended. An application for registration dated 27th April 2005 pursuant to Section 261 of the Planning and Development Act, 2000, was made to the Council. (See exhibit 14 attached)

That application was rejected by the Council on basis that the appropriate period for registration ended on the 26th April 2005.

The validity of that application is currently the subject of separate legal proceedings in the circuit court.

It is clear from that registration form submitted in 2005 that there was no discharge from the premises at that time for the following reasons:

Q 10 of the form asks:

Is pumping carried out at the development? Yes

No

The No box is ticked.

If Yes, identify (a) rate of pumping and (b) identify point of discharge.

Underneath this part of the question is written N/A

The final part of the question 10 is

Licence reference under which discharge is being carried out.

Underneath is written N/A

The form was signed by the Mr Donie O'Regan and it is not unreasonable to assume that if there had been a discharge of water at this time, questions would have been answered in the affirmative.

Q14 on the application form states:

Please give details of emissions (noise, dust, water, etc) from the quarry where measurements are available.

The answer given is N/A

Q16 of the form states:

Give details of the level relative to ordnance datum of the winter water table.

The answer given is "Water Table not Identified."

AN BORD PLEANÁLA

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The application form for registration submitted to the Council in 2005 poses three questions relating to the outputs of the quarry at that time. The replies to each question indicate that there was no water discharge from the quarry and in the answer to question 14 it is stated that the winter water table was not identified. This is credible evidence as to the scale and extent of the quarry operation in 2005.

For the purpose of Section 261A of the Planning and Development Act for the purpose of preparing a screening report further inspection was carried out in May 2012. On inspection it was found that recent quarrying had taken place to below the water table as the extracted area was filled with water. No discharge was found from the quarry lands to any adjoining surface water drainage at that time. An appropriate assessment screening having regard to the site visit, the nature and size of the quarry, all relevant information available at the time and it was concluded that by virtue of there being no pathway from the source (quarry) to the receptor (River Nore SAC) that impact on the SAC would be unlikely. A copy of the planner's report and AA screening report dated 14th May 2012 and is attached. (See exhibit 16)

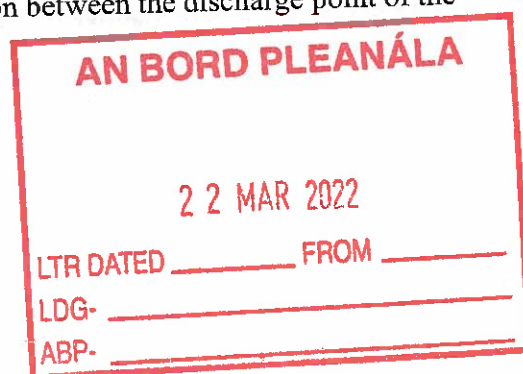
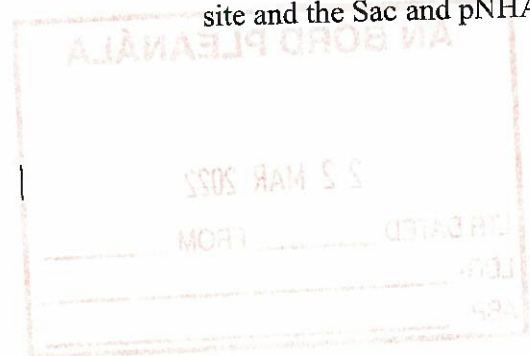
Following complaints received from local residents in August 2020 the Council instigated Section 160 proceedings against Mr. Donal O'Regan and Mr. Doni O'Regan. These proceedings are ongoing. Complaints were received from Mr. Sean Cahill, Mr. Aidan Brophy and Mr. Eamon Conway local residents. Sworn Affidavits were made by the complainants and used in the proceedings brought by Kilkenny County Council. Copies of these affidavits are included as exhibit 17 attached.

Site inspections carried out by the Planning Section of Kilkenny County Council and the Environment Section of Kilkenny County Council has established that the operation of the quarry provides for the pumping of water from the active quarry area to a set of constructed lagoons and water now discharges from the site to the public road drainage system and onwards to the River Barrow/River Nore Sac and the Inchbeg pNHA through the natural land drainage system. The land drains provide a direct hydrological connection from the quarry to the environmentally sensitive areas.

It is the contention of the Planning Authority that this has resulted in a material change to the nature and scale of the operation of the quarry and by virtue of the change in operation (water disposal system and direct discharge to land drains) has rendered the entire operation (established quarrying activity and water discharge system) development which requires stage 2 appropriate assessment and therefore is development and is not exempted development

To assist in the determination of the referral please find enclosed the following documents numbered as per the list below:

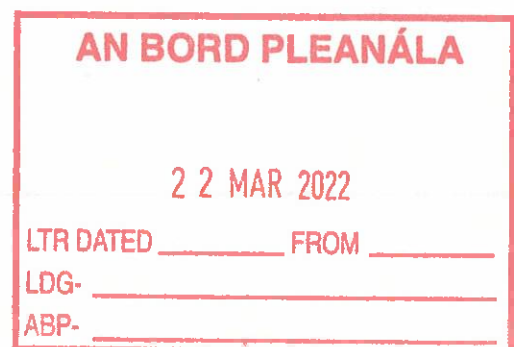
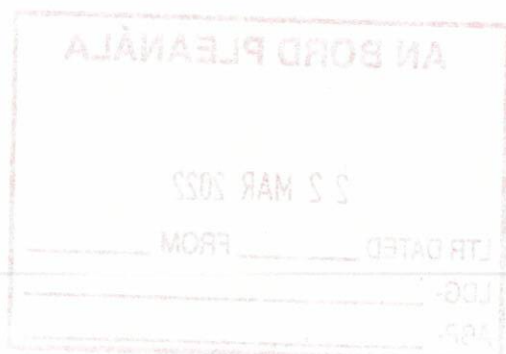
1. Copy of complaints and supporting documentation from KCC Environment Section made under Ref ENF20103.
2. Copy of Planner's report dated 15th October 2021 relating to ENF20103, recommending Enforcement Notice issued on 10th December 2021.
3. Copy of land map outlining the location of the active quarry and the lagoons
4. Copy of map prepared by the Environment Section of Kilkenny County Council ref ENV-W-21-03 showing the hydrological connection between the discharge point of the site and the Sac and pNHA.



5. Copy of affidavit from Mr. Malcolm Lane claiming exemption for the lagoons under Article 6 schedule 2 Part 3 Exempted Development – Rural, Class 3
6. KCC follow-up site inspection photos dated 17th December 2021.
7. KCC follow-up site inspection photos dated 21st December 2021.
8. KCC follow-up site inspection report and photos dated 20th January 2022.
9. Copy of Enforcement Notices issued in relation to ENF20103,
10. Copy of affidavits by Mr. Aidan Brophy, Mr. Eamon Conway and Mr. Sean Cahill relating to injunction proceedings under ENF20103.
11. Copy of Planning ref 790/82 with drawings.
12. Copy of Planning ref 08/1233 with map.
13. Folio Map Lismaine.
14. Copy of application under Section 261 of the P&D Act.
15. Copy of Map 1 NPWS Designated Areas.
16. Copy of Planners Report and AA screening report under 261 A
17. Copies of affidavits from Mr. Sean Cahill, Mr. Eamon Conway, and Mr., Aidan Brophy.

I attach herewith a cheque of €220 required for a Section 5 referral.

 Denis Malone
 Senior Planner



AN BORD PLEANÁLA

2 2 MAR 2022

LTR DATED _____ FROM _____

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ABP- _____

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Background

The subject site comprises a quarry located in the townland of Lismaine, approx. 4.5kms south of Ballyragget. The site is accessed off the local primary road L-1818-19, close to its junction with the N77-141. It is located approx. 450m east to the River Barrow And River Nore Special Area of Conservation (SAC site code 002162) and Inchbeg pNHA (site code 000836). There are a number of residential dwellings in the area and a petrol filling station at the junction of the LP 1818-19 and the N77-141, close to the site.

Quarrying in this area started prior to 1964 and aerial photos from the 1970s show the quarry as extant. The lands in the original ownership of James Treacy in 1964 would have constituted all the lands currently in the ownership and use by both Brenstone (William and Liam Brennan), Lismaine concrete and Asphalt Roofing (Donal O'Regan and Doni O'Regan). This land was sold off in batches in the 1970s and 1980s, to The Brennan Bros others. The current landownership breakdown is indicated on the Folio Map Lismaine in the exhibit 13.

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In 2020 the Council received a further complaint in relation to unauthorised quarrying activity at the subject site. Ultimately Kilkenny County Council was of the view that the quarrying activities constituted unauthorized development. The Council subsequently made an application for an injunction under Section 160 of the Planning and Development Act 2000 (as amended). This case is currently active with the respondents arguing that by virtue of the provisions of Section 251 of the P&D Act 2000 as amended the period of one year referred to in Section 261(1) has to be read as one year and nine days and that therefore the information was submitted within the period prescribed in the PDA 2000.

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The owner of the site is contending that the lagoons and associated discharge of water is exempted development. (see attached submission by Malcolm Lane planning consultant exhibit 5)

Relevant Planning History

790/82 – Permission granted for an asphalt Processing plant as Lismaine to Donal O'Regan and John O'Brien. Granted 11/11/1982 (copy of decision and drawings attached exhibit 11)

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Enforcement History

ENF20103 - Alleged unauthorised quarry activity and alleged unauthorised construction of lagoon system

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Case closed Sept 2014

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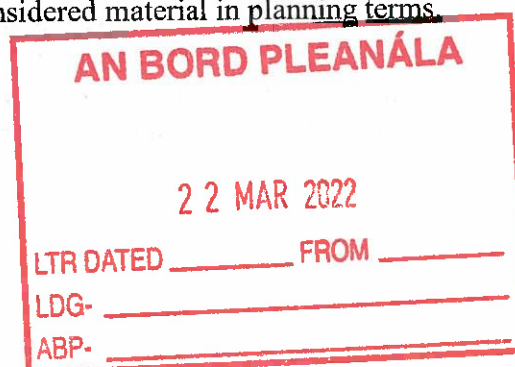
Planning Authority View Q1

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22 MAR 2022

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Planning Authority View Q2

The Planning Authority accepts that a quarry use on lands at Lismaine was established prior to 1st Oct 1964 as defined within the Planning and Development Act 2000 as amended. An application for registration dated 27th April 2005 pursuant to Section 261 of the Planning and Development Act, 2000, was made to the Council. (See exhibit 14 attached)

That application was rejected by the Council on basis that the appropriate period for registration ended on the 26th April 2005.

The validity of that application is currently the subject of separate legal proceedings in the circuit court.

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The No box is ticked.

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Underneath this part of the question is written N/A

The final part of the question 10 is

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The form was signed by the Mr Donie O'Regan and it is not unreasonable to assume that if there had been a discharge of water at this time, questions would have been answered in the affirmative.

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The answer given is N/A

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Give details of the level relative to ordnance datum of the winter water table.

The answer given is "Water Table not Identified."

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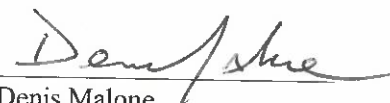
To assist in the determination of the referral please find enclosed the following documents numbered as per the list below:

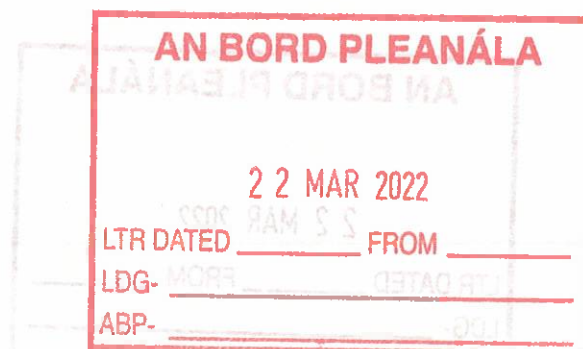
1. Copy of complaints and supporting documentation from KCC Environment Section made under Ref ENF20103.
2. Copy of Planner's report dated 15th October 2021 relating to ENF20103, recommending Enforcement Notice issued on 10th December 2021.
3. Copy of land map outlining the location of the active quarry and the lagoons
4. Copy of map prepared by the Environment Section of Kilkenny County Council ref ENV-W-21-03 showing the hydrological connection between the discharge point of the site and the Sac and pNHA.

AN BORD PLEANÁLA	
22 MAR 2022	
LTR DATED _____	FROM _____
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5. Copy of affidavit from Mr. Malcolm Lane claiming exemption for the lagoons under Article 6 schedule 2 Part 3 Exempted Development – Rural, Class 3
6. KCC follow-up site inspection photos dated 17th December 2021.
7. KCC follow-up site inspection photos dated 21st December 2021.
8. KCC follow-up site inspection report and photos dated 20th January 2022.
9. Copy of Enforcement Notices issued in relation to ENF20103,
10. Copy of affidavits by Mr. Aidan Brophy, Mr. Eamon Conway and Mr. Sean Cahill relating to injunction proceedings under ENF20103.
11. Copy of Planning ref 790/82 with drawings.
12. Copy of Planning ref 08/1233 with map.
13. Folio Map Lismaine.
14. Copy of application under Section 261 of the P&D Act.
15. Copy of Map 1 NPWS Designated Areas.
16. Copy of Planners Report and AA screening report under 261 A
17. Copies of affidavits from Mr. Sean Cahill, Mr. Eamon Conway, and Mr., Aidan Brophy.

I attach herewith a cheque of €220 required for a Section 5 referral.


Denis Malone
Senior Planner



AN BORD PLEANÁLA

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ENFORCEMENT NOTICE

SECTION 154 PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

LANDS AT: Lismaine, Jenkinstown, Co. Kilkenny
(as outlined in red on the attached map)

Ref: ENF20103

WHEREAS an unauthorised development is being carried out by you on the above lands which said unauthorised development consists of:

Unauthorised excavation of land, including associated pipe work, mounding, and all associated site works to facilitate ground water lowering and discharge of water from the quarry at Lands at Lismaine, Jenkinstown, Co. Kilkenny.

Note: The location of the subject area of land is highlighted in red on attached Image Reference ENF20103_Map2 in the interests of clarity.

Now take notice that The County Council of the County of Kilkenny, under the provisions of Section 154 of the Planning & Development Act 2000 (as amended), requires you to:

Cease all works on-site and restore land to pre-existing state.

Time Period for Compliance with the terms of the Enforcement Notice:

48 hours to cease all works associated with the excavation and one month to restore land to pre-existing state.

In the event that the steps specified herein are not taken within the above-mentioned period(s), the County Council of the County of Kilkenny may enter on the land and take such steps, including the removal, demolition or alteration of any structure and may recover from you any expenses reasonably incurred by them in that behalf.

TAKE NOTICE that the costs and expenses incurred by Kilkenny County Council in relation to the investigation, detection and the issue of this Enforcement Notice amount to €385.77 (Three hundred and eighty five euros & seventy seven cent) which are hereby required to be refunded to the Planning Authority forthwith which said costs and expenses are recoverable by the Planning Authority by virtue of the provisions of the Planning & Development Act 2000 (as amended).

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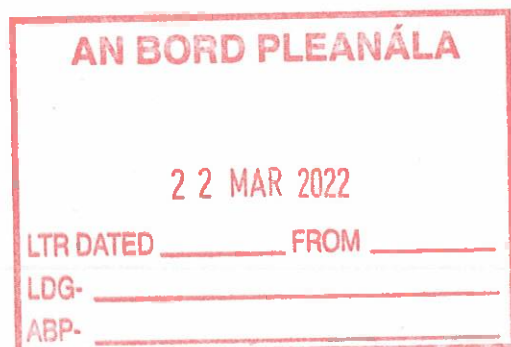
AND FURTHER TAKE NOTICE that in the event that the steps specified in this notice to be taken are not taken within the period specified herein that you may be guilty of an offence under the provisions of the above Act.

Dated this the 10th December, 2021

TO: Mr. Donal (Donie) O'Regan (Snr)
Moate Road
Ballyragget
Co. Kilkenny

Denis Malone

Senior Planner



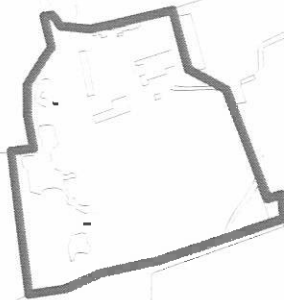
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Kilkenny County Council Enforcement Ref: ENF 20-103 O.S. Map 4525-C

Owner/Occuiper : Mr. Liam Brennan.
Owner Address: Webbsborough, Ballyfoyle,
Co Kilkenny.

Site Address: Lismaine, Co Kilkenny

Date: 10/12/2021

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Kilkenny County Council Enforcement Ref: ENF 20-103

Image Reference ENF20103_Map2



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Lisa McCann

From: Thomas Brennan
Sent: Monday 13 December 2021 12:36
To: Anne Marie Shortall; Denis Malone; Sean McKeown
Cc: Lisa McCann; Regina Moran
Subject: Lismaine Water Discharge
Attachments: 20211210_151353(Cropped).jpg

Hi all,

Just to advise that we received reports Friday morning (10/12/2021) from a resident at Lismaine that the discharge from the quarry was overtopping the open drain and running down the public road. When we attended on site there was evidence that the drain had indeed been overtopped onto the public road opposite Mr. Aidan Brophy's property. However, no active discharge was visible when inspected on Friday afternoon. See enclosed.

The discharge is now being piped from the lagoon system west of the main quarry. I note the height of the lagoons compared to the discharge point and the potential head of pressure likely to be imparted. We propose to forward any further reports of water discharging onto the public road to the Area Office.

Best Regards

Tom

Thomas Brennan
BEng C Eng MIEI
Executive Engineer
Environment Section
Kilkenny County Council
County Hall
Kilkenny
(056) 7794125
Email: Thomas.Brennan@Kilkennycoco.ie

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Lisa McCann

From: Thomas Brennan
Sent: Monday 22 November 2021 11:33
To: Denis Malone; Sean McKeown; John G. Harte; Anne Marie Shortall
Cc: Regina Moran; Eddie O'Reilly; Lisa McCann
Subject: 2021-11-22-ENV-W-21-23-Update on Works at Lismaine Quarry
Attachments: IMG-20211122-WA0001.jpg; Screenshot_20211122-105642_WhatsApp.jpg; Screenshot_20211122-105616_WhatsApp.jpg

Importance: High

Hi,

Hope all is well.

Regina received a number of communications from Sean Cahill at the weekend. I've attached a select number of photographs. It is clear to the Environment Section that a development in the form of unlined lagoon system has been constructed. There is also an overflow pipe visible heading towards the previous discharge location on the side of the access road opposite the entrance gate into O'Regan's. It would be reasonable to assume that the sole basis of this work is to reduce the level of suspended solids in the discharge and to limit the level of water discharging from the quarry site by ground infiltration within the ponds. You will note the raised level of one of the ponds. I note active pumping to the lagoons system is visible on one of the photographs. Subject to confirmation we believe that this development may be encroaching upon neighbouring lands.

At present there doesn't appear to be an ongoing or active water discharge to the roadside drain at the location but we will certainly monitor matters going forward and consider if any further notices are warranted on our end. John we'd welcome any feedback in terms of further action under LG WPA.

Denis can you advise if a further planning enforcement notice is now justified for this recent development.

Best Regards,

Tom

Thomas Brennan
BEng C Eng MIEI
Executive Engineer
Environment Section
Kilkenny County Council
County Hall
Kilkenny
(056) 7794125

Email: Thomas.Brennan@Kilkennycoco.ie

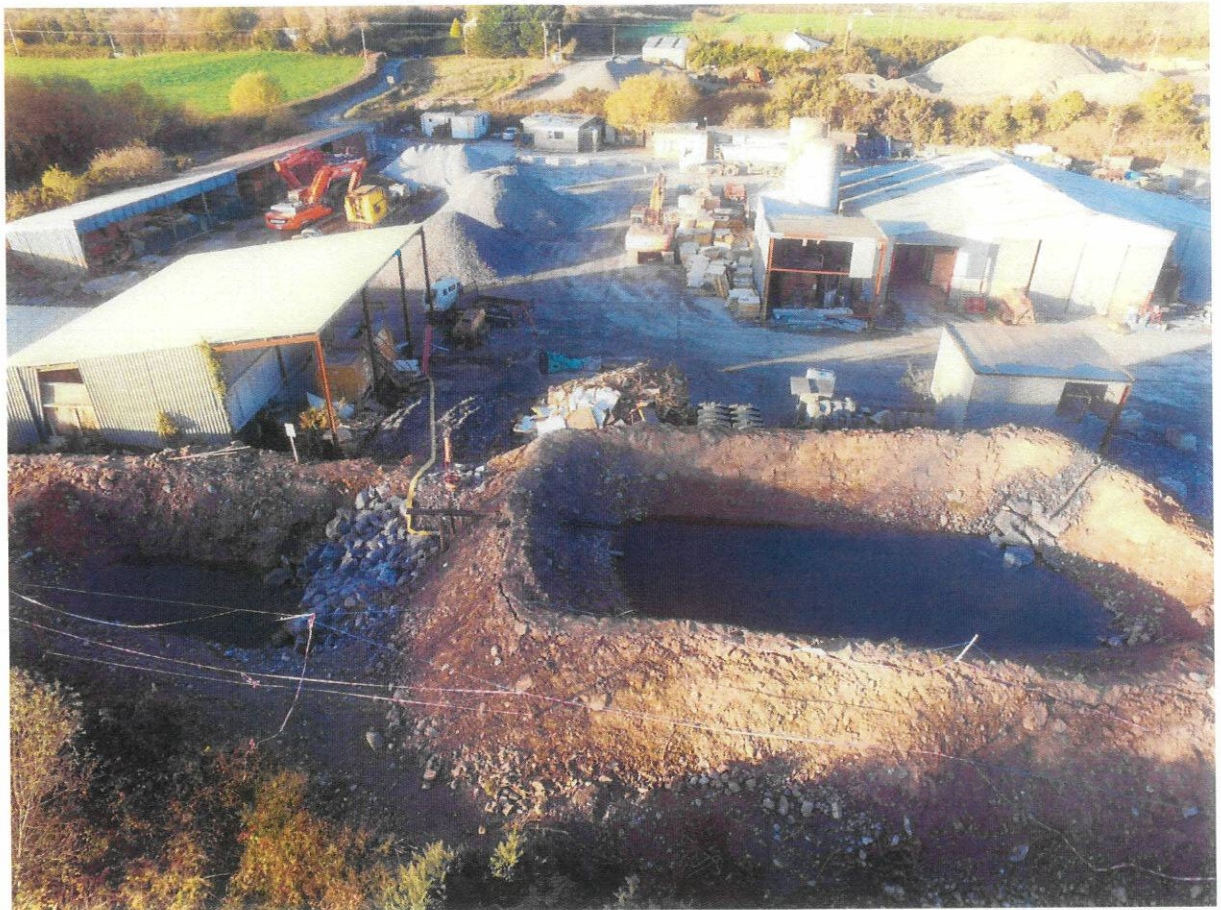
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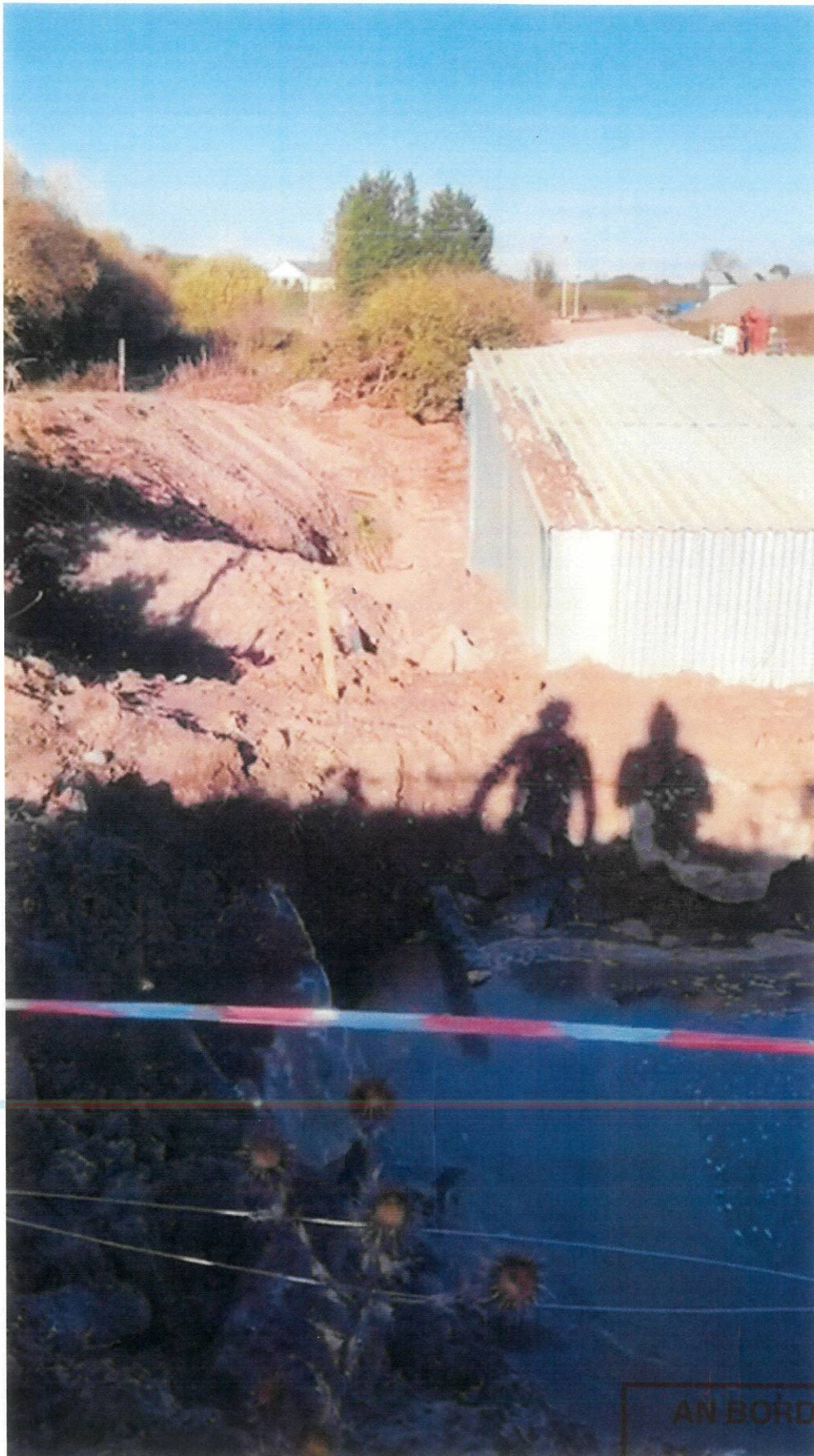
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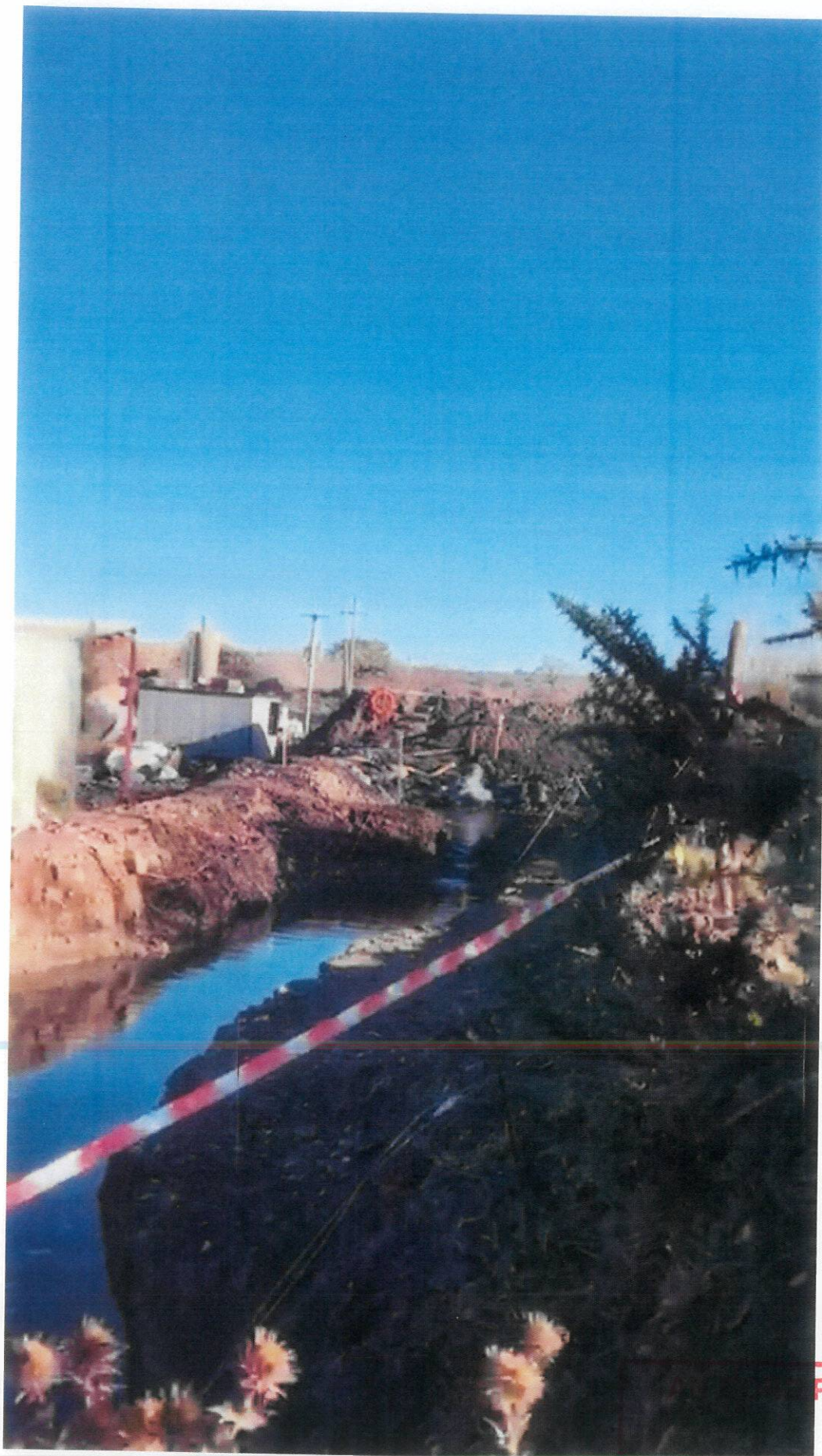
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Lisa McCann

From: Thomas Brennan
Sent: Tuesday 19 October 2021 09:39
To: Regina Moran
Cc: Eddie O'Reilly; Lisa McCann; Denis Malone
Subject: RE: Lismaine

Hi Regina,

Yeah look, make contact with Liam Brennan advise him of the works and that it appears to us to be encroaching on he's lands. Advise him that we are making informal enquiries at this stage, but that the matter has been forwarded to the Planning Section and that a joint inspection may be arranged without further notice. The main goal is probably to try and get some information as to what the intention of the work is in the context of O'Regan Quarry and why they are allowing him access having regard to the prior Notices issued to them by the Environment Section.

Denis mentioned the joint inspection with planning and I think that might be useful. Can you make contact with Lisa.

Keep Eddie and Lisa in the loop. Look, If they consider it to be development works at variance with Planning Regulations then just hand off to them at that stage. If it is considered that the works are for the purposes of discharge of trade effluent to either ground or surface waters, then we may need to issue further waters Notices e.g. a further Section 10, 12 or 23 Notices or all of the above.

I might have some time towards the end of the week to attend on site.

Regards,

Tom

From: Regina Moran
Sent: 19 October 2021 09:12
To: Thomas Brennan <Thomas.Brennan@kilkennycoco.ie>
Subject: Lismaine

Hi Tom

You asked me last week if the development at Lismaine was on Regans land, the land ownership boundary is indicated on the aerial view below, the works are certainly encroaching on Liam Brennans Lands

I can contact Liam Brennan and ask if he is aware of the works if you think it is appropriate, we also noted that further silt has been tipped into the area indicated to the west as a pond (more than likely by Brennans

R

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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Regina Moran

Environment Section | Kilkenny County Council | County Hall | John Street | Kilkenny | R95 A39T

T 056 7794119 | M 087 9144368

E regina.moran@kilkennycoco.ie

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2

KILKENNY COUNTY COUNCIL
Enforcement Site Inspection Sheet

Enforcement Ref: ENF20103

Complaint Received: 15th October 2021

Complaint Origin: Thomas Brennan KCC Executive Engineer
Environment Section
Kilkenny County Council
County Hall
Kilkenny

Report date: 27th October 2021.

INSPECTION STATUS

Preliminary Visit	21 st October 2021
Follow up visit	
Following Warning	
Following Enforcement	
Prior to Court	

SITE INFORMATION

Site Address

Lands at Lismaine,
Jeninstown,
Co. Kilkenny.

Land Owner(s)

1. Donal (Donie) O'Regan
Moat Road
Ballyragget
Co. Kilkenny
2. John O'Brien
High Street
Ballyragget
Co. Kilkenny
3. William Brennan
Webbsborough
Ballyfoyle

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Co. Kilkenny

4. Liam Brennan
Webbsborough
Ballyfoyle
Co. Kilkenny

Planning History

08/1233 - to extend our existing yard by 1.5 Hectares to be used for the storage of asphalt, roofing insulation and other roofing materials and all ancillary site works.

Granted 10/07/2009

Enforcement History

ENF14024 – Alleged unauthorised quarry.
Case closed

ENF12111 – Alleged unauthorised quarry.
Case closed

ENF12110 – Alleged unauthorised quarry.
Case closed

ENF10046 – Alleged unauthorised quarry.
Case closed

ENF09177 – Alleged unauthorised quarry.
Case closed

ENF09176 – Alleged unauthorised quarry.
Case closed

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DESCRIPTION OF UNAUTHORISED DEVELOPMENT

Unauthorised excavation of land and all associated works at Lismaine, Jenkinstown, Co. Kilkenny.

REPORT

The subject site comprises a quarry located in the townland of Lismaine, approx. 4.5kms south of Ballyragget. The site is accessed off the local primary road L-1818-19, close to its junction with the N77-141. It is located approx. 500m east to the River Barrow And River Nore Special Area of Conservation (SAC).

A complaint from Mr Sean Cahill was referred from Mr Thomas Brennan, KCC Executive Engineer (Environment Section) to the Planning Enforcement Department on 15th October

2021. Mr Brennan stated in his email correspondence that significant works are underway at Lismaine Quarry and provided photos of the subject works. Mr Brennan also advised that the purpose of the works is unclear but confirmed that a deep trench has been excavated from a large hole in the middle of the yard, and advised that it could be a deep soakaway.

Following receipt of the complaint I carried out a site inspection with Eddie O'Reilly KCC Senior Executive Technician, and Regina Moran of KCC Environment Section, on 21st October 2021 in accordance with Covid-19 restrictions. Upon arrival to the site, I observed that the quarry is operational and work is currently being undertaken with machinery in use. I also observed that significant excavation works had been carried out on site as described by Mr Brennan. The subject development appears to be located along a site boundary with separate ownerships. I carried out a land registry search which states that the lands are within the ownership of the persons outlined in the Land Owner section of the report.

Section 154. (3)(a) of the Planning and Development Act 2000 (as amended) states:-

An enforcement notice under subsection (1) shall be served on the person carrying out the development and, where the planning authority considers it necessary, the owner or the occupier of the land or any other person who, in the opinion of the planning authority, may be concerned with the matters to which the notice relates.

The Planning Authority therefore considers all persons outlined in the Land Owner Section of the report to be concerned with the matters to which this investigation relates.

The works observed during the course of the site inspection comprised excavation of a deep trench within installed pipes located to the south east of the quarry site. The excavated area was corded off by ribbon and included signage advertising 'Danger – Deep water'. A life belt was also located adjacent to the trench and sign.

Another excavated area was observed to the north of the trench, comprising a hole filled with water. This excavated area is located between two buildings within the south west area of the quarry site. It was noted that the pipes installed within the trench excavation appear to run from the trench into the second excavated area filled with water to the north.

Mr Donal O'Regan arrived on site shortly after our arrival and I explained the nature and purpose of the inspection. Mr O'Regan confirmed that the purpose of the excavated areas was to alleviate surface water from the quarry site and described the subject excavations as a sump, soakaway, and settling pond. Mr O'Regan advised that a similar pre-existing use was previously in situ which was being replaced by the existing development. However, independent investigations carried out by KCC Planning Enforcement Department using Google Satellite Imagery indicates no evidence of the alleged pre-existing development.

It is noted that Mr O'Regan stated that the Brennan's are tipping silt into the settling pond. It is also noted that Mr O'Regan advised that a Hydrogeologist named Connor from AWN Consulting in Dublin had been consulted regarding the subject excavation works.

Section 3 (1) of the Planning and Development Act 2000 (as amended) states:-

"development" means, except where the context otherwise requires, the carrying out of any

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works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 2 (1) of the Planning and Development Act 2000 (as amended) provides the following definitions:-

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined."

The works constitute "development" as defined under Section 3 of the Planning and Development Act 2000 (as amended) and do not come within the scope of exempted development.

Section 4(4) of the Planning and Development Act 2000 (as amended) states:-

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

The Planning Authority was not provided the opportunity to determine if an environmental impact assessment or an appropriate assessment was required for the subject development before commencement of works. Having regard to the works observed during the site inspection carried out on 21st October 2021, and the proximity of the subject development to the River Barrow And River Nore SAC, the requirement for an Appropriate Assessment cannot be ruled out at this stage. It is therefore considered that Stage 2 AA would be required. The works carried out do date therefore fails to accord with Section 4(4) of the Planning and Development Act 2000 (as amended) and is not exempted development in this regard.

It is noted that Schedule 2, Part 1, Class 22 of the Planning and Development Regulations 2001 (as amended) outlines the following exempted development stipulations for storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process:-

The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.

However, it is noted that Part 2, Article 5 (1) of the Planning and Development Regulations 2001 (as amended) provides the following definition for "industrial building":-

"industrial building" means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

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The works carried out to date is associated with a quarrying activity and does not therefore benefit from the aforementioned exempted development stipulations.

RECOMMENDATION

Having regard to the site inspection carried out on 21st October 2021, and following independent investigations carried out by KCC Planning Enforcement Department, I therefore recommend that the following Enforcement Notice is served on the following parties:

1. Donal (Donie) O'Regan
Moat Road
Ballyragget
Co. Kilkenny
2. John O'Brien
High Street
Ballyragget
Co. Kilkenny
3. William Brennan
Webbsborough
Ballyfoyle
Co. Kilkenny
4. Liam Brennan
Webbsborough
Ballyfoyle
Co. Kilkenny

Reasons for serving Enforcement Notice

Unauthorised excavation of land and all associated works at Lands at Lismaine, Jenkinstown, Co. Kilkenny.

Terms for Compliance with Enforcement Notice

Cease all works on-site and restore land to pre-existing state.

Time period for compliance with the terms of the Enforcement Notice.

One week from the date of the service of this notice.

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OFFICER'S DETAILS



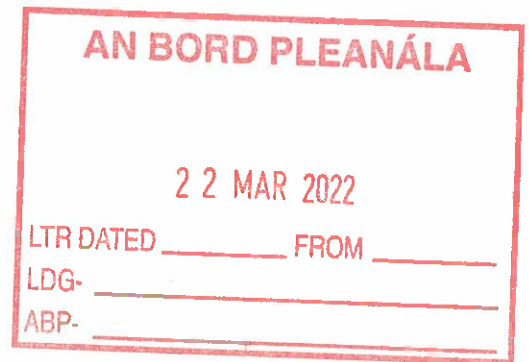
Signature: _____
Lisa McCann, Executive Planner

28/10/21
Date: _____

I agree with the above recommendation.

Signature: _____
Denis Malone, Senior Planner.

Date: _____



ENF 20103 Lismaine, Jenkinstown, Co. Kilkenny.

GIS Imagery



Fig1: Image showing distance of quarry entrance where water is discharging from the site from SAC (450m).



Fig2: Image showing location of quarry entrance where water is discharging from the site and location of SAC.

Google Pro Imagery

Fig 1-2: Image dated 17/09/2019 showing pre-existing land



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Fig 3-4: Image dated 28/06/2018 showing pre-existing land.



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Fig 5-6: Image dated 20/11/2005 showing pre-existing land.



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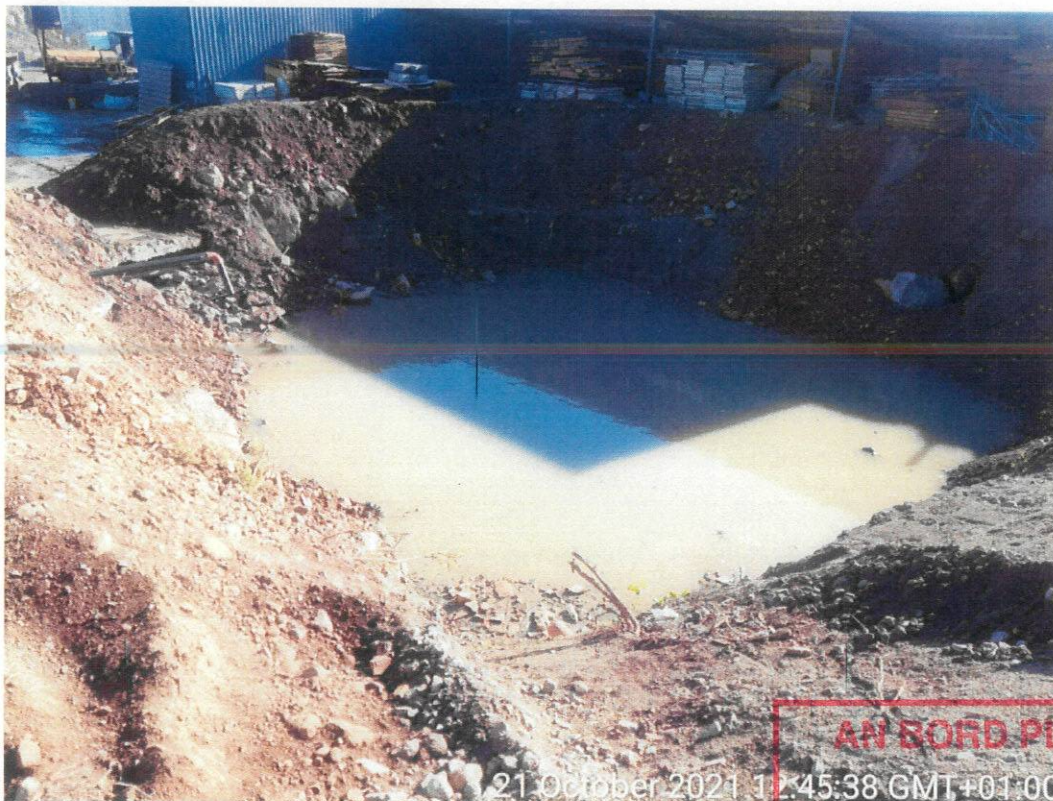
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Site inspection 21st October 2021.



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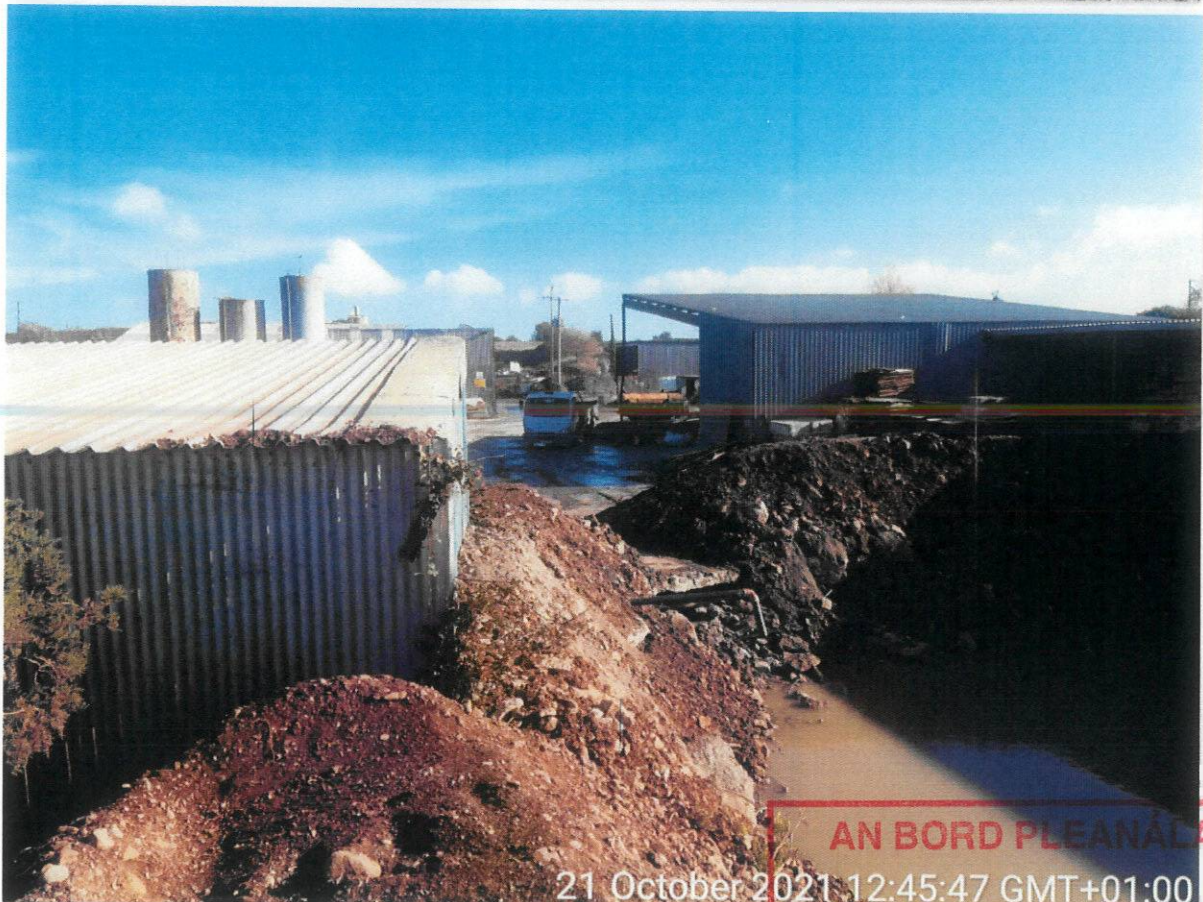
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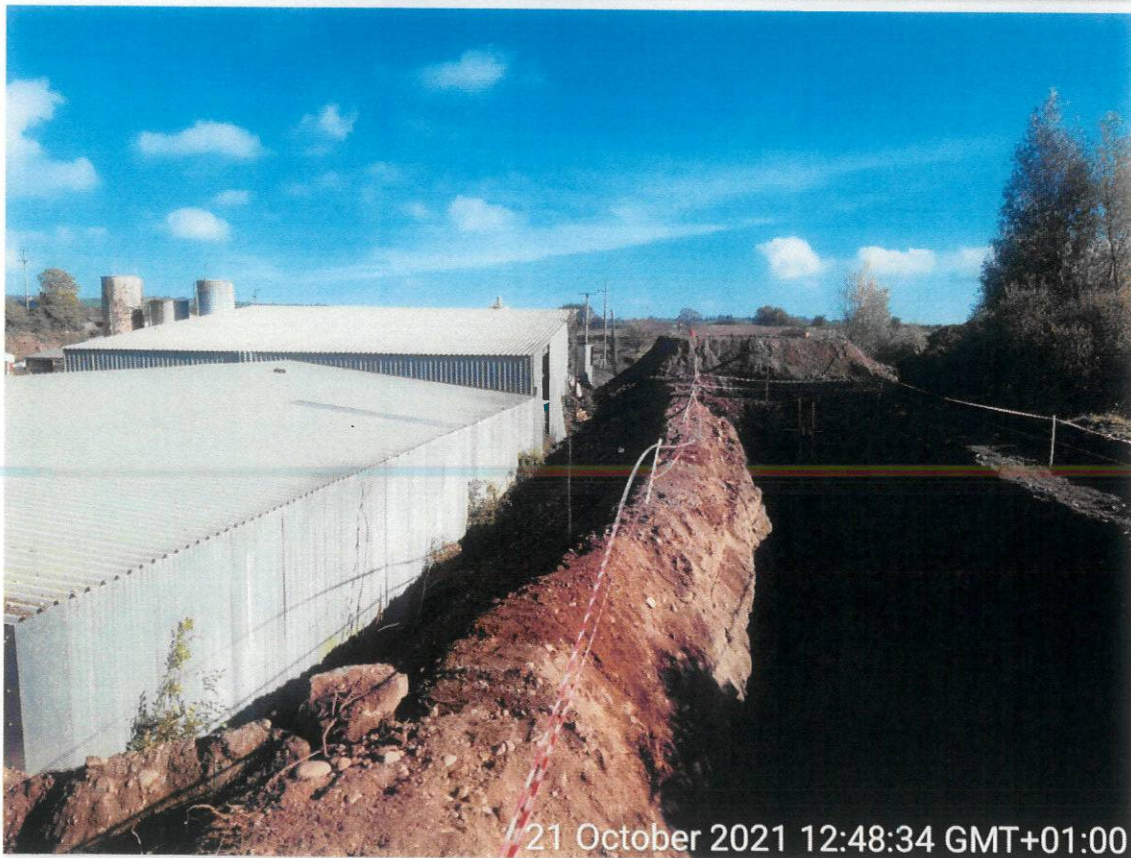
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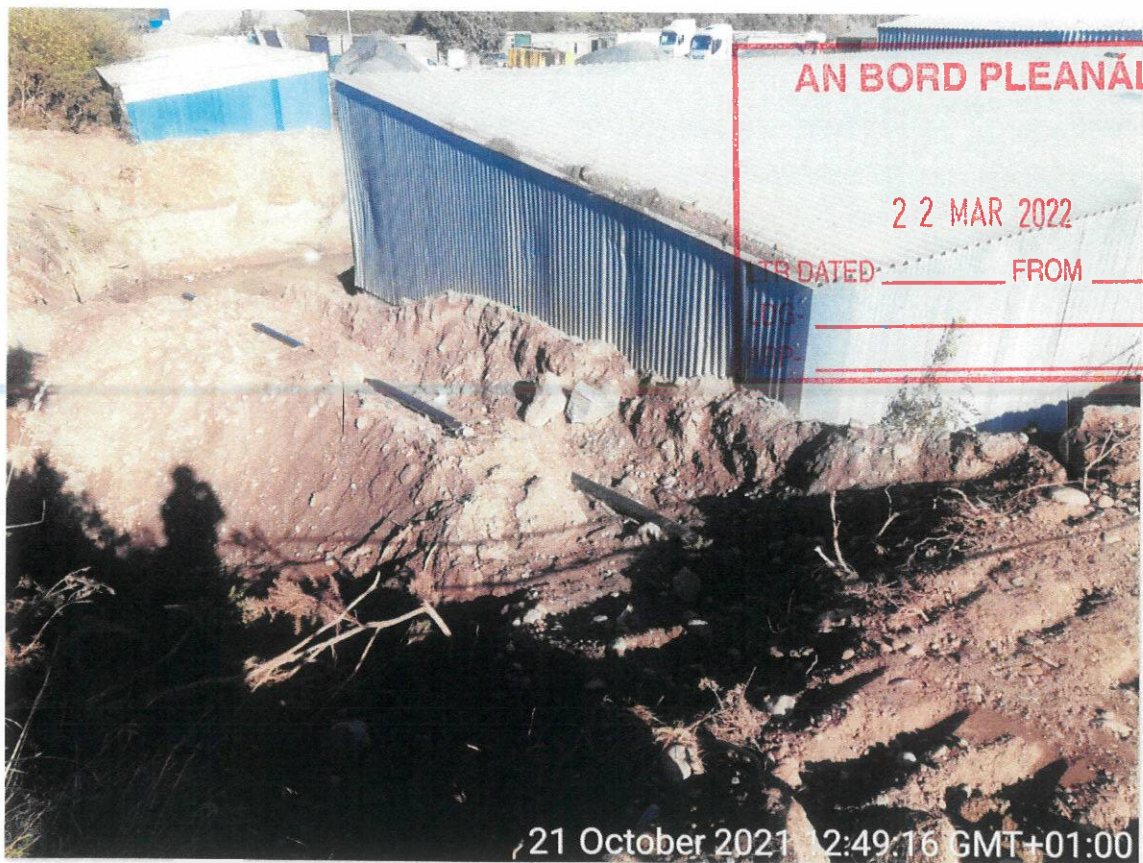
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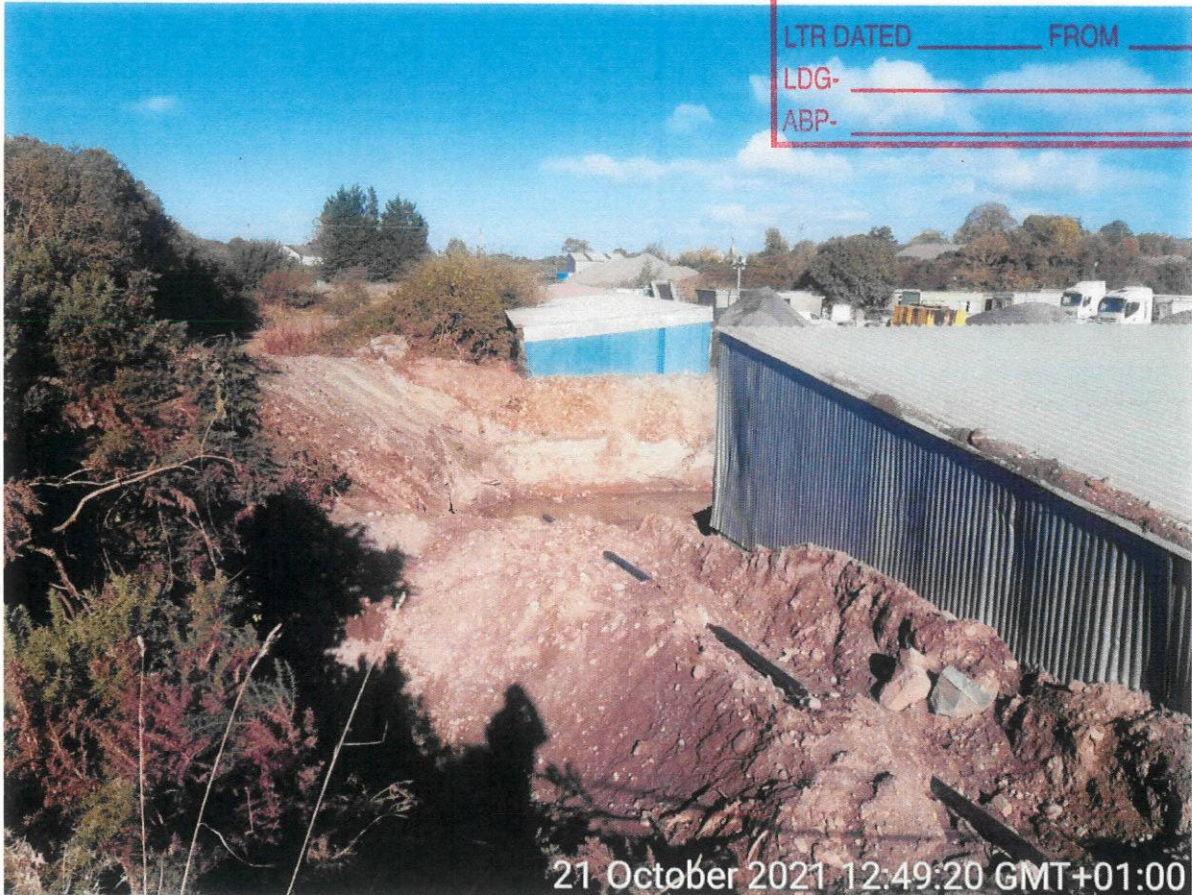
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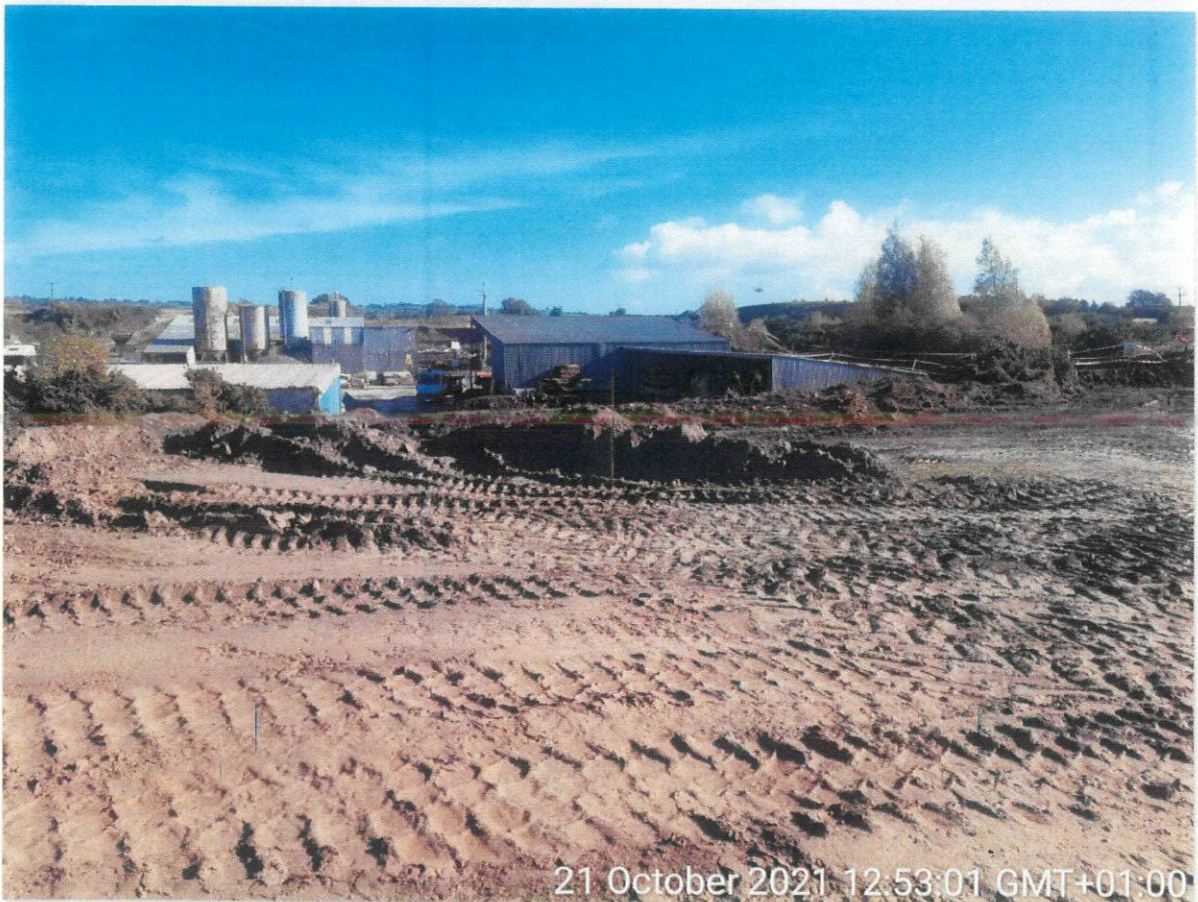
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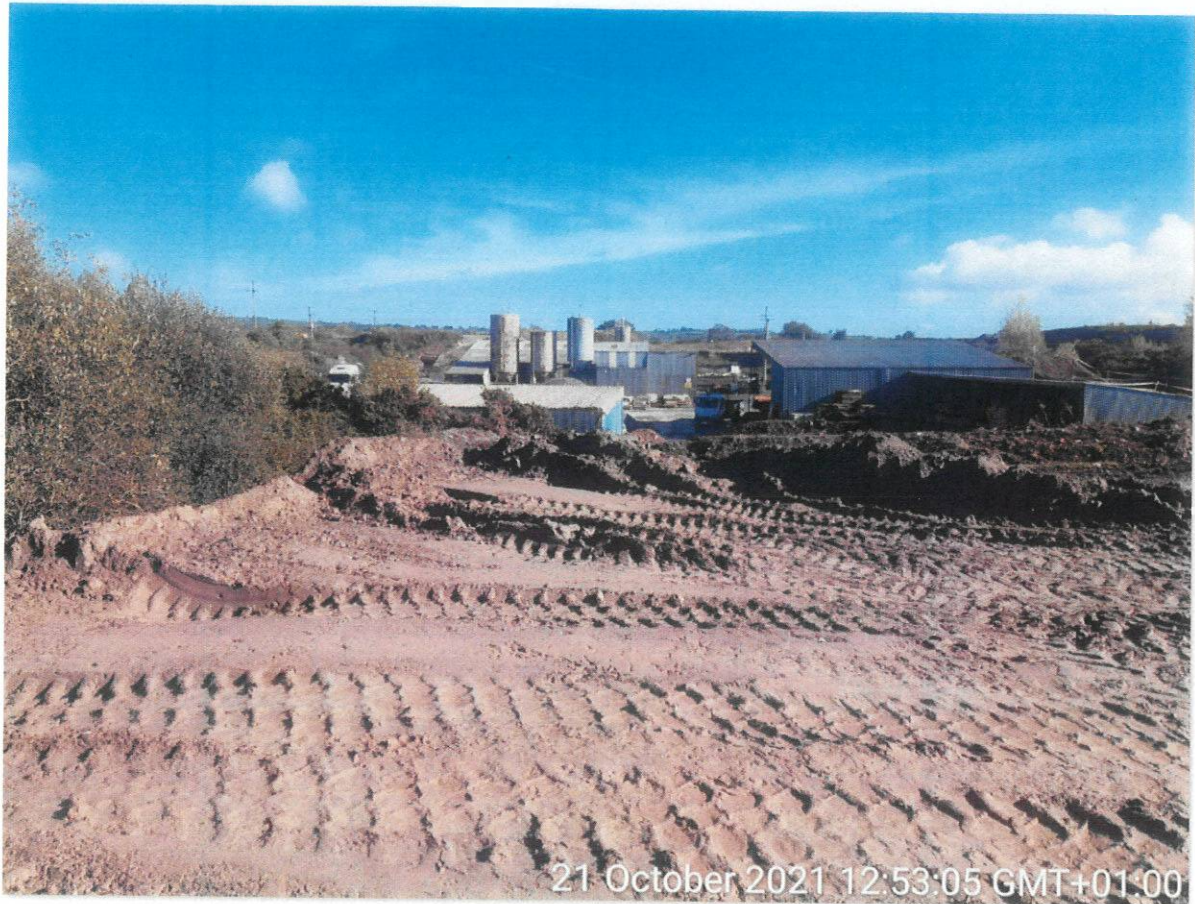
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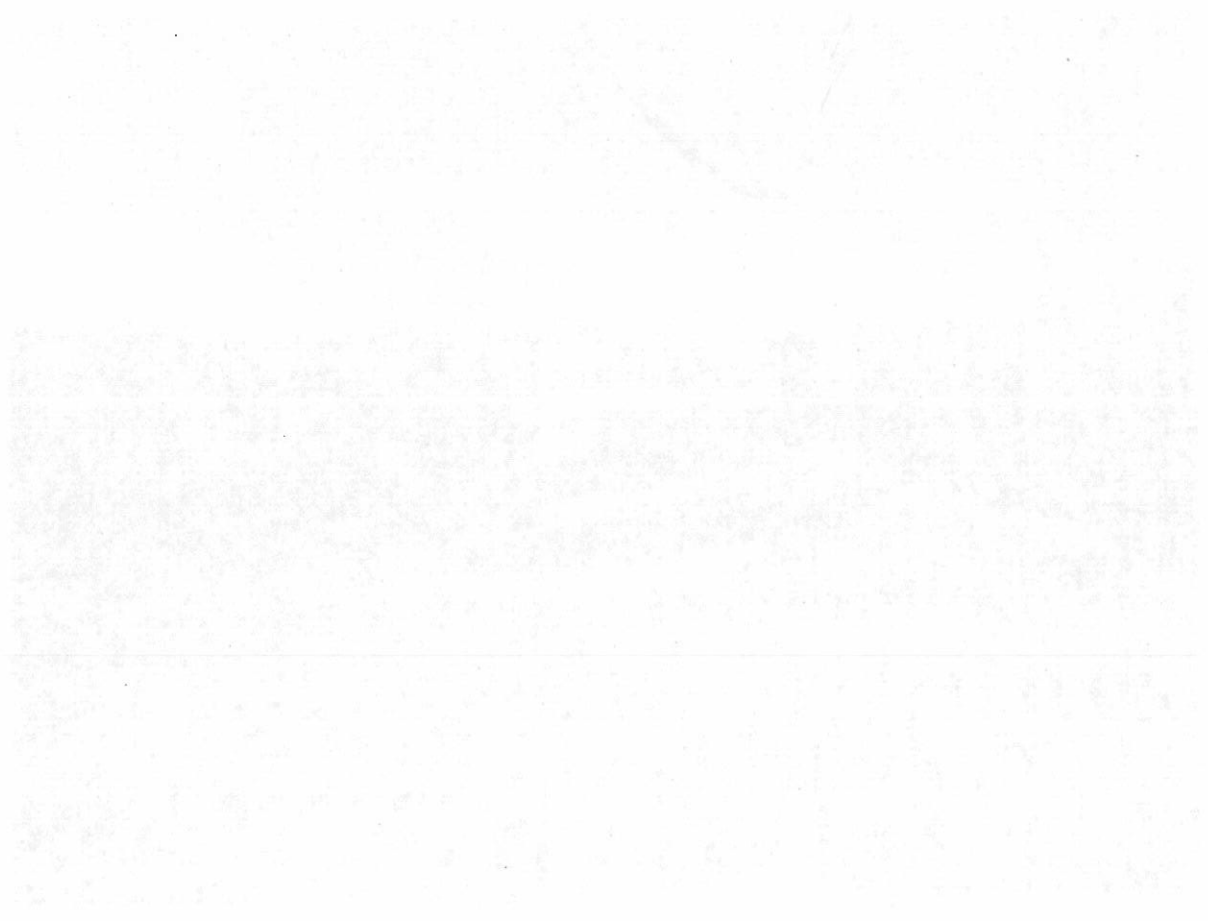
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25 MAR 2025	
TO DATED	FROM
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3

Land Ownership - <https://www.landdirect.ie>

Lang Reg folio Reference: **KK7344F**

Registered Land Owner(s): **1. Donal O'Regan**
2. John O'Brien



Lang Reg folio Reference: **KK11970F**

Registered Land Owner(s): **1. William Brennan**
2. Liam Brennan



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Land Registry

County Kilkenny

Folio 7344F

Register of Ownership of Freehold Land

Part 1(A) - The Property

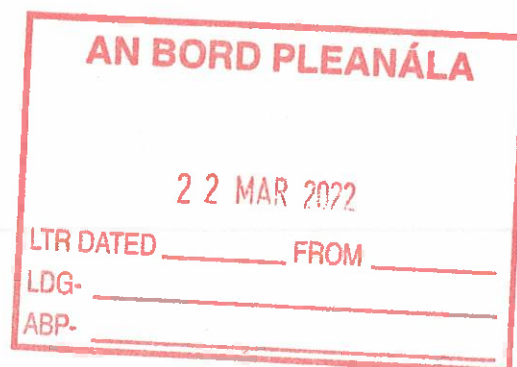
Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The property shown coloured RED as Plan(s) 17 on the Registry Map, situate in the Townland of LISMAINE, in the Barony of FASSADININ, in the Electoral Division of COOLCRAHEEN.</p> <p>The registration does not extend to the mines and minerals.</p>	From Folio KK11231

Land Cert Issued: No

Page 1 of 5

Collection No.:



County Kilkenny

Folio 7344F

Part 1(B) - Property
Parts Transferred

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG-

ABP.

Land Registry

County Kilkenny

Folio 7344F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965	
1	03-APR-1984 J1481/84	DONAL O'REGAN of HIGH STREET, BALLYRAGGET, COUNTY KILKENNY is full owner as tenant in common of an undivided moiety.
2	03-APR-1984 J1481/84	JOHN O'BRIEN of HIGH STREET, BALLYRAGGET, COUNTY KILKENNY is full owner as tenant in common of an undivided moiety.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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Land Registry

County Kilkenny

Folio 7344F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	<p>The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect the same.</p>
2a	<p>03-DEC-2010 D2010LR147831M</p> <p>Charge for present and future advances repayable with interest. AIB Mortgage Bank is owner of this charge as tenant in common in undivided shares, the owner's share at any time being the proportion that the debt owing to the owner secured by the charge bears to the total debt owing to the owners in common secured by the charge.</p> <p>Note: The ownership of this charge has been transferred. See Entry No.4</p>
2b	<p>03-DEC-2010 D2010LR147831M</p> <p>Charge for present and future advances repayable with interest. Allied Irish Banks, p.l.c. is owner of this charge as tenant in common in undivided shares, the owner's share at any time being the proportion that the debt owing to the owner secured by the charge bears to the total debt owing to the owners in common secured by the charge.</p> <p>Note: The ownership of this charge has been transferred. See Entry No.4</p>
3	<p>08-JAN-2013 D2013LR001282Y</p> <p>A judgment mortgage in respect of a a judgment obtained by THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND against John O'Brien, Donal O'Regan on 12th day of September 2012 in the High Court Record Number 2012/2228 S in a cause/matter/action of THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND v John O'Brien, Donal O'Regan against the interest of John O'Brien, Donal O'Regan in the property.</p> <p>Note: This judgment is registered also on folios KK14635F, KK21768F, KK24045F, KK21414F, KK6317F, LS14774F, LS30142F and LS107433F.</p>

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Land Registry

County Kilkenny

Folio 7344F

4

05-DEC-2018
D2018LR177601E

EVERYDAY FINANCE DESIGNATED ACTIVITY COMPANY is the owner of the charge registered at Entry No's 2a & 2b.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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ABP- _____

Land Registry

County Kilkenny

Folio 11970F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The property shown coloured RED as Plan(s) 19 on the Registry Map, containing 6.699 Hectares, situate in the Townland of LISMAINE, in the Barony of FASSADININ, in the Electoral Division of COOLCRAHEEN.</p> <p>The registration does not extend to the mines and minerals.</p>	From Folio KK11231

Land Cert Issued: Yes

Page 1 of 4

Collection No.:

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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ABP- _____

County Kilkenney

Part 1(B) - Property
Parts Transferred

22 MAR 2022

LTR DATED: _____ FROM: _____

LDG- _____

ABP-

Land Registry

County Kilkenny

Folio 11970F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965	
1	11-SEP-1990 J4677/90	WILLIAM BRENNAN of WEBBSBOROUGH, BALLYFOYLE, COUNTY KILKENNY is full owner as tenant in common of an undivided moiety. Land Cert Application No.: 633510096835 Date: 27-AUG-1992 Issued To: JOHN M. FOLEY & CO. SOLICITORS Address: BAGENALSTOWN CO CARLOW
2	11-SEP-1990 J4677/90	MARTIN BRENNAN of LISMANE, COUNTY KILKENNY is full owner as tenant in common of an undivided moiety. Cancelled D2010LR131878U 26-OCT-2010 Land Cert Application No.: 633510096835 Date: 27-AUG-1992 Issued To: JOHN M. FOLEY & CO. SOLICITORS Address: BAGENALSTOWN CO CARLOW
3	26-OCT-2010 D2010LR131878U	WILLIAM BRENNAN of Websborro, Ballyfoyle, County Kilkenny is full owner as tenant-in-common of 1 undivided 1/4 share(s) of which MARTIN BRENNAN was registered as owner as tenant in common of an undivided moiety at entry number 2.
4	26-OCT-2010 D2010LR131878U	LIAM BRENNAN of Websborro, Ballyfoyle, County Kilkenny is full owner as tenant-in-common of 1 undivided 1/4 share(s) of which MARTIN BRENNAN was registered as owner as tenant in common of an undivided moiety at entry number 2.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____
LDG- _____
ABP- _____

Land Registry

County Kilkenny

Folio 11970F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.
2	<p>31-JAN-1983 J956/83</p> <p>Full right and liberty for Donal O'Regan and John O'Brian the registered owners of Folio KK6317F their executors, administrators, heirs, licensees, servants, agents, invitees and assigns at all times and for all purposes on foot and with or without animals or vehicles to pass and repass over the property herein by the way shown coloured yellow and lettered C-D on the Plan thereof.</p> <p>The description of the land affected by the above right is as set out on the Registry Map. In the event that the above entry includes lettering or other alpha numeric references as part of the description of the subject lands, where such lettering or alpha numeric references are not now shown on the Registry Map, the description on the Registry Map prevails and is deemed to be the description of the affected property for the purposes of the Registration of Deeds and Title Acts 1964 and 2006.</p>

AN BORD PLEANÁLA	
22 MAR 2022	
LTR DATED	FROM
LDG-	
ABP-	

ENVIRONMENT
Kilkenny County Council
County Hall John Street Kilkenny
Tel: 056 7794020
Fax: 056 7794004
E-mail: info@kilkennyco.ie
Website: www.kilkennyco.ie
Serving People - Preserving Heritage
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PROJECT
Quarry at Lismaine Jenkinstown
Unauthorised Discharge

CHARACTER
Site Location Map
Discharge Route - March 2021

SCALE
1:5000

DATE
30th March 2021

FILE NO.
ENV-W-21-03

ALL ORDNANCE SURVEY DATA BASED ON ORDNANCE SURVEY OF IRELAND MAP LICENCE NUMBER XLK-ENVY-CDMA-982

Legend

- O'REGAN QUARRY SITE BOUNDARY
- LANDS IN OWNERSHIP OF O'REGAN (SITE INCORPORATED INTO QUARRY SITE MARCH 2021)
- BARROWMORE SAC
- ROUTE OF SURFACE WATER DRAIN
- ROUTE OF SURFACE/PIPED DISCHARGE
- ROUTE OF PIPED DISCHARGE

AN BORD PLEANÁLA
22 MAR 2022
LTR DATED _____ FROM _____
DG-ABP

MARSH LANDS ADJACENT TO RIVER NORE

River Nore

LISMAINE Td.

SAMPLE LOCATION A

SAMPLE LOCATION B

SAMPLE LOCATION C

OS MAP REFERENCE 4525-C

BASED ON ORDNANCE SURVEY OF IRELAND LICENCE NO 2013/27/CCMA KILKENNY COUNTY COUNCIL

Kilkenny County Council
County Hall John Street Kilkenny

Tel: 056 7794000
Fax: 056 7794004
E-mail: info@kilkennycoco.ie
Webpage: www.kilkennycoco.ie
Serving People - Preserving Heritage

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PROJECT	PROGRESS	PLANNING	TENDER	CONSTRUCTION
Quarry at Lismaine Jenkinstown				
Unauthorised Discharge				

Site Location Map
Discharge Route - March 2021

FILE NO.	DRAWN BY	SCALE	DATE
ENV-W-21-03	RM	1:5000	30th May
DRAWING NO. V-01			

ALL ORDNANCE SURVEY DATA BASED ON ORDNANCE SURVEY OF IRELAND MAP
LICENCE NUMBER 'KILKENNY GCMA 9802'

~~22 MAR 2022~~

LTR DATED _____ FROM _____
 DG- _____
 ABP _____

LISMAINE Td.

MARSH LANDS ADJACENT
TO RIVER NORE

SITE LOCATION MAP
OS MAP REFERENCE 4525-C

BASED ON ORDNANCE SURVEY OF IRELAND LICENCE NO 2013/27/CCMA KILKENNY COUNTY COUNCIL

Legend

- O'REGAN QUARRY SITE BOUNDARY
- LANDS IN OWNERSHIP OF D O'REGAN (SITE INCORPORATED INTO QUARRY SITE MARCH 2021)
- BARROW-INNERE SAC
- ROUTE OF SURFACE WATER DRAIN
- ROUTE OF SURFACE/PIPED DISCHARGE
- ROUTE OF PIPED DISCHARGE

5

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

THE CIRCUIT COURT

RECORD NO 2021/

SOUTH EASTERN CIRCUIT

COUNTY OF KILKENNY

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000

AND IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACTS 2000 - 2020

BETWEEN

KILKENNY COUNTY COUNCIL

Applicant

And

KILKENNY ASPHALT ROOFING LIMITED -and- DONAL O'REGAN

Respondents

AFFIDAVIT OF MALCOLM LANE

I, **MALCOLM LANE**, BA MRUP MA(UD) MIPI, Planning Consultant of 1 Church Road, Greystones, in the County of Wicklow aged 18 years and upwards MAKE OATH and say as follows: -

1. I am a planning consultant retained on behalf of the Respondents to the aforementioned proceedings. I make this affidavit from facts within my own knowledge save where otherwise appears, and where so appearing I believe the same to be true and accurate.
2. I beg to refer to the proceedings had herein when produced.
3. I say that in arriving at the following conclusions, I have had the opportunity to review the various affidavits sworn on behalf of both the Applicant and the Respondents, and I have taken detailed instructions from the Respondents, their servants or agents, regarding the various allegations and claims advanced by the Applicant.
4. I have been advised that the Applicant no longer asserts that the Quarry was not registered in accordance with the Planning and Development Act 2000 (as amended).

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

5. I have also been advised that the Applicant is now advancing an argument that due to the absence of an express reference to the pumping of water in the documentation submitted on behalf of the Respondents in April 2005 (as part of the s261 registration process), the pumping of water currently taking place at the Quarry site renders the development unauthorised. I say that I do not believe that there is a basis for such a proposition.
6. Firstly, the description of the Quarry in the registration documentation is neither exhaustive nor conclusive of any level of activity which may have been taking place at the Quarry. The document in question is a very simplified (pro-forma) questionnaire. I say that when assessing the level of development carried out in respect of any type of development, whether it be a quarry or otherwise, one has regard to evidence of the actual activities that takes place at the development site, in particular where the Quarry has been in operation for several decades.
7. In this regard and having had sight of the expert report of Mr. Conor McGrath, I note that groundwater flooding is common in the locality as the natural underground drainage system is incapable of sufficiently draining itself, resulting in emergence of groundwater at the surface and I am advised that groundwater has been flowing through the site for many years. I also note from Mr McGrath's report that the Quarry site is not using water as part of its quarry operations and is not discharging polluting matters and that the water flowing from the Quarry site is in effect storm water and cannot be considered as trade effluent. Further, I say and believe and am advised that the pumping of water from the Quarry site has been taking place for many years and in this regard, I would note that the Applicant was aware of the fact that water was pumped from the site when it carried out a s261A assessment in May 2012 as is evident from the photographs annexed to the Applicant's assessment report. I am advised that the pumping is seasonal in nature and not directly connected to the Quarry process and that the groundwater would continue to flow from the Quarry site regardless of whether any quarrying activity is carried out on the site or not. I believe that the answer of "NA" provided at Question 10 of the 2005 registration application was provided in that context.
8. Moreover and leaving aside the points made above, in my opinion, if the Quarry site is deemed authorised by virtue of its registration (which I understand to be the case) and the management and pumping of water has been taking place for many years (which I also understand to be the case), there can be no *intensification or material change of use* as this pumping process has continuously been carried on in tandem with the working of an authorised quarry and consequently, planning permission is not required for this longstanding activity.

Drainage - Exempted Development

9. I have reviewed the enforcement notice issued by the Applicant on 5 November 2021 ("the Notice") in which it is alleged that an unauthorised excavation of land has taken place and I understand (although it is far from clear from the Notice) that this allegation relates to the recent construction of drainage ponds/lagoons at the Quarry site. I have reviewed those works and would highlight that the carrying out of drainage works constitutes an exempted development as provided by the Planning and Development Regulations 2001-2021, Part 3, Article 6 which provides as follows:

AN BORD PLEANALA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

"Rural - Minor works and structures - CLASS 3"

Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works."

10. It is noteworthy that the foregoing Class of *exempted development* includes the construction or maintenance of any:

- (i) Gully;
- (ii) Drain;
- (iii) Pond;
- (iv) Trough;
- (v) Pit; or
- (vi) Culvert

11. In my opinion, this class of exempted development permits the works carried out by and on behalf of the Respondent to manage the flow of water, including the opening or enlargement of ponds/lagoons.

12. It is important to recognise that in the absence of the drainage mechanisms provided by the Respondent, which control the diversion of groundwater to the local land-drain, there is likely to be a flow of ground water which will naturally flow across the lands, travelling down-hill, accumulating in neighbouring landowners properties. Should this occur, it is entirely caused by the prevailing weather conditions rather than any activities on the part of the Respondents, their servants or agents.

Opening of ponds/lagoons at the Quarry

13. I am instructed that during the operation of the quarry over several decades, a large silt pond was opened up primarily on the adjoining land, but also on land which forms part of the Quarry site. I understand that the Respondents have constructed new tailing ponds/lagoons on their land which was formally part of the silt pond and I say ponds/lagoons are a regular feature of any quarry and the new ponds/lagoons are required by the Respondents to manage the drainage of storm water from the Quarry site.

14. I say that the opening or enlargement of ponds/lagoons is part of the quarrying process. As the excavation of the quarry progresses, the location of a pond/lagoon may have to be altered or a new pond/lagoon constructed. This is ancillary to the quarry process.

15. I understand that the new ponds/lagoons constructed by the Respondents are constructed on their own lands which form part of the original (much larger) existing silt pond site and in my opinion, these works, which are part of the ongoing Quarry operation, are not a new development requiring separate planning permission.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Malcolm Lane
Malcolm Lane

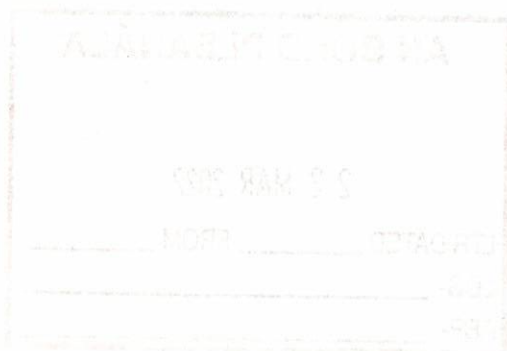
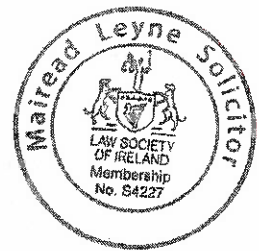
SWORN this 24TH day of November
2021 at GREYSTONES

in the County of WICKLOW

by the Malcolm Lane before me, a
~~Commissioner for Oaths~~/ Practicing Solicitor,
and the deponent who is personally known to
me

Mairead Leyne
~~Commissioner for Oaths~~/ Practicing Solicitor.

Mairead Leyne Solicitor



AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

ENF20103 Lismaine, Jenkinstown, Co. Kilkenny.
Site Inspection 17th December 2021



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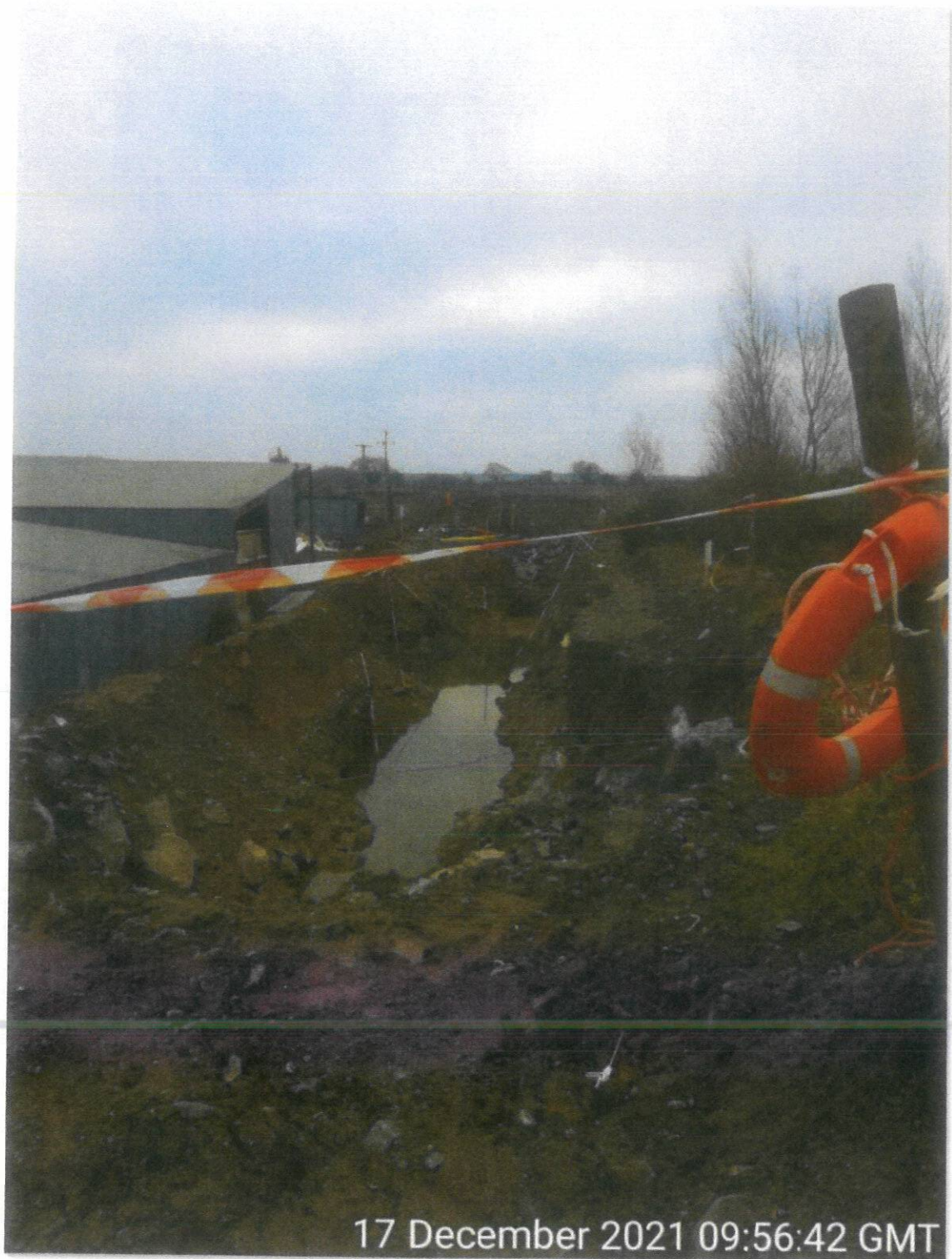
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22 MAR 2022

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AN BORD PLEANÁLA

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AN BORD PLEANÁLA

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AN BORD PLEANÁLA

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AN BORD PLEANÁLA

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AN BORD PLEANÁLA

2 2 MAR 2022

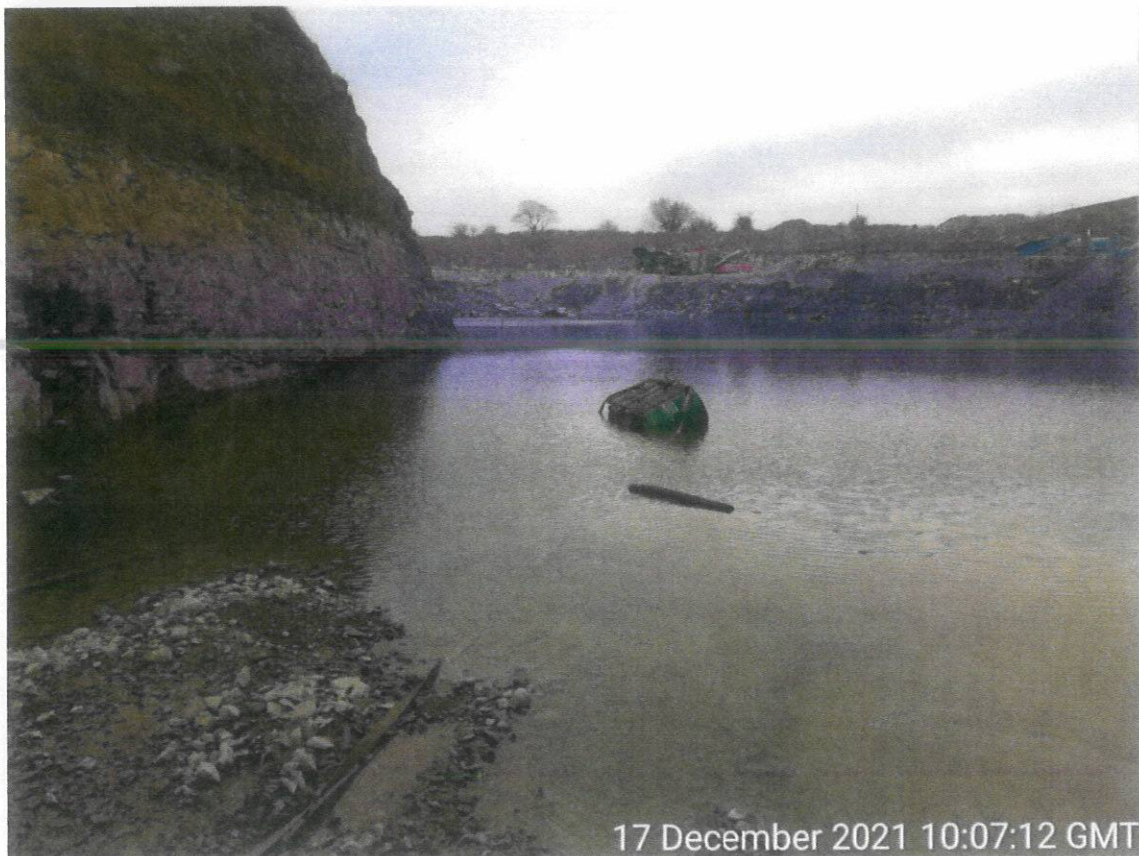
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AN BORD PLEANÁLA

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AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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7

ENF20103 Site Inspection 21st December 2021



AN BORD PLEANÁLA

22 MAR 2022

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LDG- _____

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21 December 2021 14:40:28 GMT

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21 December 2021 14:45:23 GMT

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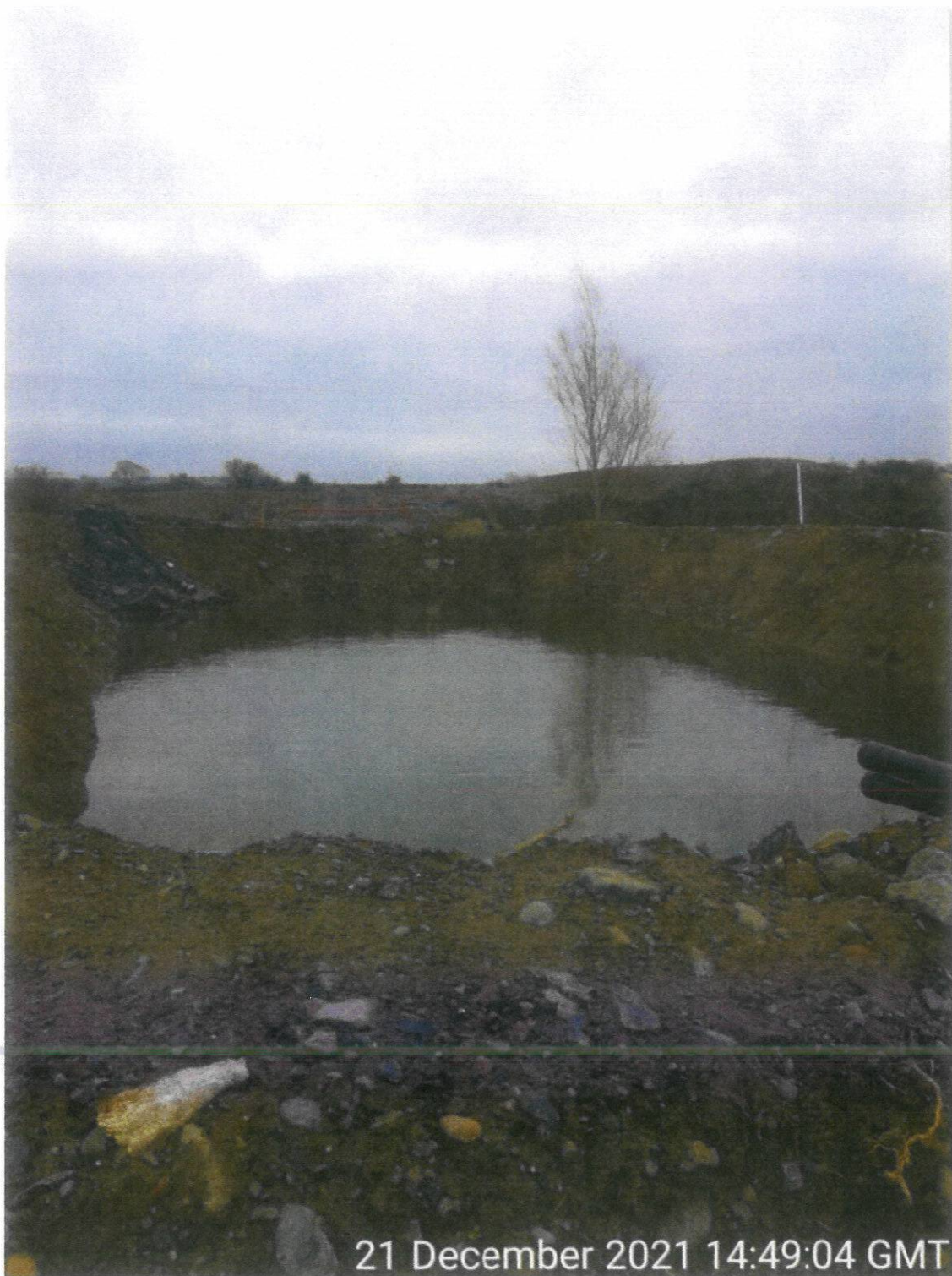
AN BORD PLEANÁLA

22 MAR 2022

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21 December 2021 14:49:04 GMT

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22 MAR 2022

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22

AIRPORT CANADA	
5 MAR 2022	
FROM	TO
[Faint, illegible text]	



AN BORD PLEANÁLA	
2 2 MAR 2022	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	



ENF20103 Site inspection 20th Jan 2022

Attendees on behalf of KCC

John Harte (Solicitor)

Tom Brennan (Environment Section)

Regina Moran (Environment Section)

Lisa McCann (Planning Section)

Eddie O'Reilly (Planning Section)

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Several other attendees were on site including Donal O'Regan, Donal O'Regan's Solicitor, and Conor McGrath (Hydrogeologist from AWN Consulting).

Mr Harte explained to the attendees that the purpose of the site inspection was to carry out a fact finding investigation to help determine if the works carried out in relation to the subject excavation works and water discharge is exempted development.

Mr O'Regan agreed to lead the party through the site to explain the mechanisms of the water discharge operation on site. Mr O'Regan stated that water had always discharged from the site and that the old piping that facilitated this was still in situ. He then showed a drain gully and piping that he alleged facilitated previous water drainage. The pipe in question appeared to be disconnected at the time of the inspection. Photos of the subject piping and gully are shown in photo 3 of the report.

Mr O'Regan also confirmed that water is being pumped from the site using a floating pump and is being discharged onto the road through installed piping and the excavated lagoon system. He confirmed that one of the lagoons is lined using yellow clay. Mr O'Regan advised that the reason for the height of the lagoon systems was to pump water into the lagoons and then allow the water to be discharged from the site through a gravity flow method. He stated that the water was being pumped at a rate of approx. 50 litres per minute.

Mr O'Regan showed the party a yellow pipe which led from the installed lagoon system through the site to facilitate the discharge of water. Mr O'Regan advised that the overground piping is temporary as he intends on installing solid piping. It was noted during the inspection that an additional black pipe is now in situ adjacent to the soakaway. This additional piping was not in situ during the previous site inspection carried out on by the Planning Authority in December 2021. Mr O'Regan stated that the additional piping is now in place to facilitate additional water discharge if it is needed and he intends to install the piping underground. Photos of the subject piping is shown in site inspection photos attached.

Mr O'Regan confirmed that if the water pump was turned off, surface water overflow would result on site. However, he stated that the quarry could still operate without the water pumping system. The hydrogeologist on site, Mr McGrath, advised that there could be a potential minor contribution from ground water. Mr McGrath also stated that the majority of surface water was due to the gradient of the land.

Mr O'Regan also stated that the lagoon system is built within the boundary of his land ownership.

OFFICER'S DETAILS



Signature: _____

Lisa McCann, Executive Planner

21/01/21

Date: _____

Site inspection 20th January 2022

Photo 1 -2: Floating pump in operation.



AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



Photo 3: Alleged old pipe and drain gully in situ.



Photo

Photo 4: Water discharging into lagoon system and directly out of site via yellow pipe.



20 January 2022 14:20:09 GMT

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Photo 5: Excavated lagoon system



20 January 2022 14:21:22 GMT

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ADD _____

Photo 6-7: Water discharging into lagoon system.



20 January 2022 14:21:29 GMT

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22 MAR 2022

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LDG- _____

ABP- _____



AN BORD PLEANÁLA

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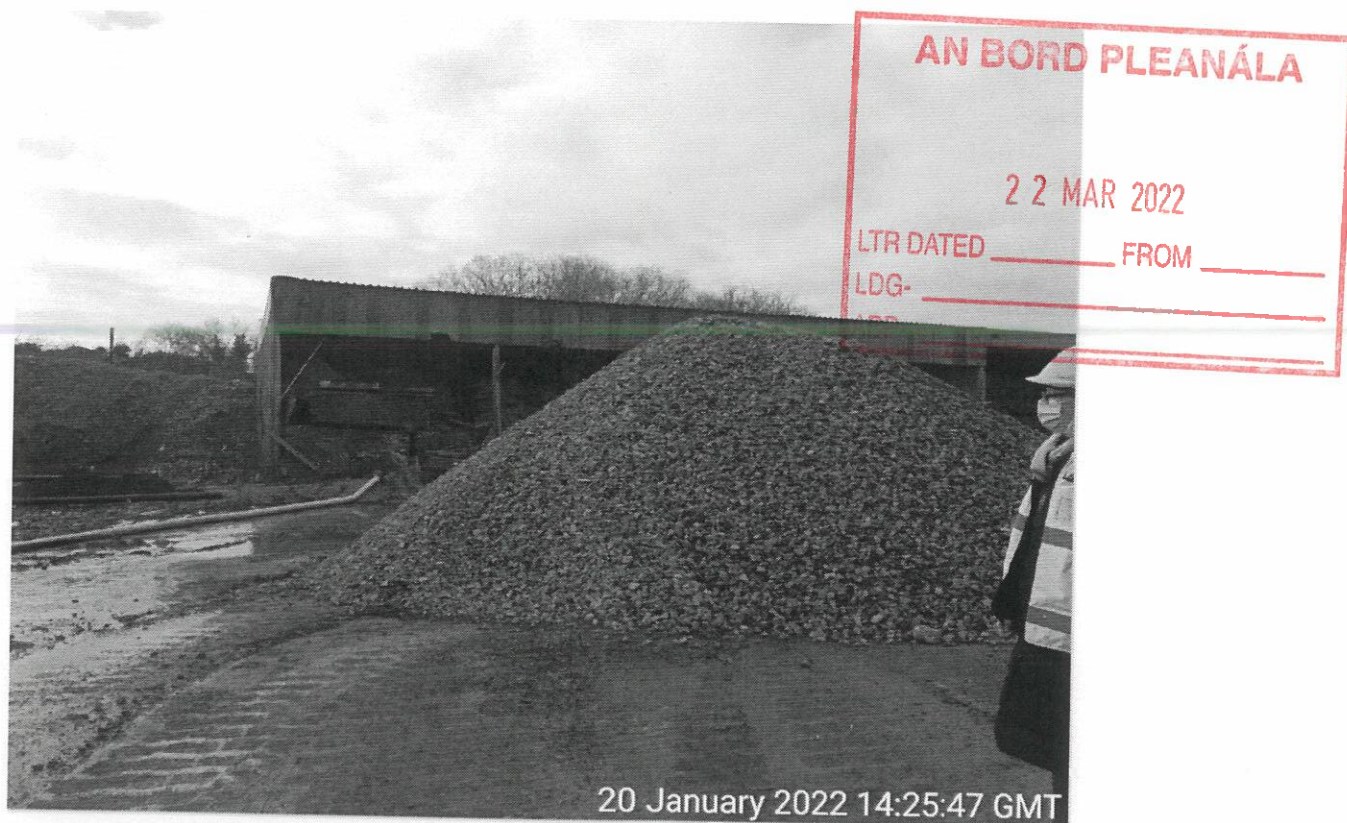
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ABP- _____

8-10

Photo 9-11: Yellow pipe running from lagoon system out of site to road. Black piping in situ adjacent to soakaway, including additional pipe to facilitate additional water discharge.



AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



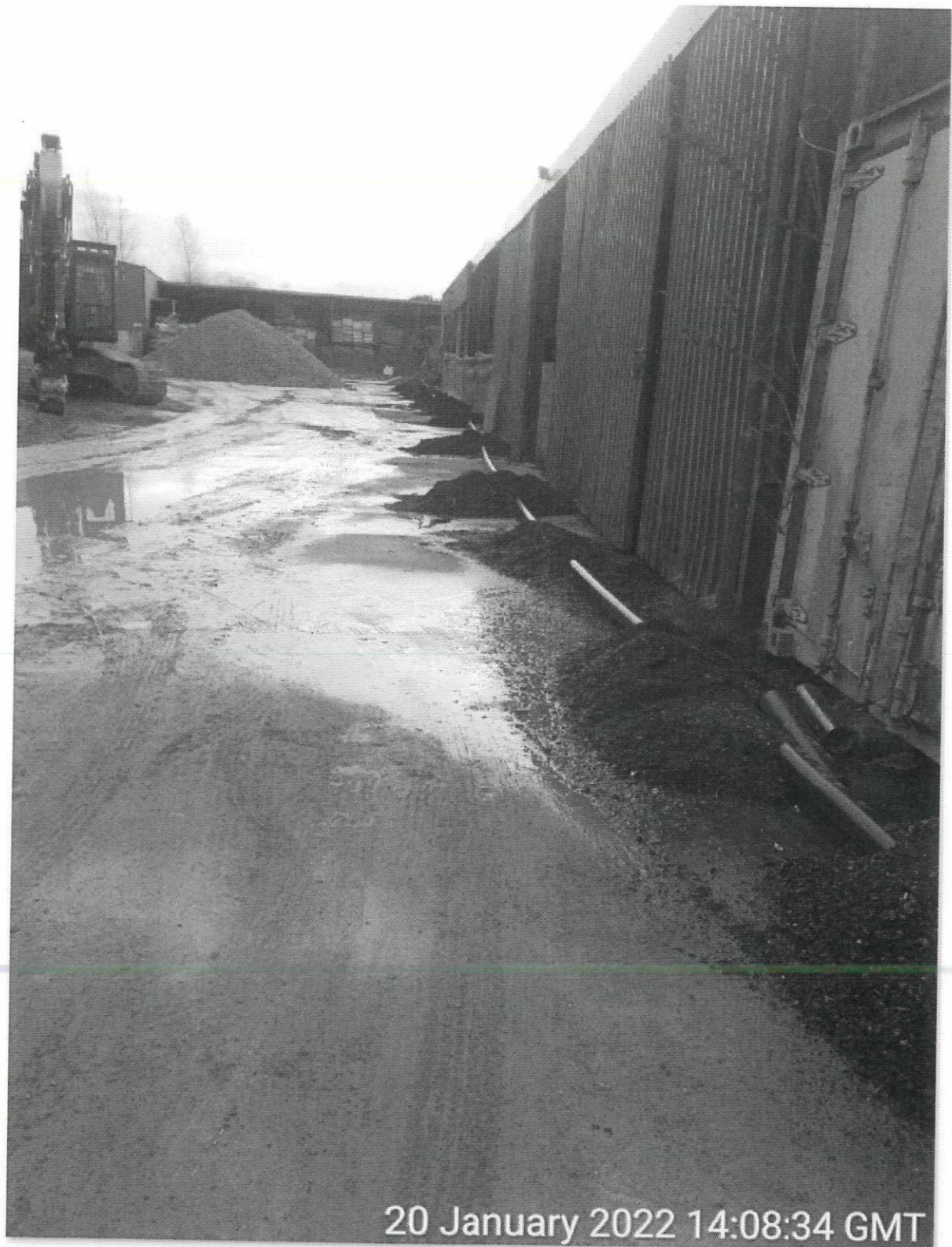
20 January 2022 14:25:51 GMT

Photo 11
12: Soakaway



20 January 2022 14:26:40 GMT

12-14
Photo 13-15: Piping from lagoon system exiting site.



AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ADD _____



20 January 2022 14:08:36 GMT

AN BORD PLEANÁLA

2 2 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



20 January 2022 14:07:35 GMT

15
Photo 16: Water discharging adjacent to public road.



AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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ABP- _____

16-17
Photo ~~17-18~~: Piping facilitating water discharge.



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AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



20 January 2022 14:04:13 GMT



Local Government (Planning and Development) Acts, 1963 and 1976

NOTIFICATION OF A GRANT OF PERMISSION/~~OUTLINE PERMISSION~~/APPROVAL
(SUBJECT TO CONDITIONS)

COUNCIL OF THE COUNTY OF KILKENNY

To M/s. D. O'Regan & J. O'Brien,
9 High Street,
Ballyragget, Co. Kilkenny.

Reference No. in
Planning Register

P.790/82

Application by or on behalf of D. O'Regan & J. O'Brien, Of (address) 9 High Street,
Ballyragget, Co. Kilkenny.

Received on **16th September 1982**

for: Asphalt processing plant at Lismaine, Conahy.

FURTHER to the order dated **9th November 1982**

A PERMISSION/~~AN OUTLINE PERMISSION~~/AN APPROVAL has been granted
SUBJECT TO the conditions set out in the Schedule hereto.

13

Signed on behalf of the said Council

Date

SCHEDULE

The Conditions referred to above are contained in the Schedule which accompanied the Notification
of the Council's decision dated **11th November 1982**

See notes on back of this form.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

Conditions attached to Planning Permission. P.790/82.

- (1) Condition: The developer shall arrange for the continuous and indefinite maintenance of an adequate supply of potable water for the domestic and sanitary needs of the development and shall take such measures as are necessary to safeguard the source of supply from pollution.
- (2) Condition: The septic tank shall be constructed to the S.R.6:1975 standard design and shall have an underground dissemination system based on the standard percolation test capable of disposing of the effluent within the curtilage of the development. The septic tank shall be located not less than 18 m. (60') from the public road and from any dwelling and not less than 30 m. (100') from the source of any potable water supply.
- (3) Condition: No part of the percolation area shall be within 10 m. (33') of the nearest road boundary, nor within 3 m. of the boundary of the site. No part of the percolation area shall be closer than 18 m. (60') to the nearest point of any dwelling. No part of the percolation area shall be closer than 30 m. (100') to any source of potable water.
- 1-3 Reason: In the interests of public health and for the wellbeing of the occupants of this development.
- (4) Condition: Surface water from this development shall be disposed of within the curtilage of the development.
- Reason: To avoid interference with other properties and to prevent damage to the public road and consequent traffic hazard.
- (5) Condition: Access to the development shall be recessed at least 20' from the line of the new road boundary, shall have side walls splayed at an angle of 45 degrees and not more than 3½' in height. Access shall be set level with the road surface.
- (6) Condition: A concrete pipe gullet of adequate capacity shall be laid in a technically satisfactory manner beneath and across the full width of the access or other approved arrangements made to deal with road drainage.
- 5-6 Reason: In the interests of traffic safety.
- (7) Condition: No objectionable odour arising from the operations of this development shall be detectable beyond a radius of 400 ft. from the development.
- Reason: In the interests of amenity and of public health.
- (8) Condition: Dust emission to the open air shall not exceed 150 mg/m³.
- (9) Condition: The burning and mixing process shall be confined to the building proposed at the south-eastern corner of the site.
- 8-9 Reason: To preserve environmental amenity and to avoid causing a nuisance.

AN BORD PLEANALA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

- (10) Condition: A screen planting of evergreen trees maintained and renewed as necessary shall be provided along the side and rear boundaries of the site.
- Reason: In the interests of environmental amenity.
- (11) Condition: Before production is commenced the developer shall consult the Kilkenny Chief Fire Officer regarding fire prevention, fire fighting and property conservation.
- (12) Condition: In addition to the main door of the shed referred to in Condition (9), a further fire escape door shall be provided.
- 11-12 Reason: To provide protection against the outbreak of fire and in the interests of the safety of the development and of the safety of the occupants of the development.
- (13) Condition: The development shall be carried out and completed strictly in accordance with the conditions of this permission and with the plans and specifications lodged with this application.
- Reason: To ensure that the development shall be in strict accordance with the permission and that effective control is maintained.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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ABP- _____

Conditions attached to Planning Permission. P.790/82.

- (1) Condition: The developer shall arrange for the continuous and indefinite maintenance of an adequate supply of potable water for the domestic and sanitary needs of the development and shall take such measures as are necessary to safeguard the source of supply from pollution.
- (2) Condition: The septic tank shall be constructed to the S.R.6:1975 standard design and shall have an underground dissemination system based on the standard percolation test capable of disposing of the effluent within the curtilage of the development. The septic tank shall be located not less than 18 m. (60') from the public road and from any dwelling and not less than 30 m. (100') from the source of any potable water supply.
- (3) Condition: No part of the percolation area shall be within 10 m. (33') of the nearest road boundary, nor within 3 m. of the boundary of the site. No part of the percolation area shall be closer than 18 m. (60') to the nearest point of any dwelling. No part of the percolation area shall be closer than 30 m. (100') to any source of potable water.
- 1-3 Reason: In the interests of public health and for the wellbeing of the occupants of this development.
- (4) Condition: Surface water from this development shall be disposed of within the curtilage of the development.
- Reason: To avoid interference with other properties and to prevent damage to the public road and consequent traffic hazard.
- (5) Condition: Access to the development shall be recessed at least 20' from the line of the new road boundary, shall have side walls splayed at an angle of 45 degrees and not more than 3½' in height. Access shall be set level with the road surface.
- (6) Condition: A concrete pipe gullet of adequate capacity shall be laid in a technically satisfactory manner beneath and across the full width of the access or other approved arrangements made to deal with road drainage.
- 5-6 Reason: In the interests of traffic safety.
- (7) Condition: No objectionable odour arising from the operations of this development shall be detectable beyond a radius of 400 ft. from the development.
- Reason: In the interests of amenity and of public health.
- (8) Condition: Dust emission to the open air shall not exceed 150 mg/m³.
- (9) Condition: The burning and mixing process shall be confined to the building proposed at the south-eastern corner of the site.
- 8-9 Reason: To preserve environmental amenity and to avoid causing a nuisance.

22 MAR 2022

LTR DATED _____ FROM _____
LDG- _____
ABP- _____

- (10) Condition: A screen planting of evergreen trees maintained and renewed as necessary shall be provided along the side and rear boundaries of the site.
- Reason: In the interests of environmental amenity.
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- (12) Condition: In addition to the main door of the shed referred to in Condition (9), a further fire escape door shall be provided.
- 11-12 Reason: To provide protection against the outbreak of fire and in the interests of the safety of the development and of the safety of the occupants of the development.
- (13) Condition: The development shall be carried out and completed strictly in accordance with the conditions of this permission and with the plans and specifications lodged with this application.
- Reason: To ensure that the development shall be in strict accordance with the permission and that effective control is maintained.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____



KILKENNY COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACTS 2000-2007

**Delegated Officer's
Order No:**

440

Reference Number:

08/1233

Name of Applicant:

Asphalt Roofing Ltd

Address:

C/o Larkin Associates Architects
Main Street
Bennettsbridge
Co. Kilkenny

Nature of Application:

PERMISSION to extend existing yard by 1.5 Hectares to be used for the storage of asphalt, roofing insulation and other roofing materials and all ancillary site works

Location of Development:

Lismaine Ballyragget Co. Kilkenny

ORDER:

Pursuant to the Planning and Development Acts 2000-2007 it is hereby decided for the reason(s) set out in the First Schedule hereto to **GRANT PERMISSION** for the development as described above in accordance with the plans, particulars and other documents submitted subject to the 9 no. conditions specified in the Second Schedule hereto, the reason for the imposition of the said conditions being set in the said Second Schedule.

I further order that PERMISSION **BE GRANTED** subject to the 9 no. conditions, unless an appeal which is not subsequently withdrawn is lodged with An Bord Pleanála within four weeks beginning on this date.

DIRECTOR OF SERVICES

DATED:

9/6/09

Tel no. Planning Section: 056-7794010
Website: www.kilkennycoco.ie

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

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FIRST SCHEDULE
REASONS AND CONSIDERATIONS FOR DECISION ON PLANNING
REFERENCE P. 08/1233

Having regard to the policies and objectives of the Kilkenny County Development Plan 2008, the association of the proposed development with an existing commercial operation on site and the referral responses received, it is considered that the proposed development would not seriously injure the amenities of the area and if constructed in accordance with the attached conditions the proposed development would accord with the proper planning and sustainable development of the area.

SECOND SCHEDULE
9 NO. CONDITIONS ATTACHED TO PLANNING REFERENCE P. 08/1233

1. The development shall be carried out and completed strictly in accordance with:
 - (i) the conditions of this permission.
 - (ii) the documents lodged with this application on 19th September 2008 and further information lodged on the 15th May 2009, except as otherwise required by the conditions of this permission.

Reason: To ensure that the development strictly accords with the permission and to ensure that effective control is maintained.

2. The Developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000.

The amount of the financial contribution is €30,000.00 (thirty thousand euro) and is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

The contribution shall be paid upon commencement of development, with the amount of the contribution being the rate of contribution in existence on commencement of development.

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

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____
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ABP- _____

3. Prior to commencement of any development on site, the Developer shall submit the following information for the formal approval of the Planning Authority:

- a) accurate detailed drawings, to a suitable scale, indicating how the sightlines are to be provided at the entrance onto the public road to serve the development
- b) accurate detailed drawings, to a suitable scale, of the proposed entrance and boundary treatment improvement works at the entrance onto the public road.

Reason: In the interests of traffic safety.

4. The storage yard shall be used only for the storage of asphalt, roofing insulation and similar materials associated with the Asphalt Roofing Ltd operation on site. The storage of materials from any adjoining sites shall not be permitted without prior grant of planning permission.

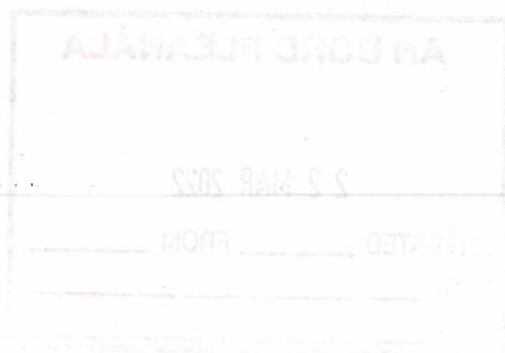
Reason: In the interests of clarification and orderly development.

5. The screen planting to the east of the site, as indicated on the Site Layout Drawing submitted on the 15th May 2009, shall consist of a 5 metre wide woodland buffer planted behind a 1.5metre high earthen embankment. The earthen embankment shall be planted with a triple staggered row of native hedgerow plants which are common to the locality (e.g. holly, hawthorn, blackthorn, field maple) planted at 300mm centres. The woodland buffer shall consist of a mixture of native tree species with a minimum of 5% of this planting having a girth of at least 18-20cm measured at 1m above ground level. This planting shall be provided along the full extent of this eastern roadside boundary. Prior to commencement of development, the Developer shall submit a revised Site Layout Drawing in this regard, for the formal approval of the Planning Authority.

Reason: In the interests of visual amenity and to help assimilate the proposed development into the landscape.

6. Waste

- (b) Prior to the commencement of the development the Developer shall prepare a Waste Management Plan which shall cater for the operational phase of the development. All operations at the site shall be managed and programmed in such a manner so as to minimise waste production and maximise recycling. The Plan shall also deal with any litter arising. Wastes sent off site for recovery or disposal shall only be conveyed by an Authorised Waste Contractor and transported from the proposed development site to an Authorised site of Recovery/Disposal in a manner which will not adversely affect the environment. All employees shall be made aware of the obligations under the Plan. The Plan shall be subject to annual



review and shall be available for inspection at the site of the proposed development at all reasonable times for examination by any Officer of the Local Authority.

- (c) The Developer shall ensure sufficient space is set aside both internally and externally within the proposed development to allow occupants to segregate wastes into recyclable, biodegradable and residual wastes – i.e. 3 bin system.

Reason: To provide for the recovery/disposal of waste and the protection of the environment.

7. **Storm & Wastewater Discharges**

- (a) Clean surface water only shall be discharged to the surface water drainage system.
- (b) The Class 1 separator shall be maintained in accordance with the manufacturer's instructions.
- (c) Domestic type effluent shall only be discharged to the foul drainage system. There shall be no discharge of any effluent which is chemically or biologically dissimilar to that of normal domestic effluent.

Reason: In the interests of public health and for the protection of the environment.

8. **Storage of Materials:**

During the construction phase all tank and drum areas shall be rendered impervious to the materials stored therein. In addition, tank and drum storage areas shall be bunded either locally or remotely to a volume not less than 110% of the capacity of the largest tank or drum within the bunded area. Drainage from the bunded area shall be diverted for collection and safe disposal.

Reason: In the interests of protection of the environment.

9. **Noise, Air & Odour:**

The Developer shall ensure that all operations on site are carried out in a manner such that noise, air emissions and/or odours do not result in significant impairment of, or significant interference with, amenities or the environment beyond the site.

Reason: In the interest of public health and for the protection of the environment.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

FOOTNOTES:

Section 34 (13) of the Planning & Development Act, 2000 – 2007 states:

"A person shall not be entitled solely by reason of a Permission under this section to carry out any development."

Developers are obliged to comply with other legislation and to avoid infringement of third party rights.

If there is no appeal against this decision, a Final Grant of Permission in accordance with the Decision will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanála. (See attached).

It should be noted that until a Final Grant of Permission has been issued, the development in question is **NOT AUTHORISED** and works cannot be carried out.

The Applicant is advised that unless the development described above is carried out within five (5) years from the date of Final Grant of Permission, Planning Permission will cease to have effect. (See Section 40 of the Planning and Development Act 2000 - 2007).

Please note that the Site Notice shall be removed by the applicant following the notification of the planning authority decision under Article 31.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

**Comhairle Chontae Chill Chainnigh
Kilkenny County Council
Planning Report**



**Planning & Development Act, 2000 - 2007
Planning & Development Regulations, 2001 - 2008**

Planning Ref. P. 08/1233
Due Date: 11/06/2009

Applicant: Asphalt Roofing Ltd
Subject: Permission to extend our existing yard by 1.5 Hectares to be used for the storage of asphalt, roofing insulation and other roofing materials and all ancillary site works at Lismaine, Jeninstown, Co. Kilkenny.

Planning History:

P. 190/82 – Permission granted to Donal O' Regan and John O'Brien for an Asphalt Processing Plant at Lismaine.

Enf 02/035 – Lismaine Concrete – unauthorised concrete batching plant at Lismaine – ongoing enforcement proceedings. (Lismaine Concrete operate from the adjoining site. The company directors of Lismaine concrete are the same directors for Asphalt Roofing Ltd)

Location:

The site is located in the townland of Lismaine, approx. 4.5kms south of Ballyragget, off the N77. The site is accessed off the local primary road, LP1818, close to its junction with the N77.

Asphalt Roofing Ltd is the stated owner of the site outline in red and surrounding lands outlined in blue. Donny O' Regan and John O'Brien are the stated company directors of Asphalt Roofing Ltd. However, the lands identified as being in the ownership of Asphalt Roofing Ltd do not extend into the Lismaine concrete site.

The proposal is to extend the existing yard by 1.5 Hectares to be used for the storage of asphalt, roofing insulation and other roofing materials. No further details in this regard have been submitted. The file was referred to the Environment Section who requested further information.

AN BORD PLEANÁLA

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LTR DATED _____ FROM _____

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The site is accessed by an existing laneway off the Local Primary Road to the north west of the site. From site inspection, the visibility at the existing entrance onto the public road is obstructed by an existing roadside hedgerow. It is considered that this existing entrance is substandard in terms of visibility. It is considered that the proposed development may lead to an intensification of use and increased traffic volumes using this existing substandard entrance. The file was referred to the Road Design Section who requested further information.

Further information:

The following further information was requested in November 2008:

1. You are required to demonstrate that adequate visibility sightlines are available at the existing entrance onto the public road in accordance with the NRA Design Manual for Roads and Bridges. Where the provision of sightlines requires the modification of boundaries outside of your direct control, you are required to submit the written consent of the relevant landowner to carry out these works.
2. The existing entrance is poorly defined. You are required to submit proposals in relation to the entrance layout and road boundary treatment.
3. You are required to submit details of the traffic generated by the proposed development, outlining the current situation and the expected traffic volumes generated by the existing and proposed new development using this entrance. The type of vehicles using the entrance and the turning movements shall also be assessed.
4. You are required to confirm the width and extent of the existing access road leading from the public road to the site of the proposed development.
5. You are required to submit full details of a proposed surface water attenuation system. The design of the attenuation structure shall comply with the following criteria. Attenuation shall be provided to reduce the flow to that of the peak flow for a one year return storm coming from the green-field site. The attenuation structure shall have capacity to cater for the 30 year storm while the 100 year storm shall be contained within the site.

In addition the following shall be provided:

- (a) Provide detailed drawings to a scale of not less than 1:500 of the location, depth and size of the attenuation structure that would be required for a storm return period of 30 years.
- (b) Provide detailed drawings to a scale of not less than 1:500 of the area that would be flooded by the one in 100 year storm including the depth of flooding and the floor levels that would be required in order to prevent proposed premises from being flooded during such an event.

AN BORD PLEANALA

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(c) Provide detailed calculations following normal acceptable methodologies for the proposed attenuation scheme to be put forward.

6. You are required to submit proposals for a suitably sized oil / petrol interceptor on the surface water drainage system.
7. You are required to submit details of sufficiency of interest to lay and indefinitely maintain a surface water discharge pipe outside the boundaries of the proposed site.
8. You are required to clarify what *other roofing materials* are to be stored on site and confirm that these, in addition to asphalt and roofing insulation are the only materials proposed to be stored at this site. Your submission shall include typical elevation drawings of the materials to be stored on site, which shall be clearly dimensioned.
9. You are required to confirm what sanitary facilities are available for staff at this site. In addition you are required to submit details of how the proposed development may result in additional staff (full-time, part-time or seasonal) and visitors at the site. Detailed proposals for the upgrading of the existing wastewater treatment system shall be submitted as appropriate.
10. The site is open and exposed to the east and south, in particular along the eastern boundary, where it is visible from the N77. You are required to submit your screening proposals for the eastern and southern boundaries of your site. Your submission shall also include a cross section through your site, extended to the east to include the National Road, showing the existing and proposed grounds levels, materials stored on site, and proposed boundary treatments and screening proposals, etc.

A response to this further information was received on the 15th May 2009 and was referred to the Environment and Road Design sections for comment.

The Road Design report recommends specific conditions regarding the existing entrance onto the public road.

The Environment Section has no objection subject to specific conditions.

With regard to Item 10, which relates to screening proposals to the east of the site along the National road, the cross section through the site shows the ground level of the proposed storage yard to be 5metres lower than the existing ground level to the east of the site. The materials proposed to be stored on site are shown to be no higher than 3metres in height. It is also proposed to plant a double staggered hedgerow of holly with further semi mature oak and ash trees planted along the inside of the new hedgerow. This was



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discussed with the Parks Dept who recommends a specific condition regarding the screen planting proposed. Condition attached in this regard.

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Third Party Submissions:

None received

Ex

Development Contribution:

Class 14

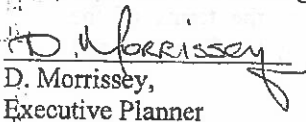
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Conclusion:

Having regard to the policies and objectives of the current Kilkenny County Development Plan 2008, the association of the proposed development with an existing commercial operation on site and the referral responses received, it is considered that the proposed development would not seriously injure the amenities of the area and if constructed in accordance with the attached conditions the proposed development would accord with the proper planning and sustainable development of the area.

I recommend that **Planning Permission be Granted** subject to the following conditions.


D. Morrissey,
Executive Planner

I agree with the above report and recommend that permission be granted subject to the attached conditions.


N. Louw
Senior Executive Planner

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FIRST SCHEDULE
REASONS AND CONSIDERATIONS FOR DECISION ON PLANNING
REFERENCE P. 08/1233

Having regard to the policies and objectives of the Kilkenny County Development Plan 2008, the association of the proposed development with an existing commercial operation on site and the referral responses received, it is considered that the proposed development would not seriously injure the amenities of the area and if constructed in accordance with the attached conditions the proposed development would accord with the proper planning and sustainable development of the area.

SECOND SCHEDULE
CONDITIONS ATTACHED TO PLANNING REFERENCE P. 08/1233

1. The development shall be carried out and completed strictly in accordance with:
 - (i) the conditions of this permission.
 - (ii) the documents lodged with this application on ~~24th April 2009~~ ^{19th September 2009} and the ~~unpublished~~ ^{finalised} information submitted on ~~19th September 2008~~ ^{15/05/09} and further plans and particulars lodged on the ~~15th May 2009~~, except as otherwise required by the conditions of this permission.

Reason: To ensure that the development strictly accords with the permission and to ensure that effective control is maintained.

2. The Developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000.

The amount of the financial contribution is €..... (.....euro) and is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

The contribution shall be paid upon commencement of development, with the amount of the contribution being the rate of contribution in existence on commencement of development.

2. **Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.
3. Prior to commencement of any development on site, the developer shall submit the following information for the formal approval of the Planning Authority:

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____
LDG- _____
ABP- _____

- a) accurate detailed drawings, to a suitable scale, indicating how the sightlines are to be provided at the entrance onto the public road to serve the development
- b) accurate detailed drawings, to a suitable scale, of the proposed entrance and boundary treatment improvement works at the entrance onto the public road.

Reason: In the interests of traffic safety.

4. The storage yard shall be used only for the storage of asphalt, roofing insulation and similar materials associated with the Asphalt Roofing Ltd operation on site. The storage of materials from any adjoining sites shall not be permitted without prior grant of planning permission.

Reason: In the interests of clarification and orderly development.

5. The screen planting to the east of the site, as indicated on the site layout drawing submitted on the 15th May 2009, shall consist of a 5 metre wide woodland buffer planted behind a 1.5metre high earthen embankment. The earthen embankment shall be planted with a triple staggered row of native hedgerow plants which are common to the locality (e.g. holly, hawthorn, blackthorn, field maple) planted at 300mm centres. The woodland buffer shall consist of a mixture of native tree species with a minimum of 5% of this planting having a girth of at least 18-20cm measured at 1m above ground level. This planting shall be provided along the full extent of this eastern roadside boundary. Prior to commencement of development, the developer shall submit a revised site layout drawing in this regard, for the formal approval of the Planning Authority.

Reason: In the interests of visual amenity and to help assimilate the proposed development into the landscape.

6. Waste

- (b) Prior to the commencement of the development the developer shall prepare a Waste Management Plan which shall cater for the operational phase of the development. All operations at the site shall be managed and programmed in such a manner so as to minimise waste production and maximise recycling. The plan shall also deal with any litter arising. Wastes sent off site for recovery or disposal shall only be conveyed by an authorised waste contractor and transported from the proposed development site to an authorised site of recovery/disposal in a manner which will not adversely affect the environment. All employees shall be made aware of the obligations under the plan. The plan shall be subject to annual review and shall be available for inspection at the site of the proposed development at all reasonable times for examination by any officer of the local authority.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

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- (c) The developer shall ensure sufficient space is set aside both internally and externally within the proposed development to allow occupants to segregate wastes into recyclable, biodegradable and residual wastes – i.e. 3 bin system.

Reason: To provide for the recovery/disposal of waste and the protection of the environment.

7. **Storm & Wastewater Discharges**

- (a) Clean surface water only shall be discharged to the surface water drainage system.
- (b) The Class 1 separator shall be maintained in accordance with the manufacturer's instructions.
- (c) Domestic type effluent shall only be discharged to the foul drainage system. There shall be no discharge of any effluent which is chemically or biologically dissimilar to that of normal domestic effluent.

Reason: In the interests of public health and for the protection of the environment.

8. **Storage of Materials:**

During the construction phase all tank and drum areas shall be rendered impervious to the materials stored therein. In addition, tank and drum storage areas shall be bunded either locally or remotely to a volume not less than 110% of the capacity of the largest tank or drum within the bunded area. Drainage from the bunded area shall be diverted for collection and safe disposal.

Reason: In the interests of protection of the environment.

9. **Noise, Air & Odour:**

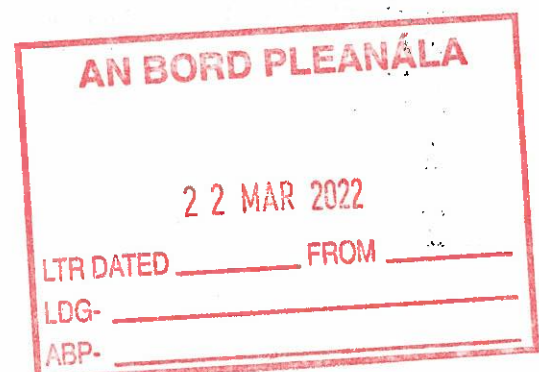
The developer shall ensure that all operations on site are carried out in a manner such that noise, air emissions and/or odours do not result in significant impairment of, or significant interference with, amenities or the environment beyond the site.

Reason: In the interest of public health and for the protection of the environment.

FOOTNOTES:

Section 34 (13) of the Planning & Development Act, 2000 states:

"A person shall not be entitled solely by reason of a Permission under this section to carry out any development."



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Developers are obliged to comply with other legislation and to avoid infringement of third party rights.

If there is no appeal against this decision, a Final Grant of Permission in accordance with the Decision will be issued after the expiration of the period within which an appeal may be made to An Bord Pleanála. (See attached).

It should be noted that until a Final Grant of Permission has been issued, the development in question is **NOT AUTHORISED** and works cannot be carried out. The Applicant is advised that unless the development described above is carried out within five (5) years from the date of Final Grant of Permission, Planning Permission will cease to have effect. (See Section 40 of the Planning and Development Act 2000)

Please note that the Site Notice shall be removed by the applicant following the notification of the planning authority decision under Article 31.

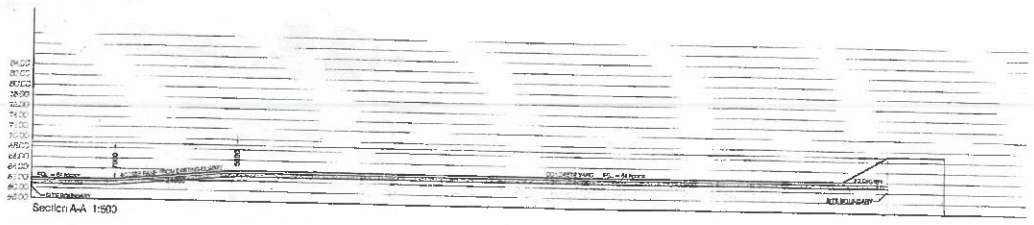
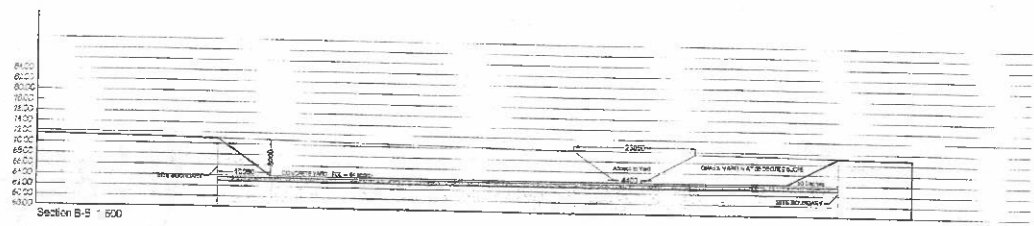
AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____
LDG- _____
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Site Layout: Plan 1:1000



PLANING SECTION

ISSUED BY

12 SEP 2022

LARKIN ASSOCIATES

LARKIN ASSOCIATES ARCHITECTS

12 SEP 2022

THIS DRAWING IS FOR PLANNING PURPOSES ONLY

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

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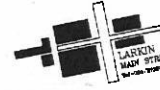


APPROXIMATE LOCATION OF
SITE NOTICE

LAND OWNERSHIP OUTLINED
IN BLUE

PLANNING SECTION
Received
19 SEP 2008 08/11233
KILKENNY CO COUNCIL

ISSUED BY
15 SEP 2008
LARKIN ASSOCIATES



LARKIN ASSOCIATES ARCHITECTS
MAIN STREET BERRYBROOGE CO. KILKENNY
01-512-1000

Project: STORAGE YARD EXTENSION, ON LANDS AT LISVANE, BALLYRAGGET, CO. KILKENNY	Client: ASPHALT ROOFING LTD.
Drawing No: 08/504/PP/101	Date: 15 SEP 2008
Scale: 1:1000	Drawn: NATH TREACY

THIS DRAWING IS FOR PLANNING PURPOSES ONLY

13

AN BORD PLEANALA

22 MAR 2022

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Folio Map Lismaine, Jenkinstown, Co. Kilkenny

Legend:

- | | | | | |
|----------------------------------|-----------------|------------------|---------------|--------------------|
| Folio Boundary (FolioNo. & Name) | Asphalt Roofing | Brennan Brothers | Lagoon System | Quarrying Activity |
|----------------------------------|-----------------|------------------|---------------|--------------------|

Disclaimer: The folio boundary as shown is indicative only and parcel boundaries remain subject to further verification

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Date: 16/03/2022 Revision 1.0

Drawn: GE Checked: DM



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LDG-

ABP-

Kilkenny County Council, County Hall, John Street, Kilkenny
Tel no. 056-7794010 Fax no. 056-7794004



APPLICATION TO KILKENNY COUNTY COUNCIL FOR REGISTRATION OF A QUARRY UNDER
SECTION 261 OF THE PLANNING AND DEVELOPMENT ACT, 2000

Kilkenny County Council, County Hall, John Street, Kilkenny
Tel no. 056-7794010 Fax no. 056-7794004

APPLICATION TO KILKENNY COUNTY COUNCIL FOR REGISTRATION OF A QUARRY UNDER
SECTION 261 OF THE PLANNING AND DEVELOPMENT ACT, 2000

1(a) Name of Owner/operator of quarry(s)

DONIE O'REGAN

In the event of the operator not being the owner please also give details of owner

Address

MOATE ROAD, BALLYRAGHET, CO. KILKENNY.

Telephone No. 087-828 6113 Email address

1(b) If the Applicant is a Company registered under the Companies Act 1963 to 1994, state:

(i) the name of the Directors of the Company (if this space is insufficient, please use a separate sheet)

N/A

(ii) Registered Address of Company

N/A

(iii) Company Registration No. N/A

2. Name & Address to which any correspondence is to be sent

DONIE O'REGAN c/o AIDAN O'CONNELL & ASSOCIATES LTD, 11 LISHARD COURT,
PORTLAONE, CO. LAOIN
No 0502 63245 Tel No 0502 63244 Fax

3. (a) Location, townland or postal address of quarry concerned:

LISHANE

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(b) Identify the relevant Ordnance Survey Map Ref. No. and the Grid Reference
1:25 - C

(c) A site location map to a scale of not less than 1:2500 is to be attached. The map is to define:

- (i) the entire landholding in the locality (in blue)
- (ii) the quarry site (outlined in red)
- (iii) the current working quarry area (hatched in colour)

(d) Clarify whether parts of the total land holding were acquired at different period, if so, then

- (i) identify the relevant portion of land,
- (ii) usage of said lands at time of acquisition,
- (iii) date of acquisition
- (iv) from whom was the land obtained
- (v) evidence as appropriate to substantiate the foregoing

N/A

4. Was planning permission under Part IV of the Local Government (Planning and Development) Act, 1963 granted?

YES ☐ Reference No.: _____

NO ☒

If YES, please quote the reference number of the permission and include a copy of said permission(s) and conditions.

N/A

5. Did the quarry commence operation before 1st October, 1964?

YES ☒

NO ☐

If YES, please supply any available documentary evidence.

6. Total site area of quarry (hectares): 7.57 HA.

7. Extraction area of quarry (hectares): 0.793 HA.

8. Types of material being extracted: SAND & GRAVEL & STONE.

9. Details of processes, if any, within the site: NONE.

10. Is pumping carried out at the development? YES ☐ NO ☒
If YES, give details of (a) rate of pumping and (b) identify point of discharge.

N/A

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Licence Reference under which discharge is being carried out:

N/A

11. (a) Date which quarrying commenced on the land?

1980/1

(b) Date which current operator commenced quarrying?

1982

(c) If operation of the quarry was only periodic, please give details of dates of operation, if known):

N/A

(d) Any other details on the history of the working quarry and quarry operator:

N/A

12. Quarry operating hours:

(i) Plant operating hours:

(a) Weekdays

8am - 7pm

(b) Saturdays

8am - 7pm

(ii) Loading/Off-site Haulage Hours (if different from above):

(a) Weekdays

(b) Saturdays

As Above

(iii) Hours (outside normal opening hours) required to service exceptional customer requirements:

(iv) No of employees on site:

4

N/A

(v) Sanitary and canteen facilities: TEA MAKING FACILITIES ONLY. PROVIDED. SANITARY FACILITIES AT DELIVERY PLANT OR AT ADJACENT WORKS.

13. Traffic generated by the operation of the quarry? (Type and frequency of vehicle entering and leaving the quarry and identify traffic routes - To be accompanied by maps as appropriate):

10 NO. TIPPER LORRIES X 20 TRIPS PER DAY

TO NAW BALLYRAGGET - KILKENNY ROAD

14. Please give details of emissions (noise, dust, water, etc.) from the quarry where measurements are available:

Noise:

Dust:

Water:

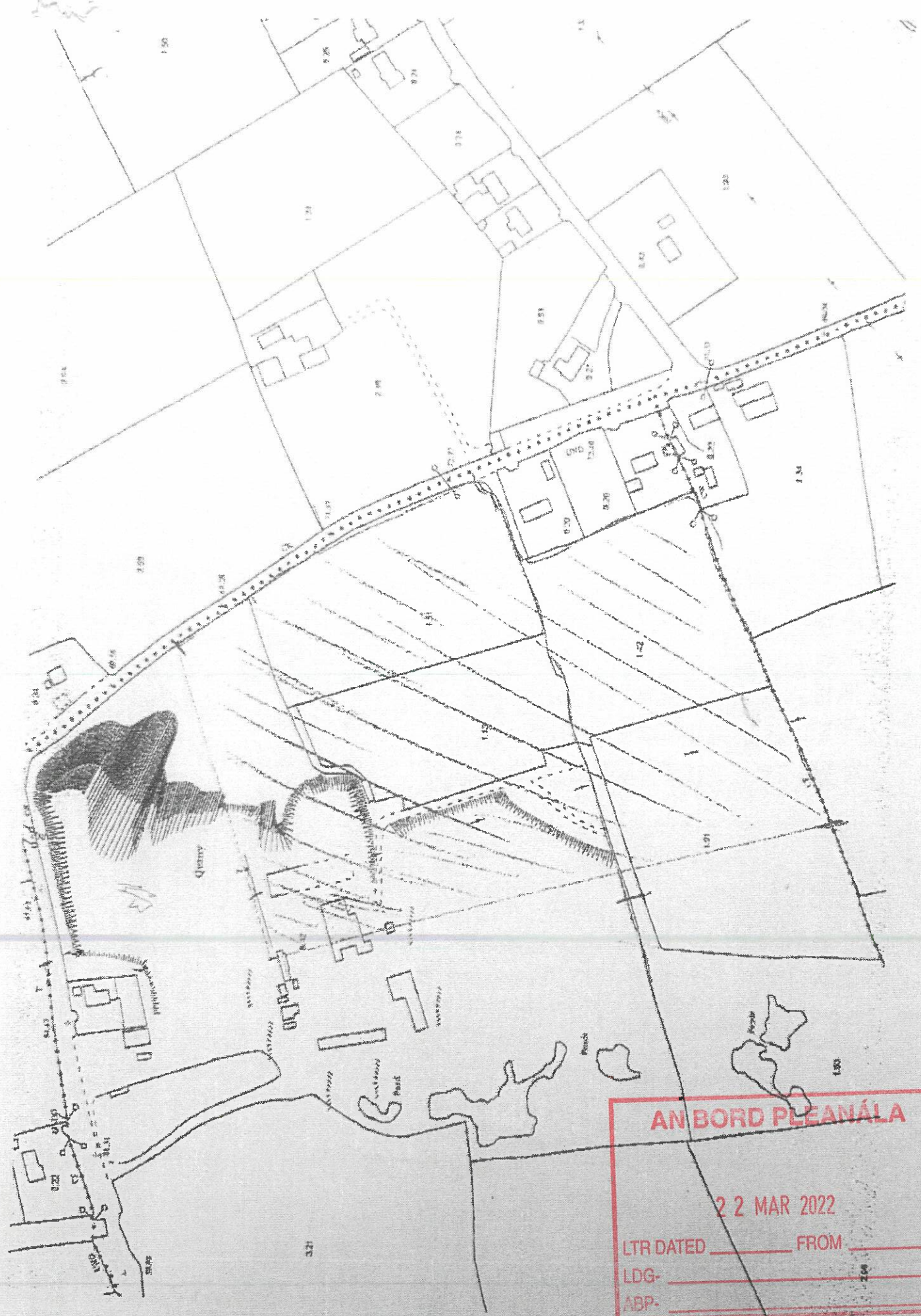
N/A

- Waste Water: N/A
 Other: N/A
15. Give details of current depth of excavation relative to the Ordnance Datum: 56.47
16. Give details of the level relative to Ordnance Datum of the winter water table: WATER TABLE N/A IDENTIFIED
17. Is the existing activity subject to IPC licence: N/A
 If yes, give details of licence no.: N/A
18. Is the quarry situated on a European site or any other area prescribed for the purpose of section 10(2)(c), or land to which an order under section 15, 16 or 17 of the Wildlife Act, 1976, applies: YES ☐ NO ☒
 If YES, give details: N/A
19. Give details of any material changes in the particulars referred to above during the period 28th April, 2004 and the date on which the information is provided: N/A

Name (BLOCK CAPITALS):	<u>DONIE O'REGAN</u>
Signature:	<u>[Signature]</u>
Position with firm/company ² :	<u>LAND ENGINEER</u>
Date:	<u>27/04/2005</u>

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

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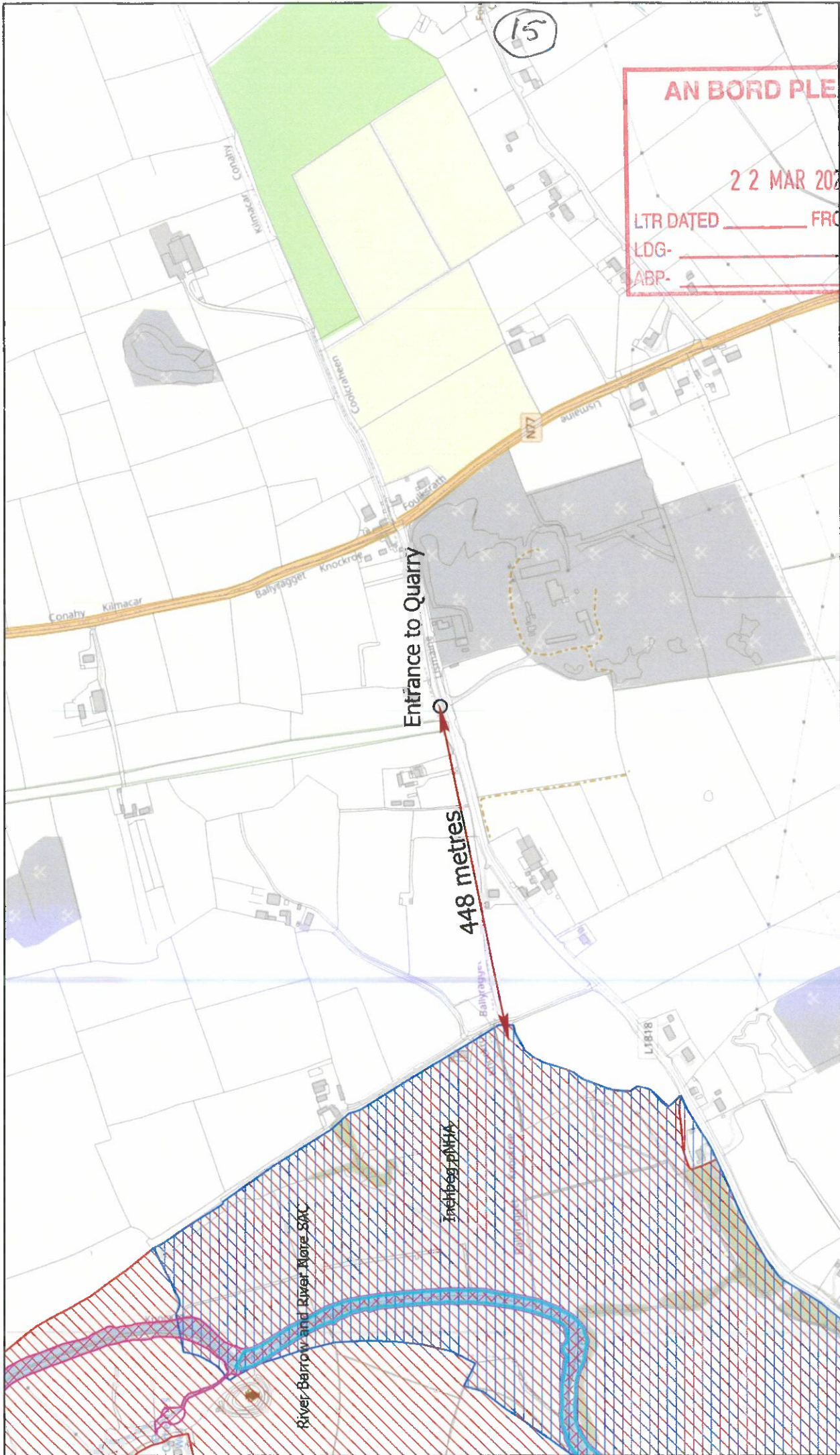
2019

1

1000

1000





NPWS/NPWS Designated Areas

- Special Protection Areas
- Proposed Natural Heritage Areas
- Natural Heritage Areas
- Special Areas of Conservation

15

Map 1

Date: March 2022

License No. "2019/27/CCMA/KilkennyCountyCouncil"

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Comhairle Chontae Chill Chainnigh

Kilkenny County Council

Planning Report



Planning & Development Act, 2000 - 2010
Planning & Development Regulations, 2001 - 2010

Planning Ref: QR 20
Asphalt Roofing LTD.
Lismaine

Subject: Assessment of Quarries in County Kilkenny under Section 261A of the Planning and Development Act 2000- 2010 to ensure compliance with the provisions of the Environmental Impact Assessment Directive and the Habitats Directive.

1. Site Location & Description:

The site is located where the N77 and the L1818 meet at Lismaine. The site is on the corner and is part of the original Lismaine site. The site is currently used for crushing and screening and has a concrete batching plant on site.

2. Owner/Operator:

Messrs. Donal O'Regan and John O'Brien.

3. Quarry Registration: (Did the quarry fulfil the requirements of registration under Section 261 of the Planning and Development Act 2000?)

No

4. Submissions Received:

None

5. Planning History:

Enforcement History:

ENF 10046 Unauthorised Quarry at Lismaine.

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Planning History pre 1964:

None

Planning History 1964 -1990 (Feb 1):

82/790 – Asphalt processing plant

Planning History 1990 -1997 (26 Feb):

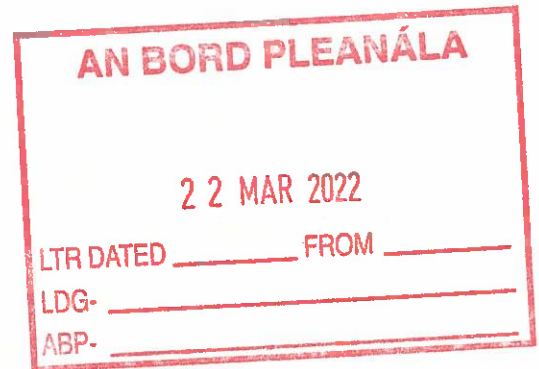
None

Planning History post 1997:

None

Planning History post July 2008

Works commenced on the unauthorised quarry where the storage area for asphalt roofing was granted.



6. Deliberation:

6.1 In accordance with the Environmental Impact Assessment Directive, did any of the works since 1 February 1990 require an EIA or a determination whether an EIA would be required where same was not carried out? If so, please elaborate.

No

6.2 In accordance with the Habitats Directive, did any of the works since 26 February 1997 require an Appropriate Assessment where same was not carried out? If so, please elaborate.

No

6.3 Was any works undertaken post July 2008 that would have required an EIS, a Determination whether an EIS would be required or An Appropriate Assessment, where same was not carried out? If so, please elaborate.

No

7. Determination under section 2(a) of Section 261A:

- Having regard to all relevant information, including submissions and observations, the Planning Authority considers that the quarry did not fulfil the requirements of quarry registration under Section 261 of the Planning and Development Act 2000.

- Having regard to the Planning and Development Act, the Environmental Impact Assessment Directive and all relevant information, including submissions and observations, the Planning Authority considers that:

the quarry is unauthorised by reason of the owners/operators not registering same under Section 261 of the Planning and Development Act.

- No development at the quarry since 1 February 1990 was required to have a determination whether an Environmental Impact Assessment is required or an EIA where same was not carried out.
- Having regard to the Habitats Directive and all relevant information, including submissions and observations, the Planning Authority considers that development since 26 February 1997 did not require an Appropriate Assessment where same was not carried out.
- Having regard to the Habitats Directive and all relevant information, including submissions and observations, the Planning Authority considers that development post July 2008 would not have required and Environmental Impact Assessment, a determination whether an Environmental Impact Assessment is required or An Appropriate Assessment, where same was not carried out

8. Reason for decision:

The quarry started prior to 1964 and aerial photos from the 1970s show the quarry at an advanced stage. The lands in the original ownership of James Treacy in 1964 would have constituted all the lands currently in the ownership and use by both Brenstone (William and Liam Brennan) and Asphalt Roofing (Donal O'Regan and John O'Brien). This land was sold off in two batches in the 1970s and 1980s, to The Brennan Bros (portions 9 and 14) and to Cornelius Phelan (Portions 18-22). Cornelius Phelan subsequently sold portions 18,19, 20 and 22 to the Brennan Bros and Portion 21 to Donal O'Regan and John O'Brien. The original site of the quarry/sandpit is now no longer in use and used to be where Asphalt Roofing now has their builders yard. This yard was granted permission in 1982. To the South East of Asphalt Roofing's yard is an extension to the yard, which was granted permission under reg. ref 08/1233 for the storage of roofing material. On inspection, it is clear that significant quarrying has taken place to well below the allowed yard level. The yard is now a water filled quarry with solid limestone walls. It would seem as if the future extraction of this resource could be sustainable and therefore a precautionary approach should be taken and although there was no activity on site, this development should not be considered as having ceased operations.

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Enforcement Action was taken and an Enforcement Notice was served under Section 157 as the quarry became unauthorised as a result of not registering under section 261. However, the notice was withdrawn as it was considered that a Section 160 injunction would be more appropriate and to avoid a High Court Judicial Review.

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Since the proceedings were withdrawn, a change to the Planning and Development Act has commenced, which removes the seven year statute of limitations rule from applying to any quarry. Section 47 of the Planning and Development Amendment Act, amending section 157(4) by inserting paragraph "aa", states "... (a) a warning letter or Enforcement Notice may issue, or proceedings may be commenced, at any time in respect of the following development:


- (i) operation of a quarry
- (ii) extraction of peat.

Due to the nature and size of the quarry, I do not consider that the quarrying activity at this new location would pose a threat to the River Nore SAC. A screening exercise for the need for Appropriate Assessment was carried out and it was concluded that the unauthorised works do not require Appropriate Assessment.


9. **Recommendation:**

Having regard to the all the relevant information including submissions and observations, where received, it is recommended that although there is no activity on site, a notice be sent to the Quarry operator/owner including the following:

- A Notice that there are no implications for the quarry in accordance with Section 261A, however, any further quarrying would be considered unauthorised without the benefit of planning permission. Cease and desist. Enforcement Notice may be appropriate.


N. Louw
Senior Executive Planner
Date:

14/05/12


A.M. Walsh
Senior Executive Officer
Date

24/7/2012

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Habitats Directive Project Screening Assessment

Table 1: Project Details

Development Consent Type	Asphalt Roofing
Development Location	Lismane, Kilkenny
Planning File Ref	QR 020
Description of the project	Unauthorised Quarry

Table 2: Identification of Natura 2000 sites (SACs and SPAs) which may be impacted by the proposed development

Please answer the following five questions in order to determine whether there are any Natura 2000 sites which could potentially be impacted by the proposed development. If the answer to all of these questions is no, significant impacts can be ruled out for habitats and bird species. No further assessment is required. Please refer to tables 3 and 4 where the answer to any of these questions is yes.

		Y/N
1	ONE- OFF HOUSE /SMALL EXTENSION/ ALTERATION TO EXISTING BUILDING	
1a	<p>Is the development a one- off house/small extension/alteration to existing building within an SAC/SPA or within 100m of an SAC/SPA and likely to discharge pollutants or nutrients of a significant nature and amount to surface water within catchments of and SAC/ SPA as part of its construction or operational phase (including the installation of waste water treatment systems; percolation areas; septic tanks within SAC/SPA or very close proximity)?</p> <p>If the answer to the above question is: - no, then no appropriate assessment required - yes, then an appropriate assessment is required - not sure, then an appropriate assessment is required in accordance with the precautionary principle</p>	N
2	DEVELOPMENTS OTHER THAN THOSE DESCRIBED IN 1 ABOVE	
2a	<p>Impacts On Freshwater Habitats <i>Is the development within a Special Area of Conservation whose qualifying interests include freshwater habitats, or in the catchment of same and does the development propose to discharge water to or abstract water from the habitat?</i></p> <p>Sites to consider: Lower River Suir, River Barrow, River Nore.</p> <p>Habitats to consider: Alluvial Wet Woodland, (Lower River Suir), Dry Heath (some steep slopes along River Barrow and its tributaries) Rivers, Streams, Lakes and Lagoons, Old Oak Woodland, floating river vegetation,</p> <p>Species to consider: River Lamprey, Brook Lamprey, Freshwater Pearls Mussel, Nore Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter, Vertigo Moulinsiana,</p>	N
2b	<p>Impacts On Wetland Habitats <i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats, or likely to discharge water to or abstract water from the wetland?</i></p> <p>Sites to consider: Hugginstown Fen, Galmoy Fen, The Loughans, Flood Plain wetlands</p> <p>Habitats to consider: Bogs, Alkaline Fens (Hugginstown and Galmoy), Turloughs (The Loughans)</p>	N
2c	Impacts on Intertidal and Marine Habitats	

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		Y/N
	<p>Is the development located within a Special Area of Conservation whose qualifying interests include intertidal and marine habitats and species, or within the catchment of same and likely to discharge water to or abstract water from the habitats.</p> <p>Sites to consider: Lower River Suir</p> <p>Habitats to consider: Atlantic Salt meadows, Mudflats, sandflats, saltmarsh, estuary</p> <p>Species to consider: Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter.</p>	N
2d	<p>Impacts On Woodlands And Grasslands</p> <p>Is the development within a Special Area of Conservation whose qualifying habitats include terrestrial habitats, or in close proximity to same with a likely ecological impact?</p> <p>Sites to consider: Spa hill and Clomantagh Hill, Cullahil Mountain, River Barrow, River Nore, Lower River Suir</p> <p>Habitats to consider: Alluvial Wet Woodlands (River Nore below Inistioge and River Suir at Fiddown Island and Carrick on Suir), Eutropic tall herb vegetation (River Suir at Fiddown Island and Carrick on Suir), and grasslands (Spa hill and Clomantagh Hill, Cullahil Mountain)</p> <p>Oak Woodlands in old estates next to the Nore and Barrow</p> <p>Species to consider: Greenwinged, Frog and Bee Orchids (Cullahill and Clomantagh Hill), Nettle Leaved Bellflower and Autumn Crocus</p>	N
2e	<p>Impacts On Birds</p> <p>Is the development within a Special Protection Area, or likely to discharge water to same or likely to have another significant impact on the habitats of Birds in same?</p> <p>Sites to consider: River Nore</p> <p>Species to consider: River Nore: Kingfisher (Alcedo Atthis) – Nesting in river banks</p>	N

Table 3: Determination of possible impacts on Natura 2000 sites.

Where it has been identified in table 2 that there is a Natura 2000 site within the potential impact zone of the proposed development, it is necessary to try to determine the nature of the possible impacts. Please answer the following questions as appropriate.

1.	Impacts on designated freshwater habitats (rivers, lakes streams and lagoons).	
	<p>Please answer the following if the answer to question 2a in table 2 was yes.</p> <p>Does the development involve any of the following:</p>	
1.1	Impacts on watercourses (tributaries, streams, drains) which are remote from the SAC/SPA but may still impact on the SAC/SPA by reason of the nature or quantity of the discharge	N
1.2	Abstraction from surfacewater or groundwater within 1km of SAC/SPA.	yes, but impact unlikely
1.3	Removal of topsoil within 100 m of watercourses with potential for surface water runoff.	N
1.4	Infilling or raising of ground levels within 100m of watercourses with potential for surface water runoff.	N
1.5	Construction of drainage ditches within 1km of SAC/SPA.	N
1.6	Construction within a floodplain or within an area liable to flood.	N
1.7	Crossing or culverting of rivers or streams within 1km of SAC/SPA.	

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1.8	Storage of chemicals hydrocarbons or organic wastes within 100 m of a watercourse.	N
1.9	Development of a large scale which involves the production of an EIS.	N
1.10	Development of quarries, particularly where abstraction is below water table.	N
1.11	Development of windfarms within 1km of an SAC or with the risk of runoff to an SAC/SPA, particularly during construction.	N
1.12	Development of pumped hydro electric stations.	N
2	Impacts on designated wetland habitats (bog, heath, marsh, fen). Please answer the following if the answer to question 2b in table 2 was yes. Does the development involve any of the following:	
2.1	Impacts on watercourses (tributaries, streams, drains) which are remote from the SAC/SPA but may still impact on the SAC/SPA by reason of the nature or quantity of the discharge.	N
2.2	Construction of roads or other infrastructure on peat habitats within 1km of a Natura 2000 site of which qualifying interests include peat, fen or marsh. (Only Peat habitat at Bruckana – consider Galmoy fen – impact unlikely)	N
2.3	Development of a large scale within 1km within a Natura 2000 site, whose qualifying features include fen or marsh, which involves the production of an EIS.	N
3	Impacts on designated intertidal and marine habitats (mudflats, sandflats, estuaries, reefs and sea cliffs). Please answer the following if the answer to question 2c in table 2 was yes. Does the development involve any of the following:	
3.1	Impacts on intertidal and marine habitats from potential development which are remote from the SAC/SPA but may still impact on the SAC/SPA by reason of the nature or quantity of the discharge	N
3.2	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a Natura 2000 site whose qualifying features include intertidal or marine habitats.	N
3.3	Dredging within 5km of a Natura 2000 site whose qualifying features include intertidal or marine habitats.	N
3.4	Impacts on watercourses (tributaries, streams, drains) which are remote from the SAC/SPA but may still impact on the SAC/SPA by reason of the nature or quantity of the discharge.	N
3.5	Removal of topsoil or infilling within 100m of Natura 2000 sites whose qualifying features include intertidal or marine habitats where potential for surface water runoff exists.	N
3.6	Development of a large scale within 1km of Natura 2000 sites whose qualifying features include intertidal or marine habitats, which involves the production of an EIS.	N
4	Impacts on other designated woodlands and grasslands (woodland, upland grassland, lowland grassland, coastal grassland including dunes). Please answer the following if the answer to question 2d in table 2 was yes. Does the development involve any of the following:	
4.1	Works within the boundary of a Special Area of Conservation whose qualifying interests include woodland or grassland habitat types.	N
4.2	Development within 200m of Natura 2000 site with woodland or grassland habitats.	N

No discharge to river EIS only to tail pond.

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4.3	Development of a large scale within 1km of Natura 2000 site with woodland, grassland or coastal habitats which involves the production of an EIS.	2
5	Impacts on birds in SPAs Please answer the following if the answer to question 2e in table 2 was yes. Does the development involve any of the following:	
5.2	Erection of wind turbines within 1km of an SPA.	2
5.3	All construction works within 100m of SPA (River Nore), including the development of cycle ways or walking routes	2
5.4	Infilling of coastal habitats within 500m of intertidal SPA.	2
5.5	Works within 1km of coastal SPA which will result in discharges to rivers or streams that are directly connected to designated sites.	2
5.6		

Conclusion: If the answer to question 1 and 2a-e are no or n/a, significant impacts on habitats within Natura 2000 sites and on SPAs can be ruled out. No further assessment is required in relation to habitats or birds. If the answer to any question in table 2 is yes, you may require further information, unless you are satisfied that the project proponents have incorporated adequate mitigation into their design to avoid impacts on the Natura 2000 site (eg water pollution protection measures). Such information should be provided in the form of a Natura Impact Statement which should address the particular issues of concern as identified through the above.

Table 4: Consideration of potential impacts on protected species

Many of our Special Areas of Conservation are designated for species as well as for habitats. These are listed below, alongside the sites for which they are designated. Included is a short list of the types of activities which could have an impact on these species. Please tick if you are concerned that the proposed development could have an impact on these species.

Species	Relevant Sites	Activities which could have impacts on species	Possible Impacts Identified? Y/N
Otter	River Nore River Barrow Lower River Suir Note: Otters are a strictly protected species. All breeding sites and resting places are protected regardless of whether or not they are within or external to Special Areas of Conservation.	Activities that interfere with river banks.	2
Atlantic Salmon	River Barrow River Nore Lower River Suir	Activities that interfere with water quality, levels or the river bed;	2
River Lamprey	River Barrow River Nore Lower River Suir	Activities that interfere with water quality, levels or the river bed;	2
Brook Lamprey	River Barrow River Nore Lower River Suir	Activities that interfere with water quality, levels or the river bed;	2
Sea Lamprey	River Barrow River Nore Lower River Suir	Activities that interfere with water quality or the river bed – estuarine areas;	2

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Species	Relevant Sites	Activities which could have impacts on species	Possible Impacts Identified? Y/N
Twaite Shad	Lower River Suir	Activities that interfere with water quality or the river bed – estuarine areas;	N
Crayfish	Lower River Suir	Activities that interfere with water quality or the river bed;	N
Freshwater Pearl Mussel	River Barrow River Nore Lower River Suir	Activities that interfere with water quality, levels or the river bed ;	N
Nore Freshwater Pearl Mussel	River Nore	Activities that interfere with water quality, levels or the river bed ;	N

Conclusion: If the answer to all of the above is no, significant impacts on species can be ruled out. If the answer to any of the above is yes, then further information is likely to be required in relation to potential for impact on that particular species. Where potential impacts are identified on Otters or on Bats outside designated sites, then further information should be sought in the form of a species specific survey. In these cases, appropriate assessment is not required.

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Habitats Directive Screening Conclusion Statement

Development Type	Quarry
Development Location	Lismaine, Kilkenny
Natura 2000 sites within impact zone	River Nore
Planning File Ref	QR 20
Description of the project	Unauthorised quarry
Describe how the project or plan (alone or in combination) could affect Natura 2000 site(s).	
If there are potential impacts, explain whether you consider if these are likely to be significant.	
<p>Conclusion of assessment Having regard to the precautionary principle, it is considered that:</p> <p><input type="checkbox"/> Significant impacts can be ruled out or AA not required (if project is directly connected or necessary to Management of Natura 2000 site (determined in consultation with NPWS)).</p> <p>or</p> <p><input checked="" type="checkbox"/> Significant impacts are certain, likely or uncertain (cannot be ruled out), Natura Impact Statement (NIS) is required. Project must be subject to appropriate assessment.</p>	
Documentation reviewed for making of this statement.	
Completed By	JN. Lewis SEP
Date	14/05/12

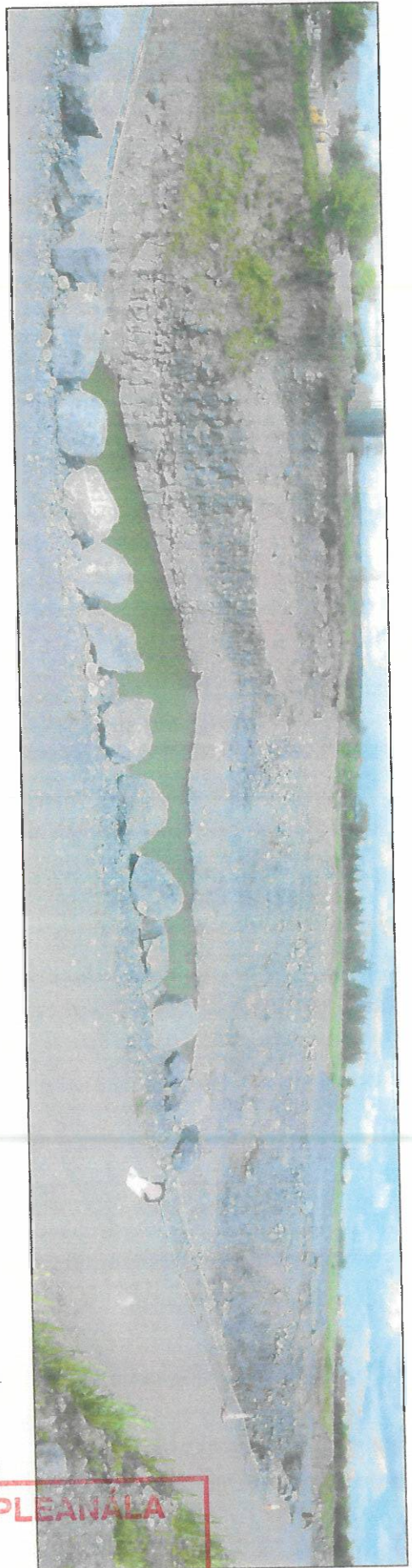
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QR-020 Lismaine, Ballyragget

Owners:

Donal O'Regan & John O'Brien

Operator:

Lismaine Concrete Ltd.

Photo survey date: 11th May 2012



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QR-019 & 020 Lismaine, Ballyragget

Photo survey date: 11th May 2012.

Owner: Brennan Bros. (QR-019) Donal O'Regan (QR-020)



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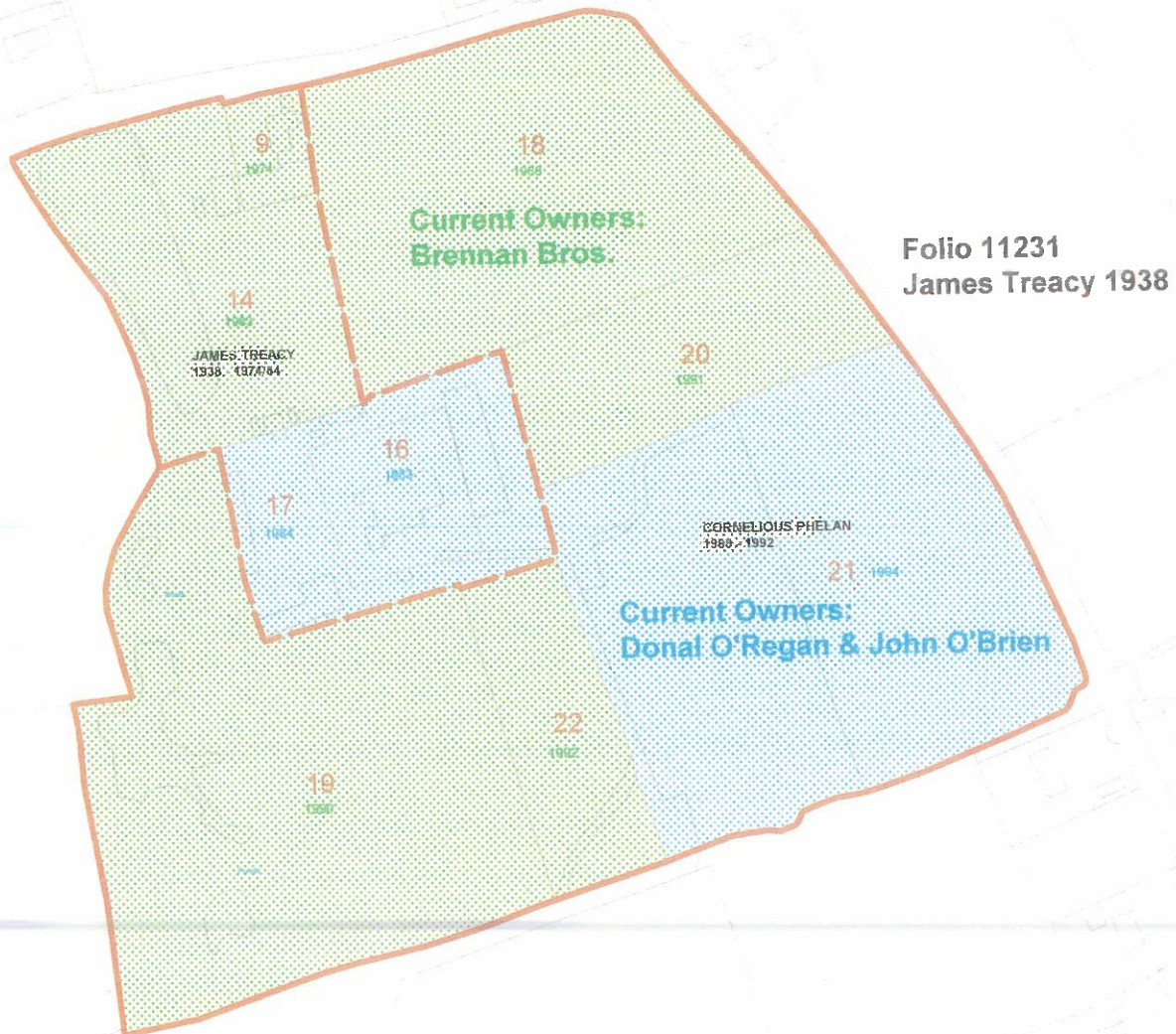


25 MAR 1962

FROM _____

TO _____

LISMAINE
BALLYRAGGET



AN BORD PLEANÁLA

22 MAR 2022

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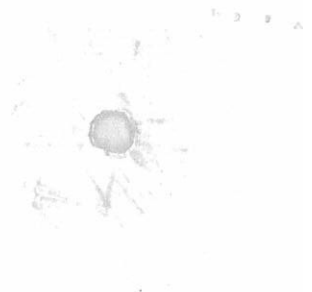
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AN BORD PLEANALA

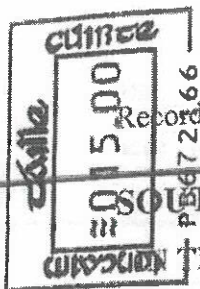
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TORONTO
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Toronto, Ontario
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Record Number:...../2021

THE CIRCUIT COURT

SOUTH EASTERN CIRCUIT

COUNTY OF KILKENNY

**THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT
ACT 2000**

**AND IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACTS 2000-
2020**

BETWEEN:

KILKENNY COUNTY COUNCIL

APPLICANT

-and-

KILKENNY ASPHALT ROOFING LIMITED

-and-

DONAL O'REGAN

RESPONDENTS

AFFIDAVIT OF AIDAN BROPHY

I, Aidan Brophy, HSE Employee, of Knockroe, Jenkinstown, Co. Kilkenny, R95AF30, aged
18 years and upwards **MAKE OATH** and say as follows:

1. I say that I make this Affidavit on my own behalf from facts within my own knowledge save where otherwise appearing and whereso otherwise appearing I believe the same to be true.
2. I say that I am very familiar with the lands and quarry the subject matter of the within proceedings as my property is located near the Respondent's lands and I have lived in the area for 61 years.
3. I say that I have kept records of the activity at the quarry as follows:-
 - i. I say that rock breaking commenced in early 2009 in or around March – April thereof. I say and believe that at that time no planning permission was in place for this development. I say that the quarry continued production up to Sept - Oct 2010 when work ceased.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

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ii. I say that the quarry lay dormant from 2011 to 27th Mar 2014 when heavy duty machinery moved into the quarry. The following morning 28th Mar 2014, rock breaking and crushing commenced. This continued up to the winter of 2015/2016.

iii. I say that once again the quarry laid dormant from early 2016 to 17th Aug 2020 when again machinery moved into the site and rock breaking and crushing recommenced right up to the present day.

iv. I say that water from the quarry is being pumped into the field drainage system which leads to the River Nore and the SAC through my lands. The water is being pumped seven nights per week during the hours of darkness from approximately 8.00pm to 4.00am. I estimate that in excess of one million litres of water is being pumped from the property nightly, which has caused flooding in my fields and has submerged my septic tank under 6 inches of water.

4. I say that on the 22nd September 2020 I contacted Kilkenny County Council by letter to inform them of the fact that works had recommenced.

SWORN this 20th day of April 2021,
Before me, Brian Reidy
At Parliament Street, Kilkenny, and I know the
John Harte who knows the Deponent.

Aiden Dwyer
Signature of Deponent

Brian Reidy **Brian Reidy**
Practicing Solicitor **Solicitor**
Reidy & Foley
Solicitors
Parliament House

Filed this .. day of 2021, by Messrs. Harte, Solicitors on behalf of the Applicant of
Parliament Street, Kilkenny.

AN BORD PLEANÁLA	
22 MAR 2022	
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Record Number:...../2021

THE CIRCUIT COURT

COUNTY OF KILKENNY

SOUTH EASTERN CIRCUIT

**IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000
AND IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACTS 2000-2020**

BETWEEN:

KILKENNY COUNTY COUNCIL

APPLICANT

-and-

KILKENNY ASPHALT ROOFING LIMITED

-and-

DONAL O'REGAN

RESPONDENTS

AFFIDAVIT OF SEAN CAHILL

Sean Cahill, Farmer, of Lismaine, Jenkinstown, Co Kilkenny, aged 18 years and upwards
MAKE OATH and say as follows:

1. I say that I make this Affidavit on my own behalf from facts within my own knowledge save where otherwise appearing and whereso otherwise appearing I believe the same to be true.
2. I say that I am very familiar with the lands and quarry the subject matter of the within proceedings as my property is located near the Respondent's lands and I have lived in the area for 52 years.
3. I say that the activity at the Respondents quarry at Lismaine, Jenkinstown began from August/September 2009 and continued up until late 2010.
4. I say that to the best of my knowledge activity did not resume again on this site until the end of March 2014 and worked until late 2015.
5. I say and that no activity happened on the site until the summer of 2020 when a large number of plant machines arrived on site. A significant amount of rockbreaking has taken place on this site from in the early hours of the morning. The noise levels from

AN BORD PLEANÁLA
22 MAR 2022
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this activity has caused considerable stress to many concerned residents in the local area with many people working from home this has caused considerable frustration to many people.

6. I say that the volume of lorries entering and exiting this site on a daily basis has rapidly increased causing heavy traffic on our small secondary road. I am also aware of the large volume of water that is being pumped from this site. This water is being pumped into the adjacent site of Mr. Liam Brennan against his will, which has subsequently resulted into where it is overflowing onto my farmland causing considerable damage and financial loss at the expense of this activity. I say that this water is freely flowing to the direction of the river Nore just in the region of 500 meters away. I say that it appears no safety precautions have ever been applied on this site, such as security railings nor warning signs.
7. I say that quarrying activity continues up to the present day.

SWORN this ^{20th} day of April 2021,
Before me, BRIAN REIDY
At Parliament Street, Kilkenny, a Practicing
Solicitor, and I know John Harte who knows the
Deponent.

John Harte
Signature of Deponent

Brian Reidy
Practicing Solicitor

Brian Reidy
Solicitor
Reidy & Foley
Solicitors

Filed this .. day of 2021, by Messrs. Harte, Solicitors on behalf of the Applicant of
Parliament Street, Kilkenny.

Parliament House
Kilkenny

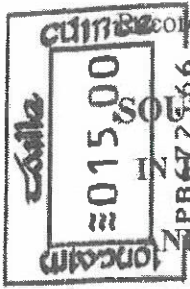
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COUNTY OF KILKENNY

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BETWEEN:

KILKENNY COUNTY COUNCIL

APPLICANT

-and-

KILKENNY ASPHALT ROOFING LIMITED

-and-

DONAL O'REGAN

RESPONDENTS

AFFIDAVIT OF EAMON CONWAY

Eamon Conway, of Lismaine, Jenkinstown, Co Kilkenny, aged 18 years and upwards
DOES SOLEMNLY SWEAR AND SAY AS FOLLOWS:

1. I say that I make this Affidavit on my own behalf from facts within my own knowledge save where otherwise appearing and whereso otherwise appearing I believe the same to be true.
2. I say that I am very familiar with the lands and quarry the subject matter of the within proceedings as my residence is located within 100 meters of the Respondent's lands and I have resided in the area for in excess of 40 years.
3. I say that I am aware that some quarrying took place in 2009 which ceased in 2010 and then recommenced in March 2014 and stopped again in early 2016.
4. I say that the quarry laid dormant from early 2016 to August 2020 when again machinery moved into the site and rock breaking and crushing recommenced right up to the present day.

AN BORD PLEANÁLA

22 MAR 2022

LTR DATED _____ FROM _____

LDG- _____

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SWORN this 21st day of April 2021,
Before me, Brian Reidy
At Parliament Street, Kilkenny, a Practicing
Solicitor, and I know John Harte who knows the
Deponent.


Signature of Deponent


Practicing Solicitor

Brian Reidy
Solicitor
Reidy & Foley
Solicitors
Parliament House
Kilkenny

Filed this .. day of 2021, by Messrs. Harte, Solicitors on behalf of the Applicant of
Parliament Street, Kilkenny.

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