Submission	
Submitter:	Mr. David Malone
Submission Title:	Submission
Submission Reference No.:	S005459
Submission Received:	22 March 2019
Application	
Applicant:	GCHL LIMITED
Reg. No.:	W0298-01
See below for Submission details. Attachments are displayed on the following page(s).	

Noeleen Keavey

Subject: FW: EAA-I submission to European Commission
Attachments: EAA-I FI for EC CHAP 2018-03359.pdf

-----Original Message-----
From: David Malone [redacted]
Sent: 22 March 2019 12:15
To: Wexford Receptionist <REC_WEX@epa.ie>; Paddy McGuire <[redacted] Simon Mooney [redacted]
Subject: EAA-I submission to European Commission

Could you please acknowledge receipt of this Further Information sent to European Commission concerning Complaint CHAP (2018) 03359.

EAA-I is seeking a meeting with the EPA to discuss the content of this complaint.

Regards David Malone

[redacted]

Secretariat-General,
European Commission,
Rue de Loi 200,
B-1049 Bruxelles/Westraat,
B-1049 Brussels,
Belgium.

22nd March 2019

Re: Further Information for Complaint CHAP (2018) 03359

Environmental Action Alliance-Ireland, wish the European Commission to consider this further information pertaining to complaint CHAP (2018) 03359.

a) There was a ***defective permission*** granted in 2004 for PL02/1475, to extract 1.6 million tonnes of sand and gravel from a quarry at Ballinderry, County Kildare. The permission was defective because there was no Environmental Impact Assessment (EIA) carried out in accordance with Article 3 of the EIA Directive and no Appropriate Assessment screening carried out in accordance with Article 6(3) of the Habitats Directive 92/43/EEC;

b) In 2018 the company applied to the Environmental Protection Agency (EPA) for a waste licence (Ref: Number W0298-01), to dispose of 1,234,335 tonnes of waste 20 meters below the water table in a quarry at Ballinderry, County Kildare. Because of the unauthorised developments this project requires **"substitute consent"** from An Bord Pleanala;

c) The Council in March 2016, took a High Court case under Section 160 of the Planning and Development Acts, 2000 as amended. On the 21 November 2016, the High Court Ordered (App No: 2015/383MCA) that the company cease forthwith the unauthorised use of the lands, at the Ballinderry site. This submission will show why the Council completely misconstrued the High Court Order as regards an EIA required for the waste licence application (W0298-01), to the EPA to dispose of 1,234,335 tonnes of waste.

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Planning Permission for PL02/1475 was Defective

The primary objective of the EIA Directive is the protection of the environment, in accordance with Article 191 of the Treaty on the Functioning of the European Union (TFEU). Pursuant to Article 191 of the TFEU, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest stage in all the technical planning and decision-making processes. Under the provisions of Article 291(1) of the TFEU, Member States are responsible for transposing Directives into their national law on time and accurately, as well as for correctly applying and implementing the entire body of EU legislation (the *acquis)*.

This complaint (CHAP (2018) 03359) relates to a quarry development in which the developer contrary to planning conditions extracted sand and gravel 20 meters below the water table level. The developer also illegally disposed over 4,000 tonnes of waste on the Ballinderry site. Both Kildare County Council and the EPA states that because the groundwater vulnerability in the area is extreme, it cannot be stated with any assurance that the waste illegally disposed at the Ballinderry site will not lead to overall adverse environmental or human health impacts.

There was no Environmental Impact Assessment (EIA) carried out in accordance with Article 3 of the EIA Directive and no Appropriate Assessment screening carried out in accordance with Article 6(3) of the Habitats Directive 92/43/EEC for the quarry project under PL02/1475 at the Ballinderry site. The Council is now claiming that there is no EIA or AA screening required to dispose of 1,234,335 tonnes of waste 20 meters below the water table in the quarry at Ballinderry. In other words, instead of complying with Articles 291(1) and 191 of TFEU the Council and EPA are rewarding the developer for violating National and European legislation.

The High Court in Case (*Klaus Batz and Hanna Heubach v An Bord Pleanála*) 2013 No. 450 JR delivered by Mr Justice Bernard J. Barton on 25 February, 2016, stated that the permission must be quashed after finding that the process under which An Bord Pleanála had decided relevant issues concerning compliance with two European Directives, namely the Habitats Directive and the Environmental Impact Assessment Directive **did not comply** with European or Irish law.

The ECJ in Case 494/01 (Commission v Ireland) at Paragraph 165 ruled that:

> *"It is to be remembered that the obligation to dispose of waste without endangering human health and without harming the environment forms part of the very objectives of Community environmental policy and that Article 4 of the Directive is intended in particular to implement the principle that preventive action should be taken, contained in the second sentence of the first subparagraph of Article 174(2) EC, by virtue of which it is for the Community and the Member States to prevent, reduce and, in so far as is possible, eliminate from the outset the sources of pollution or nuisance by adopting measures of a nature such as to eliminate recognised risks (see Joined Cases C-175/98 and C-177/98 Lirussi and Bizzaro [1999] ECR I-6881, paragraph 51, and Case C-387/97 Commission v Greece [2000] ECR I-5047, paragraph 94)."*

The ECJ in Case C-50/09 (*Commission v Ireland)* ruled that:

> *"Article 3 of Directive 85/337 makes the competent environmental authority responsible for carrying out an environmental impact assessment which must include a description of a project's direct and indirect effects on the factors set out in the first three indents of that article and the interaction between those factors (judgment of 16 March 2006 in Case C-332/04 Commission v Spain, paragraph 33). As stated in Article 2(1) of the directive, that assessment is to be carried out before the consent applied for to proceed with a project is given." (Para 36)*

The ECJ in several cases against Ireland ruled that the Irish authorities failed to take all the measures necessary to ensure a correct implementation of the provisions of Articles 2-4 of the EIA Directive 85/337/EEC as amended. This complaint also concerns infringements of these Articles of the codified EIA Directive 2011/92/EU as amended by Directive 2014/52/EU. In other words, over the past 20 years Ireland has generally and persistently failed to fulfil its obligation to ensure a correct implementation of Articles 2-4 of the EIA Directive as amended.

Under Article 4(3) of the Treaty of European Union (TEU) and the judgement in Case C-215/06, *(Commission v Ireland, paragraphs 57 and 59*), the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in Article 2(1) of the EIA Directive.

If the effective protection of European Union environmental law is not to be undermined, it is paramount that the provisions of a Directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights. (see Case C-427/07 *Commission v Ireland* [2009] ECR I-6277 para 55). According to the consistent case-law of the Court of Justice, Member States have to inform the Commission in a clear and precise way on how they translate EU Directives into their national rules (Case C-427/07, point 107)

Section 177B, of the Planning and Development Act 2000, as amended sets out the procedure to be adopted by a planning authority in cases falling within the scope of the Act of 2010. These include a planning authority giving notice in writing to the person who carried out the development, informing them of the fact that a *defective permission* had *been granted* in the absence of an EIA, a determination, or an AA, directing the person or entity concerned to apply to the Board for a substitute consent, such application to be accompanied for that purpose by a *remedial* environmental impact statement, or a remedial Natura Impact Statement, or both. (See s.177C of the Act). Again, the scope of the section is clear, and limited to cases where a *permission* was flawed.

Therefore, Kildare County Council should have informed GCHL Ltd that because the permission granted under PL PL02/1475 was a ***defective permission,*** it must now apply to An Bord Pleanala for permission to submit a Remedial EIS. That the application to the Board shall be accompanied by Remedial Natura Impact Statement undertaken in accordance with Section 177G of the Planning & Development Acts 2000-2011.

Substitute Consent required for the Waste Disposal Project

The company failed to comply with conditions 1, 2, 4 and 12, of permission PL02/1475, which resulted in sand and gravel been extracted up to 20 meters below the water table level. Section 261(1) (aa) of Planning and Development Act 2000, as amended states that *"Notwithstanding any other provisions of this Act, the operation of a quarry in respect of which the owner or operator fails to comply with conditions imposed under paragraph (a)(i) shall be unauthorised development."*

As a result, of the unauthorised developments the Council in March 2016, took a High Court case (App No: 2015/383MCA) under Section 160 of the Planning and Development Acts, 2000 as amended. On 21 November 2016, the High Court Ordered that the Company cease forthwith the unauthorised use of the lands, at the Ballinderry site. On 2 March 2017, the company violated the Order and illegally disposed over 4,000 tonnes of waste from a construction site at Sybil Hill, Raheny, Dublin on the Ballinderry site;

This complaint concerns a failure by Kildare County Council and the EPA, to implement and enforce the legislation transposed into Irish law under the provisions of Section 3 of the European Communities Act 1972, in order to remedy the defect identified in several ECJ judgements (the acquis) against Ireland. The Act grants legal status to Community law within Ireland, and is protected by Article 29.4.10 of the Irish Constitution. The purposive approach to statutory interpretation is driven by the Act 1972. Therefore, both the ECJ and Member State Courts are required to use the purposive approach rule to statutory interpretation.

Paragraph 79 of the judgement in Case C50/09 states:

> *"In its defence, Ireland, which does not deny that, generally, the Agency is not empowered to require a developer to produce such a statement, contends that there is no practical benefit for a developer in seeking a licence from the Agency without simultaneously making an application for planning permission to the planning authority, since he needs a consent from both those authorities. However, Ireland has neither established, nor even alleged, that it is legally impossible for a developer to obtain a decision from the Agency where he has not applied to the planning authority for permission."*

In order to implement the ECJ judgement in Case C-215/06, Section 23(c) of the Planning and Development (Amendment) Act 2010, amended Section 34(12) of the 2000 Act, to provide that a retention application cannot be accepted by a planning authority for a development which would have required an environmental impact assessment (EIA).

However, the PDA, introduced a new type of environmental impact assessment and a **"substitute consent"** mechanism. This new *"substitute consent'* procedure applies to any development prescribed for the purposes of either Annex I or Annex I1 of the ElA Directive. The proposed waste activity is for an annual intake of 400,000 tonnes per annum. This significantly exceeds (16 times greater) the following threshold in Schedule 5, Part 2, of the Planning and Development Regulations 2001 as amended:

11. Other Projects: (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

In order to implement the **second ground** of the judgement, in Case C-50/09, Ireland adopted legislative amendments to the Waste Management Act 1996, the Planning and Development Act 2000, the EPA Act 1992. The objective of the European Union (Environment Impact Assessment) (Waste) Regulations 2012 (S.I. No. 283 of 2012) is to give further effect in Irish law to Articles 2, 3 and 4 of the codified EIÅ Directive 2011/92/EU, insofar as it applies to certain licensable activities that require both a land-use consent and a waste license from the EPA.

The ECJ in Case C-215/06, ruled that the processing of a license application before an EIS was submitted to the planning authority was an infringement of Articles 2 to 4 of the EIA Directive 85/337/EEC. The Council claims that no EIA or AA screening is required for waste project. Nevertheless, the developer submitted an EIAR to the EPA with the licence application W0298-01.

In accordance with subsection 87(1E) of the EPA Act and subsection 42(IE) of the Waste Management Act), the EPA shall notify the planning authority or the Board as appropriate within 2 weeks, asking it to respond within 4 weeks -

(a) stating whether the activity for which a licence is now being sought is permitted by the permission given;

(b) furnishing all documents relating to the EIA carried out; and

(c) furnishing any views, it has in relation to the licence application.

The previous sections of this submission identified that there was no EIA or Appropriate Assessment screening carried out for permission PL02/1475. As a result, the development consent granted for that permission was defective.

Article 2(1) of the EIA Directive defines only a single type of consent, namely the decision of the competent authority or authorities which entitles the developer to proceed with the project (*C-332/04, Commission v. Spain, paragraph 53*). In a consent procedure comprising several stages, that assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment. (*C-201/02, Wells, paragraph 52-53, operative part 1).*

On 8 June 2017, the EPA determined a by-product notified under Article 27 of the European Communities (Waste Directive) Regulations 2011 should be considered as waste. The EPA under section 27(1)(d) of the determination states:

"The original planning application submitted to Kildare County Council in 2002 contained an Environmental Impact Statement (EIS) which was completed on the basis of the extraction of sand and gravel. The Agency has concluded that at the time of the grant of planning permission, it was not envisaged that restoration of the void space would involve its backfilling, and the environmental aspects of a backfilling activity were not therefore taken into consideration by An Bord Pleanala prior to grant of planning permission."

Therefore, the licence application for the disposal of waste for backfilling is a separate project and not a procedure comprising several stages, which requires "development consent" within the meaning of Art.2 of the EIA Directive.

In the Supreme Court Judgement on 7 November 2018 in An Taise v McTigue Quarries Ltd & Ors [2018]1ESC 54, Mr. Justice John MacMenamin states at Paragraphs10, 44 and 69:

10 *".... classification of a planning decision as a "development consent" within the meaning of Art.2 of the EIA Directive must, therefore, be carried out pursuant to national law, but in a manner consistent with what is now EU. (Barker,at para. 41). The CJEU explained that, whether the development referred to one or more stages, it was a matter for the national court to identify whether each stage in a consent procedure, considered as a whole, constituted a "development consent" for the purposes of the Directive".*

44." *The PD(A)A 2010 did set out pathways of regularisation of unauthorised developments which required an EIA, screening for an EIA, or an AA, under the Habitats Directive, but always subject to the caveats laid down by the CJEU in relation to exceptional circumstances, and for achieving substitute consent. One of these is to be found in s.177C(2)(b), which allows a person who has carried out a development where there should have been an EIA, a screening for an EIA, or an AA under the Habitats Directive, to apply to the Board for leave to seek substitute consent in respect of the development, where the applicant is of the opinion that "exceptional circumstances" exist such that it may be appropriate to permit the regularisation of the development through substitute consent.*

69 "*The PD(A)A 2010 stipulates, in terms, that the intent is to achieve concordance with the EIA Directive. This must necessitate that, in interpreting the section in its appropriate context, terms used in the Directive are given their correct meaning under EU law as defined by the CJEU. The term "development consent" has an autonomous meaning in EU law, which is predicated on there being an appropriate EIA in this category of "development". Thus, for there to be a valid planning permission in this case, there must either have been a valid EIA, or the development must come within the category of development identified in s.1770 of the PD(A)A 2010."*

Section 177C(2)(b) of PDA, allows a person who has carried out a development where there should have been an EIA, a screening for an EIA, or an AA under the Habitats Directive, to apply to An Bord Pleanala for leave to seek substitute consent in respect of the development, where the applicant is of the opinion that **"exceptional circumstances"** exist such that it may be appropriate to permit the regularisation of the development through substitute consent

The EPA accepted and validation the licence application which states that *"The site requires restoration as ordered on 21 November 2016 by the High Court under Section 160 of the Planning and development Acts, 2000 as amended (App No: 2015/383 MCA).* The application contained an EIAR instead of Remedial EIS and a Remedial Natura Impact Statement undertaken in accordance with Section 177G of the Planning & Development Acts 2000-2011. Accordingly, the EPA infringed Articles 2 to 4 of the EIA Directive 2014/52/EU, Article 6 (3) of the Habitats Directive and the jurisprudence inter alia, of the ECJ in Cases C-50/09 and C-215/06.

Kildare County Council Misconstrued the High Court Order

In March 2016, the Council took a High Court case (App No: 2015/383MCA) under Section 160 of the Planning and Development Acts, 2000 as amended, against LCP Manufacturing Limited trading as Leinster Aggregates and Goode Concrete Ltd (In Receivership) for failing to comply with conditions 1, 2, 4 and 12, of PL 02/1475.

On the 21 November 2016, the High Court Ordered the Respondents to cease forthwith the unauthorised quarry development at Ballinderry, Carbury in the County of Kildare, consisting of the excavation and processing of quarry material on the property, together with the importation of subsoil and inert material into the property to cease forthwith pending the Respondents their successors and assigns being in receipt of the appropriate Article 27 permission, licence, permit, authorisation, permission, approval or consent, as required by the EPA.

On 6 March 2017, the EPA informed Kildare County Council that it would make its determination in accordance with Article 27(3) that Soil and Stones the subject of the notification should be considered as waste for the reasons set out in the attached letter of consultation with the economic operator. Based on the stated reasons, it cannot be determined that further use of the soil and stone (which is to originate at Sybil Hill, Raheny, Dublin) at this site Good Concrete Limited, Ballinderry Quarry, Ballinderry, Carbury, Co. Kildare is lawful, nor can it be stated that the deposition of this material will not lead to overall adverse environmental or human health impacts

On 8 June 2017, the EPA made its determination in accordance with Article 27(3) that the soil and stones the subject of the notification should be considered as waste for the reasons set out in the attached letter of consultation with the economic operator. As previously identified (p 5) the EPA determination that PL02/1475, contained an EIS, which was completed on the basis of the extraction of sand and gravel only. It made no mention of importing 1,234,335 tonnes of waste and the environmental adverse effects of a backfilling activity were not therefore taken into consideration by An Bord Pleanala prior to grant of planning permission.

In other words, the waste licence application (W0298-01), to the EPA to dispose of 1,234,335 tonnes is for a separate project, which requires substitute consent from An Bord Pleanala in accordance with Section 177C(2)(b) of the PDA and a licence from the EPA under Section 40 of the European Union (Environment Impact Assessment) (Waste) Regulations 2012.

On 18 July 2018, the Balyna Environmental Action Group request information from the Council under the provisions of the European Communities (Access to Information on the Environment) Regulations 2007 to 2014. On 13 September 2018, the Council replied to Item 2 stated:

> *"Planning permission with an Environmental Impact Assessment is not required, given the High Court Order dated 21st November 2016, which requires the restoration and rehabilitation of the site. The remediation of the lands requires the authorisation/approval/consent/permission from the Environmental Protection Agency (EPA). From a planning perspective the remediation of the lands is authorised by the High Court pursuant to Section 163 of the Planning and Development Act 2000-2017, and planning permission is not required accordingly."*

The Council interpretation of the High Court Order is in incorrect for following reasons:

1. The planning permission PL02/1475, was for a project that required an EIA because it exceeded the following threshold under Schedule 5, Part 2, of the Planning and Development Regulations 2001 as amended:
2. Extractive Industry: (b) Extraction of stone, gravel, sand or clay, where the area of extraction would be greater than 5 hectares.

   The proposed project to dispose of 1,234,335 tonnes of waste requires an EIA as it exceeds the following threshold in Schedule 5, Part 2, of the Planning and Development Regulations 2001 as amended:

   11. Other Projects: (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

   The EPA in its determination stated that PL02/1475, contained an EIS, which was completed on the basis of the extraction of sand and gravel only. It made no mention of importing 1,234,335 tonnes of waste and the environmental adverse effects of a backfilling activity were not therefore taken into consideration by An Bord Pleanala prior to grant of planning permission.

   Accordingly, the Council is mistaken in stating that the remediation of the lands was authorised by the High Court pursuant to Section 163 of the Planning and Development Act 2000-2017, and planning permission is not required. The EPA in its determination clearly established that the proposed waste disposal project is totally separate to the extraction of sand and gravel project.

2. On the 17 February 2017, the EPA received an article 27 notification from GCHL Limited. The article 27 notification, reference number ART27-0579, relates to the classification as by-product of some 10,000 cubic metres of soil and stone arising at a brownfield site at Sybil Hill, Raheny, Dublin. On 2 March 2017, the developer violated the Court Order by disposing of over 4,000 tonnes of soil and stone at the site without the EPA determination

   On 8 June 2017, the EPA determined, that the of soil and stone illegally disposed at the site required a waste licence. The determination states that *"The instruction in condition 12 of the planning permission to restore the quarry is not taken to be permission to accept soil and stone in very large quantities for backfilling activities at the quarry."* The determination also stated that *"It cannot be stated with any assurance that the use of the notified material at the destination site will not lead to overall adverse environmental or human health impacts. Therefore Article 27(l)(d) has not been satisfied."*

The High Court Ordered the Respondents to cease forthwith the unauthorised quarry development at the Ballinderry site pending the Respondents their successors and assigns being in receipt of the appropriate Article 27 permission, licence, permit, authorisation, permission, approval or consent, as required by the EPA.

The ECJ ruled that a Member State fails to fulfil its obligations under the EIA Directive, which after the event gives to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to Articles 2(1) and 4(1) and (2) of that Directive, projects for which an environmental impact assessment is required must be identified and then, before the grant of development consent and, therefore, necessarily before they are carried out, must be subject to an application for development consent and to such an assessment. (*C-215/06, paragraphs 59-61)*

Article 2(1) of the EIA Directive defines only a single type of consent, namely the decision of the competent authority or authorities which entitles the developer to proceed with the project. The EPA ruled out permission under Article 27 of the European Communities (Waste Directive) Regulations 2011, and identified that a waste licence was required.

However, because of the unauthorised development at the Ballinderry site before and after the Court Order the proposed waste project requires **"substitute consent"** from An Bord Pleanala. Therefore, the Court identified a process to take place, which would involve inter alia, seeking **"substitute consent"** from An Bord Pleanala.

3. The doctrine of supremacy of EC Law refers to the fact that EC law is the sole authority regarding the issues governed by EC Law and national laws of the member states may not make any change against EC Law in areas, where EC Law is applicable. The ECJ has ruled in its various decisions, primarily in the 'Van Gend en Loos' case, that the EC has established a new legal order that is specific to itself. The ECJ emphasised it by stating, *"the European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights"*.

The Council in claiming that an EIA is not required for the waste disposal project are of the opinion that it can disapply ECJ rulings concerning the EIA Directive and the Aarhus Convention. In other words, they are of the opinion that they can disregard democracy, human rights and the rule of law in processing a waste licence application to dispose of 1,234,335 tonnes of waste in excess of 20 meters below the water table.

The doctrine of supremacy, developed by the ECJ in the Costa v ENEL case established that Union laws having primacy over domestic law of the Member States thereby rendering as non-applicable national law that was deemed to infringe EU Law.[1] The Third Amendment of the Constitution of Ireland explicitly provided for the supremacy of EU law within the Republic of Ireland.

[1] Case C-6/64 Costa v. ENEL [1964] E.C.R. 585, 593.

In other words, European Directives must be transposed into Irish law under the provisions of section 3 of the European Communities Act 1972, in order to give legal status to European law. International conventions like the Aarhus Convention, are part of European Union law rank below the primary law of the TFEU, but above secondary legislation and thus prevail over conflicting environmental directives or regulations.

Article 3(1) of the Aarhus Convention demands that Parties take the necessary legislative, regulatory and other measures, to establish and maintain a clear, transparent and consistent framework' to implement the Convention's provisions. By virtue of paragraph 20 of its Annex I, that where public participation is required under an environmental assessment procedure, such public participation shall be carried out in accordance with the requirements of Article 6 of the Convention

The Council claims that Planning permission with an EIA is not required, given the High Court Order dated 21st November 2016, which requires the restoration and rehabilitation of the site. This is absured as it undermines human rights and the rule of law. Article 35.2 of the Constitution provides that the judges are independent in the exercise of their judicial functions, subject only to the Constitution and the law. Therefore, the High Court Judge could not and did not make an Order the contravenes ECJ rulings in Cases C50/09, C-215/06 and C-494/01 and the Aarhus Convention.

4. Under Section 160 of the Planning & Development Act 2000, as amended the High Court by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order to ensure, as appropriate, the following:

(a) that the unauthorised development is not carried out or continued;

(b) in so far as practicable, that any land is restored to its condition prior to the commencement of any unauthorised development;

(c) that any development is carried out in conformity with the permission pertaining to that development or any condition to which the permission is subject.

The High Court case concerned a failure by Goode Concrete Ltd to comply with conditions 1, 2, 4 and 12, of PL 02/1475. Condition 4 states*: "No extraction or excavation shall take place below one metre above the highest water table recorded at the point of extraction/excavation."*

The company extracted sand and gravel 20 meters below the water table level. Therefore, under Section 160 of the Planning & Development Act 2000, as amended this land must be restored to its condition prior to the commencement of any unauthorised development.

Conclusion

This submission has identified that the planning permission granted by An Bord Pleanala in 2004 for PL02/1475, was a defective permission, because there was no EIA carried out in accordance with Article 3 of the EIA Directive and no Appropriate Assessment screening carried out in accordance with Article 6(3) of the Habitats Directive 92/43/EEC.

That as a result of numerous unauthorised developments the licence application (W0298-01), is of a class that requires **"substitute consent"** from An Bord Pleanala and a licence application from the EPA. That the Council misinterpreted the High Court Order in claiming that no planning permission with an EIA was required, given the High Court Order dated 21st November 2016, which requires the restoration and rehabilitation of the site.

The submission has clearly explained that such an Order (which was not made) would have infringe the Irish Constitution, International, European Union and National Law. In particular, the ECJ rulings in inter alia, Cases Case C-6/64, C-50/09, C-215/06 and C-494/01,the Aarhus Convention and Section 3 of the European Communities Act 1972, which gives legal status to European law.

Yours sincerely,

[redacted]

David Malone EAA-I