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11 December 2015

Application reg. no. W0264-01

Consultation under Section 42(1)(e)(iii) of the Waste Management Act 1996 as amended

Dear Director,

I refer to our previous notification (20/10/2014) requesting comments in relation to a licence application received from Sand and Gravel Merchants Ltd in respect of their facility located at Thornberry, Kill, Co. Kildare, licence application register number W0264-01.

I refer to your response of the 22/12/2014, for which many thanks, and which has been noted.

In accordance with Section 42(1)(e)(iii) of the Waste Management Act 1996 as amended, you are asked to have regard to the applicant's submission dated 16/11/2015 (attached) which was a response to our letter of 23/9/2015 (attached) regarding the status of the application and the apparent absence of planning permission at the facility.

The applicant has addressed your submission.

This being the case, please provide any further information or clarification that your authority considers appropriate in relation to the licence application and the planning status of the facility.

It is essential that the Agency is clear on the planning status of the facility the subject of the waste licence application and it is apparent that there are opposing views on the matter. If the facility does not have the benefit of planning permission, the Agency cannot consider granting a waste licence. **In your reply to this letter, and for the sake of clarity in light of the applicant's submission, please indicate unambiguously whether it remains a fact that the facility the subject of the licence application does not have planning permission.**

A copy of the application submitted by the applicant and associated correspondence are available for inspection by you on the Agency's website www.epa.ie.

You are requested to respond to the Agency within 6 weeks of the date of this notice, or as soon as possible thereafter, and furnish any observations your authority has in relation to the licence application.

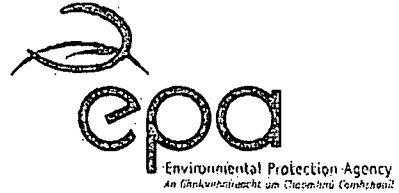
Where it is intended to submit additional documentation with your observations, it would be much appreciated if you could include an electronic copy of all documents in pdf format on a CD ROM in order to facilitate the publishing of your observations and attachments to the Agency's website.

The application is being processed by the Agency and your observations, if any, will be considered as part of the licence application assessment process. You will be notified of the proposed determination in due course.

Yours sincerely,



Brian Meaney
Inspector
Environmental Licensing Programme
Office of Climate, Licensing & Resource Use



Mr John Sheils
J Sheils Planning and Environmental Ltd
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23 September, 2015

W0264-01

re: Waste Licence Application in respect of Sand and Gravel Merchants Ltd,
Thornberry, Kill, Co. Kildare.


Dear Mr Sheils,

I refer to your client's application for a waste licence, reference number W0278-01.

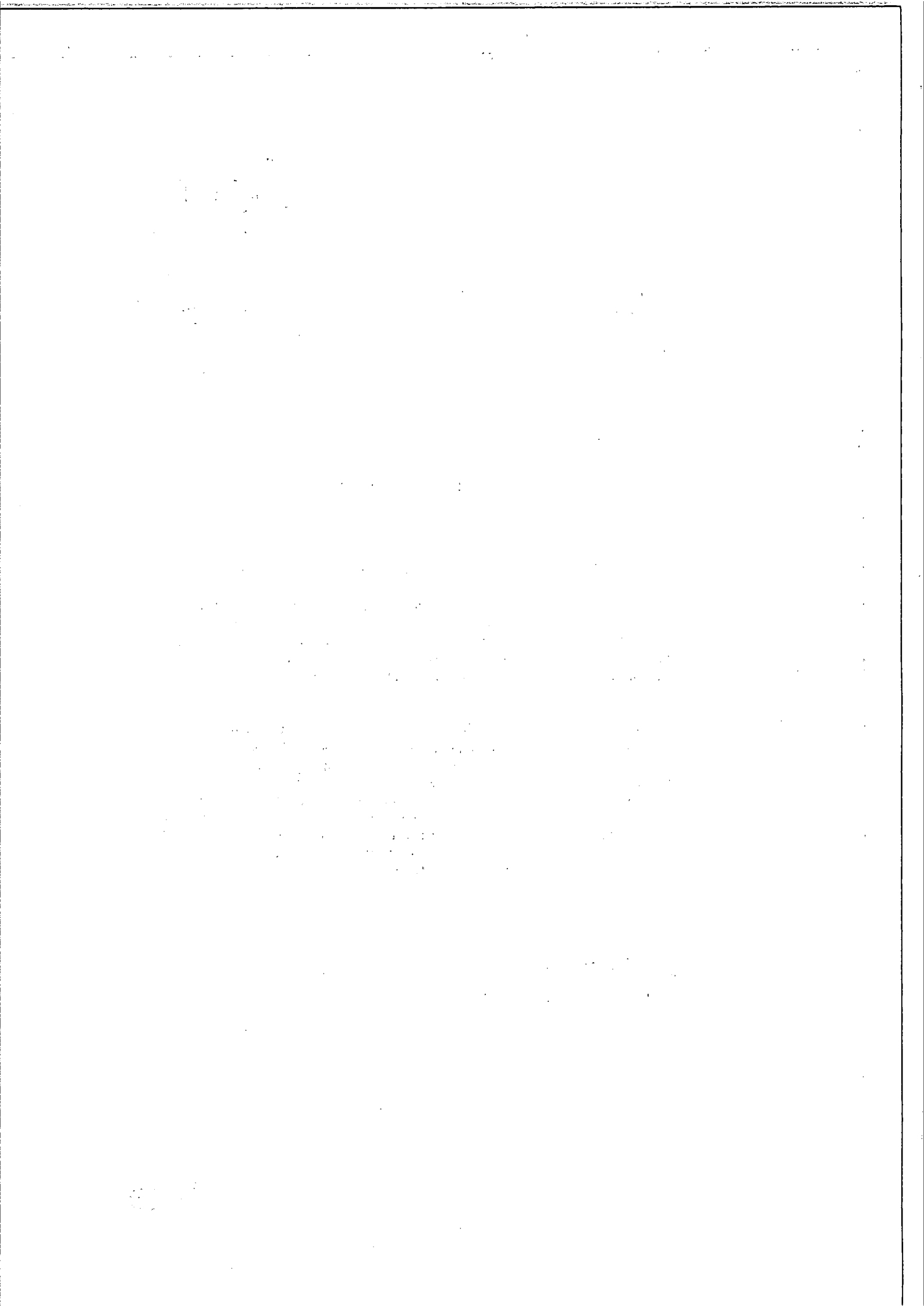
It is noted that there is no planning permission in place for the proposed waste activity the subject of your licence application. This is evident from the planning authority's submission to the Agency dated 22/12/2014. This being the case, and given that it is necessary to carry out Environmental Impact Assessment for the activity as part of the licence application, the Agency is unable at this time to consider your application further.

You are invited to address this deficiency in the facility's planning permission and revert to the Agency with a report on progress within 8 weeks of the date of this letter. If the issue is not resolved satisfactorily or if it does not appear possible to resolve it satisfactorily, the Agency will decide whether it can consider the licence application and may by notice to you determine that it cannot. This will result in the rejection of your licence application and/or its being regarded as having been withdrawn in accordance with article 21 of the Waste Management (Licensing) Regulations 2004. If any action is initiated by the Agency under article 21, you will be so notified in accordance with the requirements of article 21(2).

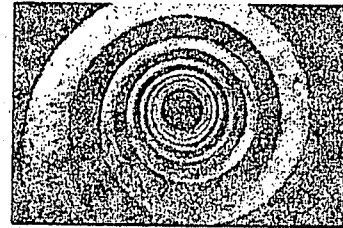
Yours sincerely,


Brian Meaney
Environmental Licensing Programme





Mr Brian Meaney,
Senior Inspector,
c/o Administration,
Environmental Licensing Programme,
Office of Climate, Licensing & Resource Use
Environmental Protection Agency
Headquarters, PO Box 3000
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JSPE

J Sheils Planning & Environmental Ltd

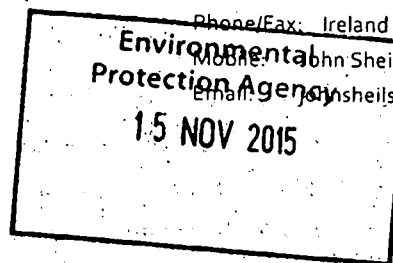
31 Athlumney Castle, Navan, Co Meath

Phone/Fax: Ireland +353 46 9073997

Mobile: J Sheils +353 87 2730087

Email: jsheils@jspe.ie

Date: 16th November, 2015
Our Ref: JSPE 175_L12
Your Ref: W0264-01



Re: Response to EPA letter of 23/09/2015 concerning Planning Permission

Waste Licence Application by Sand and Gravel Merchants Ltd for the continued operation of its existing Waste Recovery Facility on lands at Thornberry Townland, Kill, Co. Kildare (National Grid Reference 295986E 221275M).

Dear Sir,

On behalf of Sand and Gravel Merchants Ltd, we have prepared the following response to your letter of 23/09/2015.

Kildare County Council have raised a number of matters with respect to planning and Section 261(A) of the Planning Development Act 2000, (as amended) in their email submission to the EPA of 22/12/2014. i.e.

Planning Permission Req. Ref: 85/7/1 (PL 9/5/0970)
From a review of the particulars included with the waste licence application, no reasons, correspondence or other evidence has been provided to demonstrate why the proposal does not require planning permission and the permission reference quoted in documentation cannot be relied on as complying with the relevant legislation.

On the contrary in support of the Waste Management Licence Application the following details were provided in Attachment B.3:

Attachment B.3 Planning Authority

The lands have a history of sand and gravel working. Planning Permission P.A. Reg. Ref. No. 771/85, PL 9/5/70970 was granted on 05/09/1985 for development comprising the restoration of derelict land to agricultural use by managed land fill scheme using dry non-industrial toxic waste (Refer to Attachment B.3.1). It should be noted that the only material imported to site has comprised inert soil and stones, and recovery of construction and demolition waste (concrete, bricks, tiles and ceramics).

The lands have been progressively restored subject to successive WMP's dating back to 2001. The current waste management permit (Waste Permit Reg. No. WMP 30/2001B) was granted by Kildare County Council for a 36 month period on 16th May 2007 (Refer to attachment B.3.2). In consideration of this application the file including the above planning permission was referred to the Planning Section of Kildare County Council. The Planning Section stated that they had no objection to the waste permit application subject to compliance with the conditions of planning (Refer to copies of correspondence dated 30/03/2007 and 08/06/07 attached (Attachment B.3.1).

As the EPA are aware it was a requirement of the Waste Licence Application in accordance with Article 9 of the Waste Management (Licensing) Regulations 2004 (S.I. No. 395 of 2004), to inform Kildare County Council (Planning Authority) that J Sheils Planning & Environmental Ltd were submitting a Waste Licence Application to the Environmental Protection Agency, on behalf of Sand and Gravel Merchants Ltd of Thornberry Townland, Kill, Co. Kildare. Refer to copy of our correspondence (Our Ref. JSPE 175_L01) dated 11th February 2009.

It is noted that in a response (letter dated 23/03/2009) to submission of the waste licence application that Kildare County Council stated they *did "not wish to make a submission on the said application"*.

Our client has also submitted annual AER's to Kildare County Council in compliance with the current waste management permit (Waste Permit Reg. No. WMP 30/2001B).

In accordance with Section 40 (2A)(C) of the Waste Management Acts (1996-2013) and as requested by the Agency an Environmental Impact Statement (EIS) was submitted to the EPA in support of the application on 10/10/2014.

In accordance with Article 9 (1) of the Waste Management (Licensing) Regulations 2004 (S.I. No. 395 of 2004) written notice was also given to Kildare County Council (Planning Authority) of the waste licence application and EIS (Our Ref. JSPE_175_L10).

The planning history for the site as detailed above was reiterated in the EIS (Refer to EIS Section 2.2.1.2).

As stated in EIS Section 2.2.2.1 "it was considered that it will take approximately 4-6 months to complete the backfilling operations. **An additional 6 months to a year should be allowed to complete final restoration to agricultural land**".

Phasing of Restoration Works (Refer to EIS Section 2.4.3.14)

"It is proposed to reclaim the lands to a condition / gradient suitable for agricultural. **Good quality imported soil will be conserved wherever possible to provide the subsoil/topsoil capping. These topsoil's/subsoil's will be handled under dry conditions to minimise compaction.** For the purpose of restoration to agricultural the restored soil profile (capping) shall comprise 300mm topsoil over 1200-1350mm of subsoil".

"**Good quality soil material** for final capping will be placed in **temporary storage areas.** Topsoil and subsoil will be stockpiled separately to maintain the integrity of the soil".

"To ensure that damage to these materials is kept to a minimum, movement and placement of topsoil and subsoil for final restoration will only take place during **appropriate weather conditions** and when the soils are in the optimum condition. This optimum soil condition may be described as moist but friable. No soils will be moved when they are too dry or when there are unusually windy weather conditions. This will help to prevent erosion and any consequential creation of dust. Conversely, **soils will not be handled in wet conditions** or when the moisture content of the soils is too high. This will ensure that smearing of the soils does not take place and that the soil retains its structure.

Progressive restoration involving grass seeding of restored area's shall be carried out on a staged basis to reduce the effects of soil erosion, windblown dust, to aid ground stabilisation and as an effective means of weed control. On completion of each phase of development final restoration including grading, seeding and landscaping will be carried out. **Final restoration is dependent on the availability of good topsoil/subsoil and subject to suitable weather conditions.** In order to allow for continuity of operations it is necessary to have a certain overlap between phases".

"Once the topsoil is re-instated it will be seeded with a **suitable mix of grasses** suitable for pasture in order to quickly stabilise the topsoil. Once the grass sward has become established the restored farmland can be kept either as **pasture, hay meadow or arable land.** Part of the area has already been restored to grassland".

Since submission of the EIS c.5 ha of the lands have fully been restored to agricultural use. The remaining 4.7 ha of lands are undergoing final profiling and capping with topsoil materials. The applicant has been importing topsoil only into the site for the past 2 months and the topsoil is being stockpiled awaiting spreading in the next available earth moving season (i.e. Spring 2016).

As you can appreciate the operator has to balance the need to carry out soil handling operations with the need to safeguard the soil given the preference for cultivation and seeding works during the growing season.

The submission of Kildare County Council dated 22/12/2014 appears to be in response to submission of the EIS and the notification to Kildare County Council by the applicant on 10/10/2014 with respect to same.

The position outlined in the email from Kildare County Council to the EPA contradicts their previous position with respect to the issuing of successive waste management permits for the restoration of the site, which was subject to referral to the Planning Authority at the time (Refer to details above). We would also point out that our client has carried out the backfilling of the lands on the basis of the previous position by Kildare County Council since 2001.

The Waste Licence application has been under consideration by the EPA for nearly 7 years since it was submitted on 13/02/2009. As it stands the Waste Licence application (Reg. No. W0264-01) is still under consideration by the EPA and as such the Waste Permit (WMP 30/2001B) remains valid until such time as a decision is made by the EPA.

It is expected that the importation of topsoil for final site restoration will cease this year and that the final restoration of the lands will be completed within the spring/early summer 2016.

Article 21(1) of the Waste Management (Licensing) Regulations 2004 to 2010 states "an application (other than an application in respect of a waste recovery or disposal activity carried on or after the date prescribed for the purposes of section 39(1) of the Act in relation to the said activity/ or a submission referred to in article 15 may be withdrawn at any time before the making of the decision of the Agency on the application."

Given the advance stage of the restoration works our client is considering withdrawing the application. It is our understanding that an application to withdraw the licence will be subject to confirmation from Kildare County Council that the facility has been completed and restored in accordance with the requirements of Waste Permit No. 30/2001B and to the satisfaction of Kildare County Council.

We would expect that the works required to complete the facility in accordance with the waste facility permit will require c.6 to 8 months to close out to the satisfaction of Kildare County Council.

Section 261 Quarry Registration (Ref. QR41)

The Council also make reference to the fact that "the site was registered under Section 261 of the Planning and Development Act 2000 (as amended), on foot of which conditions were imposed on its operation. **Any quarrying activities on the site must comply with these conditions**".

"It should also be noted that condition no.2 of QR41 did not permit the use of the site as a landfill facility. Condition no.33 required a restoration plan to be submitted to the planning authority within six months of the date of decision for QR41".

As the Council were aware the lands were being progressively restored using imported inert materials in accordance with an agreed restoration scheme at the time subject to a waste permit as detailed above.

We have previously been advised by Kildare County Council in relation to a similar development (Planning reference 07/1578) that these types of conditions were to "restrict the use of the site as a 'landfill' and do not relate to the restoration works proposed over the course of the lifetime of the quarry. The proposed importation of inert material for restoration purposes only (as detailed in the EIS submitted as part of the application), is not considered to be affected by these conditions".

Section 261A (Ref. QRA-20-001)

The planning authority made a determination and decision under Section 261(A) of the Planning and Development Act 2000 (as amended), which required a substitute consent application and remedial EIS to be submitted to An Bord Pleanála for the quarrying operations that were carried out on the site.

The site owners/operators did not apply to An Bord Pleanála for a review of the planning authority's determination and decision, nor did they submit a substitute consent application as required.

Quarrying operations had ceased on the site and as such the operator did not submit a substitute consent application with respect to retention of quarry operations.

Current activities on the site

On 28/11/14 it was brought to the attention of the planning authority that the public road network leading to and from the site was littered with debris and was covered in dirt for a number of kilometres from vehicles entering and exiting the site. The planning authority is currently investigating this matter.

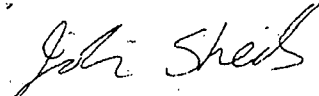
Our client has always endeavoured to address any issues that may arise with respect to either the operation of the quarry and the restoration of the lands. It is our understanding that this matter which dates from 28/11/2014 was addressed by our client to the satisfaction of the County Council through installation of a wheel wash.

We trust that the above submission clarifies matters with respect to the status of the restoration works and that the proposed plan of action is acceptable to the EPA given the circumstances in this case.

Please do not hesitate to contact us if you wish to discuss any aspect of this submission.

Yours Sincerely,

For J Sheils Planning & Environmental Ltd,


John Sheils MSCSI MRICS

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