

03 December 2020

1894029.L02.V0

EPA
Environmental Licensing Programme
Office of Environmental Sustainability
Johnstown Castle Estate
Wexford

RESPONSE TO REQUEST FOR FURTHER INFORMATION IN RESPECT OF W0298-01

Dear Sir/Madam,

A request was issued by the Environmental Protection Agency (“EPA”) in respect of the application for a waste licence by GCHL Limited (“Applicant”) to the EPA W0298-01 (“Waste Licence Application”) on 23 January 2020 (“Further Information Request”). In response to this Further Information Request, Golder Associates Ireland (Golder) have been instructed by the Applicant to prepare a detailed response.

In addition, to addressing the matters set out in the Further Information Request, we will also address and respond to a number of matters that have been raised in responses to requests for information/consultation issued by the EPA to both Kildare County Council and An Bord Pleanála. This should assist in clearly setting out to the EPA, the restoration design strategy, background and history to the Waste Licence Application and the planning status of the lands/site, the subject matter of the Waste Licence Application.

To the extent that there are any further issues arising from this response or any further information/clarification is required by the EPA from the Applicant, the Applicant and/or Golder will be more than happy to facilitate that request and provide all necessary environmental and technical information required. The Applicant is obliged by law to ensure that the lands are remediated and restored, and the Waste Licence Application is integral to meeting that obligation. In Golder’s opinion, having extensively advised on projects of similar nature and scale throughout Ireland and UK, the proposed restoration plan as detailed in the Waste Licence Application represents the best technical and environmental solution for the restoration of the lands.

1. RESPONSE TO FURTHER INFORMATION REQUEST:

In essence the Further Information Request seeks clarification from the Applicant for the purposes of compliance with Section 42(1B)(b) Waste Management Act 1996 (as amended) (“1996 Act”). As you are aware, Section 42(1B)(b) of the 1996 Act states:

“Where an application for a licence is made to the Agency in respect of an activity that involves development or proposed development for which a grant of permission is required the applicant shall furnish to the Agency.....(b) a copy of a grant of permission comprising or for the purposes of the activity to which the application for the licence relates that was issued by the planning authority concerned or An Bord Pleanála and in that case shall also furnish to the Agency either - (i) where the planning authority or An Bord Pleanála, accepted or required the submission of an environmental impact assessment report in relation to the application for permission, a copy of the environmental impact assessment report” (emphasis added)

As set out in the detailed timeline and planning history included at Appendix A, a planning permission, planning reference ABP PL09.205039 (“ABP Permission”) was granted for the development of the lands including the restoration of those lands on completion of the quarrying activities on site. It is that restoration activity which is the subject matter of this Waste Licence Application.

While the restoration of the lands is permitted pursuant to the ABP Permission generally, Condition 12 of the ABP Permission provides further technical detail on the future restoration of the lands and matters which it was envisaged would need to be taken into account in any proposed plan for restoration¹.

As you are aware, the lands the subject matter of the Waste Licence Application, are subject to a Court Order arising from High Court proceedings issued pursuant to Section 160 Planning and Development Act 2000 (as amended) (“Proceedings”). These Proceedings related to enforcement action by Kildare County Council for alleged unauthorised development at the lands at Ballinderry, the subject matter of this Waste Licence Application. Formal compliance with the requirements of Condition 12 and the nature of the proposed plan for restoration were matters that were in dispute in the Proceedings. The Proceedings were ultimately compromised and agreed (by Kildare County Council and the Respondent parties). An Order of Ms. Justice Reynolds dated 21 November 2016 (“Order”) was issued and this Order² forms the basis of the agreed position and approach to ensure restoration of the lands pursuant to the ABP Permission and compliance with Condition 12.

The Further Information Request states that “*The application refers to a Court Order requiring Remediation in accordance with Condition 12 of planning permission PL09.205039.* Golder consider that this interpretation is not correct as the Court Order does not state that remediation in accordance with Condition 12 of the planning permission is required. See Appendix B where a copy of the Order is provided. The order requires a plan for remediation, rehabilitation and restoration and details the steps to be taken by the Applicant to make a proposal and application to the EPA. Once approval has been obtained, the Applicant is required to comply with that plan for remediation and rehabilitation. As set out above, part of this Order relates to compliance with Condition 12 and the agreed steps now needed to ensure compliance with the planning permission, including Condition 12. The need for any further Kildare County Council approval for the purposes of Section 42(1B)(b) 1996 Act compliance, does not therefore arise. While we note that other concerns related to the specifics of the proposed plan have been raised by Kildare County Council in a submission to the EPA dated 19 February 2020 (“KCC Submission”), these are matters that are unrelated to Section 42(1B)(b) 1996 Act compliance but rather a submission arising in the context of Article 15 of the Waste Management (Licensing) Regulations 2004. A detailed response to these concerns and the nature of the proposed plan for remediation and rehabilitation are set out in further detail at Section 3 below.

A copy of the ABP Permission has been provided to the EPA, in accordance with the requirements of Section 42(1B)(b) 1996 Act and a copy has been included at Appendix C for ease of reference.

2. RESTORATION DESIGN STRATEGY

Golder has set out below a summary of the restoration design strategy, the subject matter of the Waste Licence Application. We have also included at Appendix C relevant extracts from the ABP Permission related to the proposed restoration plan along with details of the requirements for the restoration plan sought by Kildare County Council in the Proceedings and Article 27 submission. A timeline and planning history detailing the evolution of the restoration plan proposal is also set out in Appendix A. This information is significant as the timeline, interactions, and requirements previously highlighted are all matters that Golder fully considered in seeking to propose the best technical and environmental solution for the site in question. Golder were engaged

¹ The original application proposed development below the water table. This was not authorised as part of the ABP Permission. ABP provided detailed requirements within Condition 12 for the restoration of the site

² Pursuant to Section 163 Planning and Development Act 2000 (as amended) any development required by an order under Section 160 does not require planning permission. It also provides that development already granted pursuant to a permission can be disregarded.

by GCHL in January 2018 to prepare the Waste Licence Application for submission to the EPA. This is a proposal for the importation of circa 1.2 million tonnes of inert soil and stone to restore the site to agricultural use. The land use at this site prior to mineral extraction was agriculture. The surrounding landscape is rural and agricultural in nature and the proposed restoration of the site is to be in keeping with this surrounding land use.

Regard was also given to Kildare County Development Plan (2017-2023) which provided policy with regard to quarry restoration. Section 10.7.4 of the Kildare County Development Plan states:

“Sand and gravel workings on the other hand can easily be restored to agricultural use. However, post closure uses must have regard to the likely land-use context at the time of closure” and Section 10.7.8, EI 4: To ensure that extraction activities address key environmental, amenity, traffic and social impacts and details of rehabilitation.” In addition, Objectives EI 12 (Extractive Industry) of the Kildare County Development Plan (2017-2023) states that:

” To ensure that all existing workings are rehabilitated to suitable land-uses and that extraction activities allow for future rehabilitation and proper land-use management.”

These policies are consistent with the policies contained in the 2005-2011 County Development Plan with regard to Extractive Industries.

The restoration design strategy was based on the principles of quarry restoration contained in a number of relevant guidelines such as:

- Quarries and Ancillary Activities- Guidelines for Planning Authorities, DOEHLG, 2004;
- Environmental Management in the Extractive Industry (Non- Scheduled Minerals). Environmental Management Guidelines, EPA, 2006
- Minerals Planning Guidance, (MPG2) – Reclamation of Mineral Workings

Furthermore, the governing principles of the Water Framework Directive, Groundwater Directive and Nitrates Directive were also considered during the preparation of the restoration plan.

The Order has directed the remediation, rehabilitation and restoration of the Ballinderry Pit, which is the basis of the Restoration Plan proposed by Golder (the subject of the Waste Licence Application) (“Restoration Plan”). This Restoration Plan is based on Golder’s opinion on the best technical and environmental solution. In addition, account was taken of requirements for restoration that were detailed over the course of the project including:

- Condition 12 of the ABP Permission;
- The Order and requirements detailed in the Proceedings that specifies restoration requirements considered necessary by Kildare County Council; and
- The response to the EPA from Kildare County Council during the Article 27 consultation process which estimated that circa.1 million tonnes was required to restore the Site at Ballinderry, see Appendix D.

The Restoration Plan proposes restoration of the site to agricultural use through the remediation of the ponds by infilling of inert soil and stone³ in order to preserve the long term potential of the land as a high quality agricultural resource and to ensure that there is no irreversible loss of agricultural land. Remediation of the ponds through infilling with soil and stone is integral to the design of the restoration plan.

³ These are requirements that were identified in the Proceedings

A large portion of the site has an open waterbody which contains exposed ground water. The restoration plan has considered the exposure of groundwater at the site in the context of the proposed and surrounding land use being agricultural in nature and the potential impacts of agricultural activities on exposed groundwater at the site. In development of the current plan, previous restoration plans prepared for the site which involved leaving the quarry ponds containing exposed groundwater remaining on site were reviewed from an environmental and geotechnical perspective. Golder considers that leaving the existing quarry ponds on site is not the most appropriate restoration alternative for the site as a pathway for contamination of exposed groundwater from land spreading activities both offsite and on site would be a significant risk to groundwater. The current proposal provides a solution that significantly reduces the impacts to groundwater from land spreading activities by creating a soil layer between the restoration surface and the groundwater aquifer. This soil layer will prevent direct discharge of agricultural manures to groundwater and manures will be utilised by bacteria in the soil to support agricultural growth. The restoration surface has been designed to convey surface water from the restoration surface to surface water drainage features at the site. These surface water features include a drainage ditch which runs east along the southern boundary of the site before turning north and running along the eastern boundary of the site. This drainage ditch would have been the original way in which surface water was removed from the site in the pre-extraction days. This is consistent with the overall concept of restoration for the site and Golder are confident that this concept will have no likely significant adverse effect on the surrounding environment.

The northern slope of the pit has a very steep face with slopes of 1V:1.5H in places which is situated in close proximity to the local road abounding the northern boundary of the site. In order to make this slope safe, infilling of the ponds in order to support this embankment is integral to the design. The infilling of ponds is also required to achieve a restoration surface that will naturally drain to surface water features at the site. In addition, the Restoration Plan proposes rehabilitating the site to a condition that supports the final restoration surface that was for an agricultural land use which allowed for appropriate natural site drainage and a natural appearance, in accordance with Condition 12 (of the ABP Permission which states :

“12 (e) details of the final surface levels of the restored area, which levels shall be such as to allow satisfactory drainage of and outfall from the site and provision for the restoration of the natural surfaces and sub-soil drainage of the area to be restored”

In the preparation of the Restoration Plan, Golder took cognisance of Kildare County Council observations during the Article 27 (ART0579) consultation process where KCC identified that circa 1 million tonnes would be required to restore the Site. This fact was concurred with by Golder when restoration models were prepared; a quantum of this significance was clearly required in the restoration design of a restoration surface that tied into the surrounding land contours and as near as possible to the original land contours at the site prior to extraction. While it is acknowledged that a greater amount of imported material may lead to temporary, short terms impacts from a traffic, noise perspective, which are all assessed and considered in the EIAR, the Restoration Plan delivers a better long term rehabilitation and restoration solution for the lands. In our opinion, alternative options of importing a lesser amount of material, while delivering a level of restoration to the site, will not achieve many of the objectives of the restoration such as groundwater protection and achieving an adequate level of aftercare within a reasonable period of time. The plan prepared by Golder includes the phasing of the restoration over a period of time.

The current proposal has evolved to take account of the plan for restoration as required under the ABP Permission and the further rehabilitation works arising from Proceedings and subsequent Order. Development below the water table has occurred and remediation action is required pursuant to the Order. Those remediation works are included in the Restoration Plan which as discussed above includes a proposal to infill all ponds.

1. Response to Kildare County Council Submission

The KCC Submission dated February 2020, raised a number of concerns which were addressed under the following headings:

- (a) No Infilling of Main Lagoon/Exposed Water Body
- (b) Ground Water Protection Plan & Aquifer Protection Plan Required
- (c) Reduction of Overall Infill Material/Tonnage to the Site
- (d) Pond B - Suggestions/Recommendation
- (e) Northern Periphery of Site-Slope Stability

Golder has set out below our response to each of these issues. For the purposes of our response, we have set out and responded in accordance with these headings.

(a) No Infilling of Main Lagoon/Exposed Water Body

KCC stated that no infilling of the main lagoon/exposed water body should take place as it is not considered best practice in terms of groundwater protection. This is incorrect in the context of the Waste Licence Application for this specific site. For the reasons set out above and, in our opinion, the Restoration Plan is the best technical and environmental solution. In their submission, KCC have not presented why it is not considered best practice to infill Pond C which is the large, exposed groundwater pond on the site. This statement is at odds with Item D in the KCC submission where KCC consider it acceptable to infill Pond B which also contains exposed groundwater. It appears that much of the content expressed in item a) in the KCC submission relates to KCC requiring a reduction in the volume of fill required to restore the site. KCC have provided no rationale for this reduction in volume nor technical reasoning why backfilling is not considered best practice in particular when regard is given to the proposed and existing land use at the site and surrounding area. KCC have suggested battering down the slopes of the pond to the exposed groundwater. Golder does not consider such an approach best practice considering the proposed after use for the site as agriculture. This construct proposed by KCC would provide a conduit for effluent to enter the exposed groundwater which would be in contravention of the principles of both the Groundwater Directive and Nitrates Directive. Furthermore, KCC considers that 24-hour pumping to the River Glash is proposed and could have an impact on spawning grounds. This would appear to arise from a misunderstanding of the Restoration Plan as there is no proposed discharge to surface waters contained in the current restoration plan proposal.

(b) Ground Water Protection Plan & Aquifer Protection Plan Required

KCC have advised that a groundwater and aquifer protection plan be submitted to ensure that the existing groundwater sources serving the local residents and farms in the vicinity are unaffected by the development. The current restoration plan is in effect, a groundwater and aquifer protection plan. As discussed in Section 2 of this submission, the backfilling of the existing exposed groundwater ponds will provide added protection against contamination of the groundwater beneath the site from future site activities post restoration. It is understood that standard groundwater monitoring conditions would be included under any grant of licence for soil recovery facilities.

In the event that backfilling of these ponds is to occur under licence from the EPA, the sequencing and phasing of the backfilling of inert soil and stone is detailed in the EIAR and waste Licence application documents. Soil quality assurance measures are also identified in the Waste licence application documentation. This addresses aspects and requirements of this particular backfilling process in order to ensure that it is done using the best available techniques and ensuring a result which is consistent with the assumptions within the EIAR. It is noted

that this same process has been undertaken on other licenced sites in Ireland under the supervision of Golder and with the approval of the EPA. As such experience has been gained in this regard that can be applied in this instance.

It is noted that the KCC submission was accompanied by a 3 page DRAFT report prepared by Tobin Consulting Ltd entitled 'Ballinderry Quarry Summary Report' dated May 2016. This report was commissioned by KCC to determine the optimum restoration plan for the former Goode Quarry at Ballinderry, Co. Kildare. KCC have referred to this report in their submission.

Firstly, it is noted that the report was prepared in 2016 and has not been specifically commissioned by KCC to assess the current proposal submitted to the EPA on 01 June 2018. The report infers that a fully lined and engineered landfill is proposed to be constructed. The current proposal is a soil recovery activity under licence from the EPA and does not fall within the remit of the Landfill Directive. The Tobin Report also considers that pumping out of the ponds is required in order to construct a landfill liner. This is not what is considered by the current proposal and we submit that the DRAFT Tobin Report is not relevant to the current proposal in any way.

It is not appropriate to place any reliance on the Tobin report for a number of reasons:

- It is a DRAFT 3 page report that is unsigned;
- It is ill informed on the current restoration methodology proposed;
- It considers that an engineered landfill is being constructed and the report is largely based on landfill guidelines;
- It considers that dewatering is taking place;
- It has not fully considered all restoration options for the site;
- Has not considered importation of inert soil and stone to restore the site; and
- Has not considered all appropriate land uses.

(c) Reduction of Overall Infill Material/Tonnage to the Site

The KCC submission states that the overall tonnage should be reduced having regards to the concerns raised in items a) and b) of their submission. KCC have not provided any sound scientific reasoning for reducing the volume of material to restore the Site. Concerns raised at a) and b) have been fully addressed above and in our opinion represent a significant environmental risk to groundwater. Golder consider that the submission by KCC has not provided scientific justification for reducing the volume required. We submit that KCC have not fully assessed the current proposal for restoration and Golder have grave concerns regarding KCC's submission. To leave ground water ponds exposed at the site with the land contours draining towards the groundwater ponds would provide a conduit for contamination of groundwater in the aftercare phase of the site. The applicant through Golder welcomes the input of KCC and is open to considering any technical submissions or observations related to the existing restoration surface that can deliver the Restoration Plan while being protective of the environment and ensuring slope stability at the site.

(d) Pond B - Suggestions/Recommendation

The restoration methodology suggestion for Pond B by KCC is at odds with that proposed by KCC for Pond C considering both contain groundwater. In any event, the infilling of ponds at the site would commence with site won material.

(e) Northern Periphery of Site-Slope Stability

The restoration plan was prepared considering the most appropriate restoration for the site in order to both fulfil the criteria set out in Condition 12 of the planning permission and be protective of the environment, safety and human health. The potential for destabilisation of the northern slope is a real risk in the future to the safety of road users and consideration was given to the Guidelines to the Safety, Health and Welfare at Work (Quarries) Regulations 2008 when preparing the restoration design strategy to address this issue of instability at the northern face. It is noted that KCC have not provided independent professional technical opinion by a qualified geotechnical engineer to support their claim that there is no evidence of instability of the northern face and disregards the Ayrton Group Report submitted to KCC (provided in appendix E).

We would ask that full account of our response to the KCC Submission is taken and to the extent that any further concerns or issues related to the Restoration Plan are raised by KCC on the Waste Licence Application, we would be happy to consider and address these fully.

2. Response to An Bord Pleanala Submission

It is also noted that An Bord Pleanala by letter dated 29 October 2019, made a submission to the EPA in response to a request for submissions/observations on the Application for a Waste Licence (“ABP Submission”). The ABP Submission makes two observations.

Firstly, the ABP Submission notes;

“(i) On the basis of the information made available, it would appear that any importation of fill for the purposes of quarry restoration going forward, would not be covered by the grant of planning permission under PL 09.205039. All works associated with PL 09.205039, including the implementation of the Site Restoration Plan, expired on 30th September 2013.”

Condition 2 of the ABP Permission states *“Subject to compliance with condition 12 of this order, relating to restoration of the site, this permission shall be valid until the 30th day of September 2012, by which date all development on site shall otherwise be complete”*. Therefore, while the quarrying activity was due to cease by 30th day of September 2012, the requirement relating to restoration of the site remains in force until such time as it is completed. In fact, as detailed in the Timeline and Planning History in Appendix A, originally a restoration plan was submitted for approval in June 2013 but no approval was forthcoming from Kildare County Council. Matters came to a head in April 2015 when the Proceedings were threatened and issued by Kildare County Council, and ultimately compromised pursuant to the Order.

The second observation notes:

“The decision was made by the Board after the carrying out of an environmental impact assessment and the receipt of an Inspector’s report on the said case, which includes a section of environmental impact assessment and consideration of key associated issues. The Agency’s attention is brought to the issues set out in the Inspector’s Report and assessment and the Board’s final decision, as set out in the Direction and Order, with particular attention to the Reasons and Considerations and Conditions imposed on the grant of permission.”

A copy of the of the ABP Decision along with the Inspector’s report, Board’s Direction and Order have been provided by KCC as part of the stakeholder consultation process during the waste licence application process for W0298-01.

The Restoration Plan submitted as part of the Application for a Waste Licence takes account of the technical requirements the ABP Permission in addition to the remediation and rehabilitation requirements needed to meet the Order. Set out in Appendix C is a table which sets out and compares the restoration plan requirements under Condition 12, the requirements arising from the Proceedings and the Order to illustrate that all requirements are satisfied under the Restoration Plan proposed as part of the Waste Licence Application.

We hope that this letter assists the EPA in understanding the full nature and background to this Application for a Waste Licence. If any further information or clarification is required, please let us know.

Golder Associates Ireland Limited

Ruth Treacy, Peter Corrigan

Ruth Treacy
Environmental Consultant

Peter Corrigan
Principal

RT/PC/mb

CC: GCHL

APPENDIX A

Planning History

Timeline & Planning History

17 September 2004 - Grant of Planning Permission - ABP PL09. 205039/ KKC P.P. Ref: 02/1475

Condition 12 - Restoration Plan was to be submitted and agreed with Kildare County Council (KCC) as the restoration plan submitted to KCC/ABP was not accepted as it had proposed going below the water table. Condition 12 requirements are detailed in Section 1.1 above.

14 June 2013 - Goode Concrete lodged a restoration plan with KCC for approval. KCC acknowledged receipt however no approval was granted for this restoration plan.

30 April 2015 – Regan McEntee on behalf of KCC issued a notice in respect of Section 160 of Planning and Development Act 2002-2014. The notice included the following statement:

Condition 12 provided for the restoration of the lands in accordance with a phased restoration programme, the final phase of which was to be completed within one year of the cessation of production. The purported restoration programme submitted on your behalf, by Cross Architect and Building Surveyor and dated the 18th June, 2013, has not been complied with in that there has been no restoration of the lands within the time period therein specified, further excavations have occurred on the lands and as a consequence of excavations being found to be below the ground water table on the lands, the restoration programme set out in your letter dated the 18th of June, 2013 is no longer applicable.

14 December 2015 – Application of Notice of Motion to the High Court for Order against LCP/Leinster Aggregates/Goode Concrete pursuant to Section 160 of Planning & Development Act as amended for breach of conditions 1, 2 4 and 12.

22 November 2016 – High Court Order (2015 No. 383 MCA). – See Order in Appendix B

11 January 2017 – On foot of the Order, GCHL engaged Geoff Parker & Associates to prepare a revised restoration plan (Condition 12 report). This report was submitted to KCC (Colm Lynch) who returned the plan and stated that the plan was to be submitted to the EPA for approval as per the court order.

17 February 2017 - An Article 27 Notification (ART-0579) was submitted to the EPA for soils originating from as site in Sybill Hill, Raheny, Co. Dublin for use in the restoration of the pit at Ballinderry. Kildare County Council provided commentary during the consultation period of this notification. KCC considered the soil and stone to be waste and it also considered that an estimated c.1 million tonnes were required to restore the site and therefore required a waste licence to be obtained from the EPA (Liam Dunne). The Article 27 Notification was determined to be a waste on the 20 March 2017. This determination was made on the basis that the activities proposed were considered to be waste activities, that further use is lawful nor can it be stated that the deposition of this material will not lead to overall adverse environmental or human health impacts.

11 October 2017 – Pre-application meeting with the EPA

A pre-application meeting was held at the EPA offices in Wexford with (Brian Meaney & Ewa Babiarczyk). The conceptual restoration design was discussed at the meeting along with infilling of ponds with inert soil and stone.

01 June 2018 – A waste Licence application (0298-01) was submitted to the EPA for the restoration of the Ballinderry Pit through the importation of C1.2 million tonnes of soil and stone. The Restoration Plan provided in the Waste licence was prepared by Golder on behalf of GCHL.

15 June 2018 - EPA consulted with Kildare County Council as a statutory stakeholder during the Waste licence Application Process. KCC responded to the EPA on the 11 December 2018 providing a response that the site had “defacto” planning permission for the activity to which the waste licence application related.

09 August 2019 – The EPA issued a Further information request which was responded to 26 November 2019. There was no further information requests pertaining to planning at this stage.

23 January 2020 – The EPA issued a Clarification Request seeking confirmation of approval of the restoration plan by the planning authority. GCHL through its representatives sought to meet with Kildare County Council to discuss the restoration plan submitted to the EPA. This meeting request was not facilitated and KCC responded to the EPA on 25 February 2020 via email stating that the High Court Order states that the EPA's role is in effect to regulate all activities under the an Article 27 permission, licence, permit , authorisation, permission, approval or consent as required by the EPA.

The planning authority further state that having regard to Section 163 of the Planning and Development Act 2000 (as amended) that:

“Permission is not required for any works required under this Part” Section 163. Notwithstanding part III, permission shall not be required in respect of development required by a notice under Section 154 or an Order under 160.....”

APPENDIX B

High Court Order

**THE HIGH COURT
App No: 2015/383MCA**

**SECTION 160 OF THE PLANNING AND DEVELOPMENT ACTS, 2000 AS
AMENDED**

Between/

KILDARE COUNTY COUNCIL

Applicant

-and-

**LCP MANUFACTURING LIMITED TRADING AS LEINSTER
AGGREGATES AND GOODE CONCRETE LIMITED (IN RECEIVERSHIP)**

Respondents

ORDER

THIS MATTER coming on for hearing this the 21st day of November, 2016

WHEREUPON reading the Notice of Motion dated the 14th December 2015 and the Affidavit of Colm Lynch, sworn on the 8th day of December, 2015 and hearing what was urged by Ms. Deirdre Hughes B.L. Counsel for the Applicant and Matthew Jolley BL, Counsel for the Respondent, the Court doth make the following Order with the Consent of the parties;

THE COURT DOTH ORDER:-

1. The Respondents their successors and assigns to cease forthwith the unauthorised quarry development being carried out at the the property situate at Ballinderry, Carbury in the County of Kildare, part of which property is comprised in Folio no KE9702 and as depicted in aerial photograph, taken on the 30th September, 2015, and which appears at annex 1 herein (hereinafter referred to as the “property”) consisting of the following;
 - i) The unauthorised development and use of a quarry for the excavation and processing of quarry materials consisting of sand and gravel.
 - ii) Breaches of conditions 1, 2, 4 and 12 of Planning permission register reference 02/1475.
2. An Order directing the unauthorised use of the property, 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.

3. The respondents their successors and assigns or one or other of them, shall within a period of 12 weeks from the date of service of the within court order on the respondents, send to the EPA all appropriate documentation in respect of the remediation and rehabilitation of the property together with a request that the Environmental protection agency consider and decide whether any article 27 permission, licence, permit ,authorisation, permission ,approval or consent is required for the restoration and rehabilitation of the property.
4. If the EPA decide that any Article 27 permission, licence, permit, authorization, permission, approval or consent is required to be carried out by suitably qualified personnel on behalf of the Respondents, their successors and assigns or one or other of them, the Respondents, their successors and assigns or one or other of them, shall submit to the EPA all necessary applications for such licences, permits, authorisations, permission, approvals or consent within six weeks from the date of such decision by the EPA.
5. In the event that an article twenty seven permission, Licence, permit, authorization, permission, approval or consent is required and that same is granted by the EPA in respect of the property, the Respondents, their successors and assigns or one or other of them, shall carry out the actions specified in such article 27 Permission , License, permit, authorization, permission, approval or consent within the time limits so provided by the EPA .
6. The Respondents, their successors and assigns or one or other of them, shall make available the property, for access to the Applicant and the representatives and agents of any party for all purposes required for the implementation of the Order herein and to permit the monitoring by the Applicant and the EPA, and their representatives and agents.
7. An Order restraining the Respondents, their successors and assigns their servants, agents, licensees or any person acting in connection with them or on their instruction, and all persons having knowledge of the granting of any Order herein from continuing the said unauthorised development of the said property.
8. That the Respondents their successors and assigns do pay the Applicant's costs and expenses of the within proceedings in the sum of €26,427.38 within a period of six months from the date of the within Order.

9. Liberty to apply and re-enter.

10. That the Respondents their successors and assigns do the acts and things outlined in paragraphs 1 to 2 above within a period of one week following the personal service of the Order herein upon the Respondents their successors and assigns or in the alternative in the event that the Applicant is unable to successfully personally serve the Order herein upon the Respondents , their successors and assigns that the Respondent is directed by this Honourable Court to do the acts and things outlined in paragraphs 1 to 8 above within a period of one week following the Order herein being affixed to the property herein.

Dated this 21st day of November,, 2016

BY THE COURT

Counsel for the Plaintiff: Deirdre Hughes, B.L.
Solicitors for the Plaintiff: Regan McEntee & Partners
Counsel for the Respondents: Matthew Jolley, B.L
Solicitors for the Respondents: John Reidy & Associates

WARNING: If you your servants, or agents act in disobedience of this Order, you will be liable to committal to Prison by this Honourable Court and will also be liable to have your estate sequestered.

CHIEF REGISTRAR

APPENDIX C

Restoration Requirements

RESTORATION PLAN REQUIREMENTS

The technical requirements for the Restoration Plan in the first instance are outlined in Condition 12 of the planning permission (Ref. 02/1475 and ABP PL 09.205039) dated 17 September 2004.

Planning Permission – Condition 12

Condition 12 states: *The extraction site, reduced in accordance with Conditions 1 and 4, shall be restored in accordance with a phased restoration programme, the final phase of which shall be completed within one year of the cessation of production of materials. A detailed restoration plan shall be submitted to the planning authority for written agreement. The restoration plan shall include the following:*

- (a) provision for the removal from the site of structures and plant associated with the extraction operations and of waste materials that are not required for restoration purposes,*
- (b) details of the nature of any filling materials that may have to be imported on the site for restoration purposes and the method and timing of any filling operation arising from such importation,*
- (c) provision for the suitable preparation and grading of the area to be restored by the use of imported materials, waste materials or overburden materials,*
- (d) provision for spreading over the area to be restored, the sub-soil and topsoil or imported sub-soil and top-soil if required,*
- (e) details of the final surface levels of the restored area, which levels shall be such as to allow satisfactory drainage of and outfall from the site and provision for the restoration of the natural surfaces and sub-soil drainage of the area to be restored,*
- (f) details of the slopes to which the face of the pit shall be graded. The plans submitted shall be revised to ensure a more natural appearance rather than the engineered finish proposed in the application,*
- (g) details of the aftercare measures, such as cultivation, seeding, planting and subsequent maintenance and management, which it is proposed to take in order to render such area of land restored and its condition suitable for use which shall be appropriate to the area, and*
- (h) a detailed programme for the implementation of the restoration or operations required by this condition, including an indication of the dates relative to the progress of the sand and gravel extraction by which each phase of restoration shall be completed.*

Proceedings - KCC Representative Affidavit 8 December 2015

In addition, provided under paragraphs 24 and 25 of an affidavit provided by a KCC representative dated 8th of December 2015 some fresh input on the requirements of Kildare County Council in relation to the restoration plan for the subject site. These paragraphs 24 and 25 are provided below for reference.

24. I say that as a result of the unauthorised development on the lands, this your deponent is of the opinion that, a scheme for the restoration and rehabilitation of the lands by the Respondents is required.

This said scheme should include the following namely;

(i) Proposals to remove the excavated material consisting of screened and washed aggregates to an approved waste disposal facility by a licensed haulage operator.

(ii) Proposals to reinstate and backfill the area with suitable material.

(iii) Proposals to reinstate and backfill the area excavated over the sand and gravel aquifer, where excavation has taken place below the groundwater table, so as to ensure non-exposure to the bedrock aquifer.

(iv) Prior to the submission of the above details, the Respondents should engage the services of a professionally qualified Environmental Consultant to advise in relation to damage to the lands and also to provide a Detailed Rehabilitation Methodology report indicating any remedial works considered necessary.

(v) The time frame for the commencement of the restoration and rehabilitation works, proposed in the scheme required above, to be within a period of two weeks from the date of receipt by the Respondents a letter of approval from the Applicant. The restoration works and rehabilitation works to be carried out and completed to the satisfaction and under the supervision of the Applicant within a such period of time as directed by the Court.

25. By letter dated the 13th of April 2015, the Applicants Solicitors, Messrs Regan McEntee, Solicitors, High Street, Trim, County Meath, wrote to the Respondents, LCP Manufacturing Limited trading as Leinster Aggregates and Goode Concrete Limited, informing them that they are acting on behalf of Kildare County Council having received instructions that an unauthorised development was being carried out by them and seeking inter alia, undertakings as follows:-

1. *"To cease forthwith the unauthorised use of the lands, consisting of the excavation and processing of quarry materials, together with the importation of subsoil and inert material into the property.*

2. *To submit proposals to remove the excavated materials consisting of subsoil and inert material to an approved waste disposal facility by a licensed haulage operator. To submit proposals to reinstate and backfill the said excavated area with suitable material.*

3. *To submit proposals to reinstate and backfill the area excavated over the sand and gravel aquifer, where excavation has taken place below the groundwater table, so as to ensure non-exposure to the bedrock aquifer.*

4. *To submit proposal to level, grade and seed the lands affected.*

5. *To submit proposals to, prior to the submission of the above details, to engage the services of a professionally qualified Environmental Consultant to advise in relation to damage to the lands and also to recommend any remedial works considered necessary.*

6. *To agree to commence and complete the restoration and rehabilitation works in respect of the proposals referred to at paragraphs 2 to 5 above, and as approved by the Council, within a time frame agreed by the Council.*

7. *To discharge the Council's costs and expenses incurred to date."*

Preparation of Restoration Plan

As one can see by comparing Condition 12 of the Planning Permission to paragraph 24 and paragraph 25 of the 8 December 2015 Affidavit, there are common requirements for the Restoration Plan and work to be carried out at the subject site. These requirements are addressed in the Restoration Plan presented in the application to the EPA.

Table 1: Restoration Requirements & Compliance

Restoration Requirements- Condition 12, ABP PL 09.205038	Order Requirements	KCC Requirements (the Proceedings)	Consideration of Restoration requirements in the Restoration Plan
<p>12. The extraction site, reduced in accordance with Conditions 1 and 4 above, shall be restored in accordance with a phased restoration programme, The final phase of which shall be completed within one year of the cessation of production of materials. A detailed restoration plan shall be submitted to the planning authority for written agreement. The restoration plan shall include the following: -</p>	<p>1. Cease unauthorised use of the property consisting of the excavation and processing of quarry materials together with the importation of subsoil and inert material into the property pending the respondents and 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</p>	<p>24. I say that as a result of the unauthorised development the lands, this your deponent is of the opinion that, a scheme for the restoration and rehabilitation of the lands by the Respondents is required. This said scheme should include the following namely:</p> <p>(i) proposals to remove the excavated material consisting of screened and washed aggregates to an approved waste disposal facility by a licensed haulage operator.</p>	<p>Phased Restoration Plan submitted to EPA during Waste Licence Application Process.</p> <p>The plan provides for the recovery of inert soil and stone to achieve the restoration requirements detailed in the planning permission and identified by KCC in the Proceedings. The Waste Licence has been applied for to the EPA which is integral to the completion of the proposed restoration plan.</p> <p>Restoration Requirements considered met</p>

Restoration Requirements- Condition 12, ABP PL 09.205038	Order Requirements	KCC Requirements (the Proceedings)	Consideration of Restoration requirements in the Restoration Plan
<p>(a) provision for the removal from the site of structures and plant associated with the extraction operations and of waste materials that are not required for restoration purposes,</p>	<p>The respondents their successors and assigns or one or other of them, shall</p> <p>within a period of 12 weeks from the date of service of the within court order</p> <p>on the respondents, send to the EPA all appropriate documentation in respect</p> <p>of the remediation and rehabilitation of the property together with a request</p> <p>that the Environmental protection agency consider and decide whether any</p> <p>article 27 permission, licence, permit ,authorisation, permission ,approval or</p>	<p>(ii) Proposals to reinstate and backfill the area with suitable material,</p> <p>(iii) Proposals to reinstate and backfill the area excavated over the sand and gravel aquifer, where excavation has taken place below the groundwater table, so as to ensure non-exposure to the bedrock aquifer.</p> <p>(iv) Prior to the submission of the above details, the respondents should engage the services of a professionally qualified Environmental Consultant to advise in relation to damage to the lands and also to provide a Detailed Rehabilitation Methodology report indicating any remedial works considered necessary.</p>	<p>All pant removed from site and weighbridge and office insitu for duration of restoration phase.</p> <p>The restoration plan provides for import of inert soil and stone to meet the technical requirements set out in the ABP Permission and by KCC in the Proceedings.</p> <p>GCHL has engaged Golder Associates Ireland as suitably qualified Environmental Consultants to develop a restoration plan that addresses remediation of the damage to the lands at Ballinderry.</p>

Restoration Requirements- Condition 12, ABP PL 09.205038	Order Requirements	KCC Requirements (the Proceedings)	Consideration of Restoration requirements in the Restoration Plan
	consent is required for the restoration and rehabilitation of the property.	(v) The time frame for the commencement of the restoration and rehabilitation works, proposed in the scheme required above, to be within a period of two weeks from the date of receipt by the Respondents a letter of approval from the Applicant. The restoration works and rehabilitation works to be carried out and completed to the satisfaction and under the supervision of the Applicant within a such period of time as directed by the Court.	The timeframe for the commencement of the restoration phase is dependent on the grant of a waste licence from the EPA
(b) details of the nature of any filling materials that may have to be imported on the site for restoration purposes and the method and timing of any filling operation arising from such importation,	If the EPA decide that any Article 27 permission, licence, permit, authorization, permission, approval or consent is required to be carried out by		Detailed in the EIAR and Waste Licence Application for recovery of inert soil and stone to achieve restoration design

Restoration Requirements- Condition 12, ABP PL 09.205038	Order Requirements	KCC Requirements (the Proceedings)	Consideration of Restoration requirements in the Restoration Plan
	<p>suitably qualified personnel on behalf of the Respondents, their successors and assigns or one or other of them, the Respondents, their successors and assigns</p> <p>or one or other of them, shall submit to the EPA all necessary applications for such licences, permits, authorisations, permission, approvals or consent within six weeks from the date of such decision by the EPA.</p>		
(c) provision for the suitable preparation and grading of the area to be restored by the use of imported	In the event that an article twenty seven permission, Licence, permit,		Detailed in the EIAR and Waste Licence Application for importation of inert soil and stone to prepare a restoration

Restoration Requirements- Condition 12, ABP PL 09.205038	Order Requirements	KCC Requirements (the Proceedings)	Consideration of Restoration requirements in the Restoration Plan
materials, waste materials or overburden materials,	<p>authorization, permission, approval or consent is required and that same is granted by the EPA in respect of the property, the Respondents, their successors and assigns or one or other of them, shall carry out the actions specified in such article 27 Permission, License, permit, authorization, permission, approval or consent within the time limits so provided by the EPA</p>		surface that facilitates a natural appearance and drainage from the restoration surface
(d) provision for spreading over the area to be restored, the sub-soil and top soil or imported sub-soil and top- soil if required,			Detailed in the EIAR and Waste Licence Application/Restoration Plan

Restoration Requirements- Condition 12, ABP PL 09.205038	Order Requirements	KCC Requirements (the Proceedings)	Consideration of Restoration requirements in the Restoration Plan
(e) details of the final surface levels of the restored area, which levels shall be such as to allow satisfactory drainage of and outfall from the site and provision for the restoration of the natural surfaces and sub-soil drainage of the area to be restored,			Detailed in the EIAR and Waste Licence Application and associated drawings
(f) details of the slopes to which the face of the pit shall be graded. The plans submitted shall be revised to ensure a more natural appearance rather than the engineered finish proposed in the application,			Detailed in the EIAR and Waste Licence Application and associated drawings. The slopes are cognisant of the Health & Safety (Quarry) regulations, 2008
(g) details of the aftercare measures, such as cultivation, seeding, planting and subsequent maintenance and management, which it is proposed to take in order to render such area of land restored and its condition suitable for use which shall be appropriate to the area, and			Detailed in the EIAR and Waste Licence Application. Proposed land use is agriculture which is appropriate to the area which is rural and agricultural in nature

Restoration Requirements- Condition 12, ABP PL 09.205038	Order Requirements	KCC Requirements (the Proceedings)	Consideration of Restoration requirements in the Restoration Plan
(h) a detailed programme for the implementation of the restoration or operations required by this condition, including an indication of the dates relative to the progress of the sand and gravel extraction by which each phase of restoration shall be completed.			Phased plan submitted, dates are subject to approval by the EPA

APPENDIX D

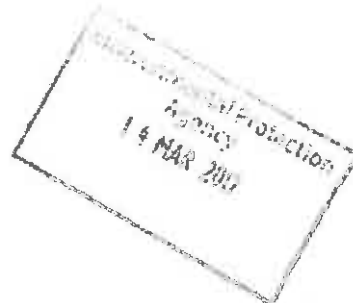
KCC email to EPA (ART27 Consultation Process)

Comhairle Contae Chill Dara
Kildare County Council



13/03/2017

Mairéad Nolan
Environmental Protection Agency,
Office of Environmental Sustainability
Head Quarters,
PO Box 3000,
Johnstown Castle Estate,
Co. Wexford



Re Article 27 Notification from GCHL Ltd
Ref No. Art 27-0579

Dear Ms. Nolan,

I refer to the Article 27 Notification Ref. No. ART27-0579.
Kildare County Council's comments/observations are as follows:

Details of enforcement issues associated with the destination site

The site has no waste authorisation and waste material is being imported into the site.

Details of any waste authorisation granted for the infill of the lands identified

The site does not have any waste authorisation. Due to the size of the site it may require a Waste Licence from the EPA. Approximately 1 million tonnes of waste will be required to restore the site.

Please indicate whether the above referenced site will be further filled in due course as part of a larger overall project, being an activity that will require waste authorisation in the form of a waste facility permit or waste licence.

On the 0th March 2017 the operator has already imported approximately 2,500 tonnes of waste material. The site is a large excavated quarry that requires approximately 1 million tonnes of material to restore the site. A waste licence is required for the site.

Any other comments/observations

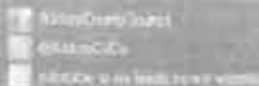
On the 6th 03/2017, two officers from Kildare County Council inspected the site at Ballinderry Quarry, Ballinderry, Carbury, Co. Kildare.

On the 9th 03/2017 an officer from Kildare County Council carried out an additional inspection of the site.

Up to the 9th 03/2017 approximately 2,500 tonnes of waste soil and stone has already been imported into the site. A small percentage of contaminants such as plastic, plastic piping, timber, polystyrene, textile bag, concrete blocks, concrete including steel reinforcement were visible in the imported waste soil during the inspection.

The site is currently active with approximately 20-25 trucks entering the site on a daily basis. Closets in the office were checked. The soil is coming from Sybill Hill, Raheny, Dublin (as specified as source in Article 27 Notification).

Kildare County Council has received numerous complaints relating to the filling of the site.



1894029.L02.V0

APPENDIX E

Ayrton Report

Audit & Inspection

CLIENT: GCHL LTD

REQUESTED BY: Barry Goode
OF: GCHL LTD

LOCATION: Ballinderry, Carbury, Co. Kildare

DATE OF INSPECTION: 21st January 2019

PREPARED BY: James Boyd
OF: Ayrton Group

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- 2. Findings**
- 3. Conclusion**




1. INTRODUCTION:

GCHL Ltd own a gravel / aggregates quarry in Ballinderry, Carbury, Co. Kildare. The Quarry is 40 acres in size and has two large lakes formed inside the site boundary from the pits they were excavating gravel from.

Excavations ceased in 2012 in the quarry. At present stock filled aggregates which are on site are being utilised and removed off site, this work begun at the end of December 2018. The site boundary is fenced off with signage in place warning people to stay out. It is evident in some areas the fencing has been tampered with, which allows easy access to the quarry.

2. FINDINGS:

Hazards	Comments/Corrective Action	
<p>Public Roadway</p>	<p>To the north of the Quarry there is a public road which is running adjacent to the pit / lake. There is a high risk of people trespassing on to the quarry at this area. The ditch in this area is five foot high which has a sheer drop into the lake which makes it dangerous for road users also. In the event there was a road traffic accident in the area there is a high possibility a vehicle would end up in the water.</p>	
<p>Erosion</p>	<p>The slop face of the pit / lake has signs of erosion which poses a risk of collapse to the embankment. As the roadway is situated no more than 4 meters from the sheer face of the pit which over time will erode further. The result of further erosion will encroach on the roadway to the north of the quarry and likely undermine the stability of the road potentially resulting in collapse of the road into the adjacent pit and open water body.</p>	

<p>Overhanging ledges</p>	<p>There are two lakes in the quarry which have over ten foot of water which could attract swimmers in the summer months. As it is a disused quarry, there are many other hazards present, including overhanging ledges around the lakes which could be used as a platform to dive off. This particular ledge in the adjacent photo - is at serious risk of collapse.</p>	
<p>Public Safety</p>	<p>The Ballinderry quarry in its current state poses a significant risk to public safety in a number of ways. There are many hazards present on site which can be easily accessed from the public road to the north of the site. Control measures can be put in place to reduce the likely hood of an accident or injury to persons who may enter the quarry, however eliminating the hazard would be the preferred option, so as no persons who enters the quarry could possibly be at risk of drowning or buried from an earth fall / gravel bank collapsing.</p> <p>I would recommend that the water be pumped from the lakes and backfilled immediately. This would eliminate many of the significant hazards on site.</p>	
<p>Sheer face</p>	<p>The sheer pit faces which are present must be buttressed immediately as they are at risk of collapse where excavations have taken place, which has a depth greater than 1000mm (1 meter) the sides must be sloped at a 45 degree angle to prevent collapse, as there are sheer drops of over 15 metres in many areas.</p>	

3. CONCLUSION

Following the site visit to the Ballinderry pit by a representative of the Ayrton Group on the 21/01/2019, a number of significant hazards present on site have been identified. These hazards have the potential to cause Potentially Serious Injury or Fatalities (PSIF's) It is recommended that all sheer faces on the gravel banks are to be removed immediately by means of constructing a buttress to support the pit face as the north fit face is serious risk of collapse. The roadway to the north of the quarry is not affected at present however, the narrow road verge provides easy access for persons/vehicles to enter the quarry and are there is an immediate danger of falling from a height of 15 metres into a deep open water body. This quarry is a high-risk area in terms of public safety, and Ayrton Group have been advised it is being used as an unauthorized swimming area during the summer months and spells of hot weather.

Due consideration should be given to recent events during the summer of 2018 in Co. Clare where two young boys lost their lives whiles swimming in a quarry lake, It is highly recommended that the pit lakes at Ballinderry are backfilled and made safe with immediate effect to eliminate the risk of a similar tragedy occurring here.

SIGNED:



