



Submission

Submitter:	Mr Chris Mitchell
Organisation Name:	Ballinclare Alliance Co Ltd
Submission Title:	Observations Regarding - Kilsaran waste license application for Ballinclare – W0311-01
Submission Reference No.:	S011391
Submission Received:	15 November 2023

Application

Applicant:	Kilsaran Concrete Unlimited Company
Reg. No.:	W0311-01

See below for Submission details.

Attachments are displayed on the following page(s).

**Inert Landfill and C&D Waste Recovery Facility at
Ballinclare
Kilbride
County Wicklow**

Technical Traffic Review

**Prepared
for
Ballinclare Alliance Ltd**

May 2021



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1.0 Introduction.

- 1.1 TPS have been retained by the Ballinclare Alliance Ltd to undertake a technical traffic and transportation review of an Environmental Impact Assessment Report (EIAR) relating a strategic planning application which includes to the back filling of an existing quarry at Ballinclare, Kilbride, County Wicklow.
- 1.2 The Tap Café and Restaurant is located to the north west of the junction of the R772 and the L1157 which are the routes proposed to be used by heavy goods vehicles importing materials to reinstate the above quarry.
- 1.3 Prior to the outbreak of Covid 19 the Tap Café and Restaurant operated from 0800hrs to 2000hrs Monday to Sunday. Post the lifting of the Covid 19 restrictions it is the owners intention to return to these operating hours.
- 1.4 We would advise An Bord Pleanala that our client has grave concerns relating to the traffic impact this operation may have on the Tap Café and Restaurant in terms of the safety of their staff and customers.
- 1.5 This concern relates to the limited traffic information contained within the EIAR relating to the traffic impact and the road safety such an infill development has on the junction of the R772 and L1157 and their access arrangement within this junction
- 1.6 Section 1.5 of the 2.4 of the Non Technical Summary within EIAR indicates the following:

It is envisaged that the maximum annual intake of soil and stone / C&D waste at the proposed waste recovery facility at Ballinclare will be of the order of 750,000 tonnes of soil and stone and 50,000 tonnes of construction and demolition (C&D) waste per annum. The combined annual intake of 800,000 tonnes per annum is equivalent to an average of

- 16,000 tonnes per week (assuming 50 weeks in a working year)*
- 2,900 tonnes per day (assuming 5.5 days in a working week)*
- 290 tonnes per hour (assuming 10 hours in a working day)*

If it conservatively assumed that each HGV / truck consignment travelling to the waste recovery facility has a carrying capacity of 20 tonnes, this suggests that at maximum intake rates, there will be on average 14 to 15 HGV / truck trips (or 28 to 30 HGV / truck movements) per hour generated by backfilling / soil waste recovery activity.

- 1.7 All of these hourly 28 to 30 heavy goods vehicle movements are proposed to route via the R772 and turn in from the southbound carriageway or turn in from the northbound carriageway from this road into the L1157.
- 1.8 Over the 10 hour working day this extent of heavy goods vehicle trips could be 300 movements. The total extent of importation is projected at 6,165,000 tonnes which could take over 7.5 years to 18 years to complete (as per the EIAR).
- 1.9 All these daily, weekly, monthly and annual heavy goods vehicles are now proposed to route past our clients Tap Café and Restaurant which is a 50% increase on the extent of quarry related traffic passing their business premises.
- 1.10 Considering the extent of these projected heavy vehicle trips it would be reasonable for the traffic impact of these heavy vehicle movements to be assessed to determine their impact on the capacity of road links and junction of the R772 with the L1157.
- 1.11 In addition, it would also be reasonable to expect the applicant to consider the road safety impact of such daily heavy vehicle movements of the junction of the R772 with the L1157 and the road safety impact of these vehicles on the adjoining Tap Café and Restaurant which shares its access with this junction.

- 1.12 The impact of these heavy vehicles is evident from the extent of suggested off site road improvements put forward by the applicant along the L1157 where several sections of the L1157 will be widened to 6.0metres.
- 1.13 The applicant also proposes 11 passing bays along the L1157 from the junction of the R772 to the quarry site access over a distance of some 2kms. The overall extent of these passing two way passing bays is some 500metres of additional road widening along this section of L1157.

2.0 Background Information for An Bord Pleanala.

Letter of Consent.

- 2.1 The above series of off road improvements are suggested as being wholly within lands under the control of Wicklow County Council.
- 2.2 Yet, from a review of this EIAR application there does not appear to be any letter of consent from the Local Authority indicating the applicant can implement these works within their lands.
- 2.3 It would be our experience from advising on Strategic Housing Developments, where off site road improvement works are proposed as part of this type of planning application An Bord Pleanala consider these lands to be similar to third party land and require a letter of consent from the effected Local Authority.
- 2.4 We respectfully submit to An Bord Pleanala that the applicant has not demonstrated a sufficient legal interest in the lands in order to carry out these proposed off site works.

The L1113 as part of the Quarry Haul Route.

- 2.5 The applicant within the EIAR application indicates that the proposed quarry infill development would generate similar traffic levels to that of the permitted development and proposed to the Local Authority to continue to use the permitted one-way haul route via the R772, L1157 and the L1113. The relevant extract from the EIAR application is shown below:

As noted above, this development proposal will generate a similar volume of traffic and it was initially proposed to the Planning Authority that HGV traffic would continue to use the same haul routes as currently permitted. The Planning Authority acknowledged that the one-way haul route had had advantages when the N11 Rathnew to Arklow Road Improvement Scheme was under construction in 2014 but that the traffic patterns on the local roads had changed in the interim such that it was the Planning Authority's preference that to benefit traffic flows locally, the traffic management regime at Ballinclare Quarry should be revised.

The Planning Authority indicated a preference for all HGV traffic to and from the application site to use only the L1157 Local Road in both directions.

- 2.6 Based solely on a *preference* not a direction from the Local Authority and with no technical consideration the applicant then decided to follow the Local Authority *preference* and foist all the quarry traffic onto the L1157.
- 2.7 In order to accommodate this quarry traffic, they now propose to fix the road problems on this suggested two-way haul route by retrofitting extensive road improvements, road widening and road strengthen measures on the L1157.
- 2.8 It is our view that the impact of these road improvements, road widening and road strengthen measures would not be required if the permitted one-way haul route was operated by the applicant.

- 2.9 We again respectfully request that An Bord Pleanála consider that these road widening, road strengthen measures are not required if the Board condition the continued use of the established haul route via the R772, L1157 and the L1113 to enable the infill of this quarry.
- 2.10 We would also question why within the EIAR application there is no technical evidence or no technical assessments provided as to why the L1113 as part of an established haul route from this quarry is just abandoned.

Applicant's Planning Application in Kildare.

- 2.11 The applicant is also seeking planning permission for a sand and gravel extraction and restoration operation at Racefield, Ballyshannon, County Kildare under Planning Ref: 19/1097. This application is currently being considered by An Bord Pleanála (PL09-306297) having been refused planning permission by the Local Authority.
- 2.12 The planning application at Racefield is for a 12-year extraction operating period and a 2-year restoration period.
- 2.13 Included within this application were the following:
- a series base year traffic surveys
 - off-site localised road widening proposals
 - traffic modelling of the adjacent road links and junctions
 - capacity assessments from a base year to future year scenarios
- 2.14 In addition, an independent road safety audit was undertaken of the key routes within the application site, the receiving along the Local Roads L8007 and L8006 and the nearby junction connecting these Local Roads with the Regional Road (R418).
- 2.15 The EIAR application prepared to support the Ballinclare quarry does not contain any traffic modelling, capacity assessments or a road safety audit assessment.
- 2.16 For the restoration of an existing Ballinclare quarry which could take between 7 to 18 years to complete, we would have expected the Board to be presented with, even base year traffic modelling and capacity assessments to enable us to provide our client with technical comment on the traffic impact of such a facility.
- 2.17 Likewise, an independent road safety assessment should have been included within the EIAR application to enable our client to consider the potential traffic hazard of doubling the daily heavy goods vehicles past the existing business.

3.0 Chapter 14 of the EIAR.

- 3.1 Chapter 14 within the EIAR sets out the extent daily and hourly traffic flows on the L1157 and the R772 based on classified turning movements counts and traffic from an automatic traffic counter data from the L1157.
- 3.2 The extent of daily and hourly traffic movements associated with the proposed backfill is also outlined within Chapter 14 of the EIAR.
- 3.3 As previously discussed a series of off-site road widening is only proposed along the section of the L1157 from the quarry site access finishing to the west of the junction of the L1157 with the R772.
- 3.4 While these off site road works are proposed to mitigate the extent of heavy vehicles the safety for all road users along this section of the L1157 has not been considered.

- 3.5 Improving the road width of the L1157 may give rise to an increase in vehicular speeds along this road and facilitate an increase in eastbound road speeds approaching the junction of the L1157 with the R772.
- 3.6 A road safety audit would have also identified if this road widening would have an impact on pedestrian or cyclists using the L1157, where they could be forced into the reduced verge to avoid the passing of two heavy vehicles within these locations.
- 3.7 Transport Infrastructure for Ireland has published a set of standards that define the role of, and outline the process for carrying out a Road Safety Audit which are set out within GE-STY-01024 Road Safety Audit (2017). Section 2.4 of GE-STY-01024 outlines the stages of a Road Safety Audit which are summarised below:
- Stage F: Route selection, prior to route choice.
 - Stage 1: Completion of preliminary design prior to land acquisition procedures.
 - Stage 2: Completion of detailed design, prior to tender of construction contract. In the case of Design and Build contracts, a Stage 2 audit shall be completed prior to construction taking place.
 - Stage 1 & 2: Completion of detailed design, prior to tender of construction contract, for small schemes where only one design stage audit is appropriate.
 - Stage 3: Completion of construction (prior to opening of the scheme, or part of the scheme to traffic wherever possible).
 - Stage 4: Early operation at 2 to 4 months' post road opening with live traffic.
- 3.8 Appendix A in GE-STY-01024 provides a summary table of the various audit stages required for the different types of schemes. An extract of that table is shown below.

Audit is required on any piece of road infrastructure which requires a design							
	Example Scheme Description	Audit Stages Required					
		X – Required (X) – Alternative to St1 and St2					
		F	1	2	1 & 2	3	4
New Alignment	Off-line road scheme with multiple options.	X	X	X		X	X
	On-line road scheme – Minor land take required		X	X		X	
	On-line road scheme – No land take required				X	X	
	New junction or access onto the road		X	X	(X)	X	
Realignment	Realignment of bend				X	X	
	Realignment of junction				X	X	
	Alteration of type of junction control, such as traffic signals, mini roundabout etc.				X	X	
	Sight line Improvements				X	X	
Pavement Improvements	Change to the existing cross section, widening or narrowing the pavement				X	X	
	Change to the existing vertical alignment				X	X	
	Change to the existing pavement which affects the horizontal or vertical alignment of public or private entrances				X	X	
	Change to existing camber or superelevation				X	X	
Signing & Road Markings	Installation of road signs: Single installation, multiple installations, or addition or amendment to sign on existing supports				X	X	
	Installation of road markings which results in a change to the existing road marking layout and/or its meaning				X	X	
Safety Barrier	Installation of new safety barrier				X	X	
	Upgrade to an existing safety barrier				X	X	
	Upgrade of an existing terminal				X	X	
	Replacement of an entire safety barrier installation				X	X	
Kerbing & Footpaths	Installation of kerbs in the verge and/or hard shoulder				X	X	
	Installation of kerbs in the centre of the pavement		X	X	(X)	X	
	Installation of kerbs and footpaths				X	X	
	Installation of pedestrian crossing, both informal and formal crossing points		X	X	(X)	X	
Lighting	Installation of traffic route lighting				X	X	
	Change to the lighting level and type of existing lighting				X	X	
Development	Major development, meeting the criteria in NRA Traffic and Transportation Assessment Guidelines Table 2.2	X	X	X		X	X
	Any development that is not a major development				X	X	

3.9 In relation to the traffic impact and the operational impact of the proposed quarry restoration is likely to have on the junction of the L1157 the applicant within Chapter 14 of the EIAR at Section 14.146 merely suggests the following:

Whilst it is acknowledged that the proposed new haul route will give rise to an intensification in traffic flows on the L1157 to the east of the existing quarry site, it is not considered likely that the change in traffic flows will give rise to capacity issues on the receiving road network. On balance the level of service and capacity of the L1157 are not considered likely to be significantly affected.

- 3.10 We respectfully suggest to the Board that where a junction is subjected to a 50% increase in heavy vehicles turning movements this traffic impact should not be a mere judgement call.
- 3.11 The Traffic and Transport Assessment Guidelines published by the former National Roads Authority (May 2014) now Transport Infrastructure for Ireland provides specific advice in relation to the traffic impact of a land use development and states where ...'Traffic to and from the development exceeds 10% of the traffic flow on the adjoining road'... the impact should be assessed.
- 3.12 Chapter 14 of the EIAR at Section 14.180 further suggests the following:
- The junction at the Tap Café is a priority arrangement. The N11 mainline or major road at the junction was reclassified to R772 and traffic flows along the major road have reduced by more than 90%. Given the significant reduction in major road flows, it is highly unlikely that the traffic flows arising from the proposed development at Ballinclare Quarry will have a significant impact upon capacity, road safety or the structural integrity and carrying capacity of the road.*
- 3.13 This unsupported comment fails to consider that the Tap Café and Restaurant access arrangements is an integral part of the junction arrangement formed within and adjacent the L1157 and the R772 in terms of:
1. Junction layout
 2. Forward visibility
 3. Sight stopping distances
 4. Traffic turning movements
 5. Adjacent customers parking
 6. Servicing arrangements
- 3.14 The Board should also be aware that the visibility sightline to the northwest within the southern intersection of the R772 and the L1157 is deficient in terms of the extent of sightline that can be provided within this arm into the leading traffic direction of the L1157.
- 3.15 Where an existing Local Road forms part of the designed criteria relating to development access which are proposed to serve an application site the junction design should be based on the Transport Infrastructure for Ireland publication out within DN-GEO-03060.
- 3.16 Within DN-GEO-03060 at Table 5.4 it indicates, that for minor arms the standard visibility 'x' distance within this minor arm should be 3.0metres with the 'y' distance being over 150metres. Table 5.4 of DN-GEO-03060 is reproduced below.

Major road use	Minor road use	Standard	'x' Distance(m)
All roads	All junctions and accesses, Stop control	Desirable Minimum	3.0
All roads	Cycleway	Desirable Minimum	4.0
All roads	Cycleway	Absolute Minimum	2.0
National roads	Simple Junctions, Stop control	Relaxation	2.4
Regional & Local Roads	All junctions and accesses, Yield control (where there are no relaxations associated with the junction layout)	Desirable Minimum	Max. 9.0
Regional & Local Roads	Accesses, Lightly trafficked	Relaxation	2.0
All roads	All junctions and accesses	Desirable Maximum	9.0

Table 5.4: 'x'

Distances on the minor road for visibility measurements.

- 3.17 It can be seen from Photograph 1.0 below, which indicates this extent of visibility sightline is not available within this junction without the agreement of our client to relocate their boundary wall to facilitate this visibility sightline.



Photograph 1.0: Visibility sightline in L1157.

- 3.18 The applicant addresses this substandard visibility issue by suggesting within Chapter 14 at Section 14.181 that improvement work to the junction provide satisfactory visibility sightlines. This section of the EIAR is reproduced below.

The R772/L1157 junction was improved in the same timeframe as the M11 works. The road structure and surfacing is in good order and the improvements carried out by Wicklow County Council to the junction provide satisfactory visibility sightlines. The improvements were undertaken with knowledge of the current permitted Ballinclare Quarry development.

- 3.19 We would advise An Bord Pleanála that there is no such technical term as satisfactory set out within any technical design standard when assessing visibility sightlines within a priority junction.
- 3.20 Visibility sightlines either meet the required standard or they don't. If they don't meet the standard then, there is a potential traffic hazard.
- 3.21 Adding to this traffic hazard situation is the vehicles attending the quarry site will either be carrying 20tonne or 29tonne loads of material which gives rise to slow turning movements through this road link and junction corridor potentially creating a further traffic hazard.
- 3.22 We would also advise the Board that restricted, or almost non-existent visibility sightlines also operate within this minor junction arm to view northbound heavy vehicles turning into the L1157 from the R772.
- 3.23 Chapter 14 within Section 14.176 of the EIAR further suggests the quarry application may generate some 5% of heavy vehicle traffic routing via this section of the R772 to the and from the quarry.
- 3.24 The extent of this restricted visibility sightline into the R772 is shown within Photograph 2.0 below.



Photograph 2.0: View southeast into R772 from minor arm.

- 3.25 Transport Infrastructure for Ireland within their technical road design standards provides specific advice in relation to visibility which states:

For safety, road users shall be able to see any potential hazard in time to slow down or stop comfortably before reaching it. It is necessary therefore to consider the driver's line of vision in both the vertical and horizontal planes and the stopping sight distance for the vehicle or non-motorised users at the relevant design speed.

Provision must be made for the specific requirements of non-motorised road users in the design of priority junctions providing access to National roads.

- 3.26 The applicant further suggests within Chapter 14 at section 14.184 that while the L1113 benefits from the rerouting of the two-way haul route to the quarry this reduction doubles the traffic routing along the L1157 stating:

No additional traffic volume is likely to arise from the proposed development. Due to the proposed alterations to the haul route the HGV traffic generated by the proposed development will redistribute to the local road network. This benefits the L1113 Coolbeg Road but increases the HGV numbers traveling from the development site two-fold on the proposed new haul route along L1157.

- 3.27 Yet, none of this traffic impact or traffic impact in terms of road safety is assessed by the applicant on the above junction or the Tap Café and Restaurant business operation save for at Section 14.185 which further states:

The above section entitled 'Proposed Road Strengthening and Widening' sets out a comprehensive scheme of road strengthening and road widening along L1157 aimed at improving the condition and serviceability of L1157 and to mitigate the impact of the additional traffic load assigned to this section of local road.

- 3.28 During the operational stage the applicant indicates within Section 14.188 of the EIAR that:

The proposed development will have no effects on the receiving road network other than those already arising from previously permitted development.

- 3.29 It is very peculiar in terms of a traffic assessment that the applicant has identified a plethora of off-site road improvements along the L1157 but fails to identify any difficulties in terms of road capacity or road safety where they propose to double the traffic within a substandard junction.

4.0 Existing and Possible Future Tap Café and Restaurant.

- 4.1 The existing Tap Café and Restaurant is accessed from the junction of the R772 and L1157 by means of a wide simple priority junction located to the northwest of this junction.
- 4.2 This access leads to 10 on-street customer parking spaces adjacent to the café and restaurant, cul de sac section of former public roads and a customer car park of some 52 parking spaces which was granted planning permission under Wicklow County Council Planning Ref: 16/1355.
- 4.3 When fully in operation 10 traffic turning movements can take place in this area between the R772 the café access and this area of the L1157. In addition, vehicular turning movements associated with the parking adjacent to the café can also simultaneously occur.
- 4.4 Servicing of the café and restaurant generally takes place via the front door of the café with deliveries by small transit type vans. As the café and restaurant is a licenced premises heavy goods vehicle in the form of rigid vehicles also deliver to this development.
- 4.5 A planning application was lodged with Wicklow County Council on the 6th October 2020 to extend the existing facility to provide new customer toilet facilities and replace the first floor residential area with a function room of some 425sq metres.
- 4.6 If planning permission is granted for this change of use it is likely to operate as a function room or a promotional events centre.
- 4.7 A Traffic Report prepared by Doctor Martin Rogers of Martin Rogers Consulting Ltd supports the parking and trip generation projections associated with this additional development as part of a Further Information submission to the Local Authority.
- 4.8 From a review of this report Dr Martin Rogers has identified that over a typical trading day some 136 trips could be generated by this redevelopment.
- 4.9 Considering the existing café and restaurant operation (pre Covid19) was not identified within the EIAR and if permitted the change of use planning application could generate significant trips then the routing of all quarry traffic through this corridor requires a much more detailed examination in terms of road safety and traffic impact.
- 4.10 No account of the traffic impact of the proposed quarry infill existing trips associated with the existing café and restaurant is discussed within the EIAR.

5.0 Conclusions.

- 5.1 From a review of the EIAR application we have established that the applicant has abandoned an established one-way haul route to enable the infill of this quarry, based solely of the preference of the Local Authority.
- 5.2 Based on this preference they propose major off site road improvements, road widening, road strengthening to the L1157 which we suggest is not required if the applicant reverts to the permitted one-way haul route via the L1113.
- 5.3 There does not appear to be any letter of consent from the Local Authority indicating the applicant can implement the proposed works within their lands along the L1157.
- 5.4 The level of technical information submitted with this application is significantly lacking in standard traffic assessment detail compared to Kilsaran's proposed operation at Racefield, Ballyshannon, County Kildare with a notable absence of base year traffic modelling, capacity assessments, traffic modelling of the adjacent road links and junctions and an independent road safety assessment.
- 5.5 Chapter 14 of the EIAR is deficient as it does not assess the traffic impact or road safety impact of routing all the potential 300 heavy vehicles per day via the L1157 and the R772 where these heavy vehicles are highly likely to give rise to a traffic hazard on the established Tap Café and Restaurant operation.
- 5.6 It is very peculiar in terms of a traffic assessment that the applicant has identified a plethora of off-site road improvements along the L1157 but fails to identify any difficulties in terms of road capacity or road safety where they propose to double the traffic within a substandard junction adjacent to the Tap Café and Restaurant.
- 5.7 The operation of the existing Tap Café and Restaurant (pre Covid19) which is a significant trip attraction was not identified within the EIAR. No review of the current application was assessed within the EIAR.
- 5.8 If permitted the change of use planning application has been identified as generating significant trips. As such, the routing of all quarry traffic through the R772/L1157 junction requires a much more detailed examination in terms of road safety and traffic impact.
- 5.9 These additional must also provide much more detailed assessments of the visibility sightline to the northwest within the southern intersection of the R772 and the L1157 which is deficient in terms of the extent of sightline that can be provided within this arm into the leading traffic direction of the L1157. Restricted, or almost non-existent visibility sightlines also operate within this minor junction arm to view northbound heavy vehicles turning into the L1157 from the R772 also needs to be considered.
- 5.10 Alternatively, all of these matters can be overcome if the applicant reverts to the permitted haul route to this infill this quarry. We would respectfully request thus current haul route is rejected and the applicant is condition to revert to the permitted haul route to complete the infill of this land use.



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**Objection to a Proposed Development at Ballinclare Quarry,
Kilbride, Co. Wicklow.**

Niamh Ní Bhroin BSc PhD

09th June 2021.

1.0 Introduction

An Appropriate Assessment Screening Report and Natura Impact Statement was compiled by SLR on behalf of Kilsaran concrete entitled:

Quarry Restoration through Import of Inert Waste Development of C&D Waste Recovery Facilities, Ballinclare Quarry, Kilbride, County Wicklow.

The proposed development will involve firstly the importation of inert soil and stone and construction demolition waste and secondly the infilling of the quarry void.

This objection has been compiled to draw attention to gaps in information within the Appropriate Assessment Screening Report and Natura Impact Statement. Consequently, the impact of the project on the Buckronev – Brittas Dunes and Fen SAC cannot be assessed. As the Potters River provides a pathway between the proposed project at Ballinclare Quarry and the Buckronev – Brittas Dunes and Fen SAC the Appropriate Assessment Screening Report and Natura Impact Statement (NIS) needs to include the river as part of the assessment process.

2.0 The Appropriate Assessment Process.

In accordance with Article 6(3) of the Habitats Directive,

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

In accordance with DoEHLG (2009). Appropriate Assessment of Plans & Projects – Guidance for Planning Authorities 2009, the Natura Impact Statement is defined as follows:

1. A Natura Impact Statement – This comprises a **comprehensive** ecological impact assessment of a plan or project, it examines the direct and indirect impacts that the plan or project might have on its own or in combination with plans and projects, on one or more Natura 2000 sites in view of the sites' conservation objectives.
2. The competent authority carries out the Appropriate Assessment, based on the NIS and other information it may consider necessary. The Appropriate Assessment process encompasses all of the process covered by Article 6(3) of the Habitats Directive, i.e. the screening process, the Natura Impact Statement, the Appropriate Assessment by the competent authority, and a record of the decisions made by the competent authority at each stage of the process, up to the point at which Article 6(4) may come into play following a determination that a plan or project may come into play following a determination that a plan or project may adversely affect the integrity of a Natura 2000 site.

Overview of the Implementation of the Appropriate Assessment Process, 2009

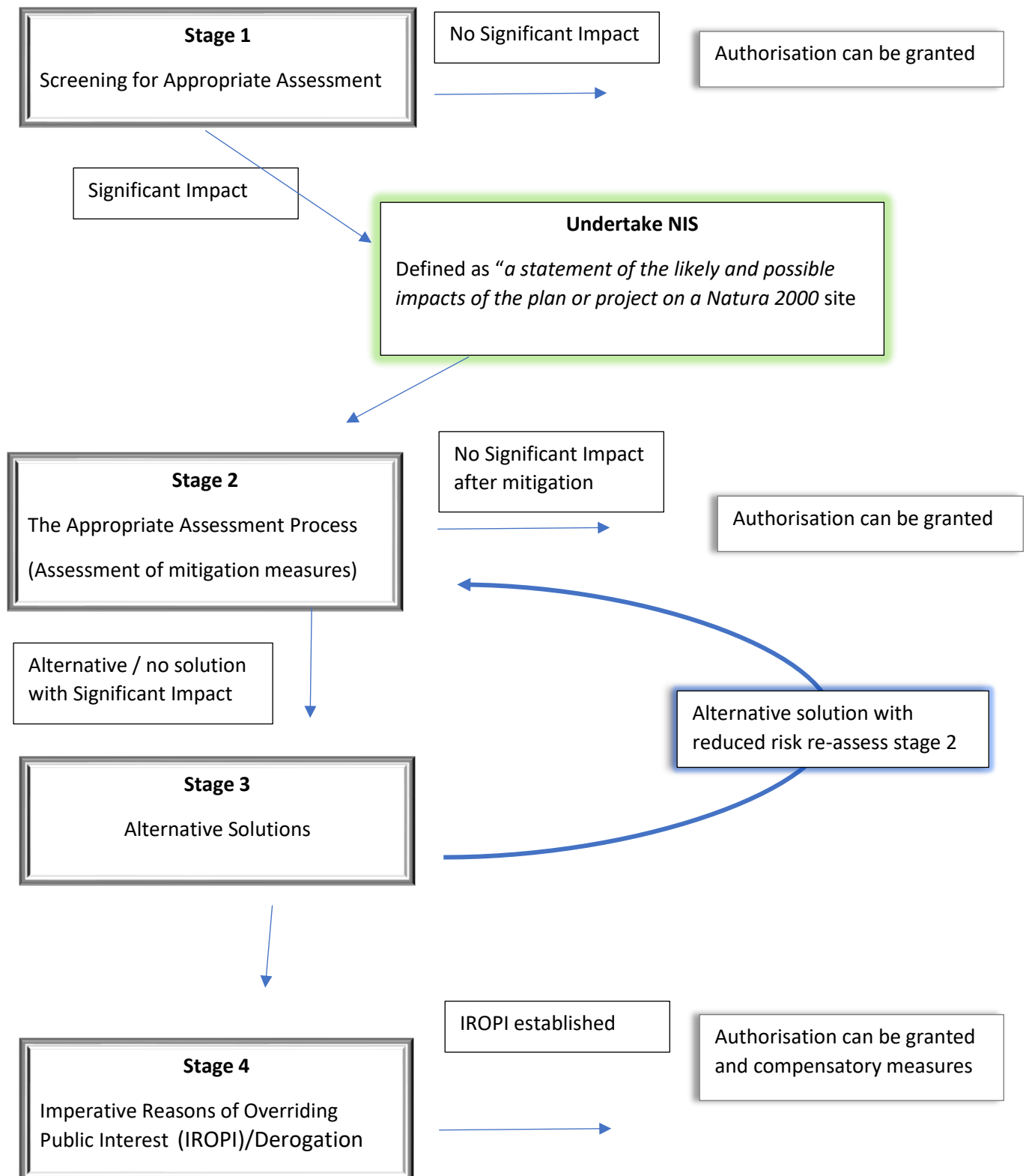


Fig. 4 Based on the DoEHLG, 2009 methodology

The document goes on to state:

The Natura Impact Statement and the Appropriate Assessment must be completed prior to any decision being made to authorise a plan or project. It is entirely unacceptable for a planning authority to approve a plan or project conditioned on the undertaking or completion of surveys, research, or data-gathering of relevance in assessing the likely effects.

3.0 Appropriate Assessment Screening Report.

Three items are listed under the heading Appropriate Assessment Screening which can be summarised as follows:

1. The Zone of Influence of the proposed development and a list of the Natura 2000 sites listed within the zone.
2. The quarry discharges to the Potters River which flows through the northern section of the Buckronev – Brittas Dunes and Fen SAC. The Natura 2000 site is approximately 11.5km downstream of the quarry.
3. It is considered that the discharge from the quarry may have an impact on the Buckronev – Brittas Dunes and Fen SAC.
“The significance of the effects on the SAC is uncertain. Therefore, it is considered that the proposed development should progress to the second stage of the appropriate assessment process we have therefore prepared an NIS (section 5 of the Appropriate Screening Report and Natura Impact Statement).

A summary of the above-mentioned Appropriate Screening Report has provided the following information.

1. A zone of influence of 5km has been identified. This means that the report is identifying that the proposed development will only have an impact on the 5km surrounding the proposed development site.

Concern. The proposed development will discharge surface water to the Potters River and flows into the Buckronev – Brittas Dunes and Fen SAC approximately **11.5km** downstream of the quarry. This is a greater distance than the zone of influence of 5km.

Effect. Inadequate zone of influence.

2. Following grant of permission, it is proposed that dewatering of the flooded quarry will lead to the discharge of 1,728m³ / day and will reduce to 860m³ / day. This is cited as being in accordance with a revised discharge license issued by Wicklow County Council in November 2019.

Concern. The waste permit (WPL 116) was granted under a previous planning application (Wicklow County Council 14/2118). The waste permit issued with respect to planning application 14/2118 was with respect to quarrying activity (chapter 7 EIAR). Quarrying ceased in 2016 due to the presence of naturally occurring asbestos. The waste licence therefore does not apply to the proposed development.

Effect. The impacts of the proposed discharge has not been properly assessed on the Potters River or that habitats of the SAC downstream of the proposed development.

3. Prior to discharge surface water will be treated via a “proposed wetland treatment system” leading to the reduction of suspended solids and “any incidental organic and inorganic contaminants”.

Concern. Initially (chapter 2) all surface water from the quarry will pass through a treatment system and into the existing settlement lagoons. As the project progresses surface water will pass through a treatment system and then discharge to a constructed wetland which will replace the settling lagoons. It is proposed that the constructed wetland will treat surface water for organic and inorganic contaminants.

Effect. The proposed treatment of surface water has not been adequately addressed in the Appropriate Assessment Screening Report. The organic and inorganic contaminants have not been identified consequently the impacts have not been identified.

4. Surface water run-off from the C&D facility surface water run-off and groundwater inflows will be treated by the constructed wetland.

Concern. The constructed wetland system needs to cater for dewatering of the quarry, surface water generated and the C&D facility along with soil washing. Surface water will pass through waste treatment system and treated water will be discharged to the constructed wetland. It is identified that the surface water will reduce suspended solids and organic and inorganic contaminants. At what point in the process does this occur? Will it mean that heavy metals could enter the constructed wetland and if so does that mean in the long term that the sediment and organic matter may require specialised disposal due to high levels of heavy metal retention?

Effect. The impact of the proposed development has not been adequately assessed. Gaps in information exist.

5. Following restoration surface water run-off from the restored land will be directed towards the constructed wetland for treatment prior to discharge. On the south eastern corner of the site a swale will attenuate surface water prior to discharge to the Kilmacurragh Stream.

Concern. In accordance with chapter 2 of the EIA on restoration the constructed wetland will be maintained and also a lagoon installed. The Appropriate Assessment Screening report makes no reference to a lagoon. Surface water from these two systems will discharge to the Ballinclare Stream and into the Potters River. On the other side of the restored quarry surface water will discharge to the Kilmacurragh Stream which will also discharge to the Potters River. There is no mention of a lagoon in the report or the expected impact upon the Potters River in the absence of maintenance of the constructed wetland.

Effect. There has been no assessment post construction that surface water will be adequately treated or attenuated or released in a controlled manner on the Potters River and consequently on the Buckronev – Brittas Dunes and Fen SAC.

The submitted Appropriate Assessment Screening Report has not:

1. Identified a proper zone of influence.
2. Showed understanding or knowledge of the proposed development.
3. Identified the elements of the proposed development that could impact on the Buckronev – Brittas Dunes and Fen SAC.
4. Assessed the impacts associated with the proposed development during and post infilling.

4.0 Natura Impact Statement

A Natura Impact Statement (NIS) is a document that assesses the impact of the proposed development on the receiving Natura 2000 site(s), or nearby Natura 2000 sites. The three types of impacts are:

- direct,
- indirect
- and cumulative or in-combination effect.

The stages of development that should be assessed include:

- During construction
- Post construction

Elements of the proposed development that may have an impact also need to be assessed directly, indirectly and cumulatively, for example.

The NIS provided is a three page report purporting to be an assessment of the impact(s) of the proposed development on the Buckronev – Brittas Dunes and Fen SAC. The NIS does not provide enough information to enable an objective assessment of the proposed development. The NIS does not deal with specific qualifying interests of any Natura 2000 sites impacted by the proposed development. The NIS does not provide information to allow the Competent Authority to carry out an informed assessment to draw any conclusions.

Assessment of Effects of Project or Plan on integrity of Natura 2000 sites.

This section should, according to the report, identify all the potential effects of the proposed development either alone or in combination with other plans or projects on the Buckronev – Brittas Dunes and Fen SAC. As part of the assessment process the impact on the conservation objectives of the site and impacts on the structure and function of the site. Finally, the implementation of mitigation measures will show that there is no “adverse impact” on the SAC under a series of headings.

Heading: Describe the elements of the project or plan (alone or in combination with other projects or plans that are likely to give rise to significant effects on the environment.

Surface water discharge on the Potters River has been identified as a potential impact. Two streams of surface water have been identified namely the surface water associated with the dewatering process and the surface water generated by the C&D waste facility.

No information is provided identifying what the impacts are either direct, indirect or cumulatively on the Potters River. No information has been provided to the quality of surface water that will be discharged, proposed treatment of the surface water prior to discharge, the impact of the flow rates on the Potters River, the impact of the Potters River on the SAC downstream. There are no mitigation measures provided to deal with the impacts of discharging of surface water into the Potters River and the SAC downstream into which the Potters River flows.

In the section titled Identification of Zone of Influence & Natura 2000 site it identifies in the Hydrology section of the EIAR submitted as part of the planning application has identified that water collecting in the quarry void has

“elevated levels of dissolved arsenic, mercury and phosphate when compared to the Potters River. Concentrations and proposed methods for dealing the with heavy metals and phosphates have not been provided.

Heading: Set out the conservation objectives of the site.

Under this section of the conservation objectives of the site are

“ to maintain or restore the favourable conservation condition of the Annex I habitats for which the SAC has been selected which is defined by a specific list of attributes and targets”.

A weblink is provided for further information.

On page 10 under Description of Natura 2000 sites a brief description of the SAC is provided and the qualified interests for the SAC are listed on page 11. There is no identification of the habitats that are directly, indirectly or cumulatively impacted by the discharge of wastewater from the Potters River. Part of the Buckronev – Brittas Dunes and Fen SAC consists of a fen habitat. Changes in hydrological conditions is a threat to fen habitats. The NIS doesn't identify if the proposed development will impact on fen or alternatively which of the protected habitats of the SAC that the proposed development will either directly, indirectly or cumulative impact on the Buckronev – Brittas Dunes and Fen SAC impact upon.

Heading: Describe how the project or plan will affect key species and key habitats. Acknowledge uncertainties or gaps in information.

According to the NIS the proposed development at Ballinclare Quarry will not impact on the species or habitats associated with the SAC. The protected habitats of the SAC are according to the NIS terrestrial habitats and are “not fed or dependent upon the flows or water from the Potters River”. The NIS goes on to say that the heavy metals occurring in the surface water

from the quarry void discharging to the river are also naturally occurring in the groundwater and Potters River. Seemingly no uncertainties or gaps in information exist.

Fossitt, 2000 categories dune habitats and as coastland and fens as peatland habitat. The Natura 2000 data sheet for the Buckronev – Brittas Dunes and Fen SAC identifies threats, pressure and activities that can negatively or positively impact on the SAC. This data has not been assessed with respect to the proposed development.

More importantly the Potters River is a freshwater river to approximately the edge of the SAC. From there the river become a tidal river system. The NIS does not assess the impact of the surface water discharged from the quarry into the Potters River on coastal habitats of the SAC.

Higher concentrations of heavy metals, phosphates and sediments entering the SAC area has not been assessed. The direct, indirect and cumulative impacts of the proposed development have not been assessed with respect to the habitats of the SAC that the Potter River flows through or over has not been assessed either during or post operation.

There are gaps in information and there are uncertainties. These have not been addressed and mitigation measures have not been provided that will deal with the higher levels of dissolved arsenic, mercury or phosphates that have been identified in the surface water of the quarry void.

Heading: Describe what mitigation measures are to be introduced to avoid, reduce or remedy the adverse effects on the integrity of the site. Acknowledge uncertainties and any gaps in information.

- A. Implementation of the Construction Environmental Management Plan
- B. On completion will comply with the planning and waste licence conditions.
Mitigation measures are detailed in “such” documents as the Construction Environmental Management Plan and the Operational Environmental Management Plan.
- C. “Within the scheme design and operation, good practice environmental and pollution control measures will be employed with regard to good practice” and a sample of guidance documents are listed.
- D. On advice from a qualified Hydrologist the most suitable option for treating surface water from the proposed waste recycling facility is by way of a constructed wetland.
- E. Other treatment can be added to the constructed wetland to “enhance” the treatment system such as chemical dosing, aeration, or other processes. This is proposed to facilitate the treatment of larger rates of leachate generation or to treat chemical changes in the surface water generated on site.
- F. Other water treatment infrastructure can be added to existing treatment system.
- G. As infilling of the quarry progresses it is proposed that two wetland system will work in parallel to facilitate the maintenance on the constructed wetland without disrupting treatment.
- H. Mitigation measures will be implemented by the quarry Operator or subsequent owner. The systems are “tried and tested” in the reduction of concentrations of organic pollutants “within” hydrological systems.

With respect to the Construction Environmental Management Plan, there is no detail of the plan contained in the NIS. No information is provided on the how the plan will be implemented. There is no information provided on the individual elements of the CEMP either directly, indirectly or cumulatively that will protect the Buckroney – Brittas Dunes and Fen SAC downstream of the proposed development. Similarly, there is no information provided on the measures that will be implemented to protect the Potters River and tributaries and cumulatively how the measures will mitigate or prevent negative impact on the Buckroney – Brittas Dunes and Fen SAC.

The constructed wetland has been proposed to treat surface water generated at the proposed C&D waste recycling facility. However, Chapter 2 of the EIAR and Fig. 2 in the Appendix shows that the C&D surface water run-off will mix with the surface water pumped from the quarry void and together will be treated in a water treatment plant prior to discharge to the constructed wetland. This treatment process has not been detailed in the NIS. The NIS does not identify the components of the water to be treated and the proposed standard in water following treatment. The NIS does not provide mitigation measures in case of system failure. The NIS does not assess the impact of the treated water on the Potters River and more importantly on the Buckroney – Brittas Dunes and Fen SAC either directly, indirectly or cumulatively.

It is proposed that additional treatments can be added to the constructed wetland to improve the treatment of wastewater. No information has been provided on the elements of surface water that may need to be treated. No information is provided on the impact of the additional treatments on the Potters River or the Buckroney – Brittas Dunes and Fen SAC either directly, indirectly and /or cumulatively.

Additional water treatment infrastructure has been proposed to enhance the existing treatment system. Currently it is proposed that the water from the quarry void and the surface water from the C&D waste recycling facility will pass through a water treatment system prior to discharging to the constructed wetland. Primary treatment will be undertaken in the water treatment system and secondary and tertiary treatment in the constructed wetland.

However, there is:

- No information provided on when an additional system would or could be needed.
- How the infrastructure will be implemented and at what stage in the surface water treatment process the additional infrastructure will be needed.
- No assessment of direct, indirect and cumulative impacts has been completed with respect to additional treatments with respect to the Potters River or the Buckroney – Brittas Dunes and Fen SAC.

Omission of project detail. Does the surface water wetland systems post construction refer to the constructed wetland and or another wetland system.? In chapter 2 of the EIAR on restoration the surface water of the infilled site will flow to a lagoon. It is unclear the function of the constructed wetland or lagoon following infilling. Post infilling there has been no assessment undertaken on the direct, indirect and cumulative impact of the proposed management of surface water run-off on the Potters River and tributaries and on the Buckroney – Brittas Dunes and Fen SAC. There is simply not enough information provided.

Implementation of mitigation measures post infilling. What mitigation measures? The NIS has not identified any mitigation measures. The NIS has not provided the evidence needed to assess the effectiveness of mitigation measures the NIS has not identified the elements of the proposed development or which mitigation measures are required. Tried and tested methods for reducing the level of organic pollutants in surface water post construction. What are the organic pollutants in question and how will such organic pollutants impact on the Potters River and the Buckronev – Brittas Dunes and Fen SAC either directly, indirectly or cumulatively post construction.

Heading: Consideration of findings.

- (i) Mitigation measures outlined in the NIS and fully implemented will not lead to an impact on the qualifying interest of the SAC.
- (ii) Based on the information provided the competent authority has “sufficient information” to ascertain that the proposed development either alone or in combination with other projects will not impact on the SAC.

The NIS had not provided sufficient information on the:

- Proposed infilling development and C&D waste recycling facility
- Description of Buckronev – Brittas Dunes and Fen SAC
- Identified elements of the project either alone or in combination with other plans or projects that could have a negative impact on the Buckronev – Brittas Dunes and Fen SAC
- Identified the direct, indirect and cumulative impacts of the project during the operation and post operation phases on the Buckronev – Brittas Dunes and Fen SAC.
- Provided mitigation measures and their implementation to reduce or avoid an impact on the Potters River and the Buckronev – Brittas Dunes and Fen SAC.

5.0 Issue paper

There are a number of issues that have not been addressed in the Natura Impact Statement which form part of the proposed development.

- a) Traffic. It is proposed to bring one 20 tonne truck to the site every four minutes during the hours of operation Monday to Friday and part of Saturday for in excess of 8 years. The proximity to the Buckronev – Brittas Dunes and Fen SAC and the impact of the volume of traffic act on the SAC hasn’t been assessed. The zone of influence may need to be extended as trucks will pass through other Natura 2000 sites as part of the proposed infilling development. The impact on other Natura 2000 sites and the climate impact of the proposal has not been considered.
- b) Scale. The proposed development has significant regional or national scale and the requirement for this facility should be identified e.g. through reference to National or Regional waste plans.
- c) In 2005 consultation was undertaken with Inland Fisheries Ireland with respect to another planning application at the same site. Inland Fisheries Ireland identified

the Potters River as a salmonoid spawning river for Salmon (an Annex II species listed in the Habitats Directive) and Trout. The impact of change in flow and the composition of water discharging to the river should have been assessed.

- d) It is proposed that the cake which is formed from the water treatment system will be disposed of to the infilling area. The cake will consist of heavy metals such as arsenic and soil particulates. The impact on surface water run-off by disposing of the cake to adjoining infill area has not been assessed.
- e) Similarly, the proposed water treatment system should reduce dissolved arsenic in the surface water run-off. However, the NIS did not identify the concentration of heavy metals, organic and inorganic materials that would be further treated in the constructed wetland. Two problems now arise. Firstly, will the constructed wetland be able to treat trace elements of heavy metals, organic and inorganic components that have not been removed by the water treatment process and secondly if it does will there be a build up of heavy metal concentrations in the sediment of the constructed wetland. How will the sediment be disposed of? Will heavy metals leach from the constructed wetland post infilling? No assessment of the impacts of the increasing concentration of heavy metals has been assessed either on the Potters River or the Buckronev -Brittas Dunes and Fen SAC.
- f) There is no reference to wastewater treatment from the welfare facilities on site. The impact of untreated wastewater has not been assessed on the Buckronev - Brittas Dunes and Fen SAC.
- g) There is no reference to potable water in the NIS to service the welfare facilities. No assessment has been undertaken in the NIS on groundwater abstraction for use in the C&D processing facility and the impact of abstraction on the Potters River and the Buckronev -Brittas Dunes and Fen SAC.

6.0 Alternative solutions

No alternative solutions are provided for the proposed development. The “do nothing scenario” has not been assessed. The proposed development involves infilling the entire void, alternatives have not been considered or assessed. Alternative solutions need to be provided.

In Section 6 of the accompanying report by Marron Environmental it has been identified that an impermeable clay layer will be created at the base of the quarry. That plus the impermeable nature of the volcanic rock of the quarry would mean that surface water that percolates through the soil layers could begin to build up at the base of the quarry because there is nowhere for the water to go. During infilling the pumping will provide an outlet for the leachate generated at the quarry base but there is no solution proposed post infilling to prevent the fill becoming saturated. Increased levels of water through the soil layer will lead to a reduction in vegetation growth, possible loss of soil strength and stability and potentially soil erosion or worse which will negatively impact on the Potters Rive and the Buckronev – Brittas Dunes and Fen SAC. An alternative is continuous pumping post restoration. This has not been detailed in the NIS

7.0 Conclusion

The Natura Impact Statement undertaken by SLR entitled,

“Quarry Restoration through Import of Inert Waste Development of C&D Waste Recovery Facilities, Ballinclare Quarry, Kilbride, County Wicklow prepared for Kilsaran Concrete fails to address:

1. Identify a proper zone of influence and not the 5km proposed in the report and the pathways between the proposed infilling development and Natura 2000 sites.
2. The direct, indirect and cumulative impact of the proposed development on the Buckronev – Brittas Dunes and Fen SAC and any other Natura 2000 sites impacted by other elements of the project which have not been assessed.
3. Assess the direct, indirect and cumulative impacts of the proposed development during and post infilling on the Buckronev – Brittas Dunes and Fen SAC and any other Natura 2000 sites impacted by other elements of the project which have not been assessed.
4. No assessment of alternative solutions has been provided.
5. No detailed mitigation measures have been provided in the NIS to mitigate, reduce or avoid impact on the Buckronev – Brittas Dunes and Fen SAC and any other Natura 2000 sites impacted by other elements of the project which have not been assessed.

From reading the NIS it cannot be concluded that the proposed development will not have a significant negative impact upon the Potters River and the Buckronev – Brittas Dunes and Fen SAC and any other Natura 2000 sites impacted by other elements of the project which have not been assessed.

The NIS does not provide a comprehensive assessment of the proposed project and the competent authority is, as a result, not in a position to assess the likely impacts of the proposed project on Natura 2000 sites.

References

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SLR (2021). Appropriate Assessment Screening Report and Natura Impact Statement. Quarry Restoration through Import of Inert Waste Development of C&D Waste Recovery Facilities, Ballinclare Quarry, Kilbride, County Wicklow. Prepared for Kilsaran Concrete.

Bord Pleanála website <https://www.pleanala.ie/en-ie/case/309991>

SLR (2021). Ballinclare Inert Waste Facility EIAR Chapter 2. Project Description.

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SLR (2021). Ballinclare Inert Waste Facility EIAR Chapter 7. Water

Bord Pleanála website <https://www.pleanala.ie/en-ie/case/309991>

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I have read the submission of Dr. Niamh NI Bhroin and I would like to add the following.

An Bord Pleanála's Legal Functions.

An Bord Pleanála's has three distinct sets of legal tasks when it deals with an Application such as this one.

It must assess the planning merits of Application in accordance with the **Planning and Development Act 2000** (as amended) to ensure that the proposed development is in accordance with the proper planning and sustainable development of the area.

Secondly, the Board is required to form and record a view as to the environmental impacts of the development, considering the **EIA Report (EIAR)** furnished by the Applicant, the views of the public concerned and applying its own expertise or if no EIAR is submitted to screen the development for EIA.

The Appropriate Assessment Screening report found, at 5.3

The significance of the effects on the SAC is uncertain

Thirdly, and different in nature to the first two tasks, An Bord Pleanála's is the competent authority having responsibilities under the **Habitats Directive**. The threshold the Application must pass in this context is explained in paragraph 44 of CJEU Case 258/11

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

This is a strict standard and An Bord Pleanála does not have legal jurisdiction to give permission if it is not met.

The Appropriate Assessment Screening report found, at 5.3

"It is considered that there is potential for effects on the qualifying interests of the SAC via the discharge from the proposed development to Potter's River. The significance of the effects on the SAC is uncertain. Therefore, it is considered that the proposed development should progress to the second stage of the appropriate assessment process and we have therefore prepared an NIS. However; An Bord Pleanála as the competent authority in this case will carry out the screening for appropriate assessment and may themselves determine that significant effects on the SAC are not likely as a result of the development."

The suggestion that An Bord Pleanála may carry out a screening to avoid the necessity of the development being subject to Appropriate Assessment under Article 6 of the Directive.

AG Sharpston in the opinion to 259/11 Sweetman & Others v An Bord Pleanála

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). (20) The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

This is implemented into Irish law by Finlay Geoghegan J. in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) at

"26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

On the basis of the total lack of certainty in the information submitted it is not possible for An Bord Pleanála to make a decision to grant permission which would comply with;

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."



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STRATEGIC INFRASTRUCTURE DEVELOPMENT SUBMISSION

to

An Bord Pleanála

concerning

Proposed Restoration of Quarry

at

Former Ballinclare Quarry, Kilbride, Co. Wicklow

An Bord Pleanála Ref: PA27.309991

Client: Ballinclare Alliance Co Ltd

14th June 2021

1.0 INTRODUCTION

David Mulcahy Planning Consultants Ltd, have been instructed by **Ballinclare Alliance Co Ltd**¹ to prepare a submission to An Bord Pleanála concerning a proposed restoration of a quarry (Strategic Infrastructure Development) at former Ballinclare Quarry, Kilbride, Co. Wicklow.

The required fee of €50 accompanies this submission.

The submission meets the 15th June 2021 deadline as advertised by the applicants.

We highlight the recent decision of the Supreme Court in respect of the Balz² judgement wherein it was clarified that *"It is a basic element of any decision-making affecting the public that relevant submissions should be addressed [by the Planning Authority] and an explanation given why they are not accepted, if indeed that is the case. This is fundamental not just to the law, but also to the trust which members of the public are required to have in decision making institutions if the individuals concerned, and the public more generally, are to be expected to accept decisions with which, in some cases, they may profoundly disagree, and with whose consequences they may have to live"*. We trust that the Board will give full attention to each of the issues raised within this submission.

This report should be read in conjunction with reports prepared by Dr. Niamh Ni Bhroin of Dulra is Duchais and Mr. Michael Moran of TPS Ltd (traffic expert).

Note: All maps are orientated north. All underlined italics text is the author's

¹ Community House, Ballard Lower, Kilbride, Wicklow, A67YC64. Comprised of a group of concerned residents and businesses in the area.

² Balz and Heubach-v- An Bord Pleanála and Cork County Council, Cleanrath Windfarms Ltd. [2019] IESC 90 Balz

2.0 CONTEXT

2.1 Location

Ballinclare Quarry is located approximately 2.5 kilometres north-west of Kilbride and 2.5 kilometres south-west of Glenealy on the west side of the M11 motorway - See Fig No.1 below.

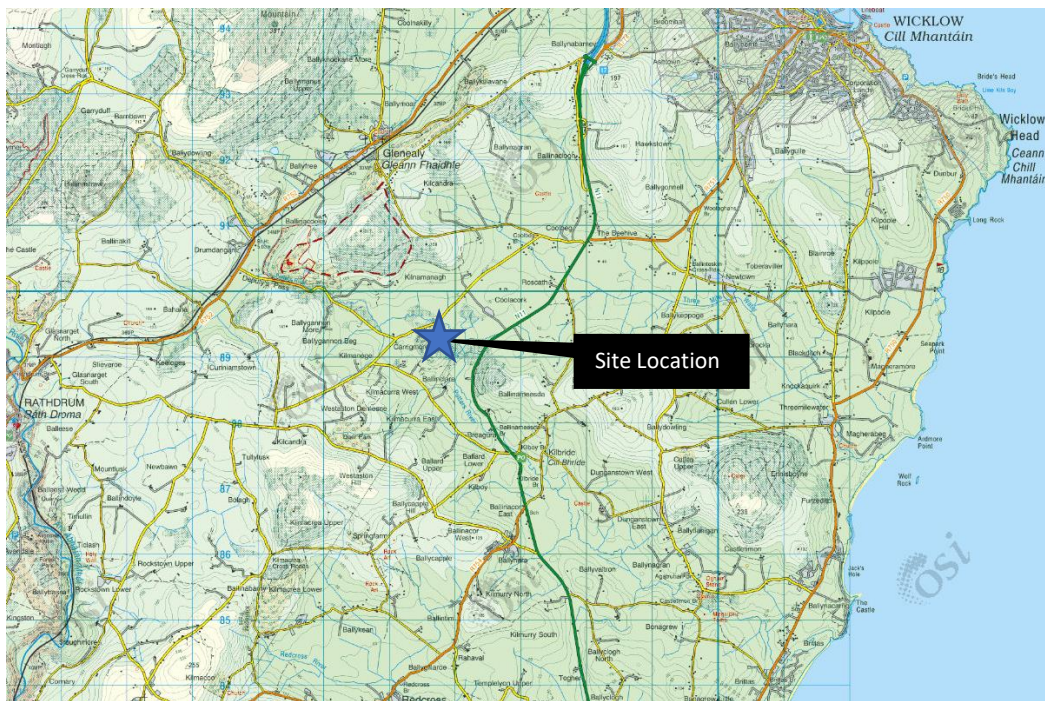


Fig No.1 Site Location Map (source: Myplan.ie - OSI Licence No.EN 0080915). Note the M11 route is not shown on this map.

2.2 Description

The application site (32.5ha) is the former Ballinclare Quarry which is partly located the townlands of Ballinclare and Carrigmore, Co. Wicklow (includes an existing quarry with an extraction void of 17.2ha). Since extraction and production activities ceased in 2016, the floor of the quarry has been flooded with surface water run-off and groundwater ingress. The volume of water in the quarry void at the present time is estimated to be of the order of 270,000m³.

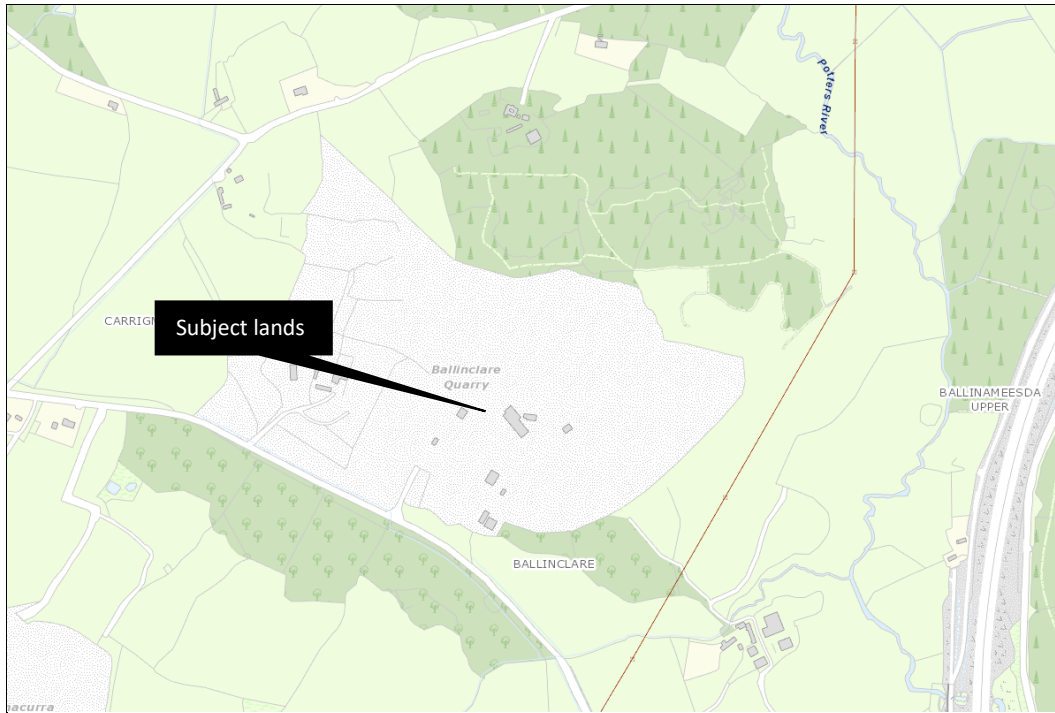


Fig No: 2 Map showing applicant's overall landholding (source: Myplan.ie - OSI Licence No.EN 0080915).



Fig. No:3 Aerial photograph showing applicant's overall landholding (source: Google Earth Pro, June 2016).

2.3 General Area

There are 13 No. dwellings within 500m of the application site boundary, with a further 18 No. within 1,000m, the majority of which are located to the north and west.

The principal tourism / amenity facility in the vicinity of the quarry is the **Kilmacurragh Botanic Gardens**, an outpost of the National Botanic Gardens in Glasnevin, Dublin, which is located just under 1km to the south-west of the site.

The other notable tourist/local facility is **The Tap Cafe** at the junction of the R772 and the L1157. This has recently been purchased by Green Angel and refurbished with the aim of creating a new lifestyle destination similar to Avoca³.

The **Potters River** flows approximately 450m beyond the northern boundary of the application site and then turns south-eastwards and flows approximately 250m to the east of the landholding. Thereafter it continues south-eastward and eventually discharges to the sea at Brittas Bay.

Deputy's Pass Nature Reserve SAC [Site Code 000717] is located approximately 1.6km to the northwest of the application site, while Glenealy Woods pNHA [Site Code 001756] is located approximately 1.0km to the north-west.

The Potter's River flows through the northern part of the **Buckroneys-Brittas Dunes and Fen SAC**, approximately 11.5 km downstream of the discharge point, before outflowing into the sea at Brittas beach.

³ Currently closed due to Covid 19 and refurbishment by new owners. Due to re-open in July 2021.

3.0 PLANNING HISTORY

3.1 Subject Lands

ABP-304735-19 Pre-application consultation

Proposed inert landfill and construction and demolition waste recovery facility at Ballinclare, Kilbride, Co. Wicklow.

Closure

In 2016 the operator closed the quarry as a result of the discovery of c.30,000 tonnes asbestos-containing rock⁴.

Reg. Ref. 14/2118

On 4th January 2016 conditional permission was granted by Wicklow County Council to Kilsaran Concrete (trading as Kilsaran Build) for the development within an overall application area of 36.0 hectares, and all for a period of 25 years, of:

1. Permission for **continued use of permitted development under PRR 07/45 for a period of 25 years** including the existing quarry, stone extraction and processing, concrete and asphalt manufacturing facilities, and related ancillary buildings and facilities.
2. Permission for **extension to the permitted quarry floor level** of +1m OD over an extraction area of 16.5 hectares.
3. Permission for a **concrete block manufacturing plant** (13.6m high 6pprox.) (c 362.1sqm) and a **concrete block manufacturing yard** (c.6225sqm).
4. Permission for an aggregate washing plant (c 142.6sqm).
5. Permission for replacement of the existing septic tank with a proprietary effluent treatment system (Aeration Treatment Unit and two modular Puraflo)

⁴ Irish Times Article, 'Authorities left in dark after toxic mineral exposed at quarry: Almost 3,000 tons of asbestos-containing rock delivered in Wicklow and south Dublin', Mon, Aug 1, 2016,

6. Permission to increase product output from the quarry, from **70 to 150 loads per day**, in line with market demand.
7. And all associated site works.

An Environmental Impact Statement accompanied the Planning Application

Reg. Ref. 07/45

On 29th February 2008 conditional retention permission was granted to SM Morris Ltd (**for a 20 year period**) **for existing stone quarry** (13.414 ha) including extraction areas, processing areas, stockpiling areas, concrete products manufacturing plant macadam and asphalt manufacturing plant, stone crushing and screening plant, waste recovery facility, car parking areas and ancillary buildings including offices, toilets, laboratory, maintenance workshop, control towers and cabins, aggregate screening and aggregate storage buildings, electricity substations and ancillary buildings 9 total 2088.28 sqm) together with septic tanks, weighbridge, truck wheelwash bay, floodlighting, oil and fuel storage tanks and water storage tanks. Proposed extension of a stone extrication area below the level of existing quarry floor to a level of 25 m o.d. within existing quarry (6.634 ha). Proposed extension of existing quarry towards the west (10.605 ha) to a level of 25m o.d.

4.0 PROPOSED DEVELOPMENT

4.1 Description

The proposed development comprises an integrated inert waste management facility comprising establishment and operation of an inert (lined) landfill, separate construction and demolition (C&D) waste recovery facility and a soil washing plant. The inert landfill element of the proposed development will provide for the progressive backfilling and restoration of the existing quarry void which was previously approved.

The following is a summary of the key features of the proposal:

Former Use	Quarry, suspended 2016
Size	32.5Ha
Waste licence	Required.
Phasing	working progressively from west to east (4 phases)
Operate	Between 08:00 hours and 18:00 hours, Monday to Friday - same as granted for quarrying at the application site (Wicklow County Council Planning Ref. 14/2118), Working hours on Saturday: 08.00 hours and 14.00 hours , but to limit waste intake and handling to 10 No. Saturdays in any given year and to only undertake maintenance work on other Saturdays. The facility will be closed on Sundays and Public / Bank Holidays.
Haul route	The HGV route is different to that when the quarry was in operation using a one-way haul route. The

	L1113 will no longer be used and there will be an increase in traffic along the L1157 (two-way) .
Haul route	(>90%) of the HGVs travelling to the proposed waste management facility at Ballinclare Quarry from the direction of Dublin and North Wicklow will use the M11 Motorway exiting at Junction 18 and joining the R772 southbound. It is estimated that less than 5% of HGV traffic will arrive from the direction of Arklow and North Wexford
Waste	Backfilled using inert waste materials which will principally comprise naturally occurring soil, stone and broken rock excavated in the course of construction and development projects, together with some construction and demolition (C&D) waste
Volume	The total volume of inert soil required to create the restored landform is approximately 3,425,000m ³ . Estimated import requirement for approximately 6,165,000 tonnes of inert soil and stones
Life	The projected maximum intake rate of 750,000 tonnes per annum would suggest that inert landfilling activities could be complete in a minimum of 8.2 years . Were the average intake rate to fall short of this level and to average 350,000 tonnes per annum, the duration of the inert landfilling activities could extend to approximately 17.6 years .
C&D waste recovery	The rate of C&D waste recovery is expected to be a maximum of 50,000 tonnes per annum .
HGV Traffic	It is conservatively assumed that each HGV / truck consignment travelling to the waste facility at

	Ballinclare has a carrying capacity of 20 tonnes, this suggests that at a projected maximum intake rate of 800,000 tonnes per annum, there will be 14 to 15 HGV / truck trips generated every hour by the proposed site activities. This is equivalent to 28 to 30 individual HGV / truck movements in or out of the site every hour.
Wetland Area	3.8 hectares for treatment of a leachate
Finished Development	On completion, it is expected that the backfilled quarry lands will be passively managed and that they will likely return to a long-term grassland / scrub habitat, and possibly some agricultural grassland use, similar to that which existed prior to quarrying.
Employment	Minimal 3 people at construction phase 4 at operational stage (not clear if different to 3 at construction phase).
Discharges	Discharges from the site will be via a wetland area with off-site discharge to Potters River which in turn flows into Brittas Bay.

5.0 SUBMISSION

5.1 Introduction

It is submitted to the Board that there are very serious concerns with the proposed development and its potential impact on the local area. We consider the key issues to be as follows:

- The principle of the development
- Traffic Impact
- Noise Impact
- Tourism Impact
- Ecological Impact

5.2 Principle of the Development

The applicant seeks permission to construct and operate an inert landfill facility to backfill the existing quarry to original (pre-development) ground level using approximately 6,165,000 tonnes of imported inert waste and (non-waste) by-product, principally soil and stone. Also, progressive restoration of the backfilled quarry to long-term grassland / scrub habitat; development and operation of a construction and demolition (C&D) waste recovery facility at the pre-existing concrete blockyard area; and installation and operation of a soil washing plant at the former concrete / asphalt production yard to recover sand and gravel aggregate from soil / claybound waste. An Bord Pleanála have deemed the development to be Strategic Development.

5.2.1 Need?

The Eastern-Midlands Region Waste Management Plan 2015-2021 at Section 16.4.4 notes that backfilling activities make up a significant treatment capacity in the region at both local authority authorised sites and EPA licensed sites. It notes that due to depressed activity in the construction sector (figures from 2012) capacity exceeds current demand.

Policy E13: *Future authorisations by local authorities, the EPA and An Bord Pleanala must take account of the scale and availability of existing backfilling capacity.*

It is accepted that there has been an increase in construction since the above waste management plan was prepared but nonetheless it is important for the applicant to demonstrate that there is a need for the development and moreover, if this is the most appropriate location. The Senior An Bord Pleanala Inspector assessing whether the proposed development is strategic or not (report dated 20th, January 2020) states that "*the proposed development would be **one of the largest restoration sites to be developed for this purpose both within the region and the State***" - bold emphasis added.

There is a notable **lack of empirical information** about what volumes of inert waste and C&D are currently being generated in the region?, what is the current capacity for same? and what is the actual need for additional facilities in the region?

Section 5.1 of the Planning Statement deals with the need for the proposed development but notably does not provide any empirical evidence in terms of quantifying the need for the facility, not to mention being possibly the largest of this type of facility in the country.

The applicants noted that there are only two active inert landfills currently operating in the Eastern Midland Waste Management Region; one operated by Integrated Materials Solutions (IMS) at Hollywood Great, the Naul in North Dublin (Waste Licence Ref W0129-03) and another operated by Walshestown Restoration Ltd near Punchestown, Naas, Co. Kildare (Waste Licence Ref. W024-01). However, there is no information submitted in terms of the capacity of these facilities or their remaining lifetimes.

We submit that the application should have been accompanied by an **independent assessment of all inert landfills within the region** and a detailed analysis of the capacity of same along with an analysis of the amount of inert waste and C&D waste being generated in the Dublin region which is the primary location of the source material.

There is no mention of Panda in Ballymount (part of the Beuparc group) which collects approximately 100,000 tonnes of crushed concrete, and also containing ceramic, tiles, bricks and stone under EPA licence. Its licence will allow the processing of this material by crushing, screening, removal and separation to produce a reusable material known as “greenrock” which will be used in the construction of a new road on an EPA-licensed site in Ireland.

In conclusion, the applicants have **not demonstrated that there is a genuine need** for an additional inert landfill facility of this scale (one of the largest such restoration sites in the State).

5.5.2 Appropriate Location?

The applicants make the case that the proposed development would be the only facility of this nature to the south of Dublin and given the road network in situ and the existing quarry, that it is an ideal location.

We note that there is **no policy support** in the Wicklow County Development Plan 2016-22 for a facility of this nature at this location. Neither is there any site-specific policy identifying this site for the proposed use. Finally, the site is not identified in Policy EMP 12 as a site for employment development. It **does not represent planned development**.

We submit that whilst a quarry is a location dependent land use, having to be located in a rural area where the local resource is present in the ground, the same cannot be said about a regional level waste facility catering primarily for waste from a neighbouring county, namely Dublin. The applicants themselves acknowledge that 95% of the traffic visiting the facility will come from the north direction and whilst some of this may be from north Wicklow the majority will inevitably be from Dublin.

We submit that in the absence of any site specific-policy or zoning objective identifying the subject site as a location for a regional-level waste facility, that the proposed development represents **piecemeal, ad hoc type development**. Given its significant size and scale the identification of such a site should have to be the subject of an agreed location by elected members and the upcoming new Wicklow County Development Plan is the proper forum whereby this issue should be addressed.

5.2.3 Sustainable Development

It is an undisputable fact that this is a vehicle-based land use. When operational it will generate approximately 30 HGV movements per hour to and from the development. As noted above the **majority of this HGV traffic will emanate from Dublin** and therefore the question has to be asked, why is a facility which is approximately **50km** (45 minute drive) from Dublin, the most appropriate location for a regional level facility of this scale? It would be far more logical from a sustainability perspective to locate the facility **closer to Dublin** where it

would not involve such long road trips by diesel fuelled HGV vehicles on a daily basis for up to a total of 17 years.

We submit to the Board that the proposed development would conflict with the National Planning Framework 2040.

Section 1.3 outlines National Strategic Outcomes one of which is a Transition to a Low Carbon and Climate Resilient Society. The National Climate Policy Position establishes the national objective of achieving transition to a competitive, **low carbon**, climate-resilient and **environmentally sustainable economy** by 2050. It is submitted that the proposed development will encourage long distance trips using diesel engine HGVs over a considerable period of time (between 8 and 17 years).

Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy
2019-2031

The Vision Statement seeks *"To create a sustainable and competitive Region that supports the health and wellbeing of our people and places, from urban to rural, with access to quality housing, travel and employment opportunities for all"*.

The 3 Key Principles include 'Climate Action' - The need to enhance climate resilience and to accelerate a transition to a low carbon society recognising the role of natural capital and ecosystem services in achieving this. This is further reflected in the associated Regional Strategic Outcomes (No9. Support the Transition to Low Carbon and Clean Energy).

The Climate Change Audit in the Appendix of the WCDP notes that *"Transport emissions are a principal emission source [of greenhouses gases] ... the combustion of fossil fuels for road, rail, sea and air navigation produces carbon dioxide and nitrous oxide"*. Specific reference is made the need to reduce journey length and times to counteract this.

The Strategy also addresses 'Decarbonising Transport, Sustainable Settlement Patterns and Compact Growth' stating that *"There is an increasing awareness and understanding of the ability of coherent transport planning to contribute towards lowering our national carbon emissions profile, as well as supporting the local economy, facilitating economic development and providing other social and economic benefits to local communities"*.

The proposed development which involves **long distance travel using diesel engines** clearly does not accord with this low carbon objective.

We draw the attention of the Board to Chapter 9 of the Wicklow CDP 2017-23 deals with Infrastructure. Section 9.1.1 states that it is the strategy of this plan to *"Craft land use policies to produce settlements of such form and layout that facilitates and encourages sustainable forms of movement and transport"*.

Climate Change Objectives of relevance in in the WCDP include:

- CCE1 *To have regard to the EU and national legislation and strategies on climate change in the decision making process, in order to contribute to a reduction and avoidance of human induced climate change.*
- CCE2 *To support the government programme for the development of national climate change legislation.*
- CCE5 *To have regard to climate change mitigation and adaptation in assessing all large scale development including all critical transport and energy infrastructural developments.*

Section 9.5.3 of the CDP is also of particular note. It deals specifically with 'Transport' and states that *"The energy utilised in transport comes from both the fuel burned in vehicles and the electricity used in electrically powered vehicles, such as electric cars or electrified tram / light rail systems. While electricity can be sourced from renewable and non-polluting sources, the use of petrol and diesel in trains, buses and cars is more difficult to address but a combination of actions will be required, such as:*

- *reducing the need to use vehicles, increased opportunities for walking and cycling;*
- *reductions in journey length and times, reduction in congestion;*
- *higher intensity of use of public transport; and*
- *development and increased usage of alternative vehicle fuel sources, such as electricity, hydrogen and biofuels".*

This section of the CDP culminates, inter alia, in the following Transport Energy Objective:

CCE22 Through coordinated land-use and transport planning, to reduce the demand for vehicular travel and journey lengths.

We submit that the proposed development, by reason of the excessive length of the HGV journeys that are required from the source material to the proposed development, is **unsustainable** and contrary to the proper planning and development of the area.

5.3 Traffic

Policy EMP4 of the Wicklow County Development Plan 2016-22 seeks *"To permit proposals for employment generating development where it can be demonstrated that the development complies with the relevant development standards and is not detrimental to residential amenity or to environmental quality, and is acceptable with regard to its impact on the character and visual amenity of the area. Regard will be paid to ensuring that existing or planned infrastructure can acceptably accommodate a proposed development. Developments that result in an unacceptably high level of traffic generation, that are detrimental to residential amenity, the character or visual amenity of an area or the existing roads infrastructure will not be permitted".*

Policy TR33 states that *“Rural local roads shall be protected from inappropriate development and road capacity shall be reserved for necessary rural development”*.

Appendix 1 of the Wicklow County Development Plan 2016-22 outlines development management policies for business, commercial and employment developments. In the section on Extractive Industry, the following criteria are listed (on Page 32) in respect of the reclamation and restoration of quarries:

“Where it is proposed to reclaim, regenerate or rehabilitate old quarries (that were not subject to restoration as part of the grant of permission or licence) by filling or re-grading with inert soil or similar material, or to use worked-out quarries as disposal locations for inert materials, the acceptability of the proposal shall be evaluated against the following key criteria:

- *the impact of the proposal on the landscape;*
- *any possible loss of biodiversity that may have developed in the worked-out quarry;*
- *the impact such proposals may have on natural ground and surface water flows or networks in the area and the potential to give rise to flooding or new surface water flows onto adjoining lands or roads, and;*
- *the suitability of the road network in the area to accommodate the traffic flows of heavy vehicles that may be generated.*

Further on in Appendix 1, in the section on Waste and Emissions, on Page 61, the following criteria are listed in respect of facilities for the disposal of inert materials;

“Applications for the development of commercial waste disposal or recycling facilities catering for the disposal or reuse of inert clean soils, clay, sands, gravels and stones shall only be permitted at appropriate locations and shall be subject to the following:

- *the proposed development shall be in accordance with the policies set out in the Eastern Midlands Region Waste Management Plan*
- *the proposed development shall not result in adverse impacts on the landscape or unnecessarily interfere with natural land form and topography in any area, without detailed justification*
- *such facilities shall not give rise to significant adverse impacts on a designated Natura 2000 site, or interfere with a protected view or prospect, a public right of way, an existing or planned piece of strategic infrastructure, or an important tourist site;*
- *a development shall not be permitted if it has a detrimental impact on the amenity of adjoining residents, by reason of unacceptable levels of traffic, noise, dust, lighting or other impact resulting from the operation of the facility".*

Please refer to the **traffic report** from Mr. Michael Moran, an experienced traffic engineer, enclosed. This report concludes that:

- there does not appear to be any letter of consent from the Local Authority indicating the applicant can implement the proposed works within their lands along the L1157.
- the level of traffic analysis submitted with this application pales in comparison to Kilsaran's proposed sand and gravel extraction and restoration operation at Racefield, Ballyshannon, County Kildare with a notable absence of base year traffic modelling, capacity assessments, traffic modelling of the adjacent road links and junctions and an independent road safety assessment.
- the visibility sightline to the northwest within the southern intersection of the R772 and the L1157 is deficient in terms of the extent of sightline that can be provided within this arm into the leading traffic direction of the L1157.
- restricted, or almost non-existent visibility sightlines also operate within this minor junction arm to view northbound heavy vehicles turning into the L1157 from the R772.

- it is very peculiar in terms of a traffic assessment that the applicant has identified a plethora of off-site road improvements along the L1157 but fails to identify any difficulties in terms of road capacity or road safety where they propose to double the traffic within a substandard junction.
- the existing Tap café and restaurant operation (pre Covid19) was not identified within the EIAR and if permitted the change of use planning application could generate significant trips then the routing of all quarry traffic through the R772/L1157 junction requires a much more detailed examination in terms of road safety and traffic impact.
- Based on this preference they propose major off site road improvements, road widening, road strengthening to the L1157 which is not required if the applicant reverts to the permitted one-way haul route via the L1113.

5.4 Noise

Section 9.3.5 of the WCDP deals with 'Noise Pollution' and notes that *"Noise pollution can be described as unwanted sound that disrupts the activity or balance of our daily lives. There are many sources of noise pollution, most of which are associated with urban development; road, rail and air transport; industrial, neighbourhood and recreational noise"*.

Noise Pollution Objectives include, inter alia,

WE14 *To require proposals for new developments with the potential to create excessive noise to prepare a construction and/or operation management plans to control such emissions.*

WE15 *To require activities likely to give rise to excessive noise to install noise mitigation measures to undertake noise monitoring and to provide an annual monitoring audit.*

We refer the Board to the Noise chapter of the EIAR. We highlight in the first instance that the 'to and from' haul route shown in Plate 10-1 is **inaccurate**. Firstly, it shows HGV traffic travelling from the north turning off the M11 motorway and

turning west along the L1157. There is no such junction to facilitate this movement. HGV traffic coming from the north has to leave the motorway at Junction 18 and travel along the R772 before turning west along the L1157. Secondly the route of HGV traffic approaching from the south via Junction 19, the R772 and then the L1157 is not shown in this diagram at all. The contrast with the haul route in the traffic chapter of the EIAR is obvious.

Plate 10-1
CadnaA Traffic Modelling

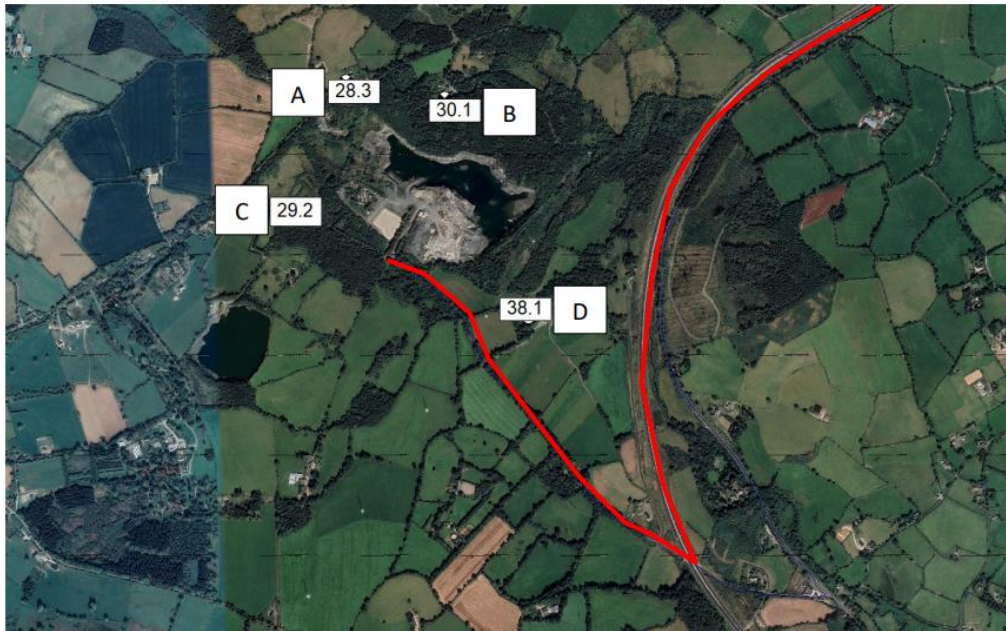


Fig No.4 Plate 10-1 Haul route shown (source: applicant's EIAR). Inaccurate.

Figure 14-3
Proposed Haul Route



Fig No.5 Accurate haul route from Traffic Chapter (Tap Café is shown). Source: applicant's EIAR.

We consider this inaccurate haul route to be highly relevant in this noise chapter. There are a **large number of dwellings along this haul route** which is evident from Fig. No.10-1 in the noise chapter of the EIAR. It is important to highlight to the Board that this diagram does not show the full extent of the haul route and therefore not all dwellings near the route are shown. As such, there are more houses along this route which should be shown in an expanded diagram and moreover assessed in terms of the noise impact from HGV traffic.

We further note that while Fig No.10-1 shows a commercial premise in the very south-east corner of the map, it does not note that this is a café/public house/restaurant with an outdoor element, namely the **Tap Café** which is local landmark. The Tap Café was taken was recently purchased by **Green Angel**, an Irish skin-care business who are investing heavily in the premises in order to create a lifestyle type business akin to Avoca on the M7 or The Orchard on the Dublin Road in Celbridge. Both these businesses generate significant draw at a regional level, as well as tourists, and Green Angel expects to obtain the same level of popularity based on its business model. A key element of the business plan will be outdoor café and dining area. The business was only able to open on a very

limited basis before Covid-19 restrictions and has been largely shut during the pandemic. It will reopen in July 2021.

We highlight to the Board that under **Reg. Ref. 20/982** permission has been sought for the insertion of a new 49m² toilet block within the internal courtyard of the existing building and the change of use of the 425m² first floor of the development from residential to restaurant/function room. This forms part of the new owner's vision for the premises. There is no reference to this application in the current application by Kilsaran.



Fig No.6 The Tap Café (now renamed Green Angel) as viewed from the front.



Fig No.7 The Tap Café as viewed from the side (with the low wall enclosing the outdoor beverage/eating area visible). Note the proximity to the road.



Fig No.8 The Tap Café as viewed from the rear along the L1157. Note the proximity to the public road.

The proposed new development is potentially catastrophic for the proposed business. The idea of **circa 30 HGVs** passing along the perimeter of the business on an hourly basis throughout the course of the day would likely have a **detrimental impact on the business**. While the applicants may argue that they are not aware of the proposed new business at this location, the proposed development would quite obviously have affected the business in its current guise as a popular food/beverage/retail outlet. This level of HGV traffic amounts to a **doubling of HGV movements at this junction** based on the 2016 quarry planning permission which relied on a one-way haul route for HGV traffic egressing via this junction.

It is highlighted that there is no reference to the **Tap Café** in the noise chapter whatsoever. This is considered to be remarkable given it is situated directly adjacent to the L1157 and would be considered highly sensitive to noise from HGV traffic given the nature of the business i.e. tourist attraction/restaurant.

The attention of the Board is drawn to the fact that all HGV traffic must turn directly in front of the Tap Café as this is where the right turn lane is located on the R772 (there is no right turn lane further along the R772 where there is another junction with the L1157). There is highly likely to be significant noise generated by

HGVs associated with the proposed development turning off the R772 and then turning quickly again onto the L1157 (i.e. breaking) and noise generated as the HGVs accelerate along the L1157 as they move away from the junction. Noise will also be generated as the HGVs brake when arriving from proposed development as they look to make the turn to negotiate this double turn. All these HGV movements (30 per hour in both directions) and associated noise will take place directly adjacent to the boundary of the Tap Café (where there is no median or buffer area) and it is considered that this will have a detrimental impact on the functioning of the café business in terms of being able to continue to attract tourists and locals.

We submit that there are no obvious mitigation measures which could be employed to minimise this noise as per objective WE14 and 15.

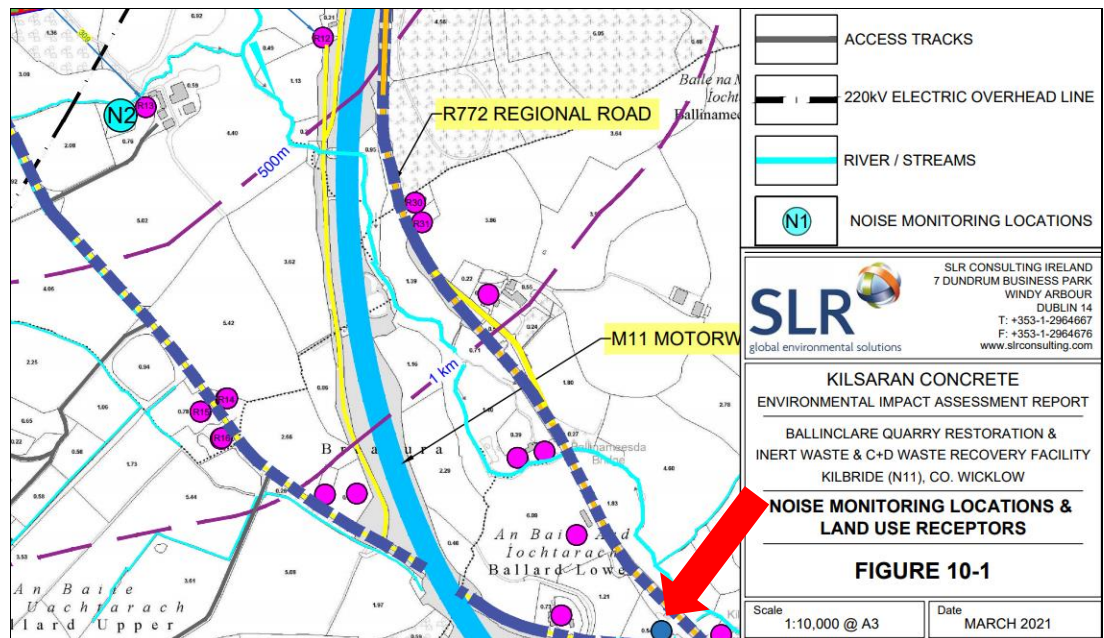


Fig No.9 Extract from Fig No.10-1 in the EIAR addressing noise monitoring locations and land use receptors with location of Tap Café shown.

We further highlight to the Board that the dwelling opposite the Tap Café fronts almost directly onto the L1157. The noise impact from a HGV passing so close by

to this dwelling on such a frequent basis is high likely to seriously injure the established residential amenity of the occupants of this dwelling.



Fig No.10 Dwelling fronting directly onto the L1157 opposite the Tap Café.

5.5 Tourism

Tourism is a vitally important element of County Wicklow's economy arising from its exceptional natural environment.

Chapter 7 of the Wicklow County Development Plan 2016-22 states that *"The County's tourism and recreational attractions are important assets, which form the basis of the County's tourism industry and which are fundamental to the enjoyment of the County by both visitors and residents".*

7.3 Strategy for Tourism and Recreation: Strategic Objectives include: *"To protect Wicklow's principal strengths and capitalise on the distinct tourism and recreational attractions that are on offer – scenic beauty, woodlands and waterways, coastal areas and beaches, and built and natural heritage".*

5.5.1 National Botanic Gardens

The Board will be aware that the National Botanic Gardens at Kilmacurragh are located in close proximity to the proposed development. Specifically, the gardens are accessed off the L1113 to the west of the subject site.

We draw the attention of the Board to the TII tourist sign (white on brown signage) which directs tourists to turn off the R772 at the Tap Café in order to gain access to this tourist facility.



Fig No.11 Tourist signage for the National Botanic Gardens at Kilmacurragh at the junction of the R772 and the L1157.



Fig No.12 Tourist signage for the National Botanic Gardens at Kilmacurragh at the junction of the R772 and the L1157.

We submit that the proposed development involving 30 HGV hourly movements at this same junction will directly **conflict with this tourist traffic** and is entirely inappropriate in terms of traffic safety and the amenity of the area. We further submit that it is wholly unreasonable to expect tourists to have to compete with such volumes of HGV traffic along this narrow road to access this tourist facility and it is likely to lead to a loss of visitors as complaints from tourists become public via social media over time.

5.5.2 L1157

We also draw the attention of the Board to the sylvan character of the L1157 on approach to the former quarry. It consists of mature trees hugging the road edge and forming a canopy over the road. The result is a very attractive visual vista as one travels along the route and is ideal as a leading route to the botanic gardens. It is submitted that the **character and setting of this road will be destroyed** by the proposed development having regard to its use by frequent HGV traffic and works to the edges in terms of multiple passing bays.



Fig Nos. 13 & 14: Sylvan character of the L1157.

5.5.3 Tap Café

As noted above the Tap Café was recently purchased by Green Angel, in order to create a lifestyle type business akin to Avoca on the M7 or The Orchard on the Dublin Road in Celbridge. A key element of the business plan will be the reawakening of the outdoor café and dining area. The Tap Café was an important local tourism location before it was closed serving tourists visiting the botanic gardens and the Wicklow Mountains (Rathdrum, Glendalough etc) as well as locals. It is submitted that the HGV traffic generated by the proposed development will have a detrimental impact on this local tourist infrastructure facility. The frequent flow of HGV traffic along the side of the site, at very close proximity (given the absence of any median or buffer), will wholly compromise the amenity of the outdoor seating area. We submit that this quite obvious impact has not been addressed in any fashion in the application. We further submit that it would be entirely unreasonable to allow an established tourism facility to be seriously compromised in this manner and it totally at odds with the aim of the Wicklow County Development Plan 2016-22 to promote and protect tourism infrastructure.



Fig No.15 HGV passing the Tap Café on the L1157 (note proximity to the outdoor dining area).

5.6 Ecological Impact

Dr. Niamh Ni Bhroin of Dulra is Duchais Teoranta was engaged to examine the NIS and EIAR submitted by the applicant.

Please refer to her report enclosed which concludes that there are fundamental flaws in the Natura Impact Statement prepared by the applicant based on serious omissions that do not allow for a proper scientific analysis to be undertaken.

The report prepared by Dr. Ni Bhroin is given full support from Mr. Peter Sweetman - please refer to letter of endorsement from Mr. Sweetman enclosed.

6.0 CONCLUSION

It is submitted to the Board that there are very serious concerns with the proposed development which we consider should result in this application being refused.

Principle of Development

We submit to the Board that the proposed development would be one of the largest restoration sites to be developed within the region and the State.

We submit that there is a notably lack of information contained within the application about what volumes of inert waste and C&D are currently being generated in the region, what is the current capacity for same and what is the actual need for additional facilities in the region.

We submit that in the absence of any site specific-policy or zoning objective identifying the subject site in a rural area as a location for a regional-level waste facility, that the proposed development represents piecemeal, ad hoc type development and is not plan led development.

The applicants have not justified why a site located in County Wicklow is the optimum location for treating waste which is primarily generated approximately 50 kilometres away in County Dublin. The proposed development will lead to unsustainable travel patterns, based on fossil fuel-based engines, over a long period, and a significant carbon footprint. It would be far more logical from a sustainability perspective to locate the facility closer to Dublin and such alternatives have not been independently investigated or objectively ruled out.

Traffic

TPS Ltd have demonstrated that from a review of the application it has been established that the applicant proposes to abandon an established one-way

haul route to enable the infill of this quarry, based solely of the preference of the Local Authority. Based on this preference the applicants propose major off site road improvements, road widening, road strengthening to the L1157 which is not required if the applicant reverts to the permitted one-way haul route via the L1113. Chapter 14 of the EIA is deficient as it does not assess the traffic impact or road safety impact of routing all the potential 300 heavy vehicles per day via the L1157 and the R772 where these heavy vehicles could give rise to a traffic hazard for local dwellings and the Tap café and restaurant operation.

If the Board are of a mind to grant permission, we strongly recommend that the applicants be conditioned to solely use the original haul route associated with the permitted quarry via the L1157.

Noise

The applicants have submitted inaccurate and misleading information in respect of noise. They have also failed to acknowledge that there is a live application before the Council to expand the offering provided at the Tap Café enabling it to develop from being an existing important tourist facility to an even more popular destination.

It is submitted that the noise generated by HGV traffic accessing and egressing the proposed development on such a frequent basis and for such a long period (potentially 18 years) would have a catastrophic impact on the Tap Café in its current guise as a popular gastro pub and the development intentions for a lifestyle destination facility and local dwelling owners.

Tourism

The Board will be aware that the National Botanic Gardens at Kilmacurragh are located in close proximity to the proposed development. Specifically, the gardens are accessed off the L1113 to the west of the subject site.

The TII tourist sign for National Botanic Gardens at Kilmacurragh directs tourists to turn off the R772 at the Tap Café in order to gain access to this tourist facility. The proposed development means that there will be a direct conflict between established tourist traffic and HGV traffic along this narrow road which is a traffic hazard, even with the proposed amendments to the road as part of the application.

It is submitted that the character and setting of the L1157 road will be destroyed by the proposed development having regard to its use by frequent HGV traffic and works to the edges in terms of multiple passing bays.

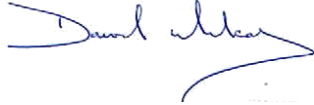
The Tape Café was an important local tourism location before it was closed serving tourists visiting the botanic gardens and the Wicklow Mountains (Rathdrum, Glendalough etc) as well as locals. The new owners of the premises have plans to turn the facility into an Avoca type lifestyle destination which will attract tourists and locals on a regular basis, 7 days a week. It is submitted that the HGV traffic generated by the proposed development will have a detrimental impact on this local tourist infrastructure facility.

Appropriate Assessment

The assessment undertaken by Dr. Niamh Ni Bhroin has concluded that there are fundamental flaws in the NIS submitted by the applicant which means that the Board cannot rely on same in terms of determining if there is a significant impact on any NATURA 2000 sites. The precautionary principle must be applied in such circumstances and the application refused.

We trust that the Board will afford this submission due consideration.

Signed:



David Mulcahy

David Mulcahy Planning Consultants Ltd

CHARTERED PLANNING CONSULTANTS

Separate Enclosures

1. Traffic report prepared by TPS Ltd (traffic experts).
2. Ecology report prepared by Dr. Niamh Ni Bhroin of Dulra is Duchais Teoranta.
3. Letter of support from Mr. Peter Sweetman.

To whom it may concern,

Observations re Kilsaran waste licence application W0311-01 for Ballinclare Quarry, Co Wicklow

We operate a retail and hospitality business in the former Tap Bar premises on the junction of the old N11 and the L1157, the proposed haulage route for the Kilsaran waste facility and C&D plant at Ballinclare. We make the following observations with regard to this Waste Licence application and enclose reports in support of our observations.

We are not experts in the area of environment or biodiversity but having a business and spending large amounts of time in this locality, we are deeply concerned about the impact of this proposed development on the local environment, biodiversity, the lives of local residents and on our business which is bringing both employment to this area and attracting visitors from throughout the county and Dublin and beyond, in addition to local customers and is an attractive amenity in this area.

In addition to the issue of a huge amount of HGV traffic passing in such close proximity to our premises during the precise hours we open each day, the potential detrimental environmental impact of the additional traffic in this rural area and the impact of the proposed operation on the currently quiet clean environment is of great concern to us. While we understand that traffic management may not be within your remit, the sheer volume of HGV traffic cannot fail to have serious environmental consequences for both the site itself and the surrounding area.

We choose this premises because the area surrounding it was so scenic and quiet and attracts visitors to Kilmacurragh Botanic Gardens, Deputy's Pass Nature Reserve and the other natural amenities in this area. The operation of a huge landfill will have a detrimental impact on the entire area and will adversely affect our business, in addition to the impact on local wildlife, biodiversity and local residents' enjoyment of their homes and surroundings.

We attach a number of studies commissioned on the impact of the proposed landfill on this area and would strongly urge you not to grant a waste licence to such a huge undertaking, where the potential for environmental damage is on such a large scale and where we believe inadequate measures are proposed to prevent such damage occurring.

Many thanks

Chris and Mary Mitchell