



An
Bord
Pleanála

Inspector's Report ABP-302276-18

Development	Continuation of quarrying activity
Location	Fallard or Calhame, Letterkenny , Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	1850016
Applicant(s)	P. Bonar Plant Hire Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Parties
Appellant(s)	1. Raymond McDermott 2. Laurence & Gabrielle Moran; Martin and Helen O'Dowd
Observer(s)	An Taisce
Date of Site Inspection	8 th March, 2019.
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located within the townland of Fallard or Calhame in Co. Donegal approximately 4km north of Letterkenny town centre and 6km south-west of Rathmelton. The site is located in a rural area that is outside of any settlement and the surrounding area is characterised by rural / suburban type residential development, farmland and forestry plantations on an elevated location. Knockbrin (259m OD) and Carn Hill (242m OD) are located to the south-east and north-east of the site respectively.
- 1.2. The site is accessed by a local road (L-5912-1) and the access is approximately 1.7km from the roundabout that connects this local road with the N56 at Mountain Top roundabout. The general vicinity of the appeal site has seen significant residential development over recent years given its proximity to Letterkenny, and the local road has residential development to the southern end, with dwellings becoming more sporadic on the approach to the quarry. Residential developments at the southern end of the road close to the N56 Mountain Top roundabout include Errigal View and a residential development currently under construction on the eastern side of the road c.1km to the south of the site entrance. The closest dwelling is located approximately 80 metres to the south of the site boundary.
- 1.3. The existing quarry has an irregular footprint and the roughly rectangular shape is orientated in a north west – south east orientation. The L-5912 forms the north west boundary of the site and the area in the vicinity of the site access is characterised by a hard standing area that has site offices, parking area, a maintenance shed and outside storage where a number of vehicles were stored at the time of inspection. A ramped access to the quarry floor is located close to the southern boundary of the site and in this area there is an existing concrete batching plant that was permitted under Ref. 10/40186.
- 1.4. The quarry floor area can be divided into two distinct sections, with the area to the north being covered by a water lagoon. To the south and south east of this area is the main area of recent quarrying operations which are characterised by a number of levels and steep rock sides that run very close to the site boundaries. This is particularly the case at the far southern and south eastern corner of the quarry.

- 1.5. There is a watercourse located adjacent to the eastern side of the quarry and this flows in the Bohirill Burn c.450 metres to the north east of the site and onto the Glashagh River is a tributary of the Leannan River approximately 3km to the north of the quarry.
- 1.6. Mobile crushing / screening equipment is present on the quarry floor. There is also a washing plant located on the quarry floor.
- 1.7. The stated area of the site within the identified red line boundary is 7.3 ha. Based on the figures presented in a 2007 application for extension of the quarry area (ABP Ref. PL05C.223700), the permitted quarry area is c.6.95 ha. comprising an existing area in 2007 of 5.43 ha. and a permitted extension of 1.52 ha.

2.0 Proposed Development

- 2.1. Planning permission is sought for continuation of quarrying activities for a period of 10 years on a site of 7.3 hectares by lowering the floor of the existing quarry to 132m AOD and for revised opening hours.
- 2.2. The following specific aspects are proposed as part of the subject application:
 - Excavation to a depth of 132 metres AOD up to the existing permitted boundaries with blasting. The existing permitted quarry extension which has been partially undertaken, comprises the quarrying of the southern portion of the site comprising approximately 1.5 ha. to a depth of 140 metres AOD. It is proposed that this area would be extended to a depth of 132 metres AOD from the current depth of approximately 145 metres AOD.
 - The quarrying of the central area located between the previously permitted extension and the lagoon area over an area of approximately 3 ha.
 - Stated that there would be no material intensification of material processing.
 - Proposed that the hours of operation would be extended to 08.00 to 18.00 hours Monday to Friday and 08.00 to 13.00 Saturdays and that the hours of working would be extended with the operation Monday to Friday to be extended to 07.00 AM and 17.00 hrs and 07.00 to 08.00 and 13.00 to 18.00 on Saturdays to facilitate HGV loading and haulage with the understanding that there would be no quarry processing during these extended hours.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Prior to the issuing of a decision, the Planning Authority requested further information on the following issues:

- Documentary evidence relating to site ownership and the applicants legal interest in the entirety of the site as outlined in red on the submitted plans.
- Submission of revised plans and cross sections that enable clear assessment of the area of proposed excavation, how it is proposed to bench the quarry faces in accordance with industry standards, accommodation of haul routes, landscaping and overburden.
- Submission of report from ecologist setting out how the ongoing operation of the quarry can support the restoration of the Leannan River SAC population of freshwater pearl mussel to favourable condition.
- Undertake an assessment as to how vibration and air overpressure limits can be met at the nearest sensitive receptors.

In response, the first party submitted the following information:

- Relevant land registry folios submitted.
- Revised plans A1-A4 submitted. Clarified that berms are completed and in place and haul route indicated in A3.
- Letter restating the content of the EIAR and NIS and how the existing lagoon acts as a settlement pond and that the discharge from the lagoon is controlled and in accordance with the discharge licence.
- Report submitted by Brendan O'Reilly Noise and Vibration consultant which includes at section 5.0 mitigation measures to reduce vibration and air overpressure impacts. Results of monitoring of blasts from 2017 are presented and indicated that these are within the conditioned limits.

A clarification of further information request was issued by the Council relating to the single issue of land ownership and entitlement to undertake the development.

3.1.2. Notification of Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 19 no. conditions, the most notable of which are considered to be as follows:

- Condition 1 specifies that permission is for a period of 10 years and that development including bench layout shall be in accordance with revised plans submitted. A revised and updated landscaping and restoration scheme to be submitted.
- Condition No.2 requires that buffer of 10 metres be maintained to the lagoon and between the development and the NE, SE and SW boundaries of the site.
- Condition No.5 requires the establishment of a benchmark and the submission of a topographical survey of the site at least every 2 years.
- Conditions Nos. 6 and 7 relate to blasting and resulting vibration.
- Conditions Nos. 10 and 11 relate to surface water and require the submission and agreement of a drainage management plan (condition 10) and that all surface waters would drain to the lagoon before discharge from the site in accordance with the requirements of a licence.
- Condition No.18 requires the payment of a special contribution of €30,000 in respect of the provision of a footpath on the local road to the south of the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the planning officer notes the nature of development proposed and site history. The contents of the objections are noted and specifically addressed. A recommendation of further information is made consistent with the request that issued by the Planning Authority. Report subsequent to the requests for further information and clarification for further information considers that all issues

have been adequately addressed and a grant of permission consistent with the notification of decision to grant permission which issued is recommended.

A second planning officer report, subsequent to the receipt of further information, identifies that issues regarding compliance with conditions of original application are considered concluded, and a grant of permission consistent with the notification of decision which issued is recommended.

3.2.2. Other Technical Reports

Senior Executive Technician / Chemist – No objection subject to conditions including water discharge in accordance with discharge licence (Lwat42) and that surface water would be drained to sealed settlement ponds / lagoons.

Roads Report (area engineer) – specifies a contribution of €30,000 as adequate to provide a 130 metre section of footpath along the local road to the south of the site within the 60km/hr speed limit zone.

Road Design – Reply stating that no comment to make on application,

Fire Officer – No objection.

3.3. Prescribed Bodies

An Taisce – Submission notes that the extended permission on the site is due to expire in June 2018. Stated that compliance with existing permission conditions needs to be assessed. Stated that the application should be assessed de novo given the number of dwellings permitted and constructed in close proximity.

3.4. Third Party Observations

A total of 12 no third party submissions were received by the Planning Authority. The main issues raised in these submissions can be summarised as follows:

- Site ownership,

- Traffic issues and adequacy of the access and road network,
- Noise and dust impacts,
- Blasting impacts,
- Non-compliance with conditions attached to previous permissions,
- Inadequate EIS and NIS.
- Concerns regarding water lagoon on site and impacts on water quality and ecology,
- Changed context of surrounding area with additional dwellings permitted and constructed.
- That the quarry has been exhausted and should not be permitted to operate below the water table.

4.0 Planning History

Donegal County Council Reg. Ref: 03/7004 (ABP Ref. PL05.205498) - Permission granted by the Planning Authority to Mountain Top Quarry Limited for the retention and extension to existing quarry at Calhame, Letterkenny, Co. Donegal. Refused on appeal to the Board for reasons relating to conflicting information in relation to the nature and extent of development to be retained and extended and that the Board was therefore precluded from considering a grant of planning permission.

Donegal County Council Reg. Ref: 06/51276 (ABP Ref. PL05.223700) – Permission granted by the Planning Authority and the Board on appeal for retention of the removal of topsoil over area of the proposed extension, extension to existing stone quarry to include drilling, blasting, excavating, crushing and screening of rock, erection of a workshop for the purpose of repair and storage of machinery ancillary to the existing quarry business on site and all associated works. The following conditions attached by the Board to the grant of permission are specifically noted:

- Condition 2 states that the permission is for a period of five years.
- Condition 3(1) requires that a 2.5 metre high berm would be constructed around the proposed additional extraction area and that this area shall be

inspected and agreed in writing with the planning authority prior to commencement of further quarrying works.

- Condition 4 of this permission stated that *'all sides of the excavation adjacent to lands not required for quarry operations shall be left with a slope not steeper than one vertical to three horizontal.....'*
- Condition 13 required the submission of dust, noise, blast, groundwater and surface water monitoring annually to the Council at the end of each year of operation of the quarry.
- Condition No.18 requires that prior to the commencement of development permanent visibility of 70 metres would be provided at entrance from L-5912.

Donegal County Council Ref. 10/40186 – Permission granted by the Planning authority for the development of a concrete batching plant on the site.

Donegal County Council Ref. 12/50910 – Extension of duration of permission granted under Ref. PL05.223700 extended to 9th June, 2018. 10 year extension from the decision date of 10th June, 2008.

Donegal County Council Ref. 15/50140 – Extension of duration of permission granted for the development of a concrete batching plant permitted under Ref. 10/40186 from 23/8/2015 to 23/8/2020.

Donegal County Council Reg. Ref: 15/51448 – Permission granted by the Planning authority for the construction of a structure for storage of plant and machinery and associated site works. Condition No.2 attached to this grant of permission requires that the permitted building *'...shall be used solely for storage purposes associated with the existing quarry operation within the said site and shall not be used for any other commercial purpose.'*

It is noted that the report of the Planning Officer makes reference to an enforcement case undertaken (Ref. Ud14 125) which related to enforcement action commenced in 2014 after the current operator had taken over the site. This action related to compliance with conditions 3, 5, 7, 9, 15, 23, 24 and 25 of permission Ref. 06/51276. The report states that on foot of investigations and co operation by the site operator it was possible to bring the quarry into conformity with all conditions, save those

which were considered unenforceable and the investigation was closed in November, 2016.

The report of the Planning Officer also makes reference to a determination under s.261A of the Act and the conclusion that the application had the benefit of planning permission which was accompanied by an EIS and did not require appropriate assessment that a non-determination issued. Stated that it was determined during the process that the operation was authorised prior to 1964.

5.0 Policy Context

5.1. ***Donegal County Development Plan, 2018-2024***

- 5.1.1. The subject development plan is the *Donegal County Development Plan, 2018-2024*. It should be noted that the plan in force at the time of assessment of the application by the Planning Authority was the previous 2012-2018 County Development Plan.
- 5.1.2. The site is located in a rural area that is outside of any settlement. The site is located within Area 15 the Letterkenny Estuary and Farmland landscape and the site is not impacted by any views or prospects that are identified in the development plan. The site is located in an area that is identified as being of high landscape sensitivity which is the mid point of a three point sensitivity scale of moderate, high and very high sensitivity.
- 5.1.3. Section 8.1 of the Development Plan includes policies and objectives for the extractive industry and geology. It is the overall aim *“to facilitate the appropriate and sustainable extraction of locally sourced aggregates and/or minerals that contribute to the local economy and ensuring that such activity does not adversely affect issues of acknowledged importance including water quality, natural habitats, important areas of landscape character, views and prospects, areas of geological interest or human health and residential amenity.”*
- 5.1.4. ***Policy EX-P-3*** states that it is policy not to permit development unless it has been demonstrated that the development will *‘not result in a significant threat of pollution to the receiving environment including, siltation and sedimentation of receiving downstream waters, having regard to the vulnerabilities identified within the River*

Basin Management Plan and any relevant fresh water pearl mussel sub basin plan...’.

5.1.5. **Policy EX-P-4** requires that it is mandatory that all applications for extractive industry proposals would be accompanied by a restoration plan and phasing plan.

5.1.6. **Policy EX-P-6** relates to roads and states that it is council policy to require applications to be accompanied by evidence of the suitability of the road network to accommodate the proposed development and that any required deficiencies can be accommodated at the applicant’s expense.

5.2. **Natural Heritage Designations**

5.2.1. The appeal site is located c.3.5km to the south of the closest European site, that being the Leannan River SAC (site code 002167). The Lough Swilly SAC and SPA sites are located c.4km to the east, south east at the closest point. The Mulroy Bay SAC and the Cloghernagore Bog and Glenveigh National Park SAC and SPA sites are located within the 15km radius of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. Two third party appeals were submitted by against the Council’s decision by residents of the area. The grounds of appeal and main points raised in these submissions are summarised as follows:

Raymond McDermott

- Appellant’s own land adjoining the quarry to the east and south east and extending approximately 60m to the south.
- Retention permission for unauthorised development should have been included in the planning application – quarry face has been cut vertically contrary to Condition 4 of PL05C.223700.

- Storage shed permitted under Reg. Ref: 15/51448 is being used as a maintenance shed for plant and machinery and not just storage as permitted. No vehicle inspection pit was permitted.
- Annual reports on dust, noise, blast, ground and surface water monitoring has not been submitted in accordance with Condition 13 of PL05C.233700. This has been confirmed by the Planning Authority.
- Board should refuse permission for same reason as was refused under PL05C.205498 when an application for the extension of the quarry was refused permission.
- Proposal fails to comply with the extractive industry and geology objectives and policies of the Development Plan. The proposal is contrary to Policy EX-P-3 on the basis of the environmental pollution threats to groundwater, surface water and natural habitats. No restoration plan accompanies the planning application as required under Policy EX-P-4 and it is not appropriate require such a plan by condition as provided by Condition No.1(c) of the .
- No assessment of the potential risk or landslide or slope failure is presented in the EIAR.
- That the assessment of stability undertaken in the case of application Ref. 06/51276 / PL05C.233700), indicated that a final face slope angle to ensure stability was used in the calculation of the extension area volume. This report also confirmed that large scale wedge failure had occurred at the quarry.
- Expert geologist's report appended to appeal submission states that none of the recommendations of the 2006 planning application stability assessment imposed as Condition 4 were implemented or adhered to.
- Traffic impacts associated with the batching plant were not included in the Traffic and Transportation chapter of the EIAR, which confined itself to aggregates extraction only. The 7 trips per day permitted under the batching plant permission (Ref. 10/40186 as extended by 15/5140) have been exceeded in operation.

- The operation of the batching plant equipment is not included in the submitted noise assessment and is not mentioned at all in this assessment. Similarly, it is not included in the assessment of dust contained in the EIAR.
- Apart from road making materials, no cumulative assessment is carried out in the EIAR regarding the production of concrete blocks and brick, ready-mix concrete and precast concrete products.
- Cumulative assessment of new shed, including noise associated with vehicle maintenance and the generator/ compressor, and the potential for oil spillages should also have been cumulatively assessed.
- There is an unauthorised landfill of approximately 4 acres located 250m along the public road to the north-east – no assessment of cumulative impacts.
- Dewatering of quarry discharges to roadside drain alongside the landfill and to the Bohirrill Burn which discharges to the Leannan River SAC via the Glashagh River.
- EIAR assumes, without any investigation, that the underlying bedrock aquifer is confined and as such there is no threat of contamination of groundwater. No monitoring of surface water contamination, or discharge controls in contained in the EIAR. A geologists report is submitted as Appendix D to the appeal.
- There are other houses, existing and permitted, closer than the noise sensitive locations used in the noise assessment. Two additional houses have recently been permitted that are closer than the NSLs used in the assessment.
- Level of quarrying operations and noise levels in May 2017 were for the most part, associated with an exhausted quarry and are not representative of a normal operating scenario.
- Noise monitoring results as required under condition of previous permission would have proven most helpful to an assessment of the current proposal.
- Only one of the four dust monitoring points is located to the north-east, which is acknowledged as the most likely located to be impacted by dust emissions.

- There are 280 dwellings from the roundabout junction at Mountain Top to the quarry entrance and the road is incapable of accommodating passing by two HGVs.
- Special development contribution only covers 130m of footpath and lighting and no further works to the remaining 825m of road to the quarry entrance area included.
- Visibility at quarry entrance is deficient - application should be refused on traffic safety grounds.
- Board previously required a sight line of 70m and this has not been provided.
- Report attached to appeal concludes that the outbound speed is 67 km/hr and the inbound speed is 58 km/hr – the required vision line is therefore 111m at nearside and 86m at offside of quarry entrance.
- Deficiencies in NIS are detailed in expert geologists report appended to appeal – it is not true that no dewatering is taking place. No surface water quality is presented, no information on pumping rates is provided and no information on groundwater chemistry or volumes is provided.
- Requirement sought by Council's Senior Executive Technician for the installation of a series of clay-lined settlement ponds to treat surface water prior to discharge is not reflected in planning conditions.
- There is no supporting evidence in the response to the Council further information request relating to the management and treatment of contaminated water at the quarry in the context of the restoration of the Leannan River SAC to favourable condition.
- Non-compliances with planning conditions have endured since 2012 after the time that the current owners took over operations.
- Cross section shows that extraction of rock has extended beyond that permitted – substitute consent application should have been applied for first to regularise unauthorised development.
- Only 50% of the berm around the site required by condition is in place and not to a height of 2.5m (Condition 3).

- Slopes have been left at 80 degrees resulting in a recent slope failure extending into neighbouring lands contrary to Condition 4.
- Based on dust emission observed on site, it is questionable of Condition 6 relating to dust suppression equipment has been complied with.
- Quarry does not adhere to opening times contrary to Condition 7.
- It appears that no blast monitoring has taken place to the north-east/ south of the quarry – monitoring locations not clear.
- OSi historic mapping shows “Garrangalta Rock” marked in the middle of the quarry extension – a series of standalone rocks in a circular formation. All archaeological evidence was cleared.
- The appeal submission sets out how specific conditions attached to Ref. PL05C.223700 have not been complied with.

Laurence and Gabrielle Moran

- That the site and development has been left in a state that has ruined the amenity of adjoining lands contrary to the provisions of the Quarry Guidelines for Planning Authorities.
- That the NIS and EIAR submitted both claim that there are no cumulative impacts that could potentially impact the local environment. This does not account for the concrete batching plant (traffic, noise and dust), the new maintenance shed which was constructed after the EIAR was prepared.
- That the shed is being used for maintenance activity contrary to the planning permission (Ref. 15/51448).
- That the operation of the quarry would constitute a serious traffic hazard. There is inadequate visibility at the access and there would be significant pedestrian / HGV conflicts along the local road.
- That with the exception of a short section fronting the Errigal View housing development, there is no footpath for 2 km from the site access towards the N56. Over the length of local road, there are 280 dwellings, 43 under construction and a further 4 permitted.

- Noted condition 18 attached by the Planning authority requires a special contribution of €30,000 to build a footpath from the N56 roundabout to the Errigal View housing estate. A further €5,000 is required to acquire the lands however it is unlikely that a CPO for the purpose of facilitating the quarry would succeed.
- That the response to the further information request relating to land ownership is not adequate and the Contract for Sale document submitted does not make reference to the current applicants.

6.2. Applicant Response

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- That the shed structure is used in conjunction with the day to day operations of the quarry including periodic storage and maintenance of vehicles and is not unauthorised.
- That the pit in the shed referred to was required as part of the fire safety certificate and is exempted development.
- That permission was granted by the Board in 2008 by which time there was no demand for aggregates. The previous operator did not therefore undertake environmental monitoring.
- Since taking control of the quarry in 2014 the current operator has undertaken monitoring and these results are presented in the EIAR.
- Since taking control of the quarry in 2014, a landscape and restoration plan has been submitted and accepted by the council. This plan is presented as Appendix C to the response submission. A lagoon will be created and the previous agreed restoration and landscaping plan remains valid as the extent of the quarry is not to be increased.

- Regarding compliance with conditions, little or no extraction was undertaken over 2008-2013. When the current applicant took over the site in 2014, the council detailed the conditions which had not been complied with at that time. All conditions have since been complied with.
- That as per McDowell v Roscommon County Council, it is not possible to use one part of the Planning Acts to address another part and in this case the application and enforcement issued are addressed in separate sections of the Act. A number of letters confirming compliance are attached with the response.
- That there is no clear evidence to support the contention that the quarry has or will result in a reduction in house prices. Sales in the vicinity of the site do not support the contention that prices are significantly impacted.
- That the issue of land ownership has been addressed in the further information and clarification requests and in the subsequent responses. It was accepted by the planning authority that there was sufficient legal interest. Stated that legal interest / ownership is not a planning matter that the Board routinely concerns itself with.
- That the limited impact of the development on the site was recognised in the reasons and considerations attached by the Board to its previous decision to grant an extension of the quarry, (Ref. PL05C.223700).
- That the quarry operation and associated batching plant in Drumkeen employs c.43 persons.
- That the quarry is operated in accordance with the requirements of the Guidelines for the Safety, Health and welfare at Work (Quarries) Regulations, 2008.
- That the concerns regarding instability of the working faces do not take into account relevant geotechnical parameters including internal angle of friction, fracture and bedding strike planes. Without this detailed information it is not possible to make an assessment of the risk of slippage as undertaken by the appellants. The proposed bench plan will ensure a safe working environment.

- Regarding cumulative effects, the impact of the concrete batching plant has been included in all EIAR assessments. A worst case scenario (including the concrete batching) has been undertaken.
- That all water runoff from the quarry and concrete batching drains to the lagoon and is discharged under controlled conditions.
- Similarly, with traffic, the assessment includes the batching plant.
- That the only area where the impacts are disaggregated is noise where the impact of the quarry has been disaggregated using industry standard modelling and software.
- Restated that the hydrology of the quarry is extremely confined in nature and that the water table lies a significant distance below the existing and proposed extraction levels. No groundwater de watering is intended.
- That given the confined groundwater context and the local topography cumulative impacts with regard to surface and ground water are limited to the immediate vicinity of the site. Impacts would not extend to the unauthorised landfilling area on third party lands to the north of the site.
- That GSI datasets and on site drilling have confirmed the rock type at the site and that the bedrock is incapable of transmitting significant quantities of groundwater. Abstraction sources within 1.2km of quarry display very poor yields. The borehole logs are contained at Appendix 7.1 of the EIAR.
- That noise has been modelled using industry standard software and all sources within the model were derived from relevant equipment specifications. Noise assessment was a worst case scenario on basis of all equipment running simultaneously at full power.
- It should be noted that at no time have the conditioned noise limits been exceeded. Surveys were sometimes conducted in the presence of the EHO and evidence of full production at these times has been provided. Noise survey results have been presented to the council.
- Dust monitoring on a monthly rather than conditioned quarterly basis. All site boundaries are covered and results have been submitted to the council.

Monitoring has not indicated breaches of deposition limit values set in the original permission of the Board.

- That the effective speed limit along the road at the entrance is 60km/hr or less and this results in the 70 metre vision line requirement.
- That works undertaken in 2014 and 2015 include for the improvement of visibility splays of 70 metres in each direction.
- Stated that a set of works and completion time regarding Condition No.18 was agreed between the council and the applicants. Confirmation that the matter is now closed was received from the Planning Department in November, 2016.
- That conditions 12 and 13 attached to the current permission issued by the PA (Ref. 18/50016) relate to traffic and are the same as conditions 15(1) and 16 attached by the Board and which have been deemed met by the Planning Authority.
- That the current application does not provide for any alteration to the existing access and no increases in traffic movement are proposed. Given this, it is considered that traffic volumes do not have to be predicted in the same way as a new development proposal.
- That quarry activities would generate c.25-30 lorries a day entering the site. No accidents along the 1.7km route to the N56 have been recorded in recent years.
- That there is a lack of data with regard to the methodology used in the traffic assessment presented in the third party appeal.
- That the traffic at the quarry entrance may be categorised as low flow for the purpose of TA22/81.
- That a review of the survey date of 19th and 26th July was undertaken using on site security cameras and 'channel 6 registration plate camera' data. Data for other dates was also collected from the cameras. It is clear from analysis of this data that the traffic levels on the dates surveyed by the appellants are significantly higher than on the other dates examined. It is contended that a number of vehicles associated with the appellants are observed on the

recordings from the 19th and 26th (appellants traffic survey dates) driving repeatedly up and down the local road in the vicinity of the site. It is therefore submitted that the results of the KH Consultants report submitted by the third party appellants contains significant bias and should be disregarded.

- That the KH report includes a drawing at Appendix B showing site layout as it currently exists. This drawing does not show horizontal road alignment, road markings, x set back distance or Y visibility splays. The evidence from on site security is that it was undertaken in c.10 minutes.

6.3. Planning Authority Response

Response received stating that all issues raised in the third party appeals have previously been addressed in the reports of the Planning Officer.

6.4. Observations

6.4.1. An observation on the appeal was received by An Taisce, which is summarised as follows:

- There is an extensive history of compliance complaints and ineffective enforcement.
- Permissions are considered on the basis of issues being resolved by condition – Board escapes the burden of ensuring these conditions are enforced.
- Continuation of, or extension of an existing development can only be accommodated if the development is compliant in the first instance - Condition 4 of the permission on site is not being complied with.
- Range of other considerations need to apply, including operational and compliance history and change in circumstances since quarrying first occurred.

- Appellants have raised significant considerations relating to Polices EX-0-3 and EX-P-4 and the suitability and impact of additional or continued quarrying in this area.

6.5. Further Responses

The application was referred by the Board to the Heritage Council and to the Department of Culture Heritage and the Gaeltacht. No response to these referrals was received within the period specified.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of development,
- Status of Existing Development
- Noise and air quality issues,
- Water and hydrology issues,
- Landscape and Visual impact
- Traffic and access issues,
- Other issues
- Appropriate Assessment
- Environmental Impact Assessment

7.2. Principle of Development

7.2.1. The site is an existing quarry, albeit a location where active quarrying operations are currently ceased. Based on available information, no quarrying operations or extraction of aggregate has occurred since mid 2018.

- 7.2.2. In principle, the site is appropriate for the extraction of aggregates. The site has a long history of quarrying activity and the available information on the history file Ref. PL05C.223700 indicates that the site was used as a quarry prior to the commencement of the planning acts. From the information on file, it would appear that activity at the site dates back to the 1930s.
- 7.2.3. The nature of the proposed development is also conducive in a number of ways to the principle of the development proposed. Specifically, the form of development proposed does not involve the expansion of the footprint of the quarry, minimising the potential for the encroachment of the active quarry area closer to dwellings or other sensitive locations.
- 7.2.4. The appeal site is located in a rural area that is outside of any identified settlement. Specifically, the site is located outside of the boundary of the *Letterkenny and Environs Development Plan, 2009* the duration of which has been extended. The site is not therefore zoned for any particular purpose. As per the rural area type map contained at Map 6.2.1 of the Donegal County Development Plan, 2018-2024, the site is located in an area that is identified as being under strong urban influence.
- 7.2.5. Given the existing pre 1964 development status of the site as recognised by the council in the s.261A quarry registration process, it is considered that the principle of the use of the site for the extraction of sand and gravel has been established and that the further development of the site by way of deeper extraction within the existing quarry footprint is acceptable in principle.
- 7.2.6. Section 8.1 of the Development Plan includes policies and objectives for the extractive industry and geology. It is the overall aim *“to facilitate the appropriate and sustainable extraction of locally sourced aggregates and/or minerals that contribute to the local economy and ensuring that such activity does not adversely affect issues of acknowledged importance including water quality, natural habitats, important areas of landscape character, views and prospects, areas of geological interest or human health and residential amenity.”* The appellants contend that the propose development would be contrary to this overall aim on the basis of environmental pollution issue arising. Consideration of the impact of the proposal on the environment and particularly noise, dust air and ground and surface water impacts is

considered in detail in sections 7.4 (noise and Air Quality), 7.5 (Ground and Surface Water) and 7.10 under the heading of EIA.

7.2.7. Before proceeding to the rest of the assessment I wish to highlight a number of ***issues relating to the submitted drawings*** and in particular the cross sections showing existing and permitted profiles of the quarry faces. As part of the further information request issued by the Planning Authority, the applicant was requested to submit further drawings detailing items including the extent of the proposed extraction area and the proposed benching. In response, drawing A2 indicates 4 no. sections through the site, including sections 3 and 4 that are across the area of additional extraction proposed in the current application and section 1 that is a section through the full north – south extent of the quarry. These section drawings contained in Drg. A2 include in the key the '*permitted profile*' in blue and the '*proposed profile*' in red. Section drawings 2 and 3 make reference to '*existing and permitted profile*' though it is not possible to clearly see what is being referred to under this heading. From an inspection of the appeal site and a review of the history file Ref. PL05C.223700, it would appear to me that what is indicated by the blue line on Drg.A2 is the permitted contours as per permission Ref. PL05C.223700. In particular, I note the similarity of Section 1 on Drg. A2 with the only section that is on the history file which is section AA on Drg.No. 17502/01'B'. The submitted drawings do not therefore give section drawings that provide a clear indication of the existing quarry faces in the area of the proposed extraction under the subject application.

7.2.8. As noted in 7.3 below, a number of conditions attached to permission Ref. PL05C.223700 are highlighted by the third party appellant and it is contended that some of these conditions have not been complied with. Specifically, Condition No. 4 which requires that '*all sides of the excavation adjacent to lands not required for quarry operations shall be left with a slope not steeper than one vertical to three horizontal.....*'. is highlighted by the third party appellant as is the response of the council in a letter to the third party dated 7th September, 2015 where it is stated that '*...it has been concluded on foot of further review and investigation that this condition is not one which the council can enforce – no further action is proposed.*' This is despite the fact that the same condition had been attached by the Planning Authority in its Notification of Decision to Grant Permission Ref. 06/51276. The lack of clarity regarding the existing quarry profile means that it is very difficult to assess the

feasibility of undertaking the benching / final profile as set out in the submitted drawings. The detail provided with the application also makes it difficult to assess the potential for slope failure and the proximity of quarry faces to third party property. As set out in the third party appeals, the quarry faces have been subject to failures in the past and, as recognised in the report submitted on behalf of the first party by Sub Terra Engineering for application Ref. DCC Ref. 06/51276 / ABP Ref. PL05C.223700, the discontinuities and resulting failures could impact on third party lands.

7.3. Status of Existing Development

7.3.1. The status of the existing quarry development is the subject of dispute between the parties to the appeal. This issue is of relevance as the third party appellants contend that there are aspects of the existing quarry which are unauthorised as the requirements of the conditions attached to An Bord Pleanála Ref. PL05C.223700. A number of specific conditions are noted in this regard, including the following:

- Condition No.3(1) which requires that a 2.5 metre high berm would be constructed around the south western, south eastern and north eastern extremities of the area to be excavated.
- Condition No.4 which requires that *'all sides of the excavation adjacent to land not required for quarrying operations shall be left with a slope not steeper than one vertical to three horizontal....'*
- Condition No.5 requires that a comprehensive landscaping and restoration plan shall be submitted to the planning authority for agreement and the agreed plan to be implemented within 12 months of the expiry of permission.
- Conditions Nos. 8-14 relating to monitoring for noise, dust, vibration, surface water management and the use of settling ponds.
- Condition No.18 which states that prior to commencement of development, permanent visibility splays of 70 metres shall be provided in each direction from a point 2.4 metres back from the road edge.

- 7.3.2. The appellants note the fact that An Bord Pleanála refused permission for the retention and extension of development at the appeal site (ABP Ref. PL05C.205498) on the basis that there is conflicting information on the nature and extent of development to be retained and extended and that the Board was therefore precluded from considering a grant of permission in this instance. It is contended by the appellants that a similar issues applies in the case of the current application as there are aspects of the existing development which are unauthorised and that it is not therefore appropriate that the Board would grant permission for a further extension of the quarrying activity.
- 7.3.3. With regard to the planning status of the existing development undertaken at the site, correspondence from the council relating to compliance with conditions attached to the permission for the expansion of the quarrying area (ABP Ref. PL05C.223700) is presented by both parties to the appeal.
- 7.3.4. As part of the first party response to the grounds of appeal, the first party submitted a copy of correspondence from the Planning Department of the Council, dated 7th September 2015, which states that the following conditions are considered to be complied with and where no further action is therefore proposed; Conditions Nos. 3(ii), 9(iii), 18 and 22. Other submitted correspondence by the first party relate to compliance with Condition No.5 (restoration plan) and letter dated 22nd November, 2016 stating that the conditions attached to Ref. No.06/51276 '*...have been substantially addressed to the satisfaction of the Planning Authority*'. The third party appellants (Mr Raymond McDermott) submitted correspondence from the council dated 7th September, 2015 which sets out the situation with regard to compliance with Conditions Nos. 4, 5, 6, 8, 9, 13, 18, 22, 23, and 24. In the case of each condition, the Council state that either agreement has been reached regarding compliance or that compliance information / details had been submitted and are being assessed by the Planning Authority.
- 7.3.5. I note the specific conditions attached to the decision of the Board under Ref. PL05C.223700 and the comments of the parties to the appeal. The issue of compliance with conditions is one for the Planning Authority and I note the fact that the Planning Authority have issued a determination that the outstanding compliance issues from Ref. PL05C.223700 have been addressed to their satisfaction. Similarly, while the third party appellants contend that the storage shed permitted under Reg.

Ref: 15/51448 is being used as a maintenance shed for plant and machinery and not just storage as permitted, compliance with the conditions attached to this permission is an issue for the Planning Authority. In stating this, however, there are a number of issues relating to these conditions which are in my opinion of relevance to the assessment of this appeal, including but not limited to the visibility lines at the site access, the angle of the quarry faces and surface water management. These issues will be returned to in the relevant sections of the assessment below.

- 7.3.6. With regard to the contention of the third party appellant that the current case is similar to Ref. PL05C.205498 where it was determined by the Board that it was precluded from considering a grant of permission due to a lack of clear information regarding the nature and extent of development to be retained and extended, I would highlight the following. Firstly, the existing extraction area where additional development is now proposed has clearly been the subject of a previous grant of permission under Ref. PL05C.223700 and unlike Ref. PL05C.205498 there is in my opinion no ambiguity with regard to the extent of this permission or the basic planning status of the area where development / quarry deepening is proposed. Secondly, the issues raised relate to compliance with conditions attached to a permission. The Planning Authority is the body with powers of compliance and have deemed that the relevant conditions have been complied with to its satisfaction. In such circumstances it is not appropriate for the Board to determine that development is not in compliance. As referred to above however, this position does not mean that issues relating to matters that were the subject of conditions attaching to Ref. PL05C.223700 are not relevant to the assessment of the subject appeal. For these reasons it is not in my opinion appropriate that the Board would refuse permission on the basis that the proposed development would constitute the extension of an unauthorised development or use.
- 7.3.7. The following sections relate to the potential impacts arising in terms of Noise and Air Quality and Water and Hydrology. The main conclusions from these assessments are reflected in the EIA contained at section 7.10.

7.4. Noise and Air Quality Issues,

- 7.4.1. The appellants contend that the proposed development would have a significant negative impact on residential amenity by virtue of noise, dust and vibration. A number of specific issues with regard to the methodology used in the noise assessment contained in the EIAR are raised and these are set out in the report from Keohane Geological and Environmental Consultancy which accompanied the third party appeal received from Mr Raymond McDermott. Images of dust emissions from the site are included in third party submissions. It should also be noted that an assessment of air quality impacts and noise has to be undertaken in the context of the current circumstances at the site where material is not currently being extracted. At the time of inspection therefore there was no clear noise or dust issue to observe. The concrete batching plant on site is currently operational, although not at the time of the site inspection. The application for permission for the batching plant (DCC Ref. 10/40186 as extended by Ref. 15/50140, included a noise assessment and was granted subject to conditions relating to dust and noise, Conditions Nos. 4 and 5.
- 7.4.2. I also note the fact that the first party indicate that while noise and dust emission monitoring was a condition of previous permissions on site, that by the time permission was granted by the Board in 2008 there was no demand for aggregates. It is stated that as a result, the previous operator did not therefore undertake environmental monitoring and it is only since taking control of the quarry in 2014 that the current operator has undertaken monitoring and that these results are presented in the EIAR.
- 7.4.3. With regard to **dust** emissions, Chapter 11 of the EIAR sets out the dust monitoring results for 4 no. monitoring locations that have been undertaken over a 1 year period from June 2016 to July 2017. The results of this monitoring are presented in Table 11.1 of the EIAR and indicate that all recorded results are very significantly below the 350ug/m²/day limit with a maximum recorded value of c.107 ug/m²/day. The third party appellants have questioned the dust impacts as set out in the EIAR, noting observations of dust on the ground, the appropriateness of the monitoring locations and the lack of further data to back up the results presented.

- 7.4.4. With regard to the representativeness of the survey results presented, it is not clear exactly what level or intensity of extraction was being undertaken during the July 2016 to June 2017 survey information presented in the EIAR. It would appear from information presented that works at the quarry stopped in mid 2018 with the exception of the batching plant, however it is not totally clear that the site was operating at full capacity during the period that relates to the information presented in Table 11.1 of the EIAR. The third party appellants state that annual reports on dust, noise, blast, ground and surface water monitoring have not been submitted in accordance with Condition 13 of PL05C.233700. This is not clear, and the first party state that surveying has been undertaken at the site since the current operators took control of the site in 2014. No survey information for dust deposition from 2014 onwards has, however been submitted with the application and it would have been useful to have this information available to inform the assessment and to provide further context for the information contained at Table 11.1.
- 7.4.5. With regard to the methodology of the dust assessment undertaken, the appellants contend that the survey points are not appropriate as only one of the four dust monitoring points is located to the north-east, which is acknowledged as the most likely located to be impacted by dust emissions. It is also contended that the operation of the batching plant is not included in the dust assessment. Both of these issues are refuted by the first party, and on the basis of the available information, it would appear that the batching plant was in operation at the time of the dust survey results presented in Table 11.1 of the EIAR. Regarding the survey locations, the first party state that all four site boundaries are covered by the survey locations and that the survey is therefore representative. From Figure 11.7 of the EIAR this statement is correct, however it is noticeable that there is no dust measuring point located downwind of the prevailing wind direction from the extended extraction area at the southern end of the site which was the main area of operations since 2014.
- 7.4.6. With regard to **noise**, the appellants raise a number of concerns with regard to the methodology used in the assessment. Specifically, it is contended that the operation of the batching plant is not used to generate a cumulative assessment and that the impact of the maintenance shed is not taken into account. It is also contended that there are new houses that are located closer to the site than the NSLs identified in the assessment.

- 7.4.7. The noise assessment is presented in Chapter 10 of the EIAR with additional supporting information provided at Appendices 10.1-10.6 inclusive and Appendix 14.1. The location of the noise sensitive locations are presented in Figure 10.1 of the EIAR, and it is not clear to me what additional locations closer than the 14 no locations identified on Figure 10.1. The statement of the third party appellants that the operation of the batching plant equipment is not included in the submitted noise assessment and is not mentioned at all in this assessment is noted, however it is stated by the first party that noise impacts due to the quarry operations are disaggregated and that this has been undertaken using industry standard modelling and software. This is noted and accepted as being acceptable in principle.
- 7.4.8. Baseline noise data was collected in June and July, 2017 and is presented in Table 10.2 of the EIAR. I note the comments of the third party regarding the representativeness of this survey information given that the quarry was largely exhausted at this point and not operating at full capacity. Against this however, I note and agree with the comments of the first party in the appeal response that the background noise assessment was to ascertain background non operation noise levels and that the assessment of noise levels has been undertaken using computer modelling inputting the equipment to be operated on site and on the basis of the topographical survey of the site. The basic methodology would appear to me to be acceptable and details of the plant specification, calibration and the model used are detailed in the appendices to the EIAR.
- 7.4.9. The corrected noise results are presented in Table 10.6 and 10.7 of the EIAR and indicate that the difference between background noise levels and projected noise levels is a maximum of c.11.5 dBA (at NSL10) and that the impact of the development in operation should not therefore be significant. On the basis of the results presented it would not appear to me to be likely that there would be significant impacts arising due to noise emissions from the site. In stating this however it would clearly be useful if the noise survey results from the 2014 – 2018 period had been presented with the application. The first party state in their response to appeal that at no time have the conditioned noise limits been exceeded, that surveys were sometimes conducted in the presence of the EHO and that noise survey results have been presented to the council.

- 7.4.10. Overall, with regard to dust and noise impacts, it is considered that the basic methodology and results presented would indicate that the proposed development would be likely not to have significant negative impacts on surrounding noise sensitive receptors. Given that the site is an existing operation however, and that it is stated that noise and dust monitoring has been undertaken, it would have been beneficial to the overall assessment if additional survey information had been presented with the application.
- 7.4.11. **Blasting and vibration** impacts are set out at section 10.10 of the EIAR. The blasting mitigation measures are set out at 10.10.1. Monitoring results regarding vibration and air over pressure are presented at Appendix 10.6 of the EIAR. This material is not very legible in the format presented, however it would appear to indicate that the results of blasts undertaken in 2017 passed. As with noise and dust monitoring, it would have been useful to the overall assessment for additional survey information to be presented that covered a longer period.

7.5. **Water and Hydrology Issues,**

- 7.5.1. Issues relating to **groundwater** are address in Chapter 8 of the submitted EIAR. In line with the information presented in respect of the previous application on the site (Ref. PL05C.223700), the first party contends that the site is located within a confined aquifer and such that there is limited porosity with such that does occur resulting minor faulting or fracturing. Section 8.2 of the EIAR states that there are no recorded fault zones or notable geological structures located within close proximity to the site 'which would indicate any degree of groundwater potential, therefore the bedrock aquifer is likely to be confined in nature with very poor transmissivity and groundwater yield potential. The results of the 4 no. boreholes drilled are recorded in section 8.3 of the EIAR with the logs presented at Appendix 7.1. Two of the four boreholes indicated limited amounts of water and water levels in these holes returned to original levels slowly over a period of approximately one week.
- 7.5.2. The data presented in the EIAR is not, however very clear with regard to the relationship of the boreholes drilled and the proposed depth post development. In particular it would appear that borehole 1, having a depth of 47 metres from a point at 183 metres AOD, would not penetrate the proposed excavation depth. As noted

by the third party appellants, Condition No.11 attached to the grant of permission issued under Ref. PL05C.223700 required the undertaking of groundwater monitoring and the submission of a report. It is not clear from the first party response to the appeal whether such information has been collected, however it is noted that no such information is presented in the EIAR and Appendix 8.1 contains generic information relating to Lough Swilly and not groundwater analysis relating to the immediate vicinity of the appeal site. In the event that the development was to have impacts on groundwater, this would have potential impacts on discharges from the site and on European sites and this issue is referenced under the heading of Appropriate Assessment. Overall, it is my opinion that the level of detail presented with the application is not sufficient to clearly conclude that the proposed quarry deepening to a depth of 132 metres AOD would not have groundwater impacts and potentially result in the ground and surface water impacts outside of the site and immediate vicinity and the requirement for additional site de watering.

7.5.3. With regard to **surface water**, Chapter 9 of the EIAR discusses the potential impact of the proposed development on surface waters and in particular on the Leannan River SAC. The potential impact on the Leannan River SAC is discussed in detail in section 7.9 of this report below.

7.5.4. Condition No.12 attached to An Bord Pleanala Ref. PL05C.223700 granting permission for the extension of the original quarry into what is currently the southern part of the site, required the submission of a report that set out the quantity and quality of surface water being discharged from the site and that if relevant following this report an application for the review of the discharge licence from the site shall be made. The EIAR contains, at section 9.4, some general surface water quality data relating to the Southern Leannan, Glashagh and Ellistrin catchment, the Northern Leannan – Lower Glashagh and the Leannan River. Q value data for sites 2.4km upstream of the site near Kilydesert and 3km downstream at the Leannan River is presented and indicates that the current status is poor at both locations (Q value of 3 in 2015) (see Table 9.4 in EIAR). The EIAR does not, however present any information with regard to the water quality being discharged from the site to the local surface water network as required by Condition No.12 of ABP Ref. PL05C.223700. I note the comment of the first party regarding compliance with monitoring conditions attaching to this grant of permission, namely that limited

activity took place at the quarry in the period post the 2007 granting of permission by the Board under PL05C.223700 and that monitoring has been undertaken since the first party took over the site in 2014. If surface water quality monitoring has been undertaken since 2014 it has not been clearly presented in the submitted EIAR.

- 7.5.5. The third party appellants note the fact that the discharge of surface waters from the site is controlled by way of a **discharge licence**. No details with regard to the terms of this licence has been presented. A review on the Donegal County Council website indicates that the most recent review of licence Lwat42 was undertaken in January, 2016 and that the licenced discharge from the site is 792 cubic metres per day. This is clearly a very significant volume. As highlighted by the third party, the application documentation including EIAR does not clearly indicate the existing and projected future pumping rates at the site and so it is not possible to determine whether the likely volumes are at or close to the licenced volumes.
- 7.5.6. In addition to there not being any surface water quality data relating to current emissions from the site, the on site processes for the collection and discharge of water to surface water network is highlighted as an issue by the third party appellants. I note that Condition No.14 attached to the grant of permission issued by the Board for the quarry extension (ABP Ref. PL05C.223700) required that all surface water flowing across the quarry area and all waters contaminated by the quarrying operations shall be discharged to settling ponds prior to discharge from the site. A condition with the exact same wording had also been attached by the Planning Authority in its notification of decision, (Ref. 06/51276). Despite these recommended conditions, no dedicated settlement ponds was constructed or is operational on the site. In the case of the current application, the report of the Senior Executive Technician recommended a grant of permission subject to conditions including that water to be discharged from the site would be drained to settlement ponds / lagoons and that these structures would be appropriately lined with clay or other similar material.
- 7.5.7. The current practice on site is that water is drained to the large lagoon that is present on the northern part of the site. The first party submissions on file state that the lagoon acts as an effective settlement process and that water discharged is free of suspended material and pollutants. It is also stated by the first party that existing water from the lagoon is used in the washing plant on site and in other on site

process. In the absence of monitoring of the final discharge and any specifically designed settlement ponds that are subject to regular maintenance and removal of accumulated material, it is not possible to verify that discharges to surface waters from the site are of good quality. This issue is relevant to appropriate assessment and is returned to in section 7.9 below.

- 7.5.8. In the absence of information relating to monitoring of the final discharge, specifically designed settlement ponds for surface waters, clarity regarding the methods times and volumes of discharges and a detailed assessment of, and resulting degree of uncertainty with regard to, the likely impact of the proposed development on future volumes of water to be discharged, it is considered that there remains a significant degree of uncertainty with regard to the impact of the proposed development on surface waters.

7.6. Landscape and Visual Impact

- 7.6.1. The site is located within an area that is identified as being an area of high scenic amenity as per Map .1.1 of the *Donegal County Development Plan, 2018-2024*. The categorisations given in the development plan comprise areas of moderate, high and especially high scenic amenity and so the appeal site is located in the mid level of landscape designation in the county.
- 7.6.2. It is noted that **Policy EX-P-2** of the *Donegal County Development Plan, 2018-2024* states that it is the policy of the council not to permit new extractive industry proposals in areas of especially high scenic amenity or in areas of high scenic amenity. The development the subject of the current appeal is not a new extractive proposal as there is already a quarry on the site. I would also note the fact that the development proposed would not result in the increase in the physical extent of the quarry operation on site, rather that the depth of the extraction area would be increased from the current c.145 metres AOD to c.132 metres AOD. I do not, therefore consider that the proposed development would be contrary to the provisions of Policy EX-P-2 of the plan.
- 7.6.3. A review of the development plan indicates that there are no **protected views or prospects** that are listed for protection in the vicinity of the appeal site such that they could potentially be impacted by the proposed development. Clear views of the site

are restricted by the local topography and the relationship of the site to local roads. The appeal site is located between Knockbrin Hill to the south and Carn Hill to the north east and the local roads are such that there are no clear views into the existing quarry opening. In any event, the nature of the proposed development is such that it is a deepening of the existing quarry working that is proposed rather than an increase in extent and the potential visual impact arising is therefore limited to very close proximity to the site.

- 7.6.4. By virtue of the local topography, the relationship of the site to local roads and the fact that the proposed development does not involve any material increase in the physical extent of quarrying activity, I do not consider that the proposed development would result in any significant adverse impacts on views or on the landscape.
- 7.6.5. I note that **Policy EX-P-4** requires that it is mandatory that all applications for extractive industry proposals would be accompanied by a restoration plan and phasing plan. The response submission made on behalf of the first party indicates that a landscaping and restoration plan has been submitted to and agreed with the Planning Authority. In the event of a grant of permission it is considered appropriate that a condition requiring the submission of a landscaping and restoration plan would be included.
- 7.6.6. I note the fact that Condition No.3(1) attached to the decision of the Board to grant permission for the southern extension of the quarry (ABP Ref. PL05C.223700) required that a 2.5 metre high **berm** would be constructed around the south western, south eastern and north eastern extremities of the area to be excavated. The submission of the third party appellant (Mr McDermott) contends that significant parts (c.50 percent) of the required extent of berm is not completed and that the sections that are in position are not to the required height. From my inspection of the site I could not verify the contention that 50 percent of the required berm is missing however it would appear that it is not present in all locations specified in condition No.3(1) of Ref. PL05C.223700. In terms of visual impact, I do not consider that the absence of sections of this berm or a reduced height would be such as to have a material impact on the landscape or visual impact of the proposed development. As set out above, the site is well screened from local roads and the nature of the proposed development is such that it would not result in a significant change in existing landscape and visual impacts.

7.7. Traffic and Access Issues,

- 7.7.1. The proposed development does not include any alterations to the **existing quarry entrance** onto the L-5912. The existing access will remain and the application documentation states that the volume of traffic using the access will not be increased over that which was previously the case. In my opinion there are a number of issues of relevance relating to site access and traffic, in particular sight lines, the capacity of the local road to cater for the traffic generated by the proposed development and the accuracy of the submitted traffic assessment.
- 7.7.2. With regard to **sight lines**, the site access is located on a section of the local road where the speed limit is 80 km/hr. Under Condition No. 18 attached to An Bord Pleanála Ref. PL05C.223700, a visibility splay of 70 metres measured from a position 2.4 metres back from the road edge are to be provided at the site access. It is noted by the third party appellants that the specified 70 metre visibility splays have not been provided on site and it is contended that the access is not, therefore, in compliance with the requirements of the permission granted.
- 7.7.3. My assessment of the visibility at the site access from an inspection at the site is that visibility from a position 2.4 metres back from the road edge is restricted to the left hand side (south) of the access by a crest in the road such that the maximum visibility is c.45-50 metres. Similarly, to the right hand side exiting (north), my estimate of the available visibility is c.55 metres. On this basis, I would agree with the statement of the appellants that the available sight lines at the site access are below the 70 metres required as per Condition No.18 of Ref. PL05C.223700.
- 7.7.4. The first party response to the grounds of appeal is to reference correspondence dated 7th September, 2015 received from the Planning Authority which states that *'the rationale for the reduction in the required 70 metre visibility splays has been accepted by the Council. The agreed remedial works to achieve the reduced standard of 50 metres visibility splay have now been carried out on site to the satisfaction of the Roads Department and the Council. No further action proposed.'* No details of the rationale presented to the Planning Authority that justified the acceptance of a reduced 50 metre visibility splay is presented by the first party and, in any event, I would question how it is open to the Planning Authority to accept a 50

metre sight line standard when the condition attached to the decision of the Board clearly specifies a 70 metre sight line. It is also worth noting the fact that the decision of the Planning Authority in the case of ABP Ref. 05C.223700 / DCC Ref. 06/51276 also clearly specifies a 70 metre sight line requirement (Condition No.16). Correspondence from the council to the third party appellant states that the reduced sight line of 50 metres was agreed having regard to traffic speed data and analysis undertaken. This information is not, however presented by the Planning Authority or by the first party.

7.7.5. As part of the third party appeal submitted by Mr Raymond McDermott, the results of a **speed survey** are presented and associated sight line requirements derived. The calculated 85th percentile speeds presented show an outbound speed of 67 km/hr and the inbound speed of 58 km/hr. On this basis, the third party states that the required vision line is 111m at nearside and 86m at offside of quarry entrance and therefore significantly below the level available on site. As visibility at the quarry entrance is deficient, it is contended that the application should be refused on traffic safety grounds.

7.7.6. The first party response to the appeal raises a number of issues with regard to the methodology used in the assessment submitted by the appellants, including the accuracy of the speed measurement and whether the number and speed of vehicles could have been artificially inflated. These issues are noted, however it remains the fact that no clear justification for the reduced sightline of 50 metres has been presented by the first party or the Planning Authority. Table 3 of Appendix 3 of the current *Donegal County Development Plan, 2018-2024* sets out the required vision lines at entrances onto non-national rural roads outside of the 60km/hr speed limit. In the case of a 42km/hr speed the required Y distance is 50 metres, or approximately what is currently available at the entrance to the appeal site, and an increase in traffic speed to 50km/hr increases the required vision line to 70 metres. Given the required vision lines set out in the Donegal County Development Plan, the fact that both the Planning Authority and the Board initially required a sight line of 70 metres in each direction and the absence of a clear justification as to how a 50 metre sight line is appropriate in a location where the 80km/hr speed limit applies, I would share the concerns expressed by the appellants regarding the appropriateness and safety of the existing access to the appeal site.

- 7.7.7. The third party appellants have also raised concerns regarding the impact of the proposed development on the **haul route** from the site to the south to connect with the N56 at Mountain top roundabout. The length of the route connecting the site to the N56 measures approximately 1.7 km and is characterised by a narrow local road with a variable alignment. The existing width of the road is such that there is barely space for two HGVs to pass. The third party appellants note the fact that there is a significant amount of development accessed via this local road and that, with the exception of a short section in the vicinity of Errigal View housing development to the south of the site, the route does not have a footpath or public lighting.
- 7.7.8. The first party makes the case that as the development does not provide for any alteration to the existing access and no increases in traffic movement are proposed, it is considered that traffic volumes do not have to be predicted in the same way as a new development proposal. As highlighted by the third party appellants, however, the **context of the site and the local road** has in my opinion significantly changed since the previous granting of permission for the quarry extension in 2008, (ABP Ref. PL05C.223700). The third party appellants state that there are 280 dwellings from the roundabout junction at Mountain Top roundabout (N56) to the quarry entrance. I cannot verify this figure, however the local road has clearly been the subject of significant additional residential development in recent years with further houses currently under construction on the eastern side of the local road in the vicinity of the 60km/hr speed limit transition. There has also been significant additional development to the north east of the appeal site. As noted by the third party, Condition No.18 attached by the Planning Authority requires the payment of a special contribution of €30,000 in respect of provision of a footpath that would run between the Mount Pleasant and Errigal View housing developments. The local road beyond these developments and outside of the 60 km/hr speed limit zone, would, however, remain with no footpath or public lighting and I would agree with the third party appellants that the volume of houses accessing the town by way of this local road is such that there is the potential for significant conflicts between pedestrians and HGV traffic.
- 7.7.9. The basis for the first party case is that the circumstances on the local road have not changed since the previous grant of permission, however I do not agree that this is the case with the additional residential development that has occurred in the vicinity

of the site. In any event it is required as part of the current application that an assessment of traffic safety would be undertaken and the existing width of the local road on the sections where no footpath is available is barely sufficient for two HGVs to pass. I note that condition No.21 of the decision of the Planning Authority in the case of the initial quarry extension (DCC Ref. 06/51276) required the resurfacing of the entire length of the local road from the N56 roundabout to the site entrance over a minimum width of 6 metres, however this condition was not included by the Board in the grant of permission issued (Ref. PL05C.223700). In the absence of a widening of the local road between the site and the existing and proposed footpath network and / or the provision of a footpath along this section of the local road, I am not satisfied that the proposed development would not give rise to potential conflicts between pedestrians and HGV traffic and would not lead to a potential adverse impact on safety.

7.8. Other Issues

- 7.8.1. I note that there is reference by the third party appellant (Mr McDermott) to the nature of the ***maintenance shed*** constructed on site to the immediate south of the site entrance. Specifically, it is contended by this appellant that the shed as constructed provides for the maintenance as well as storage of vehicles and is therefore not in compliance with the terms or conditions of the planning permission granted for this structure, (DCC Ref.15/51448). This permission was for the construction of a structure for storage of plant and machinery and associated site works and condition No.2 attached to this grant of permission requires that the permitted building '*...shall be used solely for storage purposes associated with the existing quarry operation within the said site and shall not be used for any other commercial purpose.*' I did not gain access to this shed at the time of inspection of the site, however noise associated with maintenance activity was audible from within the structure. As discussed at 7.3 above, compliance with the terms and conditions of the permission issued for this structure is an issue for the Planning Authority in its enforcement role.

7.8.2. The impact of the proposed development on ***archaeology and architectural heritage*** is set out at Chapter 5 of the EIAR. The EIAR identifies that there are no known archaeological sites or monuments located within or close to the site. An archaeology that was present will have been removed by the quarrying operations and in this regard I note the fact that the third party appellants have highlighted that OSi historic mapping shows “Garrangalta Rock” marked in the middle of the quarry extension – a series of standalone rocks in a circular formation. In conclusion, I would agree with the EIAR that there are no earth works proposed that would potentially impact on archaeology. I would also note and agree with the assessment that there are no protected structures or structures listed on the NIAH in close proximity to the site and such that they could be potentially negatively impacted by the proposed development.

7.9. **Appropriate Assessment**

Screening Assessment

- 7.9.1. The application for permission is accompanied by a Natura Impact Statement which is included as an appendix to the submitted EIAR.
- 7.9.2. The appeal site is located c.3.5km to the south of the closest European site, that being the Leannan River SAC (site code 002167). The Lough Swilly SAC and SPA sites are located c.4km to the east, south east at the closest point. The Mulroy Bay SAC and the Cloghernagore Bog and Glenveigh National Park SAC and SPA sites are also located within the 15km radius of the site.
- 7.9.3. The EIAR (Chapter 8) identifies the general area of the site as having a very limited potential to impact on groundwater and states that the aquifer is confined. As set out in other sections relating to groundwater, I would have some issues with regard to the robustness of the conclusions reached with regard to groundwater, notwithstanding the results obtained from the 4 no. boreholes drilled on site and results recorded in 2017. On the basis of the information presented in the EIAR, the potential for significant groundwater impacts impacting on a wide area would appear to be limited and on the basis of their being no clear surface water pathway between the appeal site and the Lough Swilly SAC and SPA, Mulroy Bay SAC and the Cloghernagore Bog and Glenveigh National Park SAC and SPA sites, I do not

consider that the proposed development is likely to have significant effects on these European sites.

7.9.4. In the case of the Leannan River SAC (site code 002167), the following are the qualifying interests of the site:

- Oligotrophic waters containing very few minerals of sandy plains
- Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea
- Margaritifera margaritifera (Freshwater Pearl Mussel)
- Salmo salar (Salmon)
- Lutra lutra (Otter)
- Najas flexilis (Slender Naiad)

7.9.5. The site has **generic conservation objectives** which state the objective to be ‘*To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected*’.

7.9.6. The location of the appeal site and the clear boundary of the SAC and separation from the appeal site is such that there would not be the potential for **direct impacts** on the SAC to occur. The nature of the proposed development involving quarrying activity and the operation of quarrying equipment is such that there is the potential for contaminated water to be discharged from the site to surface waters that connect with the SAC site. Specifically, the proposed operation envisages that surface water in the lagoon on site would be discharged to the local surface water network. This surface water discharge would have a potentially significant concentration of suspended solids. Connection to the SAC site is via the roadside drain to the north east of the site to which the site discharges, from there to the Bohirill Burn c.350 metres to the north east of the site from there to the Glashagh River and into the Leannan River, an overall distance of c.3km. Of particular note with regard to sensitivity to siltation and water pollution impacts is the presence of freshwater pearl mussel in the Leannan River. Quarries are identified as a potential risk to the species in the Leannan Sub-Basin Management Plan, although the two specific

instances of quarry pollution cited (Barnes Limestone Quarry and Churchill Quarry) are not the appeal site.

- 7.9.7. On the basis of the potential discharge of contaminated surface water, the presence of a surface water pathway to the Leannan River SAC and the potential impact on the qualifying interests of the SAC, in particular the freshwater pearl mussel, it is considered that there is a likelihood of significant effects on the SAC having regard to the conservation objectives of the site. It is therefore considered appropriate that a Stage 2 appropriate assessment would be undertaken.

Stage 2 Appropriate Assessment

- 7.9.8. The screening assessment above has concluded that the proposed development has the potential to have significant effects on the ***Leannan River SAC*** having regard to the conservation objectives of the site and specifically the objective to restore or maintain at favourable conservation condition the freshwater pearl mussel species.
- 7.9.9. The issue of potential ***sedimentation*** of surface water discharges and the potential impact on freshwater pearl mussel was specifically raised by the Planning Authority in the ***request for further information*** issued to the first party. In response, the first party notes the fact that the existing lagoon on site is of significant scale and that this will act as an efficient method of ensuring that sediment settles out of waters prior to discharge from the site. It is also noted by the first party that surface water discharge from the site is controlled and is required to be undertaken in accordance with the provisions of the discharge licence (Ref. Lwat42) that is in place.
- 7.9.10. I note the comments from the first party with regard to the potential for the lagoon to act as a settlement device prior to discharge, however from an inspection of the site it would not appear to me that the discharge waters from the lagoon would be of sufficient quality to mitigate the potential adverse impacts on the conservation objectives of the SAC. In particular, I note the fact that Chapter 8 that waters for screening and washing of aggregates on site is from the lagoon with the soiled water being discharged to the lagoon. No details of the type of discharge point from the lagoon such as how the sucking up of sediment is avoided, or the method or rate of discharge are provided with the application. The report of the Senior Executive

technician on file dated 5th February, 2018 identifies a number of recommended conditions in the event of a grant of permission. These conditions include that all contaminated run off from the site be directed to sealed **settlement lagoons / ponds** and that these structures are suitably lined so that there would be no leaks or overflow. This has not been proposed by the first party and was not conditioned by the Planning Authority in its decision. In any event, the submitted NIS does not make any reference to mitigation of this form and so it would not be such that it could be taken into account in the assessment of the affects of the development on the integrity of the SAC. **In the event that the Board considered it appropriate**, it may consider requesting further details regarding surface water management from the first party. Were additional surface water management measures including engineered settlement ponds included in any revised NIS submitted they could then be considered as mitigation in the appropriate assessment.

7.9.11. The available information presented in the **EIAR** gives limited **information with regard to surface water quality**. Such information is limited to Q value data for river catchments downstream of the site and no specific data relating to the discharges from the site in the immediate vicinity of the discharge point are presented. Similarly, information on the existing level of pumping from the site is not presented in the EIAR. Similarly, no details with regard to the discharge pipe from the lagoon are provided, including how accumulated sediment at the base of the lagoon would not be drawn into the discharge.

7.9.12. Another issue that is not clear in the proposed development and which, in my opinion, has the potential to impact on the integrity of the SAC site is the **volume of water that is likely to be discharged** to the surface water system. Chapter 8 of the EIAR sets out the basis for the conclusion reached that the immediate environs of the existing quarry comprise a confined aquifer. This included the limited extent of groundwater encountered in the 4 no. boreholes drilled on site, the length of time taken for the water level in these boreholes to recover their original levels and the fact that historical observations are that the level of pumped discharge from the site approximately matches the expected volume of water that would fall on a quarry void of the size of the appeal site. The level of information presented with regard to the existing water table in the vicinity of the site is, however limited and, in my opinion, it is not completely clear on the basis of the information presented that the additional

depth of excavation of 13 metres proposed would not result in groundwater inflows into the quarry void. Such an occurrence would result in the potentially significant additional volumes of contaminated surface water being discharged to the local surface water drainage network and ultimately, potentially to the Leannan River SAC.

7.9.13. A further factor highlighted by the third party appellants in this case is the presence of what is described as an **unauthorised landfill** of approximately 4 acres located 250m along the public road to the north-east of the appeal site. This site was observed at the time of inspection and has now been reinstated to have the appearance of a greenfield site. It is not however clear what material was deposited at this site or the construction of the site infilling. On this issue the first party state that given the confined groundwater context and the local topography cumulative impacts with regard to surface and ground water are limited to the immediate vicinity of the site and that impacts would not extend to the unauthorised landfilling area on third party lands to the north of the site. I would however have some concerns that the additional excavation proposed would have the potential to draw in contaminated groundwater generated from the landfill site and that on the basis of the information presented with the application that this risk of pollution cannot be ruled out. Any such contaminated groundwater entering the site would be pumped out into the watercourse that drains indirectly to the Leannan River SAC. Similarly, the potential for the landfill site to pollute the adjoining watercourse that takes the discharge from the quarry cannot be ruled out given the lack of surface water survey data. It is not therefore possible to conclusively state that in combination effects from the quarry and landfill site on surface water quality draining to the Leannan River SAC would not arise.

7.9.14. **Policy EX-P-3** states that it is policy not to permit development unless it has been demonstrated that the development will '*not result in a significant threat of pollution to the receiving environment including, siltation and sedimentation of receiving downstream waters, having regard to the vulnerabilities identified within the River Basin Management Plan and any relevant fresh water pearl mussel sub basin plan...*'. On the basis of the above, it is my opinion that the proposed development would be contrary to Policy EX-P-3 of the development plan.

7.9.15. In conclusion, on the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Leannan River SAC (site code 002176), in view of the sites conservation objectives. In such circumstances, the Board is precluded from granting permission.

7.10. Environmental Impact Assessment

7.10.1. Introduction

- 7.10.1.1 The application for the proposed development was submitted to the planning authority in January, 2018 and was accompanied by an EIAR and, having regard to the content of Circular Letter 1/2017, regarding the implementation of the 2014 Directive by Planning Authorities and An Bord Pleanála, it is considered that the provisions of the **2014 Directive (2014/52/EU)** are applicable in the assessment of the content and scope of the submitted revised EIS.
- 7.10.1.2 Section 1.5 of the submitted EIAR sets out the **requirement for the submission of an EIAR**. It is stated that the Paragraph 2(b) of Part 2 of schedule 5 of the Planning and Development Regulations, 2001 (as amended) requires EIA in the case of the extraction of stone or gravel where the area of extraction would be greater than 5 hectares. The provisions of paragraph 13(a) of Part 2 relating to extensions are also noted. Section 1.5 of the EIAR states that the overall site area is c.7.3 ha. but that the area of extraction proposed is significantly less than this. It is contended that the proposed development is sub threshold for the purposes of EIA and that an EIAR has been submitted having regard to the planning history of the site and specifically the note attached by the Board to a previous application for permission to extend the quarry area that stated that an EIS should be submitted (ABP Ref. PL05C.205498). The exact area of the additional extraction is not clearly indicated on the submitted drawings or in the public notices. I would also note that the description of development given in the public notices references '*the continuation of quarrying for a period of 10 years on a site of 7.3 hectares....*'. On the basis of the information presented, it is not clear to me that the proposed area of extraction would not be greater than 50 percent of the appropriate threshold (5 ha.) and therefore such that it

would require EIA. In any event, for the reasons stated above, the first party has decided to submit an EIAR with the application for permission and this EIAR fall for assessment.

7.10.1.3 I have undertaken an examination of the information presented by the applicant, including the submitted EIAR and NIS as well as the submissions made during the course of the application. A **summary of the contents of the submissions** made by the Planning Authority, prescribed bodies, appellants and observers, has been set out at Section 6 of this report. The main issues raised specific to EIA can be summarised as follows:

- The effect of noise and dust on human health and residential amenity,
- The effect of traffic on safety and local populations,
- The effect of the increased extraction depth on groundwater,
- The effect of the increased extraction depth on site and slope stability,
- The effect of the proposed development on surface water volumes and quality, the cumulative impact with adjacent illegal landfill site and the potential impact on ecology and the Leannan River SAC.
- That the development would lead to issues of ground stability and impact negatively on adjoining third party lands.
- That the development would give rise to traffic generation that would conflict with other users of the local road adjoining the site.
- That the sight lines at the existing access to the quarry are sub standard and that the continuation of extraction and resulting HGV access to the site, would lead to the creation of a traffic hazard.

These issues are addressed below under the relevant headings, and as appropriate in the reasoned conclusion and recommendation.

7.10.1.4 With regard to impacts, the EIAR submitted examines the potential impact of the proposed development under a **grouped format** approach with each of the areas set out in Article 3 of the 2014 EIA Directive being addressed individually for potential impacts and proposed mitigation measures.

7.10.1.5 The EIS submitted, in my opinion, addresses most of the main likely significant direct and indirect effects that the proposed development may have on the environment. In terms of compliance with the relevant legislative provisions, in this case **Article 94** of the *Planning and Development Regulations, 2001 (as amended)*, I would note that the application was submitted to the Planning Authority after the transposition date of the 2014 Directive (16th May, 2017) but before the coming into effect of the *European Union (Planning and Development) (Environmental Impact Assessment) Regulations, 2018* (SI No.296 of 2018) which came into effect from the 1st September, 2018. Regarding transposition, Circular Letter PL05/2018 states that Article 2 of the 2018 Regulations ‘...come into effect on 1st September, 2018 in respect of development consent applications requiring EIA made on or after that date (save for certain specific provisions referred to below which come into effect on 1st January, 2019 (screening, scoping and pre 16 May, 2017 applications).’ While the submitted EIAR therefore needs to be assessed having regard to the general requirements of the 2014 EIA Directive, it would appear that the specific requirements of the revised Article 94 and Schedule 6 of the Planning and Development Regulations as introduced by the 2018 EIA Regulations are not applicable to the subject case.

7.10.1.6 In terms of compliance with the general requirements of the 2014 EIA Directive, and the provisions of Article 94 that was in effect at the date of submission of the application (including EIAR) to the Planning Authority in January 2018, I note the following:

- That the factors of the environment covered in the grouped format presented in the submitted EIAR does not include any specific consideration of ‘*human beings*’ or ‘*population and human health*’.
- That the level of information provided with regard to reasonable alternatives and resulting environmental impacts is very limited and does not, for example, detail alternative depths of extraction.
- As set out at sections 7.4 (Noise and Air Quality), 7.5 (Water and Hydrology) and 7.9 (Appropriate Assessment) of this report above, the level of baseline information presented in the EIAR is considered limited, not to be in accordance with the requirements of Art. 94(1)(c) and not sufficient to enable

a clear identification of the main effects of the proposed development on the environment. This is particularly the case in the areas of surface water, noise and dust where it would appear that additional survey information has been collected that is not presented in the EIAR.

Having regard to the above, it is considered that the submitted EIAR does not meet the requirements of Article 94 and Schedule 6 of the Planning and Development Regulations, 2001 (as amended) and that there is insufficient information provided to enable a full assessment of the environmental impacts of the proposed development on the environment to be undertaken. In the event that the Board considers it appropriate to request further details from the first party is recommended that the above items are included in the request.

7.10.1.7 With regard to the compliance of the submitted EIAR with the specific requirements of Article 94 and Schedule 6 of the Planning and Development Regulations as amended by the *European Union (Planning and Development) (Environmental Impact Assessment) Regulations, 2018*, I note the following:

- No clear information is presented with regard to the persons who prepared the EIAR, the competencies of such persons and statement of expertise for same as required by Art. 94(e) as revised by the 2018 Regulations.

For the reasons set out above, it is not clear that the omission of this information is such that the submitted EIAR should be deemed not to be in compliance with the requirements of Article 94 of the Planning and Development Regulations, 2001 (as amended). In the event, however that the Board is considering requesting further information from the first party it is recommended that further information on this issue would be requested.

7.10.1.8 Having regard to the outstanding issues relating to traffic and Appropriate Assessment identified in the above assessment, and the consequent recommendation for refusal of permission for reasons relating to these issues, further information on the outstanding issues relating to EIA and the submitted EIAR as identified in the sections above is not recommended.

7.10.2. **Assessment of Potential Direct and Indirect Effects**

7.10.2.1 The following sections contain an assessment of the project under each of the individual factors of the environment. Where appropriate, reference is made to more detailed discussion of the impacts contained in the assessment at sections 7.2 – 7.9 of this report above.

7.10.3. **Population and Human Health**

7.10.3.1 As noted above, the submitted EIAR does not contain any specific assessment of the likely environmental impacts of the proposed development under the heading of 'Population and Human Health'. The main impacts arising under the heading of population and human health relate to the potential for the development to generate **noise, dust** and emissions to environment that would have a negative impact on the amenity of the surrounding population and potentially on the health of that population.

7.10.3.2 As set out in section 7.4 of this assessment above, the EIAR sets out the results of dust deposition monitoring that was undertaken in 2017 and which indicates that recorded dust levels are within the standard 350 ug/m²/day level that is the subject of conditions attaching to previous permissions on the appeal site. In the case of noise, the submitted EIAR contains a noise modelling exercise, the methodology for which is set out in the EIAR. The results of this modelling exercise indicate that the noise generation above background levels would be a maximum of 11.5 dBA and therefore not such that there would be a very significant change in the noise environment.

7.10.3.3 As highlighted in section 7.4 above, however, it is considered that the information presented in the EIAR could have been augmented with additional survey data dating back to the period when the first party took control of the site (2014). In the absence of such information, while it would appear that the impacts in terms of noise and dust and resulting impacts on surrounding populations and human health would not be significantly adverse, it is not possible to be definitive with regard to likely impacts of the development under the heading of population and human health.

7.10.4. Biodiversity

- 7.10.4.1 As set out at Chapter 12 of the submitted EIAR, the proposed development has the potential to impact negatively on the **Leannan River SAC** as well as local flora and fauna, including badgers and bats. The site environs were surveyed for badger sett and none were observed. Similarly there are no roosting habitats for bats in close proximity to or within the appeal site. Given the nature of the proposed development comprising the further development of an existing quarry, there are no potential impacts on flora identified. It is noted that details of the flora and fauna surveys undertaken are not set out in the appendices to or elsewhere in the EIAR.
- 7.10.4.2 There is a direct hydrological linkage between the appeal site and the Leannan River SAC and the qualifying interests for the SAC include **freshwater pearl mussel** which is especially sensitive to siltation and contaminants. As discussed at section 7.9 above under the heading of appropriate assessment, the proposed development has potential impacts on surface water that could impact on the Leannan River SAC site. Specifically, the surface water discharge from the site has the potential to be contaminated by silt and also by pollution from on site quarrying operations and the on site storage and maintenance of machinery and vehicles.
- 7.10.4.3 As discussed at sections 7.5 and 7.9 above, the EIAR contends that the **existing lagoon** on site will act to ensure that **settlement** occurs prior to discharge and mitigation measures in the form of procedures for the storage of fuels and procedures in the event of spillages are set out. Notwithstanding these measures however, as detailed in section 7.9 and as identified in third party submissions on file, it is considered that there remain significant uncertainty with regard to the **volume and nature of discharges to surface waters** from the site and no predicted discharge rates from the site are presented in the EIAR. In this regard the lack of designed settlement ponds is noted as is the uncertainty and lack of detail available with regard to the groundwater conditions at the site, the potential for the development to breach the water table and the implications for de watering of the site in the event that the water table is breached. The presence of an unauthorised **landfill site** approximately 250 metres to the north east of the site, and immediately adjacent to the local watercourse into which the site discharges, is noted by the first party responses on file but is not the subject of detailed assessment in the EIAR

relating to likely material on that site and the potential for it to combine with the proposed development to result in surface water pollution.

7.10.4.4 In the absence of data on the previous surface water quality being discharged from the site and proposals for more effective on site management of surface water, it is not possible to conclude that the proposed development would not have significant negative effects on surface water quality. Similarly, while it would appear from the information presented that there likely would not be significant negative impact on groundwater, given the depth of the additional extraction (c.13 metres) and the limited groundwater analysis presented in the EIAR it is not possible to be confident that the water table would not be breached and that resulting impacts on groundwater quality and requirements for discharges to surface waters from the site would not arise.

7.10.5. **Land, Soil, Water, Air, and Climate**

7.10.5.2 The proposed development has a number of potential environmental impacts under the above headings and these have been discussed in detail in sections 7.5 and 7.9 of this report above. By virtue of the proposed deepening of the quarry from 145 metres AOD to 132 metres AOD, the proposed development has the potential to impact on groundwater. There is also the risk that the deepening of the quarry could result in additional **slope instability** and a risk of slope failures which may also impact beyond the site boundary. The risk of **groundwater infiltration** into the excavation is raised in the submissions received from third party appellants, and this submission is supported by a geological assessment prepared by Keohane Geological and Environmental Consultancy. The Keohane report also details what are identified as a number of failures that have occurred at the site as well as the gradient of the existing quarry faces which it is contended are steeper than what was conditioned by the Board under Ref. PL05C.223700.

7.10.5.3 The submitted information contends that the existing **groundwater system** in the general area of the site is a confined system and that there is little or no movement of groundwater into this system from outside. On the basis of 4 no. boreholes undertaken on site and an analysis of the rock formation in the vicinity of the site, it is concluded in the EIAR that extraction to the proposed depth of 132 metres AOD

would not result in groundwater flowing into the site. As detailed in section 7.5, it is considered that the level of detail presented to support this contention is not very extensive, relying on the results of 4 no. boreholes, only three of which appear to extend below the depth of extraction as proposed in the subject application.

7.10.5.4 The proposed development has the potential to generate **noise, dust and emissions to air**. As set out in section 7.4 of this assessment above, the EIAR sets out the results of dust deposition monitoring that was undertaken in 2017 and which indicates that recorded dust levels are within the standard 350 ug/m²/day level that is the subject of conditions attaching to previous permissions on the appeal site. In the case of noise, the submitted EIAR contains a **noise modelling exercise**, the methodology for which is set out in the EIAR. The results of this modelling exercise indicate that the noise generation above background levels would be a maximum of 11.5 dBA and therefore not such that there would be a very significant change in the noise environment. As highlighted in section 7.4 above, however, it is considered that the information presented in the EIAR could have been augmented with additional survey data dating back to the period when the first party took control of the site (2014). In the absence of such information, while it would appear that the impacts in terms of noise and dust would not be significantly adverse, it is not possible to be definitive with regard to impacts.

7.10.6. **Material Assets, Cultural Heritage and the Landscape**

7.10.6.1 The potential impact of the proposed development on cultural heritage and on the landscape is limited by the fact that the development proposes the deepening of an existing quarry. **Landscape** impacts arising from the proposed development are assessed at Chapter 6 of the submitted EIAR. The conclusion of the EIAR that there would not be significant negative impacts on landscape or visual impacts arising is noted and agreed with given the existing developed nature of the site, the landscape character of the site environs and the lack of clear views into the site from surrounding roads and other visually sensitive locations. Similarly, the nature of the proposed development is such that there is unlikely to be significant impacts on **cultural heritage or archaeology** arising given the existing developed nature of the

site and the conclusions of the EIAR of no significant adverse impacts under these heading are accepted. .

7.10.6.2 With regard to material assets, the main potential impacts arising relate to **roads and transportation**. Specifically, the provision of access to the site by HGVs would give rise for the potential for safety issues to arise at the site entrance and along the haul route south along the local road to connect with the N56 national road at mountain top roundabout c.1.7 km to the south of the site entrance. The EIAR details how the existing site entrance is considered acceptable on the basis of the site lines being approved by Donegal County Council and the fact that there would not be additional traffic using the access. The third party appellants have questioned the appropriateness of the available sight lines for the 80km/hr speed limit zone in which the site is located and a speed survey is submitted. The appropriateness of the haul route along the local road is also questioned given the narrow width and the significant number of residential properties using the route. As set out in section 7.7 above, notwithstanding the fact that no additional traffic is stated to be generated by the development and the existing nature of the access, I do not consider that the available sight lines have been adequately justified and that the existing site access arrangements are such that it is not clear that a traffic hazard would not arise. Similarly, I would agree with the third party that the context of the site in terms of the number of residential properties using the local road has changed significantly since the last permission in 2008 and that the condition of the road is such that there would be potential conflicts between pedestrian and HGV traffic.

7.10.6.3 On the basis of the information presented in the EIAR and submissions on the appeal I consider that the proposed development would lead to significant negative impacts on the environment under the heading of material assets and specifically that the proposed development would give rise to the creation of a traffic hazard at the site access and along the haul route between the site and the national road network.

7.10.7. Interactions

The main interactions between environmental factors are identified are as follows:

- Population and Noise and Air. The impacts of the proposed development on noise and air quality, particularly dust, have the potential to impact negatively on local populations and on residential amenity. As highlighted above, the information presented in the EIAR indicates that significant negative impacts in terms of noise and air quality such as would impact significantly on local populations, human health or residential amenity are not predicted however it would appear that additional data that could support these conclusions could be provided by the first party.
- Water and Ecology. The discharge of contaminated water from the site to the surface water drainage network would also have potential impacts on ecology. In particular, it is noted that the discharge watercourse from the site has a hydrological connection to the Leannan River SAC and that one of the qualifying interests for this site is the freshwater pearl mussel. As set out in the appropriate assessment at 7.9 of this report, it is considered that the proposed development, and specifically the potential for discharges to surface water, would have an adverse effect on the conservation objectives of the Leannan River SAC site having regard to the conservation objectives of the site.
- Land / Soils and Population. The existing extraction at the site is characterised by development being undertaken in very close proximity to site boundaries and by steep quarry faces. It is also noted that the existing quarry profile is not clearly represented in the drawings submitted with the application and that there is a lack of clarity with regard to how the proposed final quarry profile is achievable from the existing situation. The proximity of development to the site boundaries and the lack of clarity regarding the achievement of the final benched profile have implications for surrounding third party landowners.

7.10.8. Reasoned Conclusion

7.10.8.1 Having regard to the examination of environmental information contained above, and in particular to the EIAR and supplementary information provided by the developer, and the submissions of the Planning Authority, prescribed bodies, appellants and observers in the course of the application, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- The potential pollution of surface waters arising from sediment in the on site lagoon and potential contamination by on site equipment and activity which will not be avoided, mitigated or otherwise addressed by means of condition. The proposed mitigation is settlement in the lagoon and controlled discharge however it is considered that the sensitivity of the receiving waters are such that additional treatment of surface water is required prior to discharge.
- The potential pollution of groundwaters and creation of a connection between the site and groundwater thereby impacting on water volumes within the site which will not be avoided, mitigated or otherwise addressed by means of condition. This is proposed to be avoided by the depth of the excavation and the fact that the site is located on top of a confined aquifer. On the basis of the information presented it is not considered that it has been clearly identified that significant impacts on groundwater, and resulting implications for surface water discharges from the site, can be avoided.
- The impact on traffic safety and conflicts between site traffic and pedestrians and other road users which will not be avoided, mitigated or otherwise addressed by means of condition. These impacts are proposed to be mitigated by the design of the site entrance and the provision of additional length of footpath along the local road to the south of the site. It is however not considered that the available sight lines at the site access are such as to enable safe access and egress from the site and that the traffic generated by the development would not lead to conflicts between site traffic and road users, particularly pedestrians, along the local road to the south of the site.

7.10.9. Having regard to the above conclusions with regard to the likely residual effects on the environment, and taken in conjunction with the identified deficiencies in the submitted EIAR and non-compliance with the requirements of Article 94 of the Planning and Development Regulations, 2001 (as amended), it is considered that a refusal of planning permission on the basis of significant negative impacts on the environment is justified.

8.0 Recommendation

8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and having regard to the potential for the discharge of contaminated water to the local surface water drainage network that has a hydrological pathway to the Leannan River SAC , the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Leannan River SAC (site code 002176), in view of the sites conservation objectives. In such circumstances, the Board is precluded from granting permission for the proposed development.
2. Having regard to the location of the site access on a local road where the 80km/hr speed limit applies, to the restricted visibility at the site access and constraints on the improvement of these existing sight lines, to the concentration of residential properties in the vicinity of the site which use the local road to access Letterkenny town and to the restricted width of this local road and absence of existing or proposed footpaths between the site entrance and the 60km/hr speed limit, the Board is not satisfied that safe access and egress to the site is available and that the proposed development would not result in conflicts between HGV traffic, pedestrians and other road users. The proposed development would therefore endanger public safety by reason of a traffic hazard and would be contrary to the proper planning and sustainable development of the area.

3. On the basis of the information contained in the planning application, the Environmental Impact Assessment Report (EIAR), and the submissions on file the Board is not satisfied that a full and adequate assessment of the potential impacts of the proposed development on the environment has been carried out and that the submitted EIAR meets the requirements of Article 94 of the *Planning and Development Regulations, 2001 (as amended)*. In particular, the potential adverse impacts of the proposed development in relation to ground and surface water, have not been adequately addressed in the EIAR and further data relating to noise and dust emissions stated to have been collected have not been provided. In the absence of such a full and adequate assessment, it is not considered that it has been demonstrated that the proposed development would not have significant negative impacts on the environment, would not seriously injure the amenities of property in the vicinity and would not be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

26th March, 2019