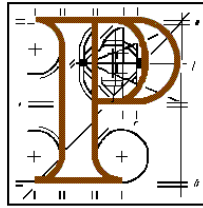


An Bord Pleanála



Inspector's Report

PL 05E.SU0128

DEVELOPMENT:- Substitute Consent application for a Quarry.

ADDRESS:- Ballymagroarty Irish and Glasbolie Ballintra, Co Donegal

PLANNING APPLICATION

Planning Authority: Donegal Co Council

Planning Authority Reg. No: n/a

Applicant: Patrick Mc Caffery and Sons

Application Type: Application for Substitute Consent

Observations

James Gorman
Pearse O' Gorman
Dorasami Raman
Christine Dinsmore
Stewart Kirkpatrick
Hugh Gorman
Mary Cosgrove

DATE OF SITE INSPECTION: 20th May 2015

INSPECTOR: Paul Caprani

1.0 INTRODUCTION

An application was lodged with An Bord Pleanála on the 4th December 2015 under the provisions of Section 177E of the Planning and Development Acts 2000 – 2001 for substitute consent for an existing quarry outside the village of Ballintra. The application was accompanied by a remedial Environmental Impact Statement and a remedial Natura Impact Statement as required by An Bord Pleanála under the provisions of Section 261A (2)(a)(i) and Section 261A (2)(a)(ii) as set out in the Board Order in relation to Reg. Ref. 05E QV0128. A number of observations have been submitted by local residents in the vicinity objecting to the application for substitute consent arguing that the quarry has to date adversely impacted on the environmental and residential amenity of the area and the application for substitute consent should relate to the entire area of the site and not just the northern portion of the Quarry.

2.0 SITE LOCATION AND DESCRIPTION.

The existing quarry is located in south-west Donegal to the west of the N15 between the towns of Ballyshannon and Donegal and approximately 3 kilometres to the south of the village of Ballintra. The existing quarry is located approximately 750 metres to the west of the N15 and a local road running westward from the national primary route traverses the quarry area and forms the southern boundary of that part of the quarry that forms the application for substitute consent. The site is located in the townlands of Ballymagroarty and Glasbolie. The area which is the subject of the application for substitute consent amounts to 4.4 hectares and this entire area of the substitute consent application is located on the northern side of the local access road that runs westwards from the N15. A larger section of quarry together with a processing area and a concrete batching plant is located adjacent to the subject site on the southern side of the road. The entire lands that form the quarry area is under the same ownership but not all of the quarry has been subject to an application for substitute consent. For the purposes of clarity, the application area will be referred to as the north quarry and the existing active processing and manufacturing area which is outside the south boundary will be referred to as the south quarry.

The north quarry accommodates an area of 4.4 hectares and quarrying activities within this area has now ceased. It is proposed to restore the

site as part of the substitute consent application according to the information contained on file. Quarrying activities at the on the north quarry were limited to extraction only with no processing such as crushing or screening undertaken. According to the drawings submitted the quarry was excavated to a depth of approximately 140 metres below existing ground level and approximately 50 metres below the existing watertable. The entrance to the quarry is located on the south-western boundary. The vast majority of the quarry area was excavated to a depth of minus 10 metres ordnance datum. Only the area around the perimeter of the site and a small section on the north-western part of the site remained unexcavated.

Extraction at the application site took place below the watertable and therefore groundwater extraction took place and the water was discharged to an adjoining stream to the north of the application site under the provisions of a discharge license. Water abstraction has now ceased and the application site has been allowed to flood.

The surrounding area can be described as generally rural agricultural land. The land forms in the vicinity of the site incorporate a pronounced undulation where Glasbolie Hill to the immediate north of the site rising to a height of c.130 metres. Ballymagroarty Hill is located to the east beyond the N15 which rises to a similar height while Lurgan Hill rises to a height of over 140 metres to the south-west of the site. Pasture farming is main agricultural activity in the area. There is a high density of one-off housing in the wider area and there are a number of dwellinghouses located in close proximity to the north quarry including a number of dwellinghouses adjacent to the north-east boundary of the quarry and numerous dwellinghouses along the local roads which run along the northern and southern boundary of the quarry.

3.0 OPERATIONS ON SITE

It is reiterated that no quarrying activity is currently taking place in the north quarry site. Excavations in a northern quarry have now ceased and the applicant proposes to restore the site in accordance with a landscaping and restoration plan which is set out in Section 11 of the EIS. The remedial EIS does however provide information in relation to the activities that were undertaken at the application site on a day-to-day basis when the quarry was fully operational. The north quarry has a maximum length (east/west) of 300 metres and a depth of c.175 square metres. The central area of the site has been excavated to a depth of

approximately 130 metres below ground level. During operation there was a requirement abstract groundwater to permit continued excavation of the quarry floor. Rock was extracted from the site using conventional blasting methods in accordance with market demand for aggregate. All excavated materials from the north quarry were, according to the remedial EIS, transferred to the southern quarry for processing prior to being exported off site. Tracked excavators and dump trucks operated on site and transported the material to the manufacturing area. The overburden stripped from the site was mounded around the perimeter to form berms. Vegetation has recolonized most of these berms. All blasting on site took place in accordance with best practice and the blasts took place at pre-determined times. All blasting was monitored for noise and vibration. The remedial EIS states that the existing water storage tank which is located inside the entrance gate has been decommissioned since extraction activities have ceased.

In terms of surface water and groundwater management, groundwater egress through the quarry face and rainwater collection within the quarry was pumped to a stream which runs along the northern boundary of the site. The discharge was subject to licensing (see Planning History below). There is currently no discharge from the application site and the groundwater level has settled at a depth of approximately 50 metres OD according to the drawings submitted. The quarry operated between 0700 hours and 1900 hours Monday to Friday and 0700 hours to 1400 hours on Saturday. The application site did not operate on Sundays or public holidays. There was no telecommunications or public water supply available for the northern quarry.

4.0 PLANNING HISTORY

The following files attached to the application are summarised below:

PL 05 131103 – Planning permission is sought for the extension, retention and completion of the existing quarry and associated buildings on site. Donegal Co. Council granted planning permission for the development and this decision was subject to 6 no. 3rd Party appeals. The Board refused planning permission on the grounds that the applicant failed to carry out an inadequate EIA and that the drawings submitted failed to sufficiently identify those areas of the site for which the retention, completion and extension of planning permission is sought. The decision was dated 22/10/2003.

LA 05. LA0053 – An Air pollution Licence was sought for the operation of bitumen/roadstone coating plant. Donegal Co Council granted the Licence and this decision was subject to a 3rd party appeal. The Board upheld the decision of the Planning Authority and granted the licence on the 18th of October 2005.

PL 05F. WW0303 Donegal Co Council granted a licence in the southern part of the quarry to discharge effluent arising from dust suppression systems and surface water run-off (maximum rate of discharge 717 m³ /day) into an open drain which will discharge into Durnesh Lake. The Board upheld the decision altering some of the conditions. The maximum discharge permitted in any one day was specified at 700 m³. The decision was dated 28th July 2006.

WW 05F WW0330. This discharge licence application relates to a discharge licence in the northern part of the quarry into the Durnesh Lake (which according to the information contained on the file was refused a licence in 2005). The maximum discharge was stated at 720 per day. Donegal Co Council granted the licence which was subject to a 3rd party appeal. The Board upheld the decision of the Council and granted the Licence. The Council limited the flow to a maximum of 700 m³/d. This was unaltered in the Boards determination. The decision was dated February 12th 2008.

SECTION 261 REGISTRATION.

The quarry was registered under Reg. Ref. QY01: The application form submitted for the registration of the quarry under section 261 of the Planning and Development Acts 2000, provides the following details:

- Quarry does not have planning permission under 1963 Act
- Quarry commenced operation in the 1940's with current operator commencing in 1969
- Total site area 33.9ha
- Extraction area of 10.6ha
- Material being extracted: limestone
- Depth of excavation: 54.6m

The file notes that the Council considered requiring the making of a planning application and the preparation of an EIS in respect of the quarry, based on a previous decision of An Bord Pleanála that an EIS was inadequate. It appears however, that such a request was not made.

QV 05E 0128 – An application under the provisions of S.261A(6)(a) for a review of Donegal Co. Council's decision to close the quarry under the provisions of S261(A)(4)(a). The Board in its decision set aside the determination under the provisions of S261(A)(4)(a) to close the quarry on the grounds that sufficient evidence exists to suggest that the quarry commenced operation prior to the 1st of October 1964 and sought an application for substitute consent accompanied by an EIS and NIS as per the provisions of (S261(A) 2(a)(i) and 2(a)(ii)). The decision was dated 13th of October 2013. The Board should have particular regard to the Inspectors report. The more relevant points regarding the planning status of various parts of the quarry are set out in my preliminary assessment below.

Details of planning applications which were not subject of an appeal are referred to in the Inspectors report in relation to 05E QV 0128 and a set out below:

Planning Authority reg. ref. 07/21124: Planning permission was sought for the construction of a quarry (4.61ha), the nature of the development is for the extraction of rock, which consists of drilling blasting and haulage of rock. The site is a greenfield site to the west of the main quarry (area A) and according to the quarry operator forms part of the s261 registered lands. The quarry operator indicated that as the areas of extraction was under 5ha, no Environmental Impact Assessment would be undertaken. A letter from the Council issued, advising that screening of the proposed development and the adjoining development was undertaken and it was considered that the proposed development was likely to have a significant effect on the environment and that an Environmental Impact Statement was required. An Environmental Impact Statement was not submitted to the Council and no decision issued from the Council.

Planning Authority reg. ref. 07/21125: Retention planning permission was sought for the retention of a quarry, the nature of development is for the extraction of rock, which consists of drilling blasting and haulage of rock. The site referred to a 1.56ha area to the west of the northern quarry (quarry B) and which according to the operators agent, was part of the s261 registered quarry. The site assessment submitted with the application stated that as the area of the quarry was below the threshold and was existing there would be limited additional impacts and an Environmental Impact Assessment was not required. As was the case above, a letter from the Council issued, advising that screening of the

proposed development and the adjoining development was undertaken and it was considered that the proposed development was likely to have a significant effect on the environment and that an Environmental Impact Statement was required. An Environmental Impact Statement was not submitted to the Council and no decision issued from the Council.

Enforcement Action

UDDLO5/26: According to the Quarry review file sent to the Board, a warning letter was sent to the quarry operator regarding alleged unauthorised development at the quarry, including extension of the existing quarry unit. The file was requested from the Planning Authority but not received at the date of writing.

5.0 APPLICATION SUBMITTED TO AN BORD PLEANÁLA

An application was submitted to An Bord Pleanála on behalf of the applicant on the 4th December 2014. It was accompanied by

- A signed planning application form.
- Newspaper notice.
- Site notice.
- Drawings.
- A Remedial Environmental Impact Statement and non-technical summary.
- A Remedial Natura Impact Statement.

On the 16th December 2014 An Bord Pleanála circulated the substitute consent application to the following prescribed bodies for comment:

- Development Applications Unit.
- Bord Failte.
- The Heritage Council.
- The Arts Council.
- The North Western Regional Fisheries Board.
- The Department of Communications, Energy and Natural Resources
- An Taisce.
- The HSE.
- Irish Water.

On the 9th January 2015 An Bord Pleanála requested the applicant to submit details of the rationale behind the decision to include only the area of 4.4 hectares for substitute consent and the exclusion of the remainder of the estimated 10.35 hectares of extracted working area to the south of the road.

The applicant's submission dated 13th January 2015 set out the background to the Quarry Review determination (05E QV 0128) and stated that as part of compiling the application, clarification was sought from Donegal County Council regarding the area to be included as part of the substitute consent application as per the notice issued by Donegal County Council under Section 261A (12) of the Planning and Development Acts 2000. The Council confirmed, on foot of a request for clarification from An Bord Pleanála, that the substitute consent application consisted of the area to the north of the county road located in the townland of Glasbolie. In line with this determination, an application was submitted to An Bord Pleanála which consisted of the lands subject to the quarrying activity to the north of the county road. A topographical survey of the lands confirmed that the area subject to quarrying consisted of 4.4 hectares.

4.0 OBSERVATIONS ON THE APPLICATION

5.1 Submission from Mrs Mary Cosgrove

The observer inherited land including a house and outbuildings on lands approximately 180 metres to the north-east of the site fronting onto a local access road. The observer had plans to develop these lands and eventually retire there, but was unable to do so because of amenity problems caused by excessive dust generation, noise and vibration. The impact the development had on the environment is described as "sacrilegious".

5.2 Submission from Hugh Gorman

The observation submitted raises objections to the application. The observer currently lives in New Zealand but owns a house opposite the quarry in which he intends retire. However the observer is dissuaded from doing so due to the noise, dust, smell and poor visual amenity associated with the quarry. The prevailing winds carry the dust directly

to the observers' dwelling and as such he feels unable to return to his ancestral farm.

5.3 Submission from Stuart Kirkpatrick

The observer argues that the quarry has significant impact on the visual amenity of the area. The quarrying activity has significantly blighted the panoramic views from the observer's dwelling. The consultants have not recognised or acknowledged the splendid views inherent in the area in the remedial environmental impact statement. The constructed berms around the periphery of the quarry have exacerbated the negative impact associated with the quarry. The EIS fails to recognise the dreadfully dangerous state of the north quarry. Only recently has this area been fenced. Nevertheless it still poses a significant safety risk.

It is considered that the EIS is very narrow and selective in its focus. It is not altogether clear why the southern part of the quarry has been excluded from the EIS. The quarry has always operated as a single entity. The quarry has been a terrible source of trouble and nuisance and significantly damaged the observers' quality of life. He has had to endure a blasting regime which has resulted in more than one blast a fortnight. The quarry has also given rise to significant traffic issues. The impact of the proposal in terms of noise, dust and tar fume-pollution has been ignored in the rEIS.

5.4 Submission from Christine Dinsmore

The observer states that her dwelling is located to the west of the north quarry. It is suggested that the applicant has included some of the observer's land along the northern side of the quarry in the application submitted for substitute consent. The observer requests that these drawings be amended so as not to include the observer's property as being under the ownership of the applicant. The berms which have been constructed from the overburden covering the northern quarry have obstructed and screened high amenity views. It would have been much better to remove the berms and maintain a quarry face way back from the road edge. The quarry extension is totally unauthorised and the applicant expanded the quarry without the benefit of planning permission or consulting with neighbours. There is no merit in allowing the substitute consent application as the damage has already been done and cannot be undone. An Bord Pleanála had turned down the observer's application for the retention of a partially constructed

dwellinghouse on the grounds that the proposed house would seriously injure the rural and scenic amenities of the area. However the house in question would be insignificant in the context of quarrying operations which have taken place. It is only fair now that An Bord Pleanála apply the same assessment to the quarry retention application. The north quarry is too close to the boundaries of the site, has not been properly benched and is far too deep. It represents a significant safety risk. A serious accident at the north quarry is inevitable. The quarry traffic also constitutes a significant traffic hazard.

5.5 Submission from Dorasami Raman

The submission contends that there has been numerous unauthorised development and extensions at the quarry and this is significantly adversely affected the amenities of residents living in the vicinity. The unauthorised extension of the quarry and its associated dangers and nuisance has caused great distress and it took many letters and phone calls to get the planning authority to begin enforcement measures. Concern is expressed that if the applicant is granted substitute consent he will recommence quarrying activity on the northern face. The remedial Environmental Impact Statement which accompanied the application is not the balanced and critically reflective assessment that it should be. It provides very partial views that favour the applicant. There are no serious plans for the restoration of this area of the quarry. The berms which have been constructed around the perimeter of the quarry only seek to screen views of the wider scenic area. The remedial EIS shows a complete lack of understanding as to how the quarry has affected and continues to impact on local residents. The observer has decided to move away from the area. However, unfortunately the proximity of the quarry is a major issue for potential buyers.

5.6 Submission from Pearse O’Gorman

The EIS only deals with the northern portion of the site and does not include the southern portion. By excluding such a large portion of the quarry and most of the quarrying activities taking place on site, the applicant has clearly not submitted a proper remedial environmental impact statement.

The applicant placed a large amount of waste material in the north quarry before allowing it to flood. A field located at the eastern corner was subject to an enforcement action, as this field was developed into a lorry park. However there is no mention of this unauthorised

development. The EIS does not incorporate an honest assessment of the detrimental impact the quarry has had on the locality. In relation to the north quarry, the excavation to a depth of 130 metres has created a serious safety risk to residents in the locality.

For decades the quarry has created a serious environmental nuisance and danger in this locality and has adversely affected the quality of life in the area. These impacts are barely addressed in the document. Pollution resulting from the operation of a quarry includes tar fumes, dust from stone crushing, traffic and noise from various activities including stone breakers, blasting and heavy road traffic.

The assessment of impacts on wildlife is clearly incomplete and the applicants clearly acknowledge that the quarry was a nesting site for peregrine falcons and Annex 1 species under the Birds Directive.

It is neither safe nor practical to walk through the south quarry on the public right of way road on account of the quarry traffic and the filthy road surface conditions.

The observer understands that the registration process was incomplete. It is considered that the EIS is weak, biased and practically worthless. The Board is requested to refuse Substitute Consent for the quarry.

5.7 Submission from James Gorman

The submission from James Gorman comprises of three separate documents.

- A submission from McCarthy Kelville O'Sullivan, Planning and Environmental Consultants.
- A submission from James Gorman (Appendix 01), and
- A hydrogeological assessment by Henning Moe, Consultant Hydrogeologist (Appendix 02).

The application for substitute consent represents project splitting as it only relates to the northern portion of the quarry. Reference is made to the inspector's report under QV 05E.0128 which, according to the observation, argues that the entire site should be assessed as an integrated unit. Reference is also made to the application for registration under Section 261 and the An Bord Pleanála application and appeal (Reg. Ref. 05131103) both of which it is contended related to the overall quarry (i.e. the north and south quarry).

The Gorman family live within 250 metres of the quarry boundary and have had to endure continuous unacceptable impacts from the quarry which has been operated with little or no regard for its neighbours. The impact on amenity arising from the operation includes impacts in relation to noise, dust, emissions to air, visual impact, and waste disposal on adjoining lands, soil and groundwater contamination. It is noted that the existing operations on site have operated entirely without the benefit of planning permission. The observer has obtained new information in the form of aerial photography from the 1950s which show no evidence of a quarry on these lands prior to the appointed day.

In relation to the remedial NIS, it is suggested that some of the SPAs in the vicinity, some of the birds which form part of the qualifying interests including the Greenland white-fronted geese and whooper swans may be susceptible to disturbance from impacts arising from quarry blasting operations.

It is also suggested that in combination effects which are required to be considered as part of the AA process could adversely impact on European sites in the vicinity. The remedial NIS did not ascertain whether the Ballintra SAC or any other Natura sites were impacted on by cumulative effects. It is therefore considered that the NIS is deficient in its current conclusion in terms of informing the AA process.

Reference is made to the fact that waste material has been dumped into the north quarry since quarrying has ceased in 2013. There is no planning permission, waste certificate or consent for the disposal of this waste material. This waste material provides a significant risk to the contamination of groundwater.

The submission suggests that the quarry presents a significant threat to groundwater which is a source of local potable water supply in the area. Reference is made to Lough Gorman which is a public water supply source, serving approximately 2,000 people.

A separate detailed report was prepared by James Gorman, the contents of this 44 page report is briefly set out below.

The first section of the report sets out the quarry history. It suggests that the quarry commenced operations under the auspices of Donegal County Council in 1966. It was opened specifically for the realignment of the N15. It ceased operations at the end of 1966, lay dormant for

approximately 18 months and was reopened around mid-1968. A concrete batching plant was added around 1977. Further details in relation to the progressive expansion of the quarry are set out in the submissions. (For further details in relation to the quarry expansion, I refer the Board to Section 12.2.7 of the Inspector's Report for QV05E.0128 attached).

The Board is requested to invalidate the substitute consent application on the grounds that

- (a) The Section 261A process has taken over three years to date and the applicant has continued with unauthorised development and inflicted further environmental damage during this period.
- (b) The Planning Inspector in the report under QV05E.0128 acknowledges that all parts of the quarry are intrinsically linked. The Board Orders in relation to QV05E.0128 considers that the entirety of the site should be considered as a single entity.
- (c) That land ownership folios referred to by the applicants in the quarry review file do not cover the full extent of the south quarry.

The red line in the substitute consent application contradicts the definition of a quarry set out under SI 584 of 2011.

The observation also sets out new information in relation to three 1964 authorisation. The first point raised relates to land ownership details and it is suggested that land was sold to the current operator after 1964 for the purposes of quarrying and therefore cannot have the benefit of pre-1964 authorisation. Also aerial photographs from military archives dated either 17/4/51 or 12/3/1958 indicate that no quarry existed on site and as such the quarry does not have pre-1964 authorisation.

It is also suggested that the Board refuse substitute consent on the grounds resulting in an unacceptable level of excavation. It is also suggested that the drawings on the north quarry and associated cross sections submitted with the application are incorrect and have significant errors. These are set out in the submission. Reference is also made to waste material which was dumped in the north quarry and this waste material included contaminated dust and lime as well as tarmacadam, tar, oils and general waste products. The north quarry was then flooded immediately.

It is also argued that the junction of the north quarry does not have adequate sightlines and is a traffic hazard. The access road from the

quarry to the N15 is a non-public road but has a public right of way over its length. The applicant also carried out unauthorised resurfacing and raising of the road levels and the applicant has on numerous occasions tried to restrict access to the local people using the access through the south quarry.

The quarry operators have a poor environmental record which has given rise to environmental pollution and general nuisance. It is suggested that structural faults and cracks have occurred in the observer's house as a result of vibration due to blasting.

Finally the observation sets out issues and concerns in relation to the remedial EIS submitted with the application. The deficiencies are set out in the submission.

A number of appendices are attached. These include aerial photographs, details of property, folios, a hydrogeological report commissioned by the observer of December 2000 (prepared by K. T. Cullen & Co.).

Hydrological assessment report was submitted from Mr. James Gorman by Henning Moe. It notes that the south quarry is located within the catchment area of Lough Gorman which is a source of public water supply for approximately 2,000 people and is groundwater fed. It is noted that the underwater aquifer incorporates fractures and faults. For these reasons any pollutants that escape from the quarry, either overland or by sub-surface pathways represent a threat to the water quality and ecosystems associated with Lough Gorman. Lough Gorman is also part of a proposed Natural Heritage Area.

5.0 FURTHER SUBMISSIONS TO THE BOARD

A number of other submissions were received on foot of correspondence circulated. These submissions are set out in chronological order as received by the Board.

6.1 Submission from the Department of Arts Heritage and the Gealteacht (29/1/ 2015)

It is noted that the quarry is not situated in any lands designated as either Natural Heritage or Natura 2000 sites. The application site is situated approximately 5.5 kilometres upstream of Durnesh Lake,

Special Area of Conservation and Special Protection Area. It is noted that no scientific data is produced to support the assertion that there is no hydrological link between Durnesh Lough and the quarry. Durnesh Lough is coastal lagoon and a water dependent habitat. Reference is made to the discharge licence from the northern quarry and this licence suggests no negative impact on Durnesh Lough from a water quality perspective. The hydrological situation appears to be stable and is not considered a threat to the integrity of adjacent watercourses or designated sites further downstream. The Department notes that the development will not affect the integrity of any Natura 2000 sites within a 10 kilometre radius of the application site. The submission also requests that archaeological monitoring should take place on site.

6.2 Submission from Mc Carthy Kelville O' Sullivan Consultant (6/2/2015)

This submission made reference to documentation contained on file and in particular a telephone conversation between staff members of Donegal County Council and An Bord Pleanála regarding the area of the quarry to be included in the substitute consent application. The submission requested a note / record of this conversation be submitted.

6.3 Submission from Christine Dinsmore (16/2/2014)

A further submission from Ms Christine Dinsmore dated 16th February 2015 reiterated the concerns that the proposal constitutes a significant adverse impact on the amenity of the area. Reference is also made to the Board Direction issued in relation to QV05E.0128 which it is contended required the applicant to assess the north and south quarries as a single entity for the purposes of submitting a substitute consent application.

6.4 Further submission from Pearse O'Gorman (24/2/2015)

The Boards' Order and Direction in the case of QV05E.0128, clearly states that it would be appropriate to consider the entirety of the site as a single entity. No convincing argument has been put forward by the applicants to explain why they chose to apply for just one section of the quarry. It is the responsibility of the applicants to follow the Direction that was clearly given at the outset by An Bord Pleanála. Instead they applied for a section that facilitated the current plans for extension. As the applicants did not consider the entire quarry in their application, the Board is requested to invalidate the application.

6.5 Additional submission on behalf of James Gorman (by Mc Carthy Kelville O Sullivan) (24/02/2015)

Again this submission relates to the area of the quarry relating to the substitute consent. It is stated that the applicants' agent is relying entirely on previous informal communication between Donegal County Council and An Bord Pleanála. This communication is not a formal determination by An Bord Pleanála. The Board's formal determination requires that it would be appropriate to consider the entirety of the site as a single entity. Nowhere is it stated by the Board that the south quarry should not be included in the substitute consent application. The observers are not aware of any precedent whereby the applicant has been allowed to subdivide the quarry for the purposes of an application for substitute consent. Assessing the northern portion of the quarry in isolation is clearly project splitting for the purposes of EIA and consequently the entire quarry should be the subject of a remedial EIS and should therefore form part of the current substitute consent application. If the implication of applying solely for the north quarry is that the applicant is claiming that the full extent of the south quarry has pre-64 authorisation based on folio DL42273. However, Folio DL42273 does not cover the full extent of the south quarry.

6.6 Further submission from Earth Science Partnership on behalf of the Applicant (24/2/2014)

This submission outlines the background to the current substitute consent application and notes that two of the observers in this instance have challenged every single application made by the applicant in respect of the quarry application over the previous decade. It is reiterated that the applicant sought clarification from the Board as to what lands the application for substitute consent related to.

In relation to hydrogeological issues, a hydrogeological assessment of the application was undertaken which included a study carried out by O'Neill Groundwater Engineering. The report concluded that there are currently no observed negative hydrogeological impacts arising from quarrying at the site. It was concluded that there was no impact either in the quantity of groundwater or the quality of groundwater discharge. Results are attached in Appendix 1. The applicants would also request the Board to note that the application area is being permanently terminated and that the applicants made this application to regularise the planning status of the application area.

6.7 Further Submission from Hugh Gorman (26/2/2014)

It reiterates that the quarrying operation should be treated as one operational unit for the purposes of the application. Material harvested on the lands to the north of the county road was processed and stored in the main quarry.

6.0 PLANNING AUTHORITY'S REPORT UNDER THE PROVISIONS OF SECTION 177 I

The report sets out the background and overview to the existing quarry. The report notes that the total area of the quarry which is the subject of this application is outlined in red and is given as 4.4 hectares. It is noted that An Bord Pleanála has accepted that the quarry is a pre-64 authorised quarry. The report also sets out the relevant planning history and the relevant development plan policy framework. In relation to transportation issues, it is noted that there are no planned transport schemes in the area nor does the quarry have any impact on the delivery of optimum accessibility or ease of movement within the county. It is considered reasonable that the existing entrance arrangements shall be conditioned to meet current technical standards insofar as it is reasonably possible.

In terms of flooding it is noted that the site is not located within a floodplain or flood risk area. It does not give rise to any flooding concerns.

In terms of natural heritage and ecology issues, it is noted that the site is not located within an area of an especially high scenic amenity or any designated Natura 2000 sites. There are seven Natura 2000 sites within 15 kilometre radius of the quarry, none of which are considered to be in the zone of influence of the quarry. The subject site is not affected by any groundwater protection area, freshwater pearl mussel catchment or other areas of importance for the protection of flora and fauna. In terms of built heritage it is noted that there are no archaeological monuments located on the subject. Nor is the site located within a zone of archaeological potential.

It is stated that the application for substitute consent has not been accompanied by an indicative restoration plan for the aftercare of the quarry. Such a plan for the landscaping/restoration of the subject quarry

should be conditioned in the case of a favourable decision being issued by the Board.

The application for substitute consent has not being accompanied by evidence of the suitability of the road network in terms of width, alignment and carrying capacity which also requires that any identified deficiencies can be addressed at the applicant's expense.

With regard to tourism, it is stated that no significant visual impacts arise. However, further boundary treatment and fencing, banking and berms, together with general landscape to supplement the existing arrangements should be conditioned along all boundaries should a favourable decision be forthcoming.

In relation to technical standards, it is stated that should a favourable decision be forthcoming, conditions should be attached which would deal with landscaping, buffer, screening, suitable storage of all waste material, fuel connections/discharge points etc. should be included in any decision.

Finally the planning authority states that it has no objection in principle to An Bord Pleanála approving the current application for substitute consent subject to the following conditions in addition to the mitigation measures proposed in the Remedial Environmental Impact Statement. A schedule of conditions is attached. A total of 14 conditions are set out.

Further submissions from the planning authority in relation to other observations on file, state that the contents of the submissions are noted and that the planning authority has no further comment to make at this time in relation to same.

7.1 Further submission on behalf of the applicant by Earth Science Partnership Limited

This submission is specifically in response to the planning authority report made under Section 177 I. The applicant welcomes Donegal County Council's recommendation to approve the application subject to conditions attached. The applicant broadly agrees with the proposed conditions. However, the Board is requested to note that there will be no further quarrying activity undertaken at the application site.

A separate submission was submitted by the Earth Science Partnership dated 18th March 2015. It merely reiterates points made in previous submissions.

8.0 PLANNING POLICY CONTEXT

8.1 Development Plan

The quarry in question is governed by the policies and provisions contained in the County Donegal Development Plan 2012-2018.

Chapter 7 of the Development Plan specifically relates to the extractive industry.

The objectives in relation to the extractive industry are as follows:

“To conserve and protect the environment including in particular the archaeological and natural heritage in conservation and protection of European designated sites and any other sites which are prescribed”.

“To preserve the character of the landscape where and to the extent that, the proper planning and sustainable development of the area requires it including the preservation of views and prospects, cultural features and the amenities of places and features of natural beauty or interest”.

“To identify those sites with the highest mineral/aggregate extractive potential within the life of the plan, and which do not reside within high amenity areas or adversely impact on environmental designations”.

“To protect and preserve quality of the environment including the prevention limitation, elimination, abatement or reduction or environment pollution and the protection of waters, groundwater, the seashore and the atmosphere”.

In terms of policies the following policies are relevant.

EX-P-1: *It is the policy of the Council not to normally permit new extractive industry proposals in area of especially high scenic amenity or why they would adversely impact upon any Natura 2000 site, Natural Heritage Area, nature reserve, groundwater protection area, freshwater*

pearl mussel catchment or other areas of importance for the protection of flora and fauna or areas of significant archaeological potential, unless it can be clearly demonstrated that such extractive industries would not have significant adverse impacts on the amenities or the environment, and comply with Article 6 of the Habitats Directive.

All extractive industry proposals in designated freshwater pearl mussel catchments will be subject to a Habitats Directive Assessment and will comply with the objectives and practices set out in the relevant freshwater pearl mussel sub-basement management plan and any relevant codes of practice.

EX-P-2: *It is the policy of the Council not to permit development proposals for quarry and ancillary facilities unless it has been evidenced that the development shall not result in a significant threat of pollution to the environment including siltation and sedimentation of receiving downstream surface waters, having regard to vulnerabilities identified in the river basin management plan and any relevant freshwater pearl mussel sub-basement plan and to ensure that extractive industry proposals do not adversely impact upon the environment including surface water and groundwater aquifers, quality and quantity, river corridors, associated wetlands and River Basin Management Districts.*

EX-P-3: *It is the policy of the Council to require all applications for extractive industry proposals to be accompanied by an integrated phased development and restoration plan for aftercare/reuse of the site. Any restoration plan must comply with Article 6 of the Habitats Directive having regard to the relevant conservation objectives, qualifying interests and threats to the integrity of a Natura 2000 site. Restoration Plans should comply with policies set out in EX-P-1 and EX-P-2 and Objectives EX-O-1 and EX-O-2 and EX-O-4.*

EX-P-4: *It is the policy of the Council to require that, where an extractive industry development is proposed within 300 metres of a recorded monument/archaeological site or is likely to have a material impact on the visual amenities of the monument/site, the applicants and operators shall engage the services of an archaeologist or suitably qualified person to undertake an archaeological assessment of the site.*

EX-P-5: *It is the policy of the Council to require that development proposals are accompanied by evidence of the suitability of the road network in terms of width, alignment and carrying capacity to require that any identified deficiencies can be addressed at the applicant's*

expense. Any mitigation works required to upgrade or align the road infrastructure must comply with Article 6 of the Habitats Directive.

8.2 Quarries and Ancillary Activities Guidelines for Planning Authorities, DoECLG 2004

This document provides guidance to planning authorities on determining applications for planning permission for quarrying and ancillary activities. It notes the economic importance of quarries and envisages a sustained level of demand for aggregates to facilitate the provision of the infrastructure required to support continuing economic and social development and to maintain Ireland's international competitiveness as a location for attracting inward foreign investment in the manufacturing and services sectors. Aggregates can only be worked where they occur and it is generally neither economically nor environmentally sustainable to transport them at any great distance to their market due to increased transport costs. Many pits and quarries tend to be located within 25 km of urban areas where most construction occurs. There will be a continuing need for some new and expanded aggregate quarrying operations on land to meet regional and local requirements.

Potential environmental impacts associated with quarries include noise, vibration, dust, effects on the amount and quality of water, lowering of the water table, effects on the natural heritage, the cultural heritage, landscape, traffic and waste materials. The following sections of the Guidelines are particularly relevant to this case:

- 3.3 Dust deposition/air quality
- 3.4 Water supplies and groundwater
- 3.5 Natural heritage
- 3.9 Waste management
- 3.10 Environmental Management Systems (EMS)
- 4.7 Possible planning conditions

9.0 PRELIMINARY PLANNING ASSESSMENT

9.1 Area of Quarry that is the Subject of a Substitute Consent Application

Before the Board can make a decision on the application for substitute consent, I consider it imperative that the Board revisit the matter regarding the area of the quarry to which the substitute consent application relates. Many of the observations submitted query the area to which the application for substitute consent applies. Some of the submissions contend that the application should relate to the entire site and not just the portion amounting to c.4.4 ha on the northern side of the public road. I consider that there is some validity in the queries on the grounds that a level of ambiguity surrounds the area to which the application for substitute consent relates.

The Inspectors report in respect of the quarry review application (QV 05E 0128) comes to the following conclusions:

- Affidavits were submitted that indicate the quarry commenced operations prior to the appointed day and as such the quarry has the benefit of pre-1964 status. However in applying the test criteria set out under Section 261A, it is clear that the Inspector formulates the conclusion that the entirety of the quarry does not have the benefit of pre-1964 status.
- In this regard the Inspector makes the following points: *"It is considered reasonable to state that the 4.9ha purchased by the McCaffreys in 1969, for which there is considerable evidence that quarry operations had commenced prior to the appointed date, has the benefit of pre-64 authorisation. I am satisfied however, that the remaining 33.9ha of land upon which quarrying operations have been undertaken do not have the benefit of a pre-63 authorisation and therefore must be subject to the test criteria of s261A(2)(a)"* (Para. 12.2.9).
- *"It appears that the remaining main quarry lands were purchased and excavation started thereon between 1980 and 1986, continuing to date. The northern quarry commenced excavation in 1986 and continues to date. According to Mr Gorman's submission, approx. 3.5ha of quarrying was undertaken after the 1st of February 1990, of which approx. 1.2ha occurred after the 1st of February 1997".*(Para.12.2.11).
- *"I am satisfied that the entire quarry can be rightfully treated as a single development unit and that the total area of extraction is currently approx. 10.6 ha. Up to February 1990 it has been submitted that the total area of extraction was approx. 5.9ha. with approx. 4.7ha occurring post February 1990".* (Para.12.3.3)

It becomes clear therefore that the inspector concluded that approximately 4.7 ha of land was quarried post 1990 and in accordance with her calculations 3.5 ha's of this occurred in the North Quarry. It suggests that an additional 1.2 ha's was quarried post 1990, which in all likelihood was located in the southern portion of the quarry.

To further complicate matter the Board in its Decision makes reference to *"the extent to which the area of extraction of the quarry expanded after the 1st day of February 1990 which exceeded five hectares"*. This is obviously in excess of the 4.4 hectares which is covered by the Substitute Consent application.

When the application was lodged with An Bord Pleanála on December 4th 2014, the Board on January 9th 2015, requested the applicant to submit the rationale behind the decision to submit an Area of 4.4 hectares for Substitute Consent and the exclusion of the remainder of the estimated 10.35 hectares extracted working area. In response the applicant submitted copies of e-mails including an e-mail from Donegal Co. Council to the applicant's Agent (Pat O Donnell), stating that on foot of a telephone conversation with a member of staff from An Bord Pleanála that the staff member from an Bord Pleanála *"discussed the matter with the relevant inspector and confirmed it is the area to the North of the County Road, in the townland of Glasbolie (which is currently fenced off and unused) which is the area for which sub consent is required"*.

It becomes clear therefore that there is significant ambiguity and thus scope for confusion with regard to identifying and demarcating the exact area for substitute consent.

It is a very important consideration in my view, and will have significant implications with regard to what constitutes the receiving environment for the purposes of identifying the baseline survey for the purposes of carrying out EIA. For example were the Board conclude that an additional area to the 4.4ha in the north quarry was to be included in the substitute application in the southern quarry which for example was used for the purposes of processing material, that could be a material consideration in altering the baseline environment for the purposes of carrying out EIA.

I would consider it appropriate and prudent for the Board to issue a Direction as to what surface area should constitute an application for substitute consent and identify all areas that should be included in any such application prior to any detail EIA assessment by the Board. If the Board conclude that the area relates to the northern quarry only, then the

file can be sent straight back to the inspector for further assessment. If the Board conclude that areas in addition to the north quarry (4.4 ha's) should be included, (as suggested in the Board Order), a new substitute consent application together with a revised remedial EIS, should be submitted before any detailed assessment is undertaken.

Some of the observations submitted argue that the entire quarry should be taken into consideration for the purposes of a substitute consent application. This is predicated on the references in the planning Inspectors report in relation to 05E QV00128 that both the North and South quarry are 'intrinsically linked' and registered as a 'single entity' and also the reference in the Board Order in relation to the S261A (6) Review which makes reference *'that it would be appropriate to consider the entirety of the site as a single entity'*. I do not consider that there is any dispute that the site should be seen as a single entity in terms of its operation and ownership. The north and south quarries are intrinsically linked in terms of operating and functioning as a quarry and this fact is acknowledged in the rEIS. But this does not imply, nor does it necessarily follow that the whole quarry should be the subject of an application for substitute consent. The Board will be aware that under the provisions of the Legislation, it is only development carried out after 1st February 1990 (in respect of EIA) and development carried out after 26th of February (in respect of AA) that can be considered for the purposes of a substitute consent application. This very important fact should be borne in mind in determining the area of the site for the purposes of substitute consent.

A final matter in relation to this preliminary assessment concerns the matter of pre-1964 status. The Board have already determined that quarry has the benefit of pre-1964 status. Notwithstanding some of the information contained in the observations, including the aerial photographs submitted by James Gorman, I do not consider that the issue of pre-1964 status can be revisited for the purposes of any substitute consent application. Any lands that have the benefit of such status together with any development carried out prior to 1990, cannot and should not be included in the application for substitute consent.

Paul Caprani
Senior Planning Inspector

22nd May 2015