

File With \_\_\_\_\_

## SECTION 131 FORM

Appeal NO: A81-315708-23Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission received 08/03/2023 fromApplicant I recommend that section 131 of the Planning and Development Act, 2000be not be invoked at this stage for the following reason(s): no new material planning issuedE.O.: [Signature]Date: 21/3/23

To EO: \_\_\_\_\_

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: \_\_\_\_\_

Date: \_\_\_\_\_

S.A.O.: \_\_\_\_\_

Date: \_\_\_\_\_

M \_\_\_\_\_

Please prepare BP \_\_\_\_\_ - Section 131 notice enclosing a copy of the attached submission

to: \_\_\_\_\_ Task No: \_\_\_\_\_

Allow 2/3/4 weeks – BP \_\_\_\_\_

EO: \_\_\_\_\_

Date: \_\_\_\_\_

AA: \_\_\_\_\_

Date: \_\_\_\_\_

File With \_\_\_\_\_

## CORRESPONDENCE FORM

Appeal No: ABP- 315708-23Mr. LacharPlease treat correspondence received on 08/03/2023 as follows:

- |  |  |
|--|--|
| 1. Update database with new agent for Applicant/Appellant _____<br>2. Acknowledge with BP <u>20</u> _____<br>3. Keep copy of Board's Letter <input type="checkbox"/> | 1. RETURN TO SENDER with BP _____<br>2. Keep Envelope: <input type="checkbox"/><br>3. Keep Copy of Board's letter <input type="checkbox"/> |
|--|--|

## Amendments/Comments

Applicant response to third  
party appeals

## 4. Attach to file

- |   |   |
|---|---|
| (a) R/S <input type="checkbox"/>            | (d) Screening <input type="checkbox"/>    |
| (b) GIS Processing <input type="checkbox"/> | (e) Inspectorate <input type="checkbox"/> |
| (c) Processing <input type="checkbox"/>     |   |

RETURN TO EO ☐file in Screenings drawer

	Plans Date Stamped <input type="checkbox"/>
	Date Stamped Filled in <input type="checkbox"/>
EO: <u>Aisling Kelly</u>	AA: <u>Mark Lachar</u>
Date: <u>13/03/2023</u>	Date: <u>15-3-23</u>



An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902

<b>AN BORD PLEANÁLA</b>	
LDG-	_____
ABP-	_____
08 MAR 2023	
Fee: €	_____ Type: _____
Time: 13:49pm	By: hand

7<sup>TH</sup> March 2023

By: Hard copy

Your reference: 315708-23

Planning reference: 2250933, Donegal County Council

Dear Sir/Madam,

On behalf of the applicant, Patrick Bonar, please find attached our supporting statement in response to third party appeals.

Should your department require any additional information do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Woods'.

Ronan Woods  
Director



## **APPEAL STATEMENT**

In respect of  
**DEVELOPMENT ON LANDS AT  
MAGHERASOLIS & CRAIGS, RAPHOE, CO DONEGAL**

**Appeal reference: 315708-23**

**Planning reference: 2250933**

Prepared by  
**GENESIS PLANNING CONSULTANTS**

On behalf of  
**PATRICK BONAR**

**MARCH 2023**

**Document Control Sheet**

Job Title: P Bonar Quarry

Job Number: 2023-13


Report ref: Planning statement

Author: R Woods

Date: March 2023

Client: P Bonar

Document Status				
Rev	Purpose of Document	Authored by	Approved by	Review Date
1	Draft		R Woods	05/03/23
2	Final	R Woods	R Woods	07/03/23

Approval for Issue		
Ronan Woods		07/03/23

The report has been prepared for the exclusive use of our client unless otherwise agreed in writing.

The report has been compiled using the resources agreed with the client and in accordance with the scope of work agreed with the client. No liability is accepted by Genesis planning consultants for any use of this report, other than the purpose for which it was prepared.

Genesis planning consultants has used reasonable skill, care and diligence in compiling this report. Genesis planning consultants disclaims any responsibility to the client and others in respect of any matters outside the scope of this report. This report has been prepared with reasonable skill, care and diligence within the terms and agreement with the client. Genesis planning consultants accepts no responsibility of whatsoever nature to third parties to whom this report or any part thereof is made known. Any such party relies upon the report at their own risk.

<b>TABLE OF CONTENTS</b>	<b>PAGE NO</b>
<b>1 INTRODUCTION</b>	<b>4</b>
1.1 Overview	4
1.2 Planning history & project overview	4-6
<b>2 PLANNING POLICY CONTEXT</b>	<b>7</b>
2.1 National Planning Framework	7
2.2 RSES	8
2.3 Donegal LECP	9
2.4 Donegal County Development Plan	9-12
<b>3 THIRD PARTY APPEALS</b>	<b>13</b>
3.1 Overview	13
3.2 Gerard Moyne Appeal	13-14
3.3 An Taisce Appeal	15-17
3.4 David Fisher Appeal	18-24
3.5 Gerard Convie on behalf of Raphoe Community in Action	25-29
<b>4 CONCLUSIONS &amp; SUMMARY</b>	<b>30</b>

---

## **APPENDICES**

Appendix 1: Submission to Planning Authority dated 13<sup>th</sup> September regarding Section 35 procedures

## **1 INTRODUCTION**

### **1.1 Overview**

- 1.1.1 In summary a notification to grant permission was issued by Donegal County Council on 13<sup>th</sup> January 2023. Subsequent to this decision a number of third party appeal have been submitted to An Bord Pleanala respectively.
- 1.1.2 It is in this context of the third party appeals that we are submitting this statement of case to the Board for due consideration to demonstrate that the planning policy context is supportive of the proposed development and also to rebut objections made by respective appellants.
- 1.1.3 Also, on review of the relevant appeals, we consider the appellants can be summarised as local objectors and environmental groups who do not wish to seek any development on the lands, despite the existing site context and all relevant planning policy being supportive of the proposed development.
- 1.1.4 Accordingly we submit the nature of the objections and appeals as lodged is not based on legitimate planning and environmental concerns, but rather are objections utilising the planning process seeking to delay the development of a quarry on the lands.
- 1.1.5 Accordingly we hereby request the Board to deal with this appeal solely by means of written submissions in the interests of expediency.

### **1.2 Planning history & project overview**

- 1.2.1 Of relevance to this appeal is the previous application 19/52015 and decision by the Board under 308326-30. In summary the previous decision by the Board refused permission on 18<sup>th</sup> August 2021 for two reasons:
  - 1. *The documentation and details submitted with the planning application and the appeal has not demonstrated adequate proposals for the proper and satisfactory management of surface water at the proposed development. In the absence of such information and having regard to Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations, 2009, as amended, which requires that a public authority in performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status, or the ecological potential of a body of surface water, it is considered that the proposed development would pose an unacceptable risk of environmental pollution and would therefore, be contrary to the proper planning and sustainable development of the area.*
  - 2. *On the basis of the information provided with the application and the appeal, the Board cannot be satisfied that the proposed development individually, or in combination with other plans and projects would not result in adverse effects on the integrity of the River Foyle and Tributaries Special Area of Conservation and River Finn SAC, in view of the site's conservation objectives. Having regard to the Board's concerns in relation to the adequacy of the proposals for the proper and satisfactory management of surface water at the proposed development, likely significant effects on these European sites could not be ruled out. In such circumstances the Board is precluded from granting approval/permission.*
- 1.2.2 To address the previous reasons for refusal cited the appeal now under consideration includes for a wholly revised suite of environmental reports, which includes a comprehensive EIAR and NIS. It is also to be noted by the Board that under the previous application (1952015 & appeal

decision 308326-50 that no EIA was carried out; which is now addressed in the current application).

- 1.2.3 For conciseness we summarise key extracts from both the EIAR and NIS which demonstrate on a robust evidential basis how the previous reasons for refusal are addressed.

EIAR & Water(s)

- 1.2.4 We highlight the EIA was informed by both surface water analysis and ground water monitoring to fully inform the hydrological impacts of the site being developed. Mitigation measures are proposed which include:

-Installation of a settlement tank and constructed wetland system to reduce sediment in final discharges from the site. These works are to be carried out and fully operational prior to commencement of quarrying activity on-site.

-The installation of a silt fence to the perimeter of berms and to be kept in place until the berms are colonised with vegetation.

-The creation of a single discharge point from the Quarry, which will be subject to a Trade Discharge Licence from Council.

- 1.2.5 In summary the mitigation measures proposed (along with project drawings and proposals) are accepted industry best-practice and fully address refusal reason 1 of the Board's previous decision under 308326-30.

NIS

- 1.2.6 As per Section 7 of the NIS 'indirect effects' on several European sites were identified. The effects included deterioration of water resource quality through contaminated runoff containing hydrocarbons and/or silt entering the hydrological pathway to the identified Natura 2000 sites. Mitigation measures have been prescribed in Section 6 to ensure that effects on water quality and noise/dust are rendered negligible. Therefore, with the implementation of mitigation there is no significant residual effect predicted to arise from this proposed development, either individually or in-combination with other plans or projects, on any Natura 2000 site.
- 1.2.7 We also highlight section 6 of the NIS sets out in detail how cumulative effects of the development have been considered.
- 1.2.8 In summary the NIS has been carried out in accordance with legislative requirements and demonstrates how the project can be granted permission without adversely impacting on the Natura 2000 site network.
- 1.2.9 We also highlight the Planning Authority are satisfied in this regard.



**Application specifics & decision of the Planning Authority**

- 1.2.10 To provide an overview for the Board of particulars and revised details submitted as further information we set out the following summary.
- 1.2.11 Further information requested by the Planning Authority on 7<sup>th</sup> October 2022 requested in summary:
- Point 1: A detailed, integrated & phased restoration plan for the entire quarry site;
  - Point 2: Clarification sought on the proposed water supply;
  - Point 3: Matters in relation to roads and access;
  - Point 4: Identify water supply points for properties along the L23749-0; and if required mitigation measures for protection of wells/boreholes.
- 1.2.12 In response the project team made a comprehensive submission to the Planning Authority on 23<sup>rd</sup> November 2022 comprising:
- Point 1: A detailed, integrated & phased restoration plan for the entire quarry site along with costings for the proposed restoration plan.
  - Point 2: Confirmation that the proposed water supply will be via a bore hole well to be located within the quarry.
  - Point 3: Particulars in relation to the junction upgrade at the L-23749-0 & R236-6 in accordance with design standards. Particulars also included for setback/turning areas and written consents.
  - Point 4: Confirmation that all 3 dwellings along the L23749-0 have water supply via the public water supply and that no private wells serve these dwellings.
- 1.2.13 The Planning Authority duly considered revised/additional details as submitted and as per the planner's report on file dated 12<sup>th</sup> January 2023
- 'The applicant has by means of details, plans, documents and environmental information submitted with the application and also in response to the further information request sufficiently demonstrated that the proposed development with appropriate conditions, will not impact on traffic safety, will not impact on the residential amenities or scenic amenities of the area, will not give rise to dust or noise pollution, will not negatively impact on the archaeological heritage or otherwise give rise to environmental (including water quality) or ecological concerns. Accordingly it is considered that the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.'*
- 1.2.14 In summary we submit to the Board that the decision made by the Planning Authority is the correct assessment and we will discuss further in this statement particular policy and planning matters and how the development complies with relevant standards.

## **2 PLANNING POLICY CONTEXT**

### **2.1 NATIONAL PLANNING FRAMEWORK**

2.1.1 The NPF sets out the importance of development within rural areas and places a major focus on rural areas. Key objectives include:

- *Strengthening Ireland's rural fabric and supporting the communities who live there;*
- *Objective 15: Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.*
- *Objective 21: 'Enhance the competitiveness of rural areas by supporting innovation in rural economic development and enterprise through the diversification of the rural economy into new sectors and services, including ICT based industries and those addressing climate change and sustainability'*
- *Objective 23: Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.*

2.1.2 The NPF continues to support the proposed development as part of its national strategic outcomes in that outcome 5 specifically states:

- Outcome 5 – A Strong Economy Supported by Enterprise, Innovation and Skills – 'A competitive, innovative and resilient regional enterprise base is essential to provide the jobs and employment opportunities for people to live and prosper in the regions. ', which can be achieved through supporting entrepreneurialism and building competitive clusters in key sectors and activities through collaborative actions at regional and local level.

2.1.3 In response we submit that the proposed development is consistent with the relevant objectives of the NPF as it incorporates a quarry that will deliver an important resource for the wider area as part of the demand for construction aggregates under Housing For All and the wider Government policy to deliver more housing and promote growth of the Country.

## 2.2 Regional Spatial and Economic Strategy

- 2.2.1 The RSES sets out the spatial growth strategy for delivering effective regional development for the Northern and Western Region, encompassing Connacht and the Ulster Counties of Cavan, Donegal, and Monaghan, setting out a broad range of policies and objectives to encourage sustainable and economic growth of the area.

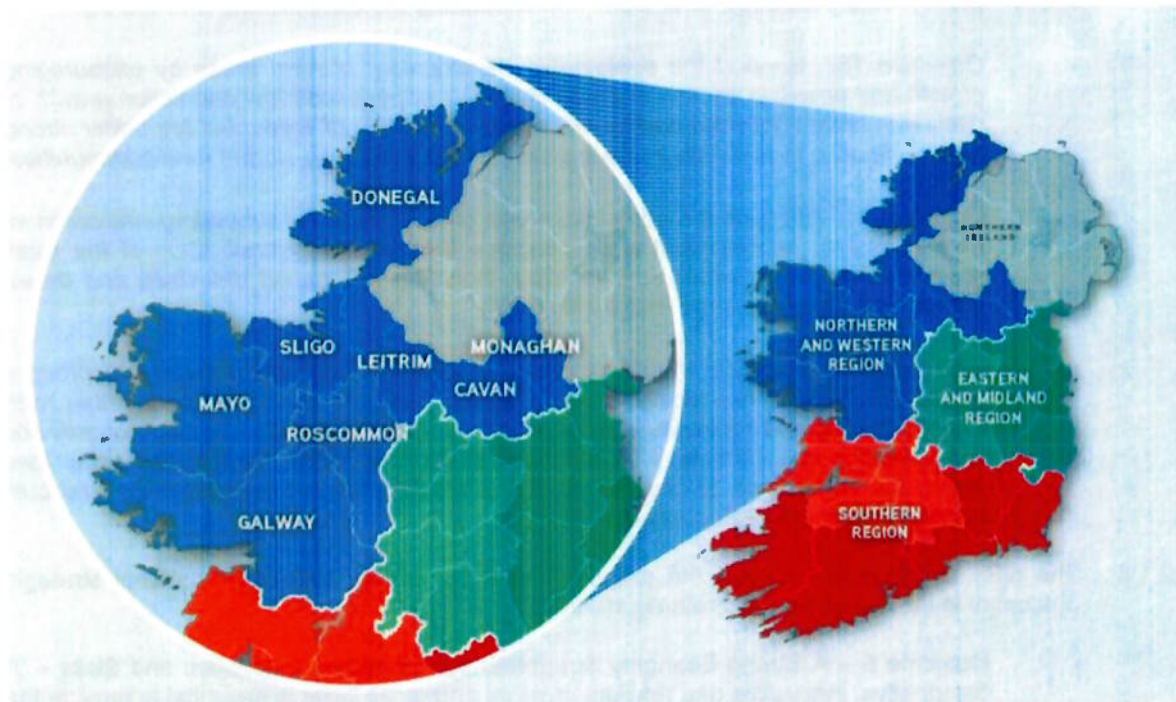


Figure 1 Map of the Northern & Western Regional Assembly Area

- 2.2.2 As set out in the Regional Spatial and Economic Strategy key future priorities include *'improving the solid foundations for success, creating opportunities for individuals, businesses, the community and future generations'*, specifically stating how *'encouraging diversification of indigenous economic activity will help enable greater economic development'*.
- 2.2.3 The RSES acknowledges the long-standing economic strengths of the region in sectors such as agri-food, life-sciences, RTDI, engineering, retail, manufacturing, service sector, energy, creative sector, tourism, marine and many more, resulting in over 140 FDI multinationals supported by the IDA employing over 26,000 people. Enterprise Ireland support SME's employing over 20,000 people in the region
- 2.2.4 Specifically, the objectives contained within the RSES relating to the proposal include:
- RPO 4.25: *'Support the upscaling of businesses, increase exports, and strengthen internal collaborations within the value chain to allow more products from the region to have access to transformation and export processes, and increasing the added value contribution through R&D (in both product and process) and the implementation of advanced manufacturing technologies.'*
- 2.2.5 The Growth ambition of the RSES to be a vibrant region builds on the broad economic themes in the National Planning Framework. We submit it is clear the RSES seeks to encourage

innovation, commercialisation and the growth of small and medium sized enterprises (SME's) such as that which is proposed.

- 2.2.6 In this policy context the proposal will also assist in growth of the construction sector and also the wider economy, given the clear need for aggregates as part of development of the region.
- 2.2.7 Therefore in this context it is clear the proposal is consistent with the objectives within the RSES.

### 2.3 Donegal Local Economic & Community Plan 2016-2022

2.3.1 The Local Economic and Community Plan [LECP] for County Donegal sets the objectives and actions needed to support and guide economic and community development in County Donegal over the six-year period 2016-2022.

2.3.2 The LECP is a mid-level plan; it is a strategic but action focused document aimed at identifying and implementing actions to strengthen and develop the economic and community dimensions of the County, and to reflect and support the implementation of existing and proposed National and Regional spatial, community and economic strategies.

2.3.3 Of particular relevance to the proposal are goals 4 and 7 which state:

- **Goal 4 – To Promote Sustainable, Inclusive and Healthy Communities**, most specifically section 4.7 (Employment) which states:

*'To create and support pathways to employment for persons from marginalised and disadvantaged communities.'*

- **Goal 7 – To Promote Entrepreneurship, Investment and Enterprise**, most specifically:

- Section 7.4 (Rural Economic Development) which states - *'To promote and support rural economic development throughout the County.'*

- Section 7.5 (Collaborative Approaches) which states - *'To collaboratively support existing and new entrepreneurs, investment and enterprise'*

- Section 7.8 (Development Centres) which states - *'To promote and enable economic growth and strengthening of identified development centres and their supporting settlements.'*

2.3.4 In response we submit the objectives identified within the Donegal LECP are supportive of the proposal, which represents an opportunity to realize, at least in part, some of the goals of the LECP with regards to stimulating local enterprise, employment and innovation.

### 2.4 Donegal County Development Plan 2018 – 2024

#### Overview & Context

2.4.1 The current Donegal CDP sets out the strategic land use objectives and policies for the overall development of the County up to the year 2024, acting as a guide for those interested in pursuing development and to inform the general public as to how development proposals are likely to be assessed.



- 2.4.2 In terms of economic development, the general aim of the County Donegal Development Plan is:

*'To provide for the appropriate growth of economic development and employment opportunities across all sectors in accordance with the Core Strategy and the ambitions of the North West City Region initiative and consistent with the principles of proper planning and sustainable development.'*

- 2.4.3 In this context given the location it is clear the proposal is strategically well placed to contribute towards the strategic economic growth of the wider Donegal and North-West region.

#### **Existing Policy Context - Industry, Enterprise & Employment**

- 2.4.4 As part of the economic development objectives of the CDP we submit the subject lands are suitable for quarrying as proposed.

In terms of current CDP objectives we highlight:

- ED-O-1 *'To facilitate cross-border collaboration and to enable and sustain regional economic, cultural and social development opportunities.'*
- ED-O-2 *'To ensure that sufficient land is provided at appropriate locations for employment generating uses and that such land will be protected from inappropriate development that would prejudice its long-term development.'*
- ED-O-3 *'To facilitate and direct appropriate employment generating developments into the Gateway centre of Letterkenny and the Strategic Support Towns, and to support the economic development of smaller towns and villages throughout the county.'*
- ED-O-5 *'To promote appropriate rural economic development by encouraging diversification that supports the growth of emerging rural enterprises functionally related to the countryside.'*
- ED-O-11 *'To support the border region for economic development and enterprise by maximising on the potential and opportunities arising from Brexit.'*

- 2.4.5 The CDP also identifies a number of policies under section 4.1.4 of the economic development strategy, specifically:

- ED-P-1 – *'It is a policy of the Council to implement the Economic Development Strategy to sustain existing employment and facilitate job creation in appropriate locations in the County.'*
- ED-P-3 *'Within designated Settlement Framework areas, it is a policy of the Council to consider economic development proposals involving an industrial building or process (as defined in Article 5 of the Planning and Development Regulations 2001, as amended) in the following circumstances and subject to the provisions of Policy ED-P-2 and ED-P-14:*
- ED-P-10 - *'It is a policy of the Council to consider proposals for the expansion or re-development of an existing economic development in the countryside provided the scale and nature of the resultant development will contribute positively to the long-term sustainability of the existing enterprise, subject to compliance with all relevant provisions of Policy ED-P-14.'*

*A proposal which would not meet these criteria will only be permitted in exceptional circumstances where it can be demonstrated that:*

- The proposal would provide for consolidation and/or remediation of the existing facilities;
- Where relocation of the enterprise would not be possible;
- The proposal would make a significant contribution to the local economy;
- The development would maintain the existing rural character of the area; and
- Where infrastructural improvements are required that a developer-led solution can be identified and delivered.'

2.4.6 In relation to the Extractive Industry Chapter 8 of the Development Plan is relevant with the overarching aim stated as:

*'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.'*

2.4.7 The main policies relevant are listed below.

- *EX-P-1: It is a policy of the Council to require that development proposals for extractive industry are in accordance with DEHLG Quarries and Ancillary Activities Guidelines for Planning Authorities 2004 and the EPA Environmental Management Guidelines – Environmental Management in the Extractive Industry (Non-scheduled minerals) 2006.*
- *EXP-2: It is a 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. Furthermore, such proposals will not normally be permitted where they would adversely impact upon any Natura 2000 site, Natural Heritage Area, Nature Reserve, Groundwater Protection Area (Aquifer), 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 amenities or the environment, and comply with Article 6 of the Habitats Directive.*
- *EX-P-3 It is a 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 the vulnerabilities identified within the River Basin Management Plan, and any relevant Fresh Water Pearl Mussel Sub-basin Plan and to ensure that extractive industry proposals do not result in significant adverse impact upon the environment, including surface water and groundwater (aquifers) quality and quantity, river corridors, associated wetlands and River Basin Management Districts.*
- *EX-P-4 It is a 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/re-use of the site. Any restoration plan must comply with Article 6 of the Habitats Directive and have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of a Natura 2000 site. Restoration plans should comply with the following policies EX-P-1 and EX-P-2 and objectives EX-O-1, EX-O-2 and EX-O-3.*
- *EX-P-6 It is a policy of the Council to require that development proposals for extractive industries are accompanied by evidence of the suitability of the road network in terms of width, alignment and carrying capacity and to require that any identified deficiencies can be addressed at the applicant's expense.*

2.4.8 Response: We submit the application particulars fully address the policy context of the Donegal CDP.

2.4.9 Importantly in terms of the principal of development and policy EX-P-2 we highlighted this is not to be considered a new extractive industry, given the established historical context of the quarry on the site. We refer to the previous Inspector's report on this matter wherein at paragraph 7.2.2 the Inspector states:

*'The appeal site comprises a former quarry, as acknowledged through the application and appeal documentation, where the extraction of stone is stated to have ended in the 1970s. While I am not aware of any planning permission with respect to this former quarry operation, or any other activity on site for that matter, and a considerable period of time has elapsed since previous extraction is stated to have taken place, I am satisfied that the proposals would not introduce a 'new' extractive industry activity at this location and, accordingly, the proposals could not reasonably be considered to materially contravene the initial terms of policy EX-P-2 of the Development Plan.*

2.4.10 On this basis, and as correctly determined by the Planning Authority, we submit policy EX-P-2 is not offended and the quarry at this location is acceptable on this policy test.

2.4.11 Also for conciseness we refer the Board to application particulars which include, inter alia, for:

- The EIAR and detailed technical analysis set out therein along with the NIS which set out how the proposal is consistent with the policies EX-P1, 3, 4 & 6;
- The project drawings which detail how the quarry can be developed in accordance with policy requirements;
- The phasing and restoration plan;
- Supporting drawings and documents which detail how the road network can facilitate development of the site.

2.4.12 Considering all of the above we submit the subject lands are well positioned to realize, at least in part, some of the economic development objectives of the county and wider NWRA region in terms of industry, the extractive industry in particular, enterprise and wider employment.

### **3 THIRD PARTY APPEALS**

#### **3.1 Overview**

3.1.1 We note the respective third party appeals submitted from:

- Gerard Moyne
- An Taisce
- David Fisher (Oakfield Park Gardens)
- Gerard Convie on behalf of Raphoe Community in Action

3.1.2 For due consideration by the Board we will respond to grounds of appeal below.

#### **3.2 Gerard Moyne Appeal**

3.2.1 To elicit the key issues we summarise matters below and our responses.

- Ground 1: Applicant details

3.2.2 We note the appellant states *'I have been unable to identify which Patrick Bonar this application refers to, as I have identified two sharing the same name and also some of the same business interests.'*

3.2.3 Response: This is not relevant, and the planner's report also does not raise any issue with the applicant. We refer to the planners report wherein it states:

*'It also considered whether the mechanism set out under section 35 of the Planning and Development Act 2000 (as amended) regarding refusing permission for past failures to comply with permissions could be implemented and concluded that previous unauthorised developments against the applicant were not of a substantial nature as required under Section 35(2) PDA.'*

- Ground 2: Impact of the quarry on waterways

3.2.4 We note the appellant states *'It must be regarded that this quarry will have a major impact on the waterways of the tributaries of Lough Foyle SPA which is downstream and hydrologically connected to this site.'*

3.2.5 Response: We refer the Board to the detailed EIAR, NIS and project particulars which sets out how the quarry can be developed without adverse impacts on the recipient environment. Also on reviewing the appellant's submission we note he fails to recognise the mitigation measures that will include for:

- Installation of a settlement tank and constructed wetland system to reduce sediment in final discharges from the site. These works are to be carried out and fully operational prior to commencement of quarrying activity on-site.
- The installation of a silt fence to the perimeter of berms and to be kept in place until the berms are colonised with vegetation.
- The creation of a single discharge point from the Quarry, which will be subject to a Trade Discharge Licence from Council.



- Ground 3: Restoration concerns

3.2.6 Response: As the Board will note this can be addressed by a financial bond/planning condition, as per condition 20 of the Planning Authority's decision which states:

*'Within three months of the date of final grant of planning permission the applicant or person entitled to take benefit of the permission shall provide adequate security to the Council for the purposes of compliance with condition no.18 above in the form of:*

- (a) A bond of a banking or Insurance Company acceptable to the Council in an approved form;*
- or*
- (b) A cash deposit;*
- (c) Such other security as the Council may approve in the sum of €75,000.00.*

### 3.3 An Taisce Appeal

3.3.1 To elicit the key issues we summarise matters below and our responses.

- Ground 1: Determination of the application by Donegal County Council under the EIA Directive

3.3.2 We refer the Board to the detailed EIAR, NIS and project particulars which sets out how the quarry can be developed without adverse impacts on the recipient environment.

- Ground 2: Donegal County Council's Appropriate Assessment under the Habitats Directive

3.3.3 In the first instance we refer the Board to the comprehensive Appropriate Assessment Screening report and Natura Impact Statement accompanying the application.

3.3.4 As the Board will note the Appropriate Assessment process consists of four stages as shown below.

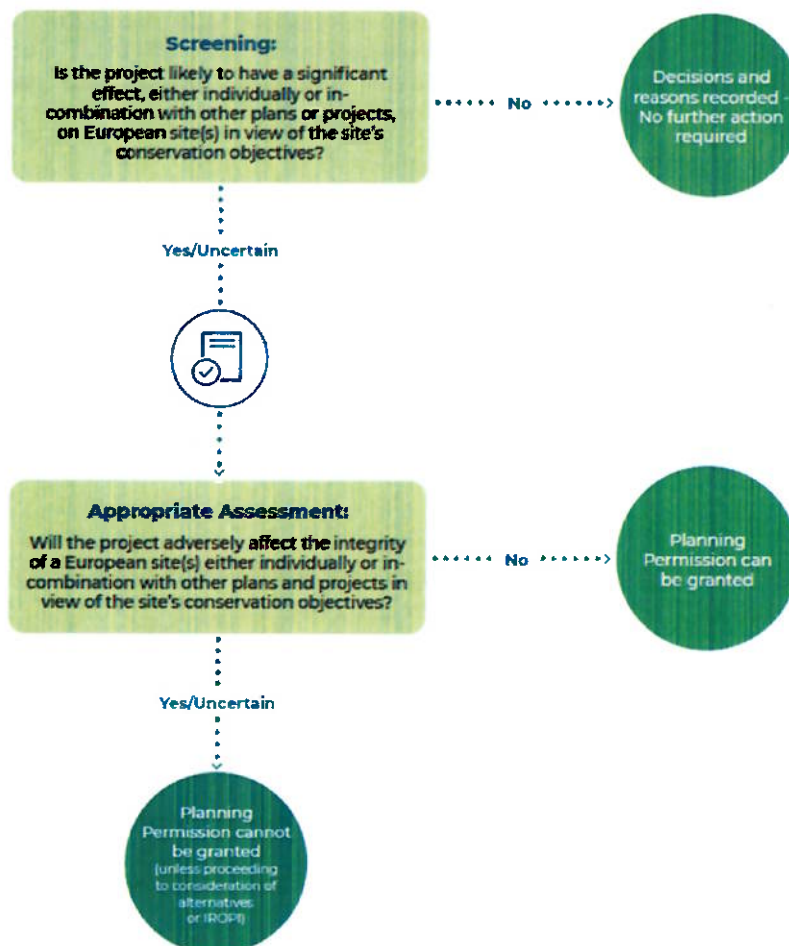


Figure 2 Extract from the OPR Practice Note 'Appropriate assessment Screening for Development Management'

- 3.3.5 As per the NIS submitted with the application documents it was noted that the project, without mitigation, has the potential to impact on Natura 2000 sites connected to the site by the source-pathway connections; with all identified sites having a hydrological pathway. Also as per the NIS it has been concluded that:

*'The proposed project as detailed, either individually or in combination with other plans or projects, will have no significant adverse effects on the integrity of any European sites if all mitigating measures as outlined in Section 6 are implemented. The proposed development as described will not alter the structure or function of any Natura 2000 site or negatively impact the conservation of any qualifying interest/ special conservation interest therein'.*

- 3.3.6 Furthermore in relation to the Appropriate Assessment carried out by the Planning Authority we refer to the planner's report dated 12<sup>th</sup> January 2023 which sets out a full record and independent Appropriate Assessment.

- 3.3.7 It is also to be noted that this Appropriate Assessment was correctly carried out by the Planning Authority when all project information was submitted (ie. post the Further Information response).

- 3.3.8 As per the planner's report this Appropriate Assessment records the qualifying features of the Natura 2000 network which have a pathway connection with the project site, records conservation objectives and also sets out an assessment of likely effects. Furthermore the Appropriate Assessment is informed by internal reports and submissions that include the Council's Acting Senior Executive Scientist, the NPWS, the Council's Waste Regulation Office and concludes by stating:

*'The Planning Authority is of the opinion that the proposed development, when considered on it's own and also when considered in combination with other existing and planned projects, subject to all proposed mitigation measures being implemented in full, would not have a significant effect on the River Finn Special Area of Conservation (site code 002031 refers) and subsequently will not have a significant effect on the River Foyle and Tributaries Special Area of Conservation (site code UK0030320).'*

- 3.3.9 We also highlight the Planning Authority correctly consulted with NPWS to inform the Appropriate Assessment; and this is highlighted in the OPR practice note where it states as below.

**When should an application be referred by the competent authority to the Department of Housing, Local Government and Heritage?**

Most screening exercises can, and are likely to be undertaken without reports or consultation with the DHLGH/NPWS. Those that should be referred by the competent authority include:

- Development proposals located within or immediately adjacent to a European site.
- Applications accompanied by a NIS (i.e. where appropriate assessment is required).
- In accordance with Article 28(1)(n) of the Planning and Development Regulations where it appears to the planning authority that the development might have significant effects in relation to nature conservation. This may be by virtue of the nature, scale or location of the proposal.

- 3.3.10 In this context we submit the Appropriate Assessment carried out by the Planning Authority is indeed correct and has informed the decision making process wherein the project is deemed acceptable under the Habitats Directive.

# GENESIS

## PLANNING CONSULTANTS

- Ground 3: Unsuitability of the application site in principle

3.3.11 In response we submit the appellant is not aware of the planning history which relates to the site. As per the EIAR and application documents this site is a dormant quarry, having been previously developed to it's current state during the 1970's and 1980's by it's previous owner, and has since been dormant.



Figures 3 & 4 Existing site context



**3.4 David Fisher (Oakfield Park Gardens)**

3.4.1 To elicit the key issues we summarise matters below and our responses.

- Ground 1: Location & principle of development

3.4.2 Response: Again as per the EIAR and application documents this site is a dormant quarry, having been previously developed to its current state during the 1970's and 1980's by its previous owner.

3.4.3 Also relevant we highlight the principle of development was considered by the planner's report; section 9.2 refers and states:

*'In assessing the previous appeal documentation it is evident that the Inspector, like the Planning Authority considered there was no objection to the principle of the development at this location, in particular having specific regard to the brownfield nature and previous quarrying use associated with the site.'*

- Ground 2: Landscape

3.4.4 Response: We refer the Board to the detailed EIAR and project particulars which sets out how the quarry can be developed without adverse impacts on the recipient environment.

3.4.5 Also relevant is the assessment by the Planning Authority on these matters. Key extracts from the planner's report are highlighted for ease of reference:

*'The Planning Authority considers that the existing quarry has been well screened from public view. Furthermore, adjoining backdrop of rolling hills and a forestry are considered to aid in the integration of the development. Detailed consideration has been given to same in the planners report below based on restoration plans and visual impact sections.'*

3.4.6 In terms of mitigating against views of the quarry from the wider landscape mitigation measures are proposed which include:

- New berms must be created around the proposed excavation site to screen the development and to provide natural vegetation and wildlife corridors of connectivity.
- A mix of native species must be planted around the eastern and southern boundary of the new berm to support a wide range of insects and animals and contribute to the ecological value of the area.

3.4.7 Further we also refer to the Inspector's report under the previous appeal (308326-20) wherein at paragraph 7.4.7 it states:

*'In conclusion, I recognise that aspects of the development could be addressed via conditions and the natural qualities of the landscape have been modified by the previous quarrying operations. However with the incorporation of the suggested mitigation measures, the proposed quarrying activities would not have a significant impact on the landscape or on the visual amenities of the area.'*

Ground 3: Infrastructure and Traffic

3.4.8 Response: We refer to chapter 12 of the EIAR 'Material Assets- Traffic' which sets out:

- an assessment and description of the existing road network
- an assessment of the impact of quarry traffic within the road network

3.4.9 As per the EIAR section 12.12 we highlight:

*'It is predicted that approximately 18-20 loads of product per day will be transported off site creating approximately 40 traffic movements per day. This equates to a mean flow of 4.5 vehicle movements/hour. It is a possibility that demand could increase over a time period which would result in an increase in machinery operating and delivering lorries on the road. Raphoe is a busy commercial town as shown by the number of travelling vehicles recorded in the traffic surveys undertaken as part of this assessment. The surveys show that an average of 400 vehicles per hour travel along the main road (R236) to the east of the quarry. The projected vehicle movement of 4.5 per hour from the quarry would have no significant negative effect on traffic levels. The 20 vehicle movements relating to workers traffic to and from the quarry is also considered as not significant. The impact on roads and traffic is therefore assessed as imperceptible.'*

- 3.4.10 We also refer to the planner's report which considered traffic implications and concluded that the wider road network is adequate to cater for traffic generated by the quarry.

3.4.11 Ground 4: Environment and Noise

- 3.4.12 Response: We refer to chapter 9 of the EIAR 'Noise and Dust which sets out a detailed discussion on Noise and Dust impacts of the quarry when operational. As per chapter 9 noise surveys were carried out, with noise sensitive receptors identified and as per section 9.6.2.2:

*'The predicted noise levels are below the levels recommended by the EPA Environmental Management Guidelines for Quarries.'*

- 3.4.13 We also highlight this matter was considered in the planner's report as per section 9.3.3 where it states:

*'It is considered the submitted report has adequately addressed this in detail and does not warrant further assessment. I note ABP inspector report on the 2019 application was also satisfied on the basis of information submitted that forecast modelling was not necessary based on thresholds as detailed in the Quarry Guidelines (S7.3.5 ABP-308326-20 refers).'*

3.4.14 Ground 5: Water Resources

- 3.4.15 Response: For conciseness we refer to the EIAR and the NIS which set out mitigation measures to ensure there is no adverse impacts on the wider hydrology. The mitigation measures proposed addressed the previous reason for refusal and are summarised as:

-Installation of a settlement tank and constructed wetland system to reduce sediment in final discharges from the site. These works are to be carried out and fully operational prior to commencement of quarrying activity on-site.

-The installation of a silt fence to the perimeter of berms and to be kept in place until the berms are colonised with vegetation.

-The creation of a single discharge point from the Quarry, which will be subject to a Trade Discharge Licence from Council.

- 3.4.16 Further we refer to Figure 8.27 of the EIAR reproduced below to demonstrate how the proposal incorporates adequate measures to ensure discharge from the quarry will be managed to ensure unacceptable pollution risk.

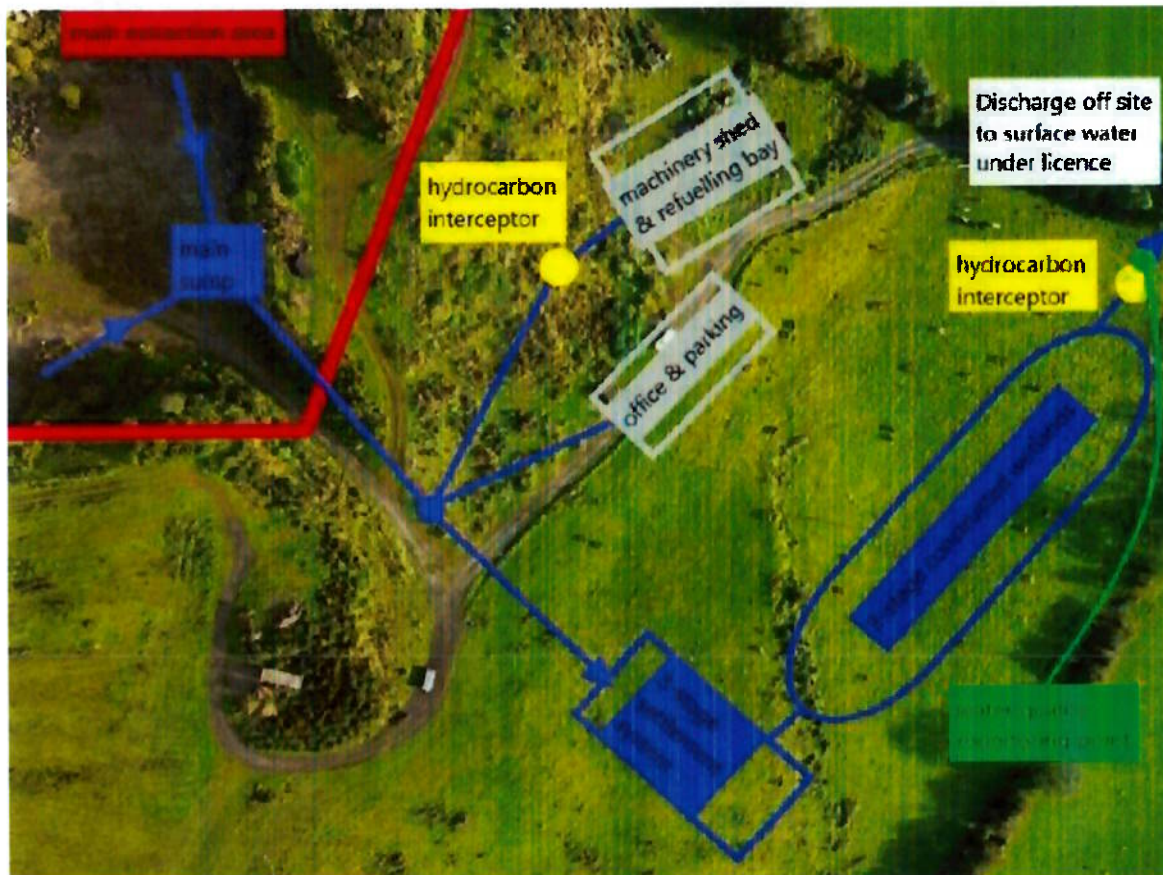


Figure 5 Extract from EIAR and figure 8.27 reproduced

3.4.17 As per section 8.6.2 of the EIAR the following summary is highlighted for effluent treatment:

*'It is likely that the main contaminant arising from activities will be suspended sediment contained within runoff. It is proposed to treat effluent from the extraction and processing areas by settlement. A main sump is proposed for the duration of the project. This will be situated on the quarry floor near the entrance haul road (Figure 8.1). All drainage from the quarry floor will be directed into the sump and water from temporary sumps at deeper excavation levels will be pumped into it. The sump is proposed to be 12m x 12m x 3m deep. The sump will have the approximate capacity of 432 m3.*

*Three large constructed settlement tanks are proposed in the south-eastern portion of the application site. These are to work in series receiving inflow from the main quarry sump to Tank 1 under gravity. Flow will be sequentially through Tanks 2 & 3 with outflow by gravity to the constructed wetlands. The inflow and outflow of each settlement tank will be set at the maximum distance from each other. Each tank will be constructed from concrete and there will be 840 m3 capacity in each tank. The three settlement tanks provide total settlement capacity of 2,520 m3.*

*The constructed wetlands will provide further effluent treatment. In addition to settlement, there are a variety of complex bio-geochemical processes occurring within wetlands especially at the root zone of the planting which treats effluent very effectively. The proposed constructed wetlands are to have a minimum footprint of 1616 m2 and standard operating depth of 300-600 mm. Assuming the wetlands are operating at minimum depth (300 mm), additional settlement capacity of approximately 485 m3 will be provided. The wetland ponds will also have a flood attenuation function. It is proposed to create three wetland ponds in series with the outlet of each fitted with a flow restriction device to allow water to accumulate to the required storage*



depth of approximately 1 m for storm events. Outflow from the wetlands will then be directed through the hydrocarbon interceptor. The bypass separator will trap any oils/hydrocarbons present in the effluent before the treated effluent is discharged off site to the surface water drain.'

- **8.6.2.6 Final polishing treatment by wetlands**

*'There is a proposed constructed wetland planned to be installed as a polishing element to the effluent treatment system. The constructed wetland is to be installed downstream of the settlement tanks. The location of the wetland is indicated in Figure 8.28.'*

*'The wetland has a minimum footprint of 1,616 m<sup>2</sup> and an operation depth of 300 mm - 600 mm. The wetlands will provide a minimum 485 m<sup>3</sup> settlement capacity and are designed to reduce any potential remaining suspended sediment load in the effluent down to imperceptible levels. The design for the wetland is to reduce a potential suspended sediment load of 25 mg/L down to below 15 mg/L. The design specification for the wetlands are provided in Appendix 8.8. In reality, the settlement tank system is likely to reduce effluent suspended sediment content to below acceptable levels and the wetlands will provide an extra polishing buffer. The wetlands will also add to the biodiversity of the quarry site.'*

- **8.7 Groundwater Impact**

*'Within the application site the water table in the bedrock has been shown to be at relatively shallow levels (5-10 mbgl) outside the quarry void created by previous activity. No significant ingress of groundwater to the quarry void was observed through any of the exposed quarry faces and some crude testing of the underlying aquifer properties showed it to be of low transmissivity (2-6 m<sup>2</sup>/day) consistent with GSI categorisation. Examination of the site following previous extraction activity gives a good indication of how the site will be impacted upon further extraction. The quarrying activity proposal will deepen the quarry void and extend into areas of the existing water table. This is not expected to have a significant impact outside the extraction areas as groundwater levels are shown to be at expected levels within relatively short distances from the edge of extraction areas. The cone of depression formed by previous extraction is steep and the cone of depression formed when extraction is complete for this proposal is similarly expected to be steep. It is not anticipated that there will be any significant change in groundwater levels outside the site boundaries on completion of the project. No groundwater supplies will be impacted by the proposed activity.'*

- **8.8.1 Surface Water Quality Impacts from Suspended Sediment Load during construction phase involving earth movement and berm construction**

*'The mitigation measures that are in place and proposed are listed below;*

- *Temporary silt traps to be created near construction areas where direction of runoff to settlement system is not practical*
- *Silt fence to be installed around the perimeter of newly constructed berms and kept in place until berms have been colonised with vegetation and risk of sediment transport in runoff is negligible*
- *Temporary silt traps and channels to be used to direct runoff to settlement system where Practical.*

*Residual Effect: Short-term imperceptible negative effect on surface water quality.*

*Significance of effects: No significant effects on surface water quality are expected.'*



- **8.8.2 Surface Water Quality Impacts from Suspended Sediment Load during operational phase**

*The mitigation measures that are in place and proposed are listed below:*

- Adequate settlement tank capacity to reduce sediment load in the effluent to acceptable levels before discharge offsite (Section 8.6.2).
- Suitable drainage system in place to direct effluent and runoff that may become contaminated with suspended sediment to the settlement tank and wetland system.
- Regular maintenance of settlement tanks (and drainage system) to ensure efficiency and appropriate disposal of material removed.
- Suspension of extraction and material handling activities for the duration of a red level rainfall warning issued by Met Eireann.
- Regular monitoring of the discharge point.
- Single discharge point to be subject to the conditions of a trade discharge licence from Donegal County Council.

*Residual Effect: Short-term imperceptible negative effect on surface water quality.*

*Significance of Effects: No significant effects on surface water quality are expected.*

- **8.8.3 Surface Water and Groundwater Quality Impacts from Hydrocarbon Contamination**

*The mitigation measures that are in place and proposed are listed below.*

- The concrete bunded area adjacent to the fuel storage area with appropriate drip trays and spill kits available is to be used for vehicle refuelling operations.
- Fuels and lubricants continue to be stored in a bunded area in the machinery shed.
- The hydrocarbon interceptor is maintained within the drainage system downstream of the machinery shed before discharge to the settlement tank system.
- Maintain the second hydrocarbon interceptor installed into the drainage system immediately before final discharge of surface waters off site.
- Refuelling of static plant on site to be carried out using a fully bunded bowser/mobile fuel truck.
- Drip trays continue to be used for all re-fuelling operations. Best practice for re-fuelling to be incorporated into the Environmental Management System for the subject site.
- Regular inspections and maintenance scheduling to take place for all plant and vehicle to minimise the potential for malfunction or leak.
- Emergency spill kit with oil boom, absorbers etc. to be kept on site for use in the event of an accidental spillage/leak.
- Regular visual monitoring of all surface waters onsite to take place for any surface sheen or sign of potential hydrocarbon pollution.'

*Residual Effect: Short-term imperceptible negative effect on surface water quality.*

*Significance of Effects: No significant effects on surface water quality or groundwater quality are expected.*

- **8.8.4 Surface Water and Groundwater Quality Impacts from wastewater discharged from office block.**

*'The mitigation measures that are in place and proposed are listed below.*

- *The settlement tanks will be constructed of concrete and will not leak or permit effluent to enter other than through the dedicated inflow.*
- *The wetland base will be formed of an impermeable liner which will not allow effluent to enter other than through the dedicated inflow.*

*Residual Effect: Short-term imperceptible negative effect on surface water quality and groundwater.*

*Significance of Effects: No significant effects on surface water quality and groundwater quality are expected.'*

- **8.8.5 Groundwater impacts due to extraction below water table.**

*'There are no mitigation measures proposed as volumes of groundwater contained in the bedrock are low and transmissivity through the rock is shown to be very low. Small amounts of water that would have percolated to groundwater will now flow directly to the surface water system.*

*Residual Effect: Imperceptible permanent negative effect on groundwater.*

*Significance of Effects: No significant effects on groundwater supply are expected'.*

- **8.8.6 Surface Water ecology losses and reduction in stream base flow due to removal of catchment areas.**

*'There are no mitigation measures proposed as volumes of surface water supplied to the ditch along the northern boundary of the site is re-directed through the effluent treatment system for the site and flows into the same tributary of the Swilly Burn River approximately 380 m downstream of the point where the catchment has been affected by quarrying activity. The direct impact to the ecology of the drain is assessed as negligible as it has been shown to be of low/poor ecological value.*

*Residual Effect: Imperceptible negative effect on drainage ditch. No negative effects on Swilly Burn River, River Finn SAC and River Foyle and Tributaries SAC.*

*Significance of Effects: Neutral effects on Swilly Burn River, River Finn SAC and River Foyle and Tributaries SAC are expected'.*

- **8.8.10 Conclusion**

*'With the implementation of the mitigation measures listed, the implementation of the project as outlined will not cause a significant negative effect on the surface water or groundwater environments.'*

- 3.4.18 In summary the mitigation measures proposed (along with project drawings and proposals) are accepted industry best-practice and fully address refusal reason 1 of the Board's previous decision. We also highlight the Planning Authority were satisfied in this regard and matters raised by the appellant are not evidenced based.

**3.4.19 Ground 6: Flood Risk**

- 3.4.20 Response:** For conciseness we refer the Board to section 8.5.9 of the EIAR and project particulars which sets out how the quarry can be developed without resulting in a flood risk to the wider area.

**3.4.20 Ground 7: Archaeology**

- 3.4.21 Response:** For conciseness we refer the Board to section 14 of the EIAR and in particular the archaeological report which concludes:

*'The site of the proposed quarry extension has had an amount of over burden removed by the previous owner, in this area it has exposed only rock, there is another portion of the proposed quarry extension which is currently within farmland, which is in grass pasture, this area would have been ploughed by the current owner and the soil depth is evidently quite shallow. The area which has had the over burden removed if it had any archaeological importance it has now been removed, it is however highly unlikely that anything of archaeological interest was ever on the site as it is not suitable for human habitation. There is no archaeological reason to test - trench the site since there is no soil on it. The area which is currently in grass land is unlikely to contain any items of archaeological importance as the land has been farmed for generations, has a soil depth of a shallow nature and is the further away than any other part of the site to sites of archaeological importance. The site will not extend any closer to the Recorded Archaeological Monuments to the South and a physical barrier, namely a berm, will be erected to stop any further incursion South it is therefore recommended that no further archaeological input will be necessary at this site.'*

- 3.4.22** Also we refer to the Inspector's report under the previous appeal wherein at paragraph 7.8.2 it states:

*'The closest structures listed in the National Inventory of Architectural Heritage (NIAH) and buildings listed in the Record of Protected Structures appended to the Development Plan, including Oakfield House, are over 800m from the appeal site. Given the substantive separation distances to the appeal site, the integrity and setting of these buildings and structures would not be directly impacted by the proposed quarrying activities. The grounds of appeal refer to the indirect impacts of the additional traffic, including HGV traffic, on buildings and structures of cultural merit within Raphoe. While it is recognised above that there would be some additional traffic arising on the local road network, these roads already accommodate substantive volumes of traffic, including HGVs, and the project would not reasonably lead to a substantive increase in traffic that would affect the integrity and setting of buildings and structures of merit.'*

**3.4.23 Ground 8: Socio-economic impact and overall project background**

- 3.4.24 Response:** For conciseness we refer the Board to section 5 of the EIAR which addresses the impact on population and human health. With mitigation measures proposed that will include for noise and dust levels to be within permitted limits and environmental monitoring to be carried out there is no basis for this ground of appeal.

### 3.5 Gerard Convie on behalf of Raphoe Community in Action

3.5.1 To elicit the key issues we summarise matters below and our responses.

3.5.2 Ground 1: Donegal County Council's failure to provide justification for non application of Section 35 of Planning and Development Acts on past failures to comply

3.5.3 In response we refer the Board to the detailed letter of response submitted to the Planning Authority on 13<sup>th</sup> September 2022<sup>1</sup>. In summary the Council did not invoke Section 35 proceedings against the applicant as there was no basis to do so; and it is outside the scope of this appeal to now consider Section 35 proceedings.

3.5.4 Further if the Board are so minded to consider this query further then the Council can readily explain why Section 35 proceedings are not applicable or appropriate in relation to this site or the applicant Patrick Bonar.

#### Ground 2: Proximity to neighbouring lands

3.5.5 We refer the Board to section 5 of the EIAR which details the local context and how the site is surrounded by improved agricultural land with an area of forestry to the north-west. The closest dwelling is located 270m west of the site boundary and 370m from the quarry face. Also the land-owners house and farmyard are located 350 south-east from the nearest site boundary and 500m from the quarry face.



Figure 6 Extract from figure 5.1 of EIAR reproduced

<sup>1</sup> Attached in appendix 1



3.5.6 Section 5.7 of the EIAR is also highlighted wherein it states:

*'Noise levels for the proposal have been predicted and include the cumulative effects of activity. Predictions have been made of maximum hourly noise levels with no allowance made for ground absorption or air attenuation. The predicted noise levels are well within the levels recommended by the EPA Environmental Management Guidelines-Environmental Management in Extractive Industry (Non-Scheduled Minerals). Ground vibration and air-overpressure will be kept below the guidelines recommended and below the regulatory limits. Controls specified to limit ground vibration and air-overpressure will be in place as a component of good management procedures. To ensure compliance with regulatory limits, monitoring of all blast vibration will be carried out at a location to be agreed with Local Authority. Keeping within the statutory limits will ensure that blast vibration or air overpressure will ensure that the likelihood of damage (or superficial damage) to all receptor structures and humans approaches zero - see Section 10 of this EIAR for full detail on noise and vibration.'*

*'The effects on human health for all receptors arising from noise and vibration are assessed as being imperceptible'. (pg 67)*

3.5.7 We also highlight the Planning Authority were satisfied in this regard. However, notwithstanding these details set out in the EIAR the appellant has failed to familiarise their position with the stated mitigation measures and how the quarry can operate in accordance with EPA parameters for noise and emissions for a quarry site.

#### 3.5.8 Ground 3: Landscape and Laggan Valley ACA

3.5.9 Again we refer the Board to the detailed EIAR and project particulars which sets out how the quarry can be developed without adverse impacts on the recipient environment.

3.5.10 Also relevant is the assessment by the Planning Authority on these matters. Key extracts from the planner's report are highlighted for ease of reference:

*'The Planning Authority considers that the existing quarry has been well screened from public view. Furthermore, adjoining backdrop of rolling hills and a forestry are considered to aid in the integration of the development. Detailed consideration has been given to same in the planners report below based on restoration plans and visual impact sections.'*

3.5.11 Further we also refer to the Inspector's report under the previous appeal (308326-20) where in at paragraph 7.4.7 it states

*'In conclusion, I recognise that aspects of the development could be addressed via conditions and the natural qualities of the landscape have been modified by the previous quarrying operations. However with the incorporation of the suggested mitigation measures, the proposed quarrying activities would not have a significant impact on the landscape or on the visual amenities of the area.'*

3.5.12 Finally we refer the Board to the viewpoint analysis carried out for the EIAR in section 15.7 and the mitigation measures in section 15.9.

#### 3.5.13 Ground 4: Quarry Operations

3.5.14 The respective appeal raises concern on blasting, the anticipated quarry extraction volumes, traffic volumes and impact on water.

3.5.15 For conciseness we refer to the EIAR which details how all environmental affects have been anticipated with mitigation measures proposed. Also, again we highlight the Planning Authority were satisfied on these matters.

**3.5.16 Ground 5: Population & Human Health (Including Noise and Vibration)**

- 3.4.17 We again refer to chapter 9 of the EIAR 'Noise and Dust' which sets out a detailed discussion on Noise and Dust impacts of the quarry when operational. As per chapter 9 noise surveys were carried out, with noise sensitive receptors identified and as per section 9.6.2.2

*'The predicted noise levels are below the levels recommended by the EPA Environmental Management Guidelines for Quarries.'*

- 3.4.18 We also highlight this matter was considered in the planners report as per section 9.3.3 where it states:

*'It is considered the submitted report has adequately addressed this in detail and does not warrant further assessment. I note ABP inspector report on the 2019 application was also satisfied on the basis of information submitted that forecast modelling was not necessary based on thresholds as detailed in the Quarry Guidelines (S7.3.5 ABP-308326-20 refers).'*

- 3.5.19 Also we note reference is made to a separate quarry outside Letterkenny. In response this third party quarry at Letterkenny is not the applicant of this proposal and this is not to be considered further.
- 3.5.20 Further we note the appellant puts forward an argument that the proposed quarry will add to traffic, noise vibrations and dust in the vicinity (paras 6.03-6.11). In response we again refer to section 5.7 of the EIAR, the context that the Planning Authority were satisfied in this regard and the proposal can be operated in accordance with EPA parameters for noise and emissions for a quarry site.

**3.5.21 Ground 6: Tourism**

- 3.5.22 In response we refer to the EIAR and how the overall environmental effects have been cumulatively assessed. Noise levels will be in accordance with permitted levels, the visual impact will be effectively mitigated given the set-back from the local roads along with berms, the surrounding landscape context and additional planting works. Also the location being removed from Raphoe and also Oakfield Park and Demesne will ensure no adverse impact on the wider landscape setting of Raphoe, the Laggan Valley or the Tourist based socio-economic profile of the area.

**3.5.23 Ground 7: Archaeology**

- 3.5.24 For conciseness we refer the Board to section 14 of the EIAR and also paragraphs 3.4.20-3.4.21 of our appeal statement which detail how no issues or Archaeological impact will arise.

**3.5.25 Ground 8: Cultural Heritage & Material Assets**

- 3.5.26 For conciseness we refer the Board to section 14 of the EIAR which sets out in detail how all aspects of Cultural Heritage in the area have been considered. We refer the Board to paragraph 14.5 in particular which states:

*'The effect of noise and vibrations from this subject site on architectural structures is discussed in more detail within Sections 9 and 10 of this EIAR. The predicted noise levels are well within the levels recommended by the EPA Environmental Management Guidelines-Environmental Management in Extractive Industry (Non-Scheduled Minerals). Ground vibration and air-overpressure will be kept below the guidelines recommended and below the regulatory limits. Controls specified to limit ground vibration and air-overpressure will be in place as a component of good management procedures. Negative effects from noise and vibration after mitigation*

*have been assessed as imperceptible. The subject site does not affect any aspect of folklore, tradition, religion and language and dialect.'*

- 3.5.27 Also we again refer to the Inspector's report under the previous appeal wherein at paragraph 7.8.2 it states:

*'The closest structures listed in the National Inventory of Architectural Heritage (NIAH) and buildings listed in the Record of Protected Structures appended to the Development Plan, including Oakfield House, are over 800m from the appeal site. Given the substantive separation distances to the appeal site, the integrity and setting of these buildings and structures would not be directly impacted by the proposed quarrying activities. The grounds of appeal refer to the indirect impacts of the additional traffic, including HGV traffic, on buildings and structures of cultural merit within Raphoe. While it is recognised above that there would be some additional traffic arising on the local road network, these roads already accommodate substantive volumes of traffic, including HGVs, and the project would not reasonably lead to a substantive increase in traffic that would affect the integrity and setting of buildings and structures of merit.'*

3.5.28 Ground 9: Traffic

- 3.5.29 In response as per EIAR section 12.12:

*'It is predicted that approximately 18-20 loads of product per day will be transported off site creating approximately 40 traffic movements per day. This equates to a mean flow of 4.5 vehicle movements/hour. It is a possibility that demand could increase over a time period which would result in an increase in machinery operating and delivering lorries on the road. Raphoe is a busy commercial town as shown by the number of travelling vehicles recorded in the traffic surveys undertaken as part of this assessment. The surveys show that an average of 400 vehicles per hour travel along the main road (R236) to the east of the quarry. The projected vehicle movement of 4.5 per hour from the quarry would have no significant negative effect on traffic levels. The 20 vehicle movements relating to workers traffic to and from the quarry is also considered as not significant. The impact on roads and traffic is therefore assessed as imperceptible.'*

- 3.5.30 We also refer to the planner's report which considered traffic implications and concluded that the wider road network is adequate to cater for traffic generated by the quarry.

3.5.31 Ground 10: Biodiversity

- 3.5.32 Again we refer the Board to section 6 of EIAR which sets out in detail the Biodiversity impacts and how the project was informed by site surveys. In summary as per section 6.10

*'The ecological impact assessment of the proposed application concludes that the continuation and expansion of quarry activities within the subject site will have no significant residual effects assuming the mitigation measures outlined in the section on biodiversity are strictly adhered to.'*

3.5.33 Ground 11: Land, Soils & Geology

- 3.5.34 In response we refer the Board to section 7 of EIAR which sets out in detail the existing soils, geology profile of the site and how the quarry can be developed in a manner that will not impact the wider area. We also highlight the Geological survey and report included as part of the EIAR by John Colthurst (professional geologist).

- 3.5.35 In summary as per section 7.15:

*'There will be an inevitable moderate permanent negative impact due to the extraction of bedrock geology. The impact of the loss of soils is assessed as slight due to the mitigation*

*measures in place. The other activities associated with the project have no negative effects on the land, soils and geology.'*



#### **4 CONCLUSIONS AND SUMMARY**

- 4.1 This statement demonstrates that the proposed development is consistent with the national, regional and local planning policy framework and that the proposal will provide for an important quarry that will serve the area.
- 4.2 As the Board will note appropriate sites for rock extraction are finite and this site is ideal for quarrying operations to recommence.
- 4.3 The proposed development and accompanying documentation that include the comprehensive EIAR and NIS have been prepared to address the previous reasons for refusal under 308326-30.

##### Refusal reason 1: Water(s) and Hydrological Impacts

- We highlight the EIA was informed by both surface water analysis and ground water monitoring to fully inform the hydrological impacts of the site being developed. Mitigation measures are proposed which include:
  - Installation of a settlement tank and constructed wetland system to reduce sediment in final discharges from the site. These works are to be carried out and fully operational prior to commencement of quarrying activity on-site.
  - The installation of a silt fence to the perimeter of berms and to be kept in place until the berms are colonised with vegetation.
  - The creation of a single discharge point from the Quarry, which will be subject to a Trade Discharge Licence from Council.
- In summary the mitigation measures proposed (along with project drawings and proposals) are accepted industry best-practice and fully address refusal reason 1 of the Board's previous decision under 308326-30.

##### Refusal reason 2: NIS

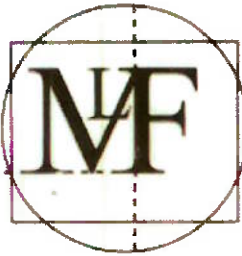
- In summary the NIS has been carried out in accordance with legislative requirements and demonstrates how the project can be granted permission without adversely impacting on the Natura 2000 site network. We also highlight the Planning Authority are satisfied in this regard.
- 4.4 The details set out in this statement address grounds of appeal by the respective appellants.
- 4.5 Given the foregoing and extensive documentation prepared as part of the planning application, we submit there are no matters arising in the appellants statement of case which undermine the conclusions set out in the Planning Authority's report which deems as acceptable the development in planning terms.
- 4.6 In the context of the attached details we trust that the application will meet with favourable assessment by the Board.



Ronan Woods  
Director

**APPENDICES**

Appendix 1: Submission to Planning Authority dated 13<sup>th</sup> September regarding Section 35 procedures



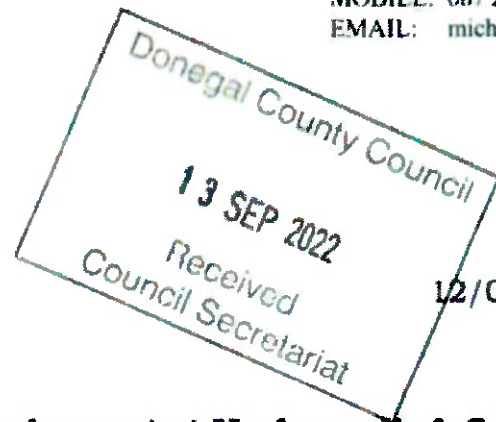
MICHAEL FRIEL

ARCHITECTS & SURVEYORS LTD.

CREESLOUGH,  
Co. DONEGAL, F92 TF60.

PHONE: 074 91 38814  
MOBILE: 087 286 9658  
EMAIL: michael@mfielarchitects.ie

Planning Section,  
Donegal County Council,  
County House,  
Lifford,  
Co. Donegal.



12/09/2022

RE: 22/50933

**Patrick Bonar RE: Permission for development at Magherasolis & Craigs, Raphoe, Co. Donegal to (1) Demolition of existing concrete structure (2) Quarrying of 5.37 hectares which will be subject to extraction and processing of Rock by drilling, blasting, crushing & Screening, (2) Construction of (a) settlement ponds and constructed wetlands (b) Construction of a Shed for the purposes of storage facility including the on - site machinery maintenance (c) Erection of a site office with canteen, Toilet & drying facilities (4) Installation of a waste water treatment system and percolations area (5) provision of a wheel wash and weighbridge (6) Landscaping of the Quarry during the operational phase and restoration of the Quarry on completion of extraction. (7) all associated ancillary facilities / works over a 25 year period. An environmental impact assessment report (EIAR) and a Natura impact statement (NIS) accompanies this application.**

A Chara,

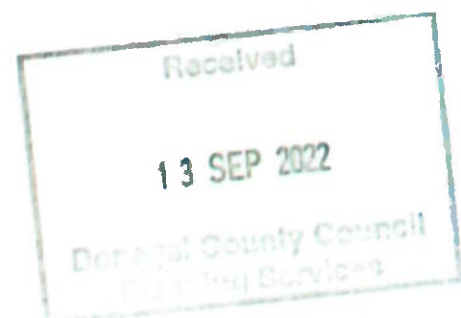
Please find attached the following documents pertaining to the above planning application, namely;

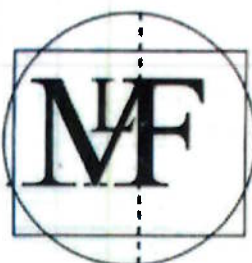
- A formal response to the correspondence which we received from the Planning Authority in respect to the application named above.
- A request for information pursuant to the access to information on Environment Regulations 2007 – 2018 (the AIE regulations)

I trust that this is satisfactory and I look forward to hearing from you in due course.

Is Mise Le Meas,

for **Michael Friel** **MRIAI**





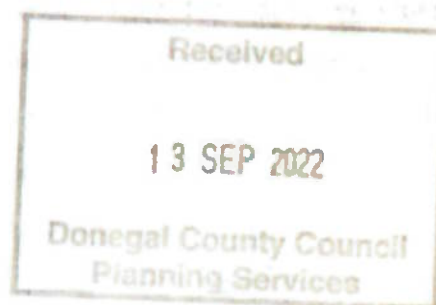
MICHAEL FRIEL

ARCHITECTS & SURVEYORS LTD.

CREESLOUGH,  
Co. DONEGAL, F92 TF60.

PHONE: 074 91 38814  
MOBILE: 087 286 9658  
EMAIL: michael@mfielarchitects.ie

Planning Section,  
Donegal County Council,  
County House,  
Lifford,  
Co. Donegal.



**RE: Planning Application Ref No: 22/50933**

**Patrick Bonar RE: Permission for development at Magherasolis & Craigs, Raphoe, Co. Donegal to (1) Demolition of existing concrete structure (2) Quarrying of 5.37 hectares which will be subject to extraction and processing of Rock by drilling, blasting, crushing & Screening, (2) Construction of (a) settlement ponds and constructed wetlands (b) Construction of a Shed for the purposes of storage facility including the on - site machinery maintenance (c) Erection of a site office with canteen, Toilet & drying facilities (4) Installation of a waste water treatment system and percolations area (5) provision of a wheel wash and weighbridge (6) Landscaping of the Quarry during the operational phase and restoration of the Quarry on completion of extraction. (7) all associated ancillary facilities / works over a 25 year period. An environmental impact assessment report (EIAR) and a Natura impact statement (NIS) accompanies this application.**

We refer to your letter dated 22<sup>nd</sup> June 2022 in relation to above planning permission purporting to invoke section 35(1) of the 2000 Act on the basis that there are good grounds for forming an opinion that there is a real and substantial risk that the development will not be completed in accordance with the permission or condition if granted.

**1. SECTION 35 OF THE 2000 ACT**

We are extremely surprised to receive such a notice which we consider wholly unjustified and disproportionate. While this provision was enacted under the 2000 Act, we are not aware of any planning authority invoking such jurisdiction. It is for very good reason that planning authorities have avoided doing. This is because it involves a very drastic and radical interference with rights protected under the Constitution including property rights and the



entitlement to earn a livelihood in a commercial context. It is a departure from the general principle that under the planning regime, matters which are personal or relate to the identity of the applicant for permission are irrelevant. It also entails mixing control of development functions and enforcement functions of the planning authority, even though they are internally separated with the Council.. The proper place for dealing with alleged breaches of the planning code is clearly through the enforcement function where there are penalties or other consequences. It is quite another matter that alleged infractions can be extended to effectively disqualifying an applicant from even consideration of their development proposals regardless of its merits.

It is open to question whether the mechanism under section 35 is constitutional on the basis that it is a disproportionate interference with property rights and the right to earn a livelihood. It has not been tested simply because it has never been invoked. However even if the mechanism is constitutional, it is clear that the exercise of such power in a particular case must be assessed against the backdrop of constitutionally protected rights and must be interpreted very strictly. It is not apparent from the letter of Donegal County Council that the Council fully appreciated these considerations in deciding to invoke section 35 and certainly on the facts, taking into account all of the circumstances, it is wholly unjustified and is disproportionate. Separate to this response we attach an FOI and/or Access to Information on the Environment Request relating to the invocation of section 35 of the 2000 Act by the Council.

## **2. INADEQUATE REASONS AND IRRELEVANT CONSIDERATIONS**

Moreover insofar as this provision has rarely, if ever advanced, in over twenty years of its existence, this also gives rise on a practical level to issues of fairness and proportionality. There are no exceptional circumstances which would justify the same and there is no attempt to explain the same. Moreover, the practical reality and nature of the quarrying industry in Ireland is there are often claims of unauthorised development. The lands are also in remote locations (as in the present) and limited adverse planning impacts in terms of impact on residential amenities can arise. There is no attempt to engage with the nature of unauthorised

development to explain why this is substantial to warrant the exercise of such an extraordinary power. To make it clear, the effect of section 35 is to be mean that a planning application is *not even considered* on its merits.

The letter purports to set out a schedule itemising three non-compliances with permission and four alleged unauthorised developments. Other than baldly asserting that they involve "substantial unauthorised development" which the planning authority, the letter and schedule gives no adequate reasons or particulars as how or why the planning authority considers these alleged unauthorised development as substantial. It is patently clear that all or many of these alleged unauthorised development, (even if they were demonstrated and taken at their highest), are not substantial. Moreover other than the reference to the Court Order in relating to landscape and restoration, there has been no findings of unauthorised development for a range of the matters alleged to constitute unauthorised development. Even if section 35 is constitutional, it is apparent that it should be reserved for the most serious and egregious breaches of planning with significant consequences. There is no attempt to explain or identify the same in the notice as none are present. Many of the alleged breaches are trivial such as alleged use of a shed for commercial rather storage purpose.

There is also a general attempt to shoehorn all of the alleged unauthorised as relating to the Court Order which is not explained. Moreover, this Court order was made against Bonar Plant Hire Company Ltd. It was not made against Patrick Bonar the applicant or person, who is an entirely different legal entity.

It is also disproportionate to contemplate invoking the same in the following circumstances, none of which appear to have been taken into account:

- The Bonar family have been operating quarries since the 1960's and in that time they have amassed a large amount of loyal clients and indeed experience in the field of supplying aggregates, stone, concrete and blocks to the Donegal Public. They have also provided significant employment and other economic benefits to the locality
- An application for development of the Quarry in Raphoe was made by Patrick Bonar in 2019 under Planning Ref: 19/52015 and a recommendation to grant was made by the Planning Authority on the 10th of September 2020, no question in respect to Section 35(4) of the Planning & Development Act 2000 was raised under



that application and the situation in regards to Patrick Bonar has not altered significantly in the intervening period.

- The Applicant has made this application in good faith and has engaged a range of experts to assist with the same. They would not have done so if it was intended to take a reckless approach to compliance with any permission which might be granted or the conditions. It is intended that in the event of a fully permitted facility that it will be monitored by the applicant and persons acting on his behalf as well as the relevant authorities such as the local Authority and Sections thereof and all aspects of the operation would be monitored (if permitted) including, noise, dust, water, vibration and all other facets of the operation to ensure that it is properly monitored and managed if it were to be granted by the Authority. If permission is granted this will allow our client to focus almost exclusively on this site and ensure that the operation is carried out to the highest standards in conformity with conditions which may be associated with any such grant of permission. This does not have appeared to have been considered by the Council and there is nothing in the application itself which would justify the Council forming the view which it appears to have done.

- The Applicant has expended very significant expense already, through the previous application process in 2019 & 2020, and is doing so again with this new, and enhanced application in 2022. This is not the course of a company or individual who is operating entirely outside of the Planning code, in fact it is the opposite

- We have had a conversation with the Senior Development Planner following the refusal by An Bord Pleanála where we were led to believe that if we were in a position to overcome the previous refusal reasons as decided by An Bord Pleanála in the 2019 application, that an application could be considered by the Planning Authority. The issue of Section 35(4) never raised its head during this conversation and we are somewhat bemused that this has now become a factor when it was not previously raised.

### 3. MATTERS IN SCHEDULE

Without prejudice to the above, it is proposed to address each of the matters relied upon set out in the schedule. Before looking at each in turn, a number of observations may be made:

1. The items at Schedule 1 vaguely make reference to the Court Order although it does not clearly identify what order. It is assumed that this relates to the order of Mr Justice Barrett dated 1<sup>st</sup> July 2021 (perfected on the 1<sup>st</sup> September 2021) which relates to lands at Calthame (otherwise Fallard) Letterkenny, County Donegal. The scope of this Order is to cease certain unauthorised quarrying activity (para 1), concrete batching plant (para. 2), cease all unauthorised development in para. 1 and 2 (para. 3), comply with the landscape and restoration plan pursuant to permission 06/ 51276 including geotechnical survey, ecological appraisal and submission of restoration plan (para. 4), submission of final restoration plan (para. 5) and implementation of restoration plan (para. 6). There is not attempt to explain how the various matter relates to the same, which is hard to understand, other than a vague reference to forming part of the Order. In addition and crucially, this Court order was made against Bonar Plant Hire Company Ltd. It was not made against Patrick Bonar the applicant or person, who is an entirely different legal entity.
2. Reference is made to warning letters. However, warning letters issued under section 152 are not findings or otherwise of unauthorised development, but an invitation to respond to potential unauthorised development. It is therefore entirely contrary to fair procedures and the nature of the warning letter for the Council to be relying upon the same as constituting unauthorised or as a basis for believing that there is a substantial risk of unauthorised development. In the Council did not progress these warning letter to further enforcement action and there is no basis in such circumstances to relying upon the same
3. The warning letters and enforcement notices mentioned are all undated and so our client has to be engage in an exercise of conjecture in seeking to identify the same.
4. Meetings have been sought with the Council but these have regularly been refused or not responded to.

#### **Schedule**

##### **1. Non Compliance with permissions**

##### **Ud14125**

Refers to an undated warning letter (which appears to be around 2013/2014) and non-conformity with "aspects" of permission 06/51276 particularly conditions 3(ii), 5, 7, 9 (iv &



v), 15 (i & iv), 23, 24 and 25 which presently forms part of High Court Order (point no. 4) in respect of landscape and restoration plan under condition 5 and remains outstanding. However, it is readily apparent that the only condition which arises under the High Court Order is condition 5 and not the raft of other conditions mentioned. Condition 3(ii) relates to the erection of 1.5 fence and security wire, 7 (operation of quarry between 0800 and 1800 hours), 9 (blasting requirement, monitoring and notification), 15 (all vehicles exit through wheel wash and spraying roads to prevent dust), 23 (resurface road at site entrance), 24 (lodging a bond) and 25 (paying financial contribution). There is correspondence on the planning file, confirming the Council was satisfied with compliance with condition 23 dated 19<sup>th</sup> August 2010. Served on Barnies Limestone Quarry Ltd. Anne Marie Bonar and Patrick Joseph Bonar. In respect of condition, the bond of €200, 000 was agreed and is in the possession of Donegal County Council. For clarity, our Client does not own any of the lands upon which the quarry is located. This land is jointly shared between 2 other parties and is not in the gift of our client to resolve at this point.

As regards the landscape and restoration plan, the condition of the planning permission required submission of landscape and restoration was agreed. It is difficult to see how such a condition, which is at the end of life of the permission, could constitute substantial unauthorised development for the purposes of section 35. The matter is the conclusion of a quarrying operation over a moderate period of time, particularly having regard to the fact the quarry has been active since the early 1960's, and is now in an effective end of life phase of dissolution. There is no quarrying taking place.

Insofar as implementation is the issue the Council is fully aware that the Company are progressing the implementation of the same. We are waiting an updated Geotechnical assessment to close this issue out. I can confirm that the Geotechnical Assessment should be complete and submitted to the Council within the next 4 to 6 weeks. Given that this matter is being dealt with through engagement between the company and the Local Authority it cannot be deemed to be of a substantial nature. The company is working with the local authority in regards to this matter and we are of the opinion that when the restoration plan is agreed with

the local authority and works carried out that the substantive unauthorised development element will be complied with.

#### Ud2072

Undated warning letter re Storage structure within quarry at Calhame, Letterkenny, County Donegal, regarding non-compliance with condition 15/51448 comprising conditions 1, 2 and 5 which is said to "presently forms part of the High Court Order requiring its removal of part landscape/restoration plan and remains outstanding. . Served on P Bonar Plant Hire Ltd. (PJ Bonar joint company director with Anne Marie Russell and PJ Bonar secretary). Again there is no explanation as to how it forms part of the High Court Order.

This UD file therefore relates to a Shed which is 186m<sup>2</sup> was permitted at their former quarry site at Calhame, Letterkenny under Planning Ref No: 15/51448. The condition states that the shed is to be used for the purposes of storage associated with the existing Quarry and shall not be used for any other commercial purposes. Our Client does not accept the use of this shed was at any stage unauthorised development. The shed was consistently used for storage, which was consistent with the terms of the Planning Permission. Originally, when Donegal County Council received third party complaints in respect of the overall Quarry operation, the Enforcement section were misled by a complainant that there was third party machinery being repaired within the structure, this claim was without foundation. Despite the inaccuracy of the complaints, the matter was investigated by the Council, and we advised as agents acting for the facility that there had not at any time been any vehicle within the building which was not associated with the Bonar's existing Quarry business. We understood at this time (Quarter 2 of 2020) that the bona fides of the use of the shed, and the inaccurate complaints being made to the Planning Section that it was accepted by the Council there was no unauthorised development in respect of the shed. Therefore, we do not accept this particular case can now be used as a part of a broader case against our Client. The structure is

approved and is not an un-authorised structure, again this does by no means constitute a failure to comply of a substantial nature and does not comply with section 35(2) of the Planning & Development Act 2001 as it is required. However, in any case, this is minor and

trivial matter and it difficult to see how it could be characterised as substantial unauthorised development for the purposes of section 35 of the 2000 Act.

#### **Ud20167**

Alleged undated enforcement notice regarding non-compliance with conditions 2(a) of planning reference 10/40186 and extension of duration 15/50140 requiring removal of all plant and apparatus associated with concrete batching plan by 23/8/2020 which "presently forms part of High Court requiring its removal as part of landscape/restoration plan) and remains outstanding. . Served on P Bonar Plant Hire Ltd. (PJ Bonar joint company director with Anne Marie Russell and PJ Bonar secretary). There is an again an attempt to link with the High Court in any unidentified manner. The concrete batching plant which is located on the former quarry site at Calhame is no longer in operation, this can be verified by the Quarry compliance officer within Donegal County Council who has carried out site visits to the former quarry facility and would have witnessed the plant no longer in operation.

## **2 Alleged Unauthorised Development**

- (i) Ud 14107 enforcement notice (undated) in respect of alleged unauthorised quarrying activities at Barnes Lower, Termon, Letterkenny, County Donegal. Served on Barnies Limestone Quarry Ltd. Anne Marie Bonar and Patrick Joseph Bonar. The Planning Authority will be aware that there is no activity taking place at this site nor has there been for a number of years. All activity and operations has ceased and Mr. Bonar has no equipment or materials on the site which require removal. As such this case should be closed and as previously advised there is a bond of in excess of €200,000 which is within Council control and is to be utilised for the restoration of the Quarry.



- (ii) Ud19117, urgent enforcement notice (undated), quarrying of lands without the benefit of planning permission and making material change of use from disused to a use of quarrying relating activity at Calthame, Letterkenny, County Donegal. Served on P Bonar Plant Hire Ltd. (PJ Bonar joint company director with Anne Marie Russell and PJ Bonar secretary). See response to Ud14125 above.
- (iii) Ud20201 urgent enforcement notice (undated) use of lands for quarrying at Drumkeen, Stranorlar, County Donegal. Served on Patrick Bonar. No development is taking place or has taken place at this location in Drumkeen for at least 18 Months. No quarrying had taken place at this location, materials which had been quarried and stockpiled at the site were removed but all activities at this site had ceased prior to the Ud letter being received by our client. This case should be closed by the local Authority and the site can be visited by the Local Authority at any time to verify the above
- (iv) Ud20269, urgent enforcement notice (undated) quarrying of lands at Moyra, Glebe, Glenties, County Donegal. Served on Sean McGee/Niamar Property. this UD file relates to Sean Mc Gee/Niamar Property for a site which is owned by the above person and we understand that this matter is being dealt with before the courts between the local Authority and the person who received the enforcement notice. We can state, that Mr. Bonar has not received any formal correspondence from the local authority in regards to this matter and that no formal proceedings have been initiated against our client in regards to the alleged unauthorised development at this location and pose the question whether it is even fair to list such a case when it is the first sight that our client has had of this case which has been initiated against another party and not our client.

## SUMMARY AND CONCLUSION

1. The issuing of the notice under section 35 in respect of the planning application is unprecedented, extraordinary, disproportionate and wholly without merit.



2. The impact of the notice if confirmed would be that the applicant would be unable to have a planning application, now or in the future even considered. This would have an enormous impact on the property rights and right to earn a livelihood of the applicant.
3. Section 35 procedures has never been invoked, may be unconstitutional but in any case, the facts do not even remotely justify the invocation of the same.
4. The notice issued by the Council is inadequately reasoned, takes into account irrelevant considerations and does not explain how the alleged breaches or in what way they constitute substantial unauthorised development.
5. The Council has sought to rely upon undated and outmoded warning letters and enforcement notices. It is misunderstood even the nature of warning letter
6. The only finding of unauthorised development relates to the Court Order concerning the implementation of the landscape and restoration plan for lands at Calthame (otherwise Fallard) Letterkenny, County Donegal. This Court order was made against Bonar Plant Hire Company Ltd. It was not made against Patrick Bonar the applicant for person, who is an entirely different legal entity. This is the aftermath of development which has ceased and is being progressed for the purposes of implementation. In no way could this be described as substantial unauthorised development within the meaning of section 35 and it is not explained by the Council how this could be the case.
7. There is an attempt to link other alleged breaches of conditions in some unexplained way to this Court order which is without merit.
8. None of the alleged breaches represent a serious, or egregious ongoing unauthorised development at any of the locations. The cases are either long dormant, being resolved, or simply based on inaccurate information received by the Council. In the other cases, Mr. Boner continues efforts to resolve matters, but requires a level of engagement from the Council which is not currently on offer, or possibly unavailable due to resourcing issues.
9. There is no prosecutions against our client in regards to any of the matters above,
10. Certain matters relied upon in terms of unauthorised development do not relate to the applicant, our clients.

11. There has been no specific case where the Local Authority have had to carry out works (remediation or environmental) at their own expense to make good any of the sites in question.
12. Our clients have employed a range of experts and expended considerable costs in preparing the planning application. Our client would not be doing so if intended not to comply with the permission or conditions. There is no objective basis for a real and substantial risk that it will not be completed.
13. The Council has made a wholly unjustified and unwarranted inference of compliance with a number of complicated conditions of planning permission to a conclusion of real and substantial risk that it will not be completed. This is without foundation.
14. If the Council were minded to refuse the application on the basis of section 35 of the 2000 Act this will have a devastating impact on the client. If the Council makes such a finding, it is the intention of our client to bring an application to the High Court to annul the same forthwith.

With my Best Regards,

  
for Michael Friel MRLAI.