

Chapter 4: PLANNING & LEGISLATIVE FRAMEWORK

Table of Contents

List of Figures	25
4 PLANNING & LEGISLATIVE FRAMEWORK	26
4.1 Introduction.....	26
4.2 Extent of Quarry Activity in 2024.....	27
4.3 Summary of Chronological History of Murray Stone at the Site	28
4.3.1 Evidence of Historical Evidence of Quarrying on the Site	28
4.3.2 Section 261 & 261A Registration.....	29
4.3.3 Planning History	30
4.3.4 Leave to Apply for Substitute Consent Application	30
4.3.5 Previous Substitute Consent Application.....	30
4.3.6 Current Application	31
4.4 Government Policy.....	31
4.4.1 The National Spatial Strategy 2002 – 2020 and Project Ireland 2040.....	31
4.4.2 Regional Planning Guidelines.....	33
4.4.3 Northern & Western Regional Assembly	33
4.4.4 Donegal County Development Plan 2018 – 2024	33
4.4.5 Compliance with County Development Plan.....	35
4.5 Quarries and Ancillary Activities - Guidelines for Planning Authorities (2004).....	35
4.6 EPA Environmental Management Guidelines – Environmental Management in the Extractive Industry (2006)	36
4.7 Conclusion	37
4.8 References.....	37

List of Figures

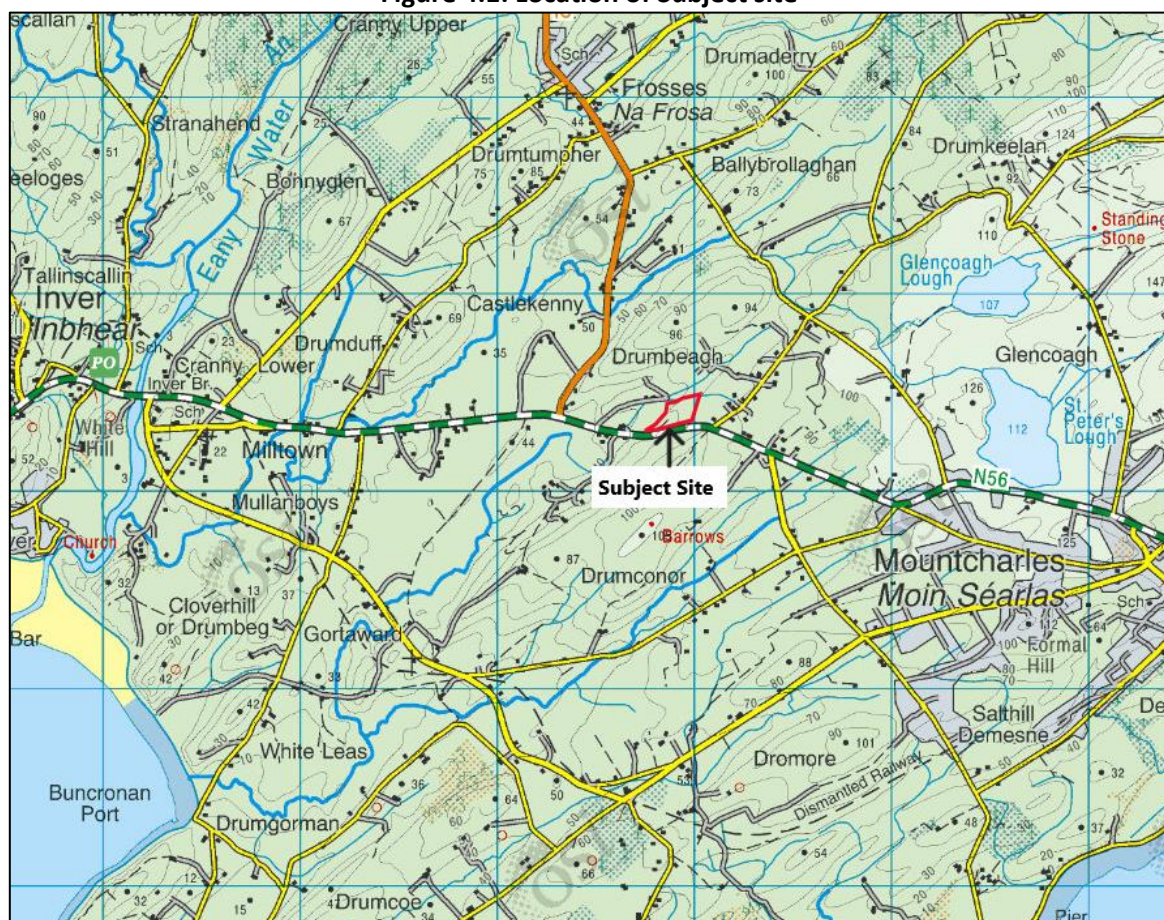
Figure 4.1: Location of Subject site.....	26
Figure 4.2: Site boundary	27
Figure 4.3: Extent of development on site.....	28
Figure 4.4: Historical quarrying at the site.....	29

4 PLANNING & LEGISLATIVE FRAMEWORK

4.1 Introduction

The development consists of a quarry located on a 3.45-hectare site in the rural townland of Drumbeagh. The site is located immediately north of the N56 between the villages of Mountcharles and Inver. The site is approximately 2.5 km west of Mountcharles, 3 km east of Inver and 1.7 km south of the villages of Frosses. The site is accessed off a local slip road immediately off the N56. The access road also serves the quarry owner and one other local resident. The site is surrounded by a mixture of poor-quality agricultural land, improved agricultural grassland and one-off rural houses and farmsteads. There are also peatlands and isolated forestry blocks in the surrounding area. The subject site location is outlined in Figure 4.1 below.

Figure 4.1: Location of Subject site



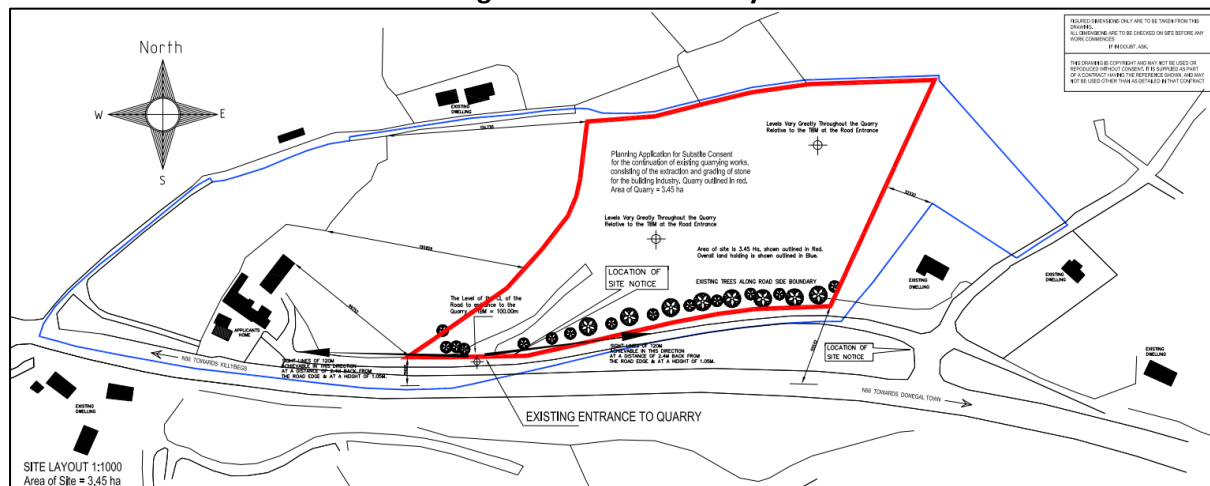
CYAL50381113 © Ordnance Survey Ireland/Government of Ireland

The quarry contains a central access road leading to the main quarry deck where stockpiles of product are stored on pallets and tonne bags awaiting collection. This central area is also used to park vehicles and to access the working quarry faces. There is a small processing area in the east of the site where stone is cut to size. Within this processing area there is a guillotine and a circular saw. Both these fixed pieces of plant are covered by temporary sheds.

Extraction of the product is by mechanical means using a ripping claw on an excavator. Occasionally boulders have to be broken down further using an impact breaker mounted on an excavator down into smaller more manageable pieces. In the distant past, the applicant states

that occasionally blasting occurred on site to win rock. The practice was discontinued after it was seen to induce unwanted fracture patterns into the rock lessening its value as cut-stone product. Won rock is then transported using excavator bucket or telehandler to the guillotine area. Rock is then guillotined by hand and stacked on pallets ready for collection. Some rock pieces are cut with a circular saw to size and then stacked on pallets ready for collection. The substitute consent area is shown in Figure 4.2 below.

Figure 4.2: Site boundary



(Extract from Drawing provided by McMullin Associates not to scale)

The site area is 3.45 hectares and is irregular in shape runs generally uphill from southwest to northeast with the lowest point at c. 54 mOD in the central western part of the site and the highest point in the east on top of the screening berms at c. 73 mOD.

Effluent management on site is via settlement ponds. The main settlement pond is in the central southern portion of the site which captures runoff from the main extraction area. Another smaller linear settlement pond is located on the northeastern boundary and captures runoff in the immediate area. The settlement ponds discharge to separate tributaries of the Eany Water River which discharges to the sea at Inver Bay approximately 3 km southwest of the subject site.

4.2 Extent of Quarry Activity in 2024

The substitute consent site is 3.45 hectares of which approximately 2.49 hectares have been developed. Figure 4.3 shows the extent of development on the site in yellow, with the site boundary shown in red.

Figure 4.3: Extent of development on site

(Created using QGIS and Bing satellite imagery)

4.3 Summary of Chronological History of Murray Stone at the Site

4.3.1 Evidence of Historical Evidence of Quarrying on the Site

The Ordnance Survey of Ireland (OSI) 25" map series was examined, and quarrying was noted with the site boundaries. This series of maps was surveyed between 1863 and 1924 and proves historical quarrying was carried out at the site. Figure 4.4 below shows an extract from the 25" OSI series overlaid with the subsite boundary in red.

4.3.3 Planning History

There is no record of any planning permission sought by the applicant. In November 2020, Donegal County Council issued an enforcement notice (Ref: UD 2027) with respect to the subject quarry and following a response from the owner/occupier of the quarry in December 2020, issued an instruction in March 2021 for their legal representative to commence prosecution proceedings.

4.3.4 Leave to Apply for Substitute Consent Application

The applicants submitted an application to An Bord Pleanála for leave to apply to substitute consent in March 2023. Below are listed some of the reasons put forward by the applicant to justify historical quarrying and that the applicant has reason for leave to apply for substitute consent:

- The quarry is long established going back many decades and generations and has remained in continuous use.
- Donegal Co Council has on many occasions purchased and used the extracted material and may well have archive records going back to the 1950s indicating such.
- Past generations of the extended Murray family were dependent on it for a livelihood since 1918 at least. Their home was built on the lands in 1850 and it remains the Family home.
- There are records of the lands and house being formally transferred in 1910 to a Mr Paddy Gallagher, Grand Uncle of the current owners.
- In 1916 during extensive road works on the adjoining public road the quarry access points were used as a bypass by Donegal Co. Co.
- Between 1960 and 1966 the Co. Co. used the quarry extensively and, on several occasions, used explosives to extract stone.
- An uncle of the present owner also worked in it as a foreman at that time.
- Mr James Gallagher, father of the present owner left it to his wife Anne, who in turn passed it on in 1980 to Bridget (Brid) who is named as the current owner together with her son Gabriel (co-applicants).
- The current generation are solely dependent on it as a source of continuous employment and income. There are 2 to 3 employees from the immediate area also dependent on quarrying continuing as it is also their only source of income.
- It is not possible to in any form cease works as requested by Donegal Co Co as it would cause a calamitous undue hardship on several families and deprive the Murray family of their historical means of livelihood.
- The Murray family, by nature of the quarrying business, have continuous contractual commitments to fulfil orders on an ongoing basis, as to do otherwise would cause ruin to their Business.

In November 2023, An Bord Pleanála, granted Briget Murray and Gabriel Murray leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended (Board Order ABP-310012-21).

4.3.5 Previous Substitute Consent Application

An application for substitute consent was submitted to the Board in September 2023. The application was accompanied by a remedial Environmental Impact Assessment Screening Report and a remedial Appropriate Assessment Stage 1 Report. The wording of the application was:

“Application for Substitute Consent for the continuation of existing quarrying works, consisting of the extraction and grading of stone for the building industry, and all associated site development works”.

In February 2024 An Bord Pleanála wrote to the applicants to inform them that certain information was necessary for the purpose of enabling it to determine the application:

In accordance with section 132 of the Planning and Development Act, 2000, (as amended), the applicant is required to submit, on or before 7th August 2024, the following information:

A Remedial Environmental Impact Assessment Report (EIAR) is required.

4.3.6 Current Application

The wording of the current application is given below:

Appeal Reference Number: ABP-318082-23

An application for Substitute Consent has been made to An Bord Pleanála for the continuation of existing quarrying works, consisting of the extraction and grading of stone for the building industry, and all associated site development works at Drumbeagh, Mountcharles, Co Donegal by Gabriel Murray, Murray Stone.

4.4 Government Policy

In recent years, there has been a conscious move in Ireland towards strategic planning with various policy documents and plans introduced over the years to support strategic planning and development. Policies and objectives of the Government are contained in documents such as Sustainable Development: a Strategy for Ireland (1997), National Spatial Strategy 2002 - 2020 and more recently Project Ireland 2040. These in turn have derived their authority from higher order World and European Union (EU) agreed agendas and directives. Policy support filters down from national and regional levels through to specific County Development Plans and Local Area Plans (LAPs). The following documents are relevant to the assessment of the development:

4.4.1 The National Spatial Strategy 2002 – 2020 and Project Ireland 2040

In early 2000 work began on the National Spatial Strategy which ended with its publication in November 2002. The National Spatial Strategy (NSS) was a 20-year strategy designed to enable every place in the Country to reach its potential, no matter what its size or location. It recognised that the various regions of the Country have different roles and it sought to organise and co-ordinate these roles to benefit the regions. It aimed to achieve a better balance of social, economic, physical development and population growth between regions and focused on people, places and on building communities.

In order to drive development in the regions, the NSS required that areas of sufficient scale and critical mass be built up through a network of gateways and hubs. While the National Development Plan 2000-2006 identified Dublin, Cork, Limerick/Shannon, Galway and Waterford as existing gateways, the NSS designated four new national level gateways - the towns of Dundalk and Sligo and the linked gateways of Letterkenny/(Derry) and the Midland towns of Athlone/Tullamore/Mullingar.

This Strategy proposed to address the contrast between rapid development in the east of the Country and slower rates of development in other regions. To redress this imbalance, the

Strategy identifies gateways and hubs that would have the capacity to support the stronger urban-rural structure needed to drive the development of these other regions.

A review of the NSS was announced by Government on 2nd February 2017, the Government published a strategic issues paper for citizens, stakeholder organisations, public bodies, indeed anyone with an interest in the country's future and willing to share their ideas, to inform and engage in creating a new Framework Plan. The Government prepared a radical plan for Ireland for action and delivery between now and 2040 called "Project Ireland 2040 - Our Plan". Project Ireland 2040 is the Government's policy initiative which aims to provide balanced regional development and to improve the State's infrastructure. It consists of two plans. The National Planning Framework (NPF) which aims to achieve balanced regional development. This plan prioritises growth in the major cities of Dublin, Cork, Galway, Limerick and Waterford and is the Government's response to changes coming down the tracks, including:

- Around 1 million extra people, almost a quarter of whom will be over 65 by 2040;
- More than 500,000 additional people at work, many of whom will be in high skilled jobs in and around cities;
- At least 500,000 extra homes needing to be close to services and amenities; and
- Major environmental challenges such as protecting air, water quality, biodiversity and climate change, transforming our energy and transport systems to move away from a dependency on fossil fuels towards green energy.

The second strand is the National Development Plan (NDP) 2018 — 2027. The ten-year plan demonstrates the Government's commitment to meeting Ireland's infrastructure and investment needs. The NDP sets out the significant level of investment, almost €116 billion, which will underpin the National Planning Framework and drive its implementation over the ten-year period. The Government is committed to the delivery of the NPF as a blueprint for spatial planning in Ireland to 2040. In setting out a strategic framework for public capital investment, the National Development Plan will support its delivery over the next ten years. Ten National Strategic Outcomes (NSOs) are outlined in the NPF along with corresponding Strategic Investment Priorities.

In March 2017, the Irish Concrete Federation (ICF) made a submission to Government on the draft National Planning Framework. The submission highlighted that aggregates must be recognised as a strategic national resource, essential for the future development of Ireland and that access to aggregates must be safeguarded to facilitate the creation of the places, infrastructure and environment required to meet the economic, environmental and societal needs of Ireland for the coming two decades and beyond. Recognising this fact, Project Ireland 2040 states the following in relation to aggregates:

"Aggregates and Minerals Extractive industries are important for the supply of aggregates and construction materials and minerals to a variety of sectors, for both domestic requirements and for export. The planning process will play a key role in realising the potential of the extractive industries sector by identifying and protecting important reserves of aggregates and minerals from development that might prejudice their utilisation. Aggregates and minerals extraction will continue to be enabled where this is compatible with the protection of the environment in terms of air and water quality, natural and cultural heritage, the quality of life of residents in the vicinity, and provides for appropriate site rehabilitation".

The Department of Housing Planning and Local Government, on behalf of the Government published the finalised plan in February 2018.

4.4.2 Regional Planning Guidelines

The Planning and Development Act, 2000 called for the drawing up of Regional Planning Guidelines (RPGs) which were first adopted in March 2004 as a key implementation mechanism of the Government's overall framework for achieving more balanced regional development and more strategic physical and spatial planning. The principal function for RPGs was to link national strategic spatial planning policies to the planning process at City and County Council level by co-ordinating the Development Plans of the local authorities through the Regional Planning Guidelines.

The Border Region derives its name from its location relative to Northern Ireland. It comprises the six Counties of Donegal, Sligo, Leitrim, Cavan, Monaghan and Louth. The Planning and Development Act, 2000 (as amended) requires Regional Authorities to provide a long-term strategic planning framework for the sustainable development of the Region for a 12-year period up to 2022.

The RPG's recognised the important role quarrying plays in the Irish Economy stating that *"The extractive industry is significantly important to the construction sector and currently provides a large number of jobs. The industry is now developing its practices in a more sustainable and environmentally friendly manner and provides opportunities for new and alternative employment within the industry"*. As part of the on-going programme of public service reform, the eight Regional Authorities were dissolved on the 1st of June 2014 and the functions, staff, assets and liabilities of the former Border Regional Authority, Midland Regional Authority and West Regional Authority were transferred on a transitional basis to the Border, Midland and Western Regional Assembly.

4.4.3 Northern & Western Regional Assembly

Three new Regional Assemblies came into being on 1st January 2015, namely the Northern & Western, the Midland & Eastern and the Southern Regional Assemblies. The Northern & Western Regional Assembly comprises of 25 elected Members nominated by the 9 local authorities within the region. The main roles of the Northern & Western Regional Assembly are to:

- Manage the BMW Regional Operational Programmes;
- Monitor the general impact of all EU and Irish exchequer-funded programmes in the Northern and Western region;
- Promote the co-ordination of the provision of Public Services in the region; and
- Ensure that national policies take regional issues into account.

The Headquarters of the Northern and Western Regional Assembly is located in Ballaghaderreen, Co. Roscommon.

4.4.4 Donegal County Development Plan 2018 – 2024

The County Development Plan is a spatial planning framework that gives effect to the delivery of sustainable and planned economic and social development in a manner consistent with higher levels plans and strategies such as the National Spatial Strategy and the Regional Planning Guidelines. The current County Development Plan in place is for the period of 2018 to 2024. Donegal Co. Co. recognises the importance of the extractive industry and that aggregates are a significant and necessary natural resource for the continued economic development of Donegal, therefore there is a need to facilitate the sustainable extraction of appropriate materials such as clays, gravels, sands and aggregates. At the same time the Local Authority also accepts the need to minimise any adverse impacts upon the natural environment, landscape, road network, heritage and communities. Impacts which must be taken into consideration include the following: noise, vibration, dust, water quality, lowering of the water table, natural and cultural

heritage, landscape traffic and waste materials. The following objectives and policies relate to the extractive/ natural resources industry.

4.4.4.1 Objectives

EX-O-1: To conserve and protect the environment, including in particular, the archaeological and natural heritage and conservation and protection of European designated sites and any other sites, which are prescribed.

EX-O-2: To preserve the character of the landscape where and to the extent that, the proper planning and sustainable development of the area requires it, including the preservation of identified views and prospects, cultural features and the amenities of places and features of natural beauty or interest.

EX-O-3: To protect and preserve the quality of the environment so as to ensure no significant adverse effects including the prevention, limitation, elimination, abatement or reduction of environmental pollution and the protection of waters, groundwater, the seashore and the atmosphere.

4.4.4.2 Policies

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.

EX-P-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. All extractive industry proposals in designated Freshwater Pearl Mussel Catchments will be subject to a Habitats Directive Assessment and will comply with the objectives and practices set out in Freshwater Pearl Mussel Sub-basin Plan, and any relevant codes of practice.

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-5: It is a policy of the Council to require that, where an extractive industry development is proposed within 300m of a recorded monument/archaeological site or is likely to have a material impact on the visual amenities of the monument/site, the applicants/operators shall engage the services of an archaeologist or suitably qualified person to undertake archaeological assessment of the site. This assessment to be submitted in full with the planning application for the development.

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. Where mitigating works are required to upgrade or realign roads infrastructure, they 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, and will comply with the objectives and practices set in any relevant Freshwater Pearl Mussel Subbasin Plan, and any relevant codes of practice, insofar as reasonably possible taking into consideration the safety of the future road users.

4.4.5 Compliance with County Development Plan

The development is located in a rural area where the land use of the study area is agricultural with livestock grazing being the predominant sector practiced. There are a number of forestry and woodland areas located in the vicinity of the quarry. The location of any quarry is dictated by the availability of resources at a particular location. Similarly, the extent of operations on any site is dictated by the extent of those resources. In this case the existing quarry is located in this particular area due to the presence of available materials, and the proposed development is directly influenced by the availability of further resources on the site. The quarry is not in an Area of Especially High Scenic Amenity (EHSA). The closest EHSA is c. 700 m to the south of the quarry on the coast.

The quarry is an established land-use in this area and has operated over a long period of time. The application is for substitute consent of an existing activity and one that has been ongoing for a considerable length of time. Measures are in place, and further measures proposed, for the continuing safeguarding of the integrity of the receiving waters.

Appropriate services and infrastructure were developed on the site in-line with good practice. The on-going, and improvement to, operation of these services on the site has ensured that the quarry operates in harmony with other local users. The development is compatible with the policies set out in the CDP with respect to landscape characterisation and protection.

4.5 Quarries and Ancillary Activities - Guidelines for Planning Authorities (2004)

The Guidelines are intended to offer guidance to planning authorities on planning for the quarrying industry through the Development Plan and determining applications for planning permission for quarrying and ancillary activities. They also note that aggregates are a significant natural resource and that extractive industries make an important contribution to economic development in Ireland. However, the operation of quarries can give rise to land use and environmental issues which require to be mitigated and controlled through the planning system.

Section 3 of the guidelines addresses the following environmental implications of quarry development:

- Noise and vibration
- Dust deposition/air quality
- Water supplies and groundwater
- Natural heritage
- Landscape
- Traffic impact
- Cultural heritage
- Waste management

All of these topics have been considered as part of the EIA process and will be addressed in the following Chapters of this rEIAR. The guidelines also note that construction aggregates and dimension stone are basic materials for the construction industry and that over 100 million tonnes are used annually in the manufacture of concrete products, road materials, and other ancillary products. Activity in the construction sector has fluctuated since the guidelines were published in 2004, in parallel with the overall economy, however, nevertheless there continues to be a demand for aggregates and dimension stone now and in the future.

‘By their nature, aggregates can only be worked where they occur. Sand and stone have a low value-to weight ratio, and therefore it is generally neither economically nor environmentally sustainable to transport them any great distance to their market due to increased transport costs. Many pits and quarries tend to be located within 25 km of urban areas, where most construction takes place.

There will be a continuing need for some new or expanded aggregate quarrying operations on land to meet regional and local requirements. There is thus a need to identify and protect aggregate resource areas through the planning system, to ensure an adequate supply of aggregates to meet the likely scale of future demand, while at the same time protecting Ireland’s natural and cultural heritage. ‘

Aggregates have been reportedly extracted from the quarry historically, but the recent focus has been on dimension stone which is a higher value product and has a more diverse geographical market. Following from the Guidelines, the County Development Plans have set out specific policies and objectives in relation to quarrying in Donegal and the technical Chapters of this rEIAR have taken into consideration the issues raised in the Guidelines and the Development Plan.

4.6 EPA Environmental Management Guidelines – Environmental Management in the Extractive Industry (2006)

These guidelines are principally aimed at surface developments within the extractive industry such as the quarry at Drumbeagh, Mountcharles, Co Donegal. They apply to surface developments that are extracting and processing construction aggregates and dimension stone (i.e. quarries and ancillary facilities), i.e. typically those regulated by Section 261 of the Planning & Development Act 2000.

The guidelines provide general advice and guidance in relation to environmental issues to practitioners involved in the planning, design, development, operation and restoration of quarry developments and ancillary facilities. It should be noted that each individual quarry location will have site-specific issues to be addressed.

The guidelines noted that of the 20 quarries visited as part of the preparation of the guidelines those quarry operations with an Environmental Management System (EMS) in place or in preparation addressed environmental issues in a more proactive manner. The EPA believes that these guidelines will contribute to a more environmentally sustainable quarry & pit industrial sector, greater protection for the environment and human health, and thereby a greater public confidence in such operations.

The Environment Management Guidelines address the following topics:

- Ecology
- Surface Water
- Groundwater
- Air Quality
- Noise & Vibration
- Waste Management
- Archaeological Heritage
- Transport and Traffic

All of the issues referred to above will be addressed in detail in this rEIAR. For sites where an Environmental Impact Statement has been carried out, this will have generated all of the necessary environmental information for an EMS. Compliance with planning conditions forms a major part of the EMS.

The applicant has indicated that they will prepare an EMS on receipt of a grant of Substitute Consent, using the information compiled in this rEIAR process as the baseline for the environmental management as part of new application to continue quarrying.

4.7 Conclusion

All of the policies and objectives of the planning policy documents governing quarry development from national to County level have been taken into consideration in the preparation of this remedial Environmental Impact Assessment Report.

4.8 References

- Local Government (Planning & Development) Regulations, 2001 (S.I. No. 600 of 2001)
- National Spatial Strategy for Ireland 2002 – 2020 (Department of Environment, Heritage and Local Government, 2002)
- Environmental Management Guidelines – Environmental Management in the Extractive Industry (Non – Scheduled Minerals) (EPA, 2006)
- Regional Planning Guidelines for the Border Region 2010 – 2022 (The Border Regional Authority, 2010)
- Donegal County Development Plan 2018 – 2024 (Donegal County Council, May 2017)
- European Union (Environmental Impact Assessment and Habitats) Regulations 2015, S.I. No 301 of 2015
- Planning and Development (Amendment) No. 2 Regulations 2015, S.I. No. 310 of 2015, Circular Letter PL 3/15 (Department of Environment, Community and Local Government, 21 July 2015)

- National Planning Framework under Project Ireland 2040 (Department of Housing Planning and Local Government, February 2018)
- Ireland 2040 Our Plan – www.npf.ie
- Irish Concrete Federation - <http://www.irishconcrete.ie>
- Donegal County Council - www.donegalcoco.ie