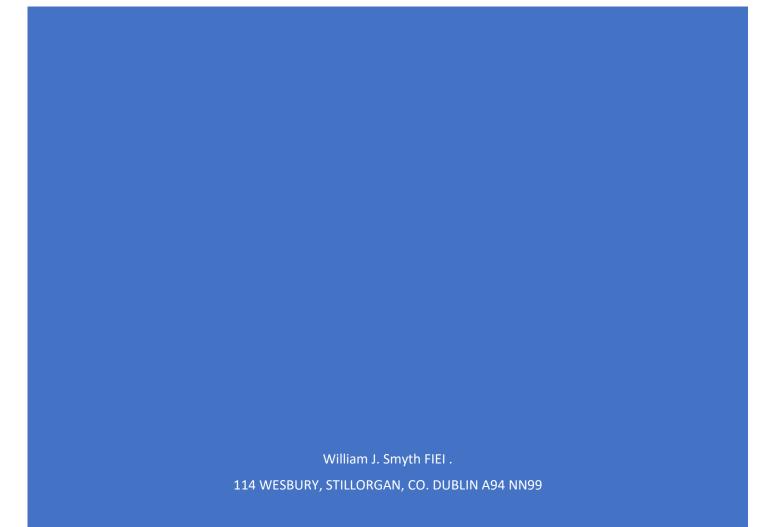
# STATEMENT OF EXCEPTIONAL CIRCUMSTANCES IN SUPPORT OF A SECTION 177E APPLICATION FOR SUBSTITUTE CONSENT BY J.J. FLOOD & SONS (MANUFACTURING) LTD. MARCH 2025



# 1. Introduction

J.J. Flood & Sons (Manufacturing) Ltd. (hereafter 'Floods') has operated a quarry at The Murrens, Oldcastle, Co. Meath for many decades. The site's origins are well established as pre-63, on lands that have been owned by the family for several generations. It has produced aggregates for civil engineering derived from site gravel and rock, and a range of sands from the finer gravels.

Processing has included crushing, screening and washing, the latter required for sands, with all water recycled through a series of long settlement lagoons which are sealed with silt, typical of historic extraction sites. Extraction of reserves is by mechanical means, and does not employ blasting as the underlying rock is relatively easily dug out.

The site was registered under Section 261 in 2005 and, in 2007, had conditions imposed under Section 261(6)(a)(i), a provision reserved for pre-63 sites. This included a condition limiting the site to a further 20 years of operation (to April 2027).

The Section 261A process of 2012 resulted in determinations by Meath County Council that both Environmental Impact Assessment and Appropriate Assessment offences were present and, in acknowledgement of pre-63 origins and registered status, made a decision requiring an application for Substitute Consent to be accompanied by a remedial Environmental Impact Statement (rEIS) and a remedial Natura Impact Assessment (rNIS).

The Meath County Council outcome was referred to An Bord Pleanala in its entirety for a de novo assessment; the Board confirmed both determinations and the decision of Meath County Council in 2013. The applicant fundamentally disagreed with the outturn, and viewed this as an infringement of constitutionally held rights, given the family history and the ongoing pre-63 user status. This led to a judicial review of the Board's confirmation which was eventually decided in April 2020, with a decision which did not follow precedent of the High Court, but essentially confirming the legality of the decision of An Bord Pleanala with respect to the referral.

A combination of Covid restrictions and other unfortunate matters led to a delay in actioning this requirement but the application is now being made substantially in compliance with the 2012 notice of Meath County Council as confirmed by An Bord Pleanala. However, the unavoidable delay post the High Court decision has left the site with a requirement to apply for Substitute Consent now without the benefit of the sunset clause provision of Section 261A.

Thus, the matter of Exceptional Circumstances is now a necessary key matter to be decided upon by An Bord Pleanala in considering any grant of Substitute Consent, and caselaw from July 2019 and the subsequent amending legislation of December 2019 requires that this matter is available for public consultation during any such application involving infringements of EU law. To these ends, this Statement of Exceptional Circumstances is being submitted in support of this Section 177E application for Substitute Consent.

The entire site planning history, and the resultant grounds for a finding that exceptional circumstances exist as would permit a grant of Substitute Consent by the Board are set out hereunder to inform the Board and the public on these matters.

# 2. Planning History to Section 261

The overall site is contained within lands which were in the ownership of the wider Flood family prior to the appointed date of 1<sup>st</sup> October 1964 and within reasonable anticipation of use as quarrying lands by the then owners in common enterprise; indeed, the lands have been in the overall family's control

since the 19<sup>th</sup> century and ownership since 1917. A Site Layout Map of the Section 261 registered area is attached at Appendix I and shows a natural block of land. As such, it is submitted that the Flood quarry lands comfortably meet the test set out in the Supreme Court decision in *Waterford County Council v John A Wood Ltd.* [1998] IESC 32, which remains the leading authority on the extent of pre-63 user.

The quarry to 1995 was located in the centre and north of the site. Development dates back to 1875 with more recent Flood family led development having progressed in the 1950s, and was a significant operation by 1964. This was and, save for reasonable modernisation over the period post the 1960s, remains the same basic operation with fluctuating output. Such modernisation is provided for in *An Taisce v Ireland & Ors* [2010] IEHC 415 without impacting on the continuing pre-63 user rights. Like all quarries, the level of activity increased and waned in tandem with the construction cycles in the region. It should be noted that the current footprint of development is that of 2013 and therefore remains within the registered area.

On 1<sup>st</sup> April 2005, Meath County Council appears to have opened an Unauthorised Development file, reference UD05/108, in relation to 'operation of a quarry at Murrens, Oldcastle, and issued a letter to Floods seeking information on existing permissions for all buildings and development on site, including areas, dates, commencement of uses, and by wording alleged that the quarrying was unauthorised. The reason for this letter is unclear but it is to be noted that this letter was not titled either Warning Letter or Enforcement Notice. This letter was responded to by Frank Burke & Associates on behalf of Floods pointing out that the site was pre-63 development and was preparing for Section 261 registration; this response was acknowledged by Meath County Council on 11<sup>th</sup> April 2005. This series of correspondence is attached at Appendix II.

The deadline for Section 261 registration quickly followed with the registration submission for the site made on 25<sup>th</sup> April 2005. The site was given reference QY35. As a pre-63 site, the Planning Authority had two options, imposition of conditions (Section 261(6)(a)(i)) or to require a full planning application for Continuance of Use with EIS given the site was over 5 hectares (Section 261(7)). By letter of 13<sup>th</sup> December 2006, the Planning Authority set out its intention to impose conditions on the operation, thereby directly acknowledging ongoing pre-63 user rights and that the site was unlikely to have significant environmental impact (or else Section 261(7) would be triggered). A draft set of planning conditions were supplied for comment, and comments were made outside the given timeframe. Ultimately, Meath County Council imposed 23 conditions including a 20-year term on further operations on 18<sup>th</sup> April 2007. The Section 261 documentation is attached at Appendix III.

It is worth noting that the potential impact of a Section 261(7) requirement for full planning application was offset by a compensation clause where non-environmental controls were imposed; this is based on the potential impact on established constitutional property rights. This was not present at the time with Section 261(6)(a)(i) conditions as continuance was assured by mere imposition of conditions; it was later applied to such conditions in 2010.

# 3. Section 261A

As a response to ECJ C-215/06 (3<sup>rd</sup> August 2008), legislation was introduced over two years in the Planning & Development (Amendment) Act 2010 and the Environment (Miscellaneous Provisions) Act 2011 with the addition of Section 261A for a review process and expansion of Section 177 to include for the Substitute Consent process. The Section 261A review legislation was commenced in November 2011 with a completion date of 24<sup>th</sup> August 2012.

Therefore, in 2012, Meath County Council assessed the site in accordance with the provisions of Section 261A, again reference QY/35. Despite the outcome of Section 261 and 2007 conditions providing for 20 further years of development, Meath County Council decided that the site was beyond pre-63 user, that the developed area included lands purchased in the 1990s which could not have been pre-63, and that, overall, the site had materially intensified in the 1970s and expanded by an amount post 1994 (nearest photo date to 1990) that would require mandatory EIA including lands without the benefit of reasonable anticipation on 1<sup>st</sup> October 1964. Additionally, while acknowledging that there was no site abstractions or discharges, the potential for contaminants to access groundwater was found to constitute a potential negative impact on the nearest Natura site.

Therefore, the outturn of this assessment was that determinations were made under Section 261A(2) that both EIA and AA offences existed on the site. In acknowledgement of the pre-63 origins and registered status, the subsequent decision made under Section 261A(3) provided for an application for Substitute Consent with rEIS and rNIS to be submitted to An Bord Pleanala within 12 weeks of the notice, see Meath County Council Section 261A Report (13<sup>th</sup> June 2012) and Notice (20<sup>th</sup> July 2012) at Appendix IV. This decision was the application of the so called 'sunset clause' provision which accepted the State's part in errors of transposition of EU law, and provided access to the new mechanism of Substitute Consent in respect of historic development.

The outturn from Meath County Council was referred to An Bord Pleanala for *de novo* assessment, an appeal mechanism provided for within Section 261A. In this, the quarry lands were set out as being either under lease from John J Flood who had himself operated the site from the 1950s until 1995 when it was passed to his son, David, or purchased from a cousin who had inherited part of the original family quarry lands and this was merely a re-consolidation of ground.

The Board gave the referral reference number QV17.0015. The Inspector found that by virtue of scale and addition of processing post 1<sup>st</sup> October 1964, in addition to the alleged working of lands previously owned by a relation, the pre-63 user was now absent. This related to the addition of a crusher in the early 1970s adjudged as a material change of use. It is submitted that this was an incorrect assessment as the range of products didn't materially change as a result of this, nor did this result in a burden on the local authority.

The ability to modernise plant within a pre-63 site was set out by Charlton J. in *An Taisce v Ireland* [2010] IEHC 415 where he made the following statement:

Intensification of use as a breach of an existing pre-1964 lawful use of land is not to be decided solely by reference to criteria set out in Galway County Council v. Lackagh Rock Limited [1985] I.R. 120. Modern methods as a replacement for manual work do not necessarily establish an unlawful intensification of use

With regard to *Galway County Council v. Lackagh Rock Limited* [1985] I.R. 120, this required a twostep test, the first of which addressed the essential nature of the use of the quarry. The additional mechanisation at Floods did not essentially change the use of the site, which was for the production of graded gravel and soft rock fill material. Crushing provides for better quality products and a greater variety of fill products but they still served the same basic end uses and were essentially the same product line (all come within the single modern Euronorme ISEN 13242: Aggregates for civil engineering). The mechanisation facilitated the appropriate use of the resources, eliminating waste and providing for better quality products. It is only if the decision maker decides that the answer to the first question is 'Yes' (material change to the nature of what is being produced) that one may proceed to the second leg of the test. I respectfully suggest that 'No' is the answer to the first test. The second leg requires consideration of any additional burden on the local authority arising from

the development which was unforeseen on 1<sup>st</sup> October 1964. In this case, there was no additional burden occasioned by the mechanical changes to processing practices, and the answer is clearly 'No'.

Consequently, I posit that the mechanisation carried out in the early 1970s do not reasonably constitute intensification per the Lackagh Test and are within the latitude applied by Charlton J. in *An Taisce v Ireland* [2010] IEHC 415. A further point of note is that the entire concept of intensification did not exist when the crusher was installed in the early 1970s; the first quarry intensification was the landmark *Patterson v Murphy Trading* (1978) and involved commencement of blasting.

In relation to AA, the same determination as Meath County Council was drawn but based on being below the water table at some location within the site, despite no site discharge, and was admittedly founded on a lack of information regarding the underlying water regime. Consequently, the Board's decision, on 27<sup>th</sup> June 2013, was to uphold both determinations and the decision of Meath County Council regarding a need for Substitute Consent. The An Bord Pleanala Section 261A referral documentation is attached at Appendix V.

In preparation for this application, the water regime was fully investigated and found to not support the notion that the site would have an impact on the nearest or any Natura site; consequently, the Stage 1 Screening for AA has screened out the need to progress to Stage 2 AA with rNIS in contrast to the confirmed decision of the Board in 2013. That is to say, in the consultant's expert opinion, no AA offence was present.

It appears that, included in the referral, was a request that, should a requirement for Substitute Consent be confirmed, a time extension for submission of the application be allowed to 24 weeks following the decision of the Board. This was to be superseded by the subsequent judicial review.

# 4. Judicial Review and Outcome

This decision of the Board obviously had enormously severe and immediate consequences for this business. The applicant fundamentally disagreed with the reasoning behind the decision and saw it as an attack on established property rights as it was effectively setting at nought any pre-63 rights within the entire site. Leave to apply for judicial review of the QV17.QV0015 was applied for and received within the statutory period of 56 days from the decisions, 2013No. 647 JR refers.

Given the number of Section 261A related judicial reviews taken in that period, many of which were based on similar points, this judicial review was not decided upon until April 2020, see *JJ Flood and Sons (Manufacturing) Ltd and David Flood v An Bord Pleanala* [2020] IEHC 95, see <a href="https://www.courts.ie/acc/alfresco/2f37dddc-413b-4465-8c8c-">https://www.courts.ie/acc/alfresco/2f37dddc-413b-4465-8c8c-</a>

<u>1751b3c2e4ed/2020 IEHC 195.pdf/pdf#view=fitH</u> (accessed 26<sup>th</sup> March 2025). An Bord Pleanala was found to have acted within its powers and the outcome stood. During this period, the site had continued to operate at a reduced rate, with no new ground developed and always working within the confines of the Section 261 conditions which remained binding.

The High Court decision was highly unusual in that it departed from the way in which Section 261A determinations had been assessed to that point, as set out in the two 2012 Section 28 guidance documents on the Section 261A process. The guidance described the process as requiring an examination of development undertaken from 1990 for EIA and 1997 (or other designation date) for AA and to then subtract all authorised development (bona fide pre-63 and/or development covered by planning permissions), with any balance left then as unauthorised and to assessed as to the potential presence or not of EIA and AA offences.

Please find a letter from Creed McStay (Solrs), solicitors for Floods, at Appendix VI setting out the grounds for judicial review and a summary of the decision of Ni Rafertaigh J. which determined that a pre-1964 user is not automatically exempt from EU Directives and that the Section 261A focused on development post transition of certain EU law and did not mean that the quarry was unauthorised and merely non-compliant with EU law. Consequently, the decision did not make a finding of unauthorised development at Floods.

This was at odds with many High Court and An Bord Pleanala decisions to that date, and potentially nullified all Section 261A 'No Further Action' outcomes for pre-63 sites based on pre-63 authorisations. No doubt this will require further legislation at some point as many sites continue to operate on historic authorisations, previously identified by Charlton J. as 'pipeline' developments in *An Taisce v Ireland & Ors* [2010] IEHC 415 and *McGrath Limestone Works v An Bord Pleanala & Ors* [2014] IEHC 382. As such, the *JJ Flood* decision set a change in established caselaw now directly opposed to the Government's clear intended interpretation of the law as of 2012, and the result is that this site has to apply for Substitute Consent, and prospective permission (each with the potential for development contribution charges for pre-63 development).

# 5. Delay Post High Court Decision

This has left the site with both EIA and AA offences which still require regularisation on foot of the 2020 High Court outcome, while still deemed authorised under national measures (pre-63 user). Little has changed at the site since the date of the High Court decision and near subsistence operations have been in place within the registered area. There are sufficient stockpiles of processed and semi-processed material available as to allow processing operations to continue without the need for further works while this application is processed. A Section 37L application is to be submitted to the Board within the appropriate period for 'further quarrying' including extension into the remainder of registered undeveloped land.

It is submitted that the applicant is essentially in the same position as of the date of the Section 261A referral decision by An Bord Pleanala with no further new ground developed and only deepening, above the water table having taken place at limited locations across this large site. Importantly, no new sources of potential significant environmental impact have been introduced to the site and works have been quite limited.

Floods pursued a path through the judicial review on points of trying to vindicate pre-63 rights and arrive at this point not as a result of a lack of engagement with the process but through legitimate argument regarding dearly held rights. The decision of the High Court was a bombshell and not aligned with previous decisions upon which the judicial review grounds were reasonably based. It has placed this site in a unique legal position of having some form of authorisation, on the face of it still controlled by the Section 261 conditions, yet requiring regularisation with EU law.

The High Court decision was just weeks after the country went into lockdown for Covid and put any opportunity to start to prepare an application on hold for in excess of two years. It was hoped to have been able to avail of the Section 261A derived 'sunset clause' provisions which were still available in the immediate aftermath of the High Court decision which only then brought an end to the Section 261A process for this site.

However, the timing resulted in unforeseeable delays in getting started, over two years before consultancies were back to normal operations, combined with the by then huge backlog of projects resulted in the loss of the 'sunset clause' provisions and the need now to apply without its benefit.

Regrettably, the entire matter took its toll on the principal who has not been in good health; the applicant can provide medical certification of prolonged poor health should An Bord Pleanala require it. Indeed, this application was brought into focus as a result of recent enforcement action by Meath County Council in which the applicant readily gave a commitment to progress the necessary applications.

Please note that following a failure to submit an application in short time following the High Court decision, the way forward was to submit a Section 177C Leave to Apply for Substitute Consent application seeking leave to make the Substitute Consent application. The legislation repealing Section 177C was enacted in July 2022 and served as a brake on such applications where an EIA and/or AA offences were definitely present as An Bord Pleanala was not making decisions in relation to such applications pending the commencement of that section, and related changes to Section 177E. AS you may be aware, all Section 177C applications with the Board were sent back to the applicants in the first quarter of 2024, deemed 'withdrawn', following the commencement of that legislation repealing Section 177C on 15<sup>th</sup> December 2023. The amending legislation also provided for submission of a parallel application for prospective development under a revamped Section 37L. Thus, it is submitted that nothing has been lost due to the delay in submitting the current application as the applicable legislation was influx during that period.

The applicant is pleased to now be in a position to make this application and submits that assessment of the site has not been compromised by the delay post mid 2020 at which point the benefit of the 'sunset clause' was lost through not being able to make the application. This application seeks to regularise the site in line with the wishes of the Board and judgement of the High Court. This leaves the matter of exceptional circumstances for analysis.

# 6. Exceptional Circumstances Considerations

An Bord Pleanala is precluded from a decision to grant Substitute Consent unless such a grant can be justified by the presence of exceptional circumstances, see Section 177K(1A)(a). The consideration for the Board in assessing the presence of exceptional circumstances are set out in Section 177(1J), and are now discussed in the order set out in the legislation.

# Would regularisation of the development concerned circumvent the purposes of the EIA Directive or the Habitats Directive?

The site originated as a pre-63 development and was very substantially developed by the time of transposition of the EIA Directive in 1990. The decision of the High Court has not impugned the pre-63 user status while confirming a requirement for Substitute Consent. As this decision of the High Court was the first such decision made in these terms, and resulted from a national review, it is submitted that regularisation to comply with EU law would not circumvent either the EIA Directive or the Habitats Directive. Indeed, it is submitted that there is no AA offence present, following the level of detailed review as was required for this application.

The site was registered under Section 261 and could have been made subject to a Section 261(7) requirement for Continuance of Use with EIS had the Planning Authority decided that significant environmental impacts were in fact likely. Instead, conditions for ongoing use were imposed.

It is submitted that the offending extraction area has not materially changed since the An Bord Pleanala decided the referral of the Meath County Council Section 261A Notice, and that the sunset clause provisions were available to this site until relatively recently.

# Did the applicant or could the applicant reasonably have had a belief that the development was authorised?

As set out above and in detail in Appendix VII, the ownership history identifies these lands as all having been part of a common family enterprise with ownership of all land within the family. Having registered under Section 261 and had conditions imposed, there was no earlier direct accusation of any issue with the site authorisation prior to 2012, noting the pre-Section 261 correspondence in 2005 (see Appendix II) was neither a Warning Letter of an Enforcement Notice.

Ultimately, the outcome of the High Court decision was not to agree with allegations of intensification and material change of use, but to decide that EU laws could be infringed by pre-63 user and that compliance was required. On this basis, there is no reason why Floods would think the site unauthorised even now. As such, the site remains authorised under pre-63 user but problematic under EU law. This has consequences for many other sites previously cleared for No Further Action under Section 261A.

It is submitted that the applicant did not make matters worse following identification of the alleged EU law infringement, and the site did not materially change post 2023. The delay to 2020 was a result of the court process beyond the control of Floods.

# Has the ability to carry out an assessment of the environmental impacts of the development for the purposes of EIA or AA, and to provide public participation in such assessments, been substantially impaired?

The historic nature of much of the development pre-dates all of the relevant European legislation. The outcome of the High Court decision was unique at the date of decision and had been cited in many cases since. No EIA activity of any consequence has taken place post 2013. The site does not have any discharges and the case that no AA offence is present has been made with this application.

It is submitted that public participation was afforded through the Section 261 and Section 261A processes. Section 261 gave the Planning Authority to seek an application with EIS requiring public consultation within such application but declined to do so. This application is rooted in the follow on Section 261A process and, following due and fair legal procedure, and a short regrettable delay thereafter, is now set to satisfy the public consultation requirement associated with EU law.

It is submitted that retrospective assessments have not been materially impaired by the applicant's actions, and that public consultation has been afforded through two planning processes to date.

# Are the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development capable of assessment?

Yes, the submitted rEIAR and Stage 1 Screening for AA Report adequately provide for assessment the likely potential impacts past and present from the development post introduction of the relevant legislation. The potential for environmental impact is highly localised and can easily be remediated by site restoration.

Specifically with regard European designated sites, the application has screened out the potential for impact to the *Kelly v An Bord Pleanala* [2014] IEHC 422 conclusion threshold of 'beyond reasonable

scientific doubt' at Stage 1 Screening Stage, noting this application has knowledge of the water regime available to it which the 2013 Section 261A Referral assessment did not and acknowledged as absent.

Consequently, it is possible to submit that there has not been an impact on a European site as a result of this development.

# What is the extent to which the significant effects on the environment or adverse effects on the integrity of a European site can be remediated?

There are no identified significant effects on the environment from this development other than the temporary loss of agricultural land. The historic nature of the site is relevant to any such assessment; this application provides a mechanism for the restoration of all areas with environmental/biodiversity benefit. As above, no European site has been impacted by the development.

# Has the applicant complied with previous planning permissions granted or has the applicant previously carried out unauthorised development?

All development at this site is related to operation of a quarry, and all details were registered under Section 261. The site development was not found to the unauthorised by the High Court, but is not in compliance with EU law. This application will ensure that all site structures are fully authorised.

### Such other matters as the Board considers relevant

As detailed earlier, the outcome of the High Court decision was ground breaking, and did not deny the continuing presence of pre-63 user at the site, but did require compliance with EU law. It is submitted that national legislation was not set up for such an outcome. However, it is also a reasonable inference that exceptional circumstances exist to allow a grant of Substitute Consent on foot of the then novelty of the decision.

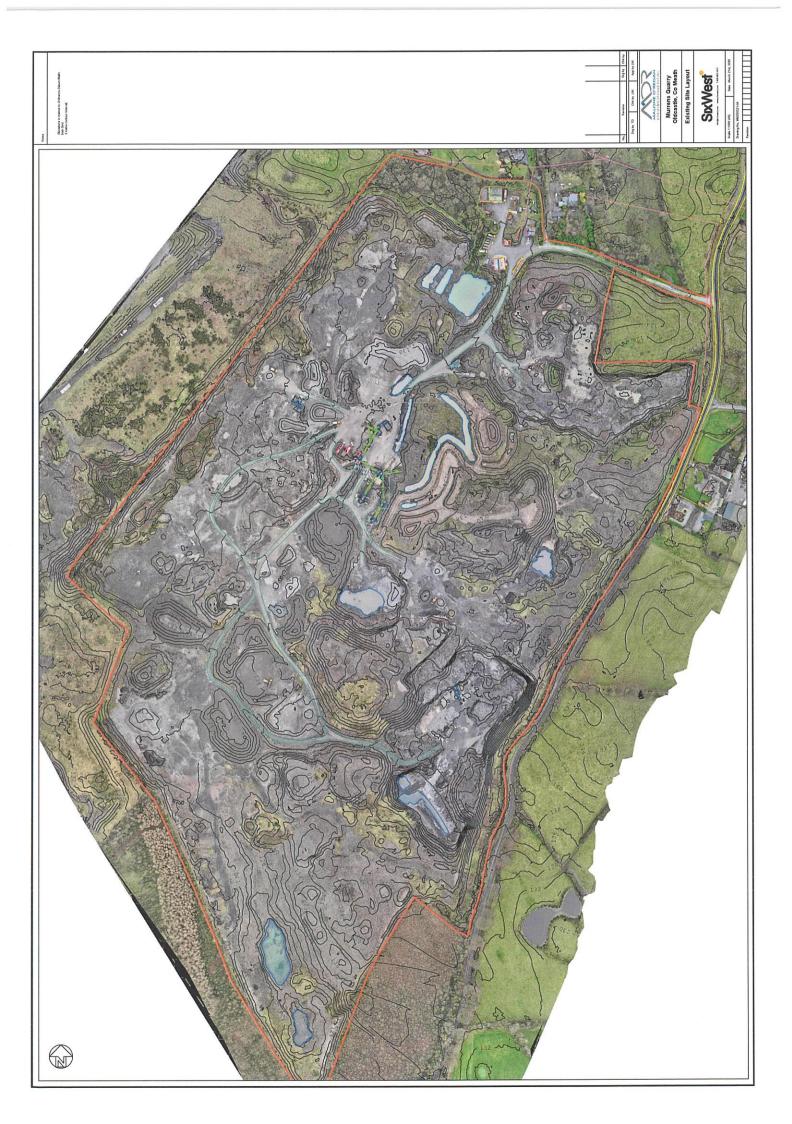
The pre-63 user was not impugned by the decision of the High Court and informs that all ongoing pre-63 sites which grew over 5 hectares since 1990 would require compliance with EU legislation and were not exempt. If realised prior to the Section 261A legislation, this should automatically open a door to a route to compliance, including exceptional circumstances to do so, for all ongoing pre-63 users, without even the need for the Section 261A review.

William Smyth FIEI (Not signed as sent by email) 27<sup>th</sup> March 2025

### Appendices

Appendix I	Site Layout Map;
Appendix II	Pre Registration Correspondence;
Appendix III	Section 261 Documentation;
Appendix IV	Meath County Council Section 261A Documentation;
Appendix V	An Bord Pleanala Section 261A Referral Documentation;
Appendix VI	Letter from Creed McStay (Solrs) re Judicial Review.

# Appendix I Site Layout Map



# Appendix II Pre Registration Correspondence

Comhairle Chontae na Mí

Halla an Chontae, An Uaimh, Contae na Mí

**Fón: 046-902 1581** *Cuirtear Fáilte Roimb Chombfbreagras í nGaeilge* 



# Meath County Council

County Hall, Navan, Co. Meath

Fax: 046-902 1463 eMail: info@meathcoco.ie www.meath.ie

David Flood, C/O J. J. Flood Ltd., Murrens, Oldcastle, Co. Meath.

Planning Section 1<sup>st</sup> April 2005

Our Ref: JY/TQ/UD05/108

# RE: UD05/108 - operation of quarry at Murrens, Oldcastle.

### Dear Sir,

Following an inspection of the above development by the Planning Authority you are hereby required to submit the following information under Section 8 (1) & (2) of the Planning & Development Act 2000-2004:

- References of planning permissions for all buildings and development on the site and dates when construction work was completed.
- The use/uses carried out on these lands and dates of commencement of such uses.
- Total site area, floor area and height of each building, area of hard surfaced yards, outline of total land in ownership of J. J. Flood at this location and dates when the lands were acquired.
- Submission in conformance with the Planning & Development Act 2000-2004 for all unauthorised development within this compound and specifically with regards to the following:

# • Entrance

- Office/Administration Building with external paved parking area
- Vehicle Service Building with external concrete parking area
- Sand and Gravel extraction and quarrying
- Crushing, Screening and other associated works
- Settlement Lagoons
- Aggregate Storage
- Fuel storage tanks
- Deposit and storage of old vehicles and parts of old vehicles
   Method of collection of multiple of the former of the
- Method of collection of surface runoff and means of filtering, discharge locations and storm attenuation
- Type, location and date of construction of treatment system for effluent from toilets and kitchen areas and relevant planning permissions
- Details of best management practise for operation of the development.

You are required to submit this information within 30 days of the date of this letter.

•

Yours faithfully,

J. Young Senior Staff Officer

# Frank Burke & Associates

Civil Engineering, Infrastructure & Planning Consultant

> Baldara, Trim Road, Navan, Co. Meath, Ireland

> > Phone/Fax: 046-22064 Mobile: 086-8264402

To/ Mr. Jimmy Young SSO Planning Section Meath Co. Co. County Hall Navan Co. Meath

Re: - UD05/108 - Operation of Quarry at Murrens, Oldcastle

Dear Sir,

We write in reference to a recent planning enforcement notice, wherein it was indicated to my client that he was operating an unauthorised quarry on his lands at Murrens and that he was to submit various information.

We would indicate that the quarry at Murrens is pre-64, as such the requirement under the Planning & Development Act is registration, currently my client is compiling the necessary information for a registration submission.

We would hope to be in a position to lodge same shortly.

I would indicate that my client and I are available to discuss the details of this proposal with the local authority at any time.

Sincerely,

C... M

Frank Burke Chartered Engineer

c.c. D Flood, c/o JJ Flood Ltd, Murrens, Oldcastle

Frank Burke BE, Earling, C Eng FIEL FIAE, C P Eng, FIE Aust CHARTERED ENGINEER **Comhairle Chontae na Mí** Halla an Chontae, An Uaimh, Contae na Mí

**Fón: 046-902 1581** *Cuirtear Fáilte Roimh Chomhfbreagras í nGaeilge* 



Meath County Council County Hall, Navan, Co. Meath Fax: 046-902 1463

eMail: info@meathcoco.ie www.meath.ie

Planning Section 11<sup>th</sup> April 2005

Our Ref: JY/EA/UD05108

Frank Burke & Associates Baldara Trim Road Navan Co Meath

# RE: Operation of a quarry at Murrens, Oldcastle.

Dear Sir

I acknowledge receipt of your letter received on 7<sup>th</sup> April 2005 in connection with the above.

Yours faithfully

erso

J. Young Senior Staff Officer

# Appendix III Section 261 Documentation

Our Ref: QY/35.

<u>Planning Section.</u> 18<sup>th</sup> April, 2007.

J.J. Flood & Sons (Manufacturing) Ltd., The Murrens, Oldcastle, Co. Meath.

Re: QY/35 – Application for Registration of a Quarry under Section 261 of the Planning & Development Act, 2000.

### Dear Sir,

I refer to an application received by the Planning Authority on 25<sup>th</sup> April, 2005 for registration of a quarry at Murrens, Oldcastle, Co. Meath under Section 261 of the Planning & Development Act, 2000.

I refer also to letter dated 13<sup>th</sup> December, 2006 from the Planning Authority together with a draft schedule of conditions.

The Planning Authority having considered your application have decided to impose conditions (23 conditions) under Section 261 (6)(a)(i) of the Planning & Development Act 2000 on the operation of the quarry as set out in the schedule of conditions attached.

You may appeal the decision of the Planning Authority to impose conditions in accordance with subsection (6) to An Bord Pleanala within four weeks from the date of receipt of notification by the authority of those conditions.

NOTE: For information on Appeals you can contact An Bord Pleanala at: Tel: 01-8588100 or LoCall: 1890 275 175 Fax: 01-8722684 E-mail:<u>bord@pleanala.ie</u> Web: <u>www.pleanala.ie</u>

Yours faithfully,

Michael Griffin, Senior Executive Officer.

Processing Unit. Docernal Constraints Unit. 3 5 CONTENT ENTE: 20 JUL 2012

# Quarry Ref. QY/35 – J.J. Flood & Sons (Manufacturing) Ltd. at Murrens, Oldcastle, Co. Meath.

# SCHEDULE OF CONDITIONS

1. The quarry shall be operated in accordance with the plans and particulars submitted to the Planning Authority except where amended by Conditions hereunder.

Reason: In the interest of proper planning and sustainable development.

2. This permission shall be for a period of 20 years from the beginning of the commencement of the date of this order. After this period, all plant and machinery items shall be removed from the site and the land shall be restored to agricultural use. No quarrying/excavation shall be permitted outside the red line as identified on site map no. 1A submitted to the Planning Authority on the 25/04/2005, unless a separate grant of planning permission has been obtained. No excavation shall be permitted within 20 meters of any public road.

Reason: To define the extent of this permission and in the interests of orderly development.

- 3. Within 6 months of the date of this order, the owner/operator of the quarry shall agree
  - 1. the exact area of the quarry within which future extraction shall be confined.
  - 2. the maximum depth of quarry excavation.

Reason: In the interests of orderly development.

4. The quarry shall only operate between the hours of 06:00am and 8:00pm hours Monday to Friday and 06.00am and 2.00pm Saturday. The quarry shall not operate on Sundays or public holidays.

Reason: In the interests of residential amenity.

Reason: In the interests of traffic safety.

5. The quarry entrance shall be adequately signed from both directions on all approach roads and at the quarry entrances. Signs to be placed and maintained at approximately 150m from the quarry roadside entrance and shall be located so that they do not create a traffic hazard. Details of sightlines along the public road at the entrance to the site, of road signage warning the public of the entrance and of proposals for traffic management at the site entrance shall be submitted to and agreed in writing with Meath County Council within 6 months of the date of this order.

Lataning Expl. Downwood Statilities in Statement. QY Ref: 3-5 CONSERT EAST: 20 JUL 2012

6. The noise levels associated with day-to-day quarrying activity, when measured from any house in the vicinity of the quarry, shall not exceed 55 dB (A) leq over a measured time interval of one hour by day time and shall not exceed 45 dB (A) leq over a measured time of 15 minutes by night time. These levels may be exceeded to allow temporary but exceptionally noisy phases in the extraction process or for short term construction activity which is required to bring long-term environmental benefits following written consent by Meath County Council.

Reason: In the interests of residential amenity.

7. A noise survey and assessment programme shall be undertaken to assess the impact of noise emissions from the quarry and submitted to the Planning Authority for agreement and approval. The surveys and assessments shall as a minimum involve the following elements:

The measurement and assessment of noise levels at three noise sensitive locations (NSLs). The NSLs shall include the most vulnerable NSLs by reason of their proximity or elevation and all monitoring positions shall be agreed by the Planning Authority within 6 months from date of this order.

A comprehensive evaluation of all pertinent acoustical factors; including tonal elements, impulsive elements, and extraneous noise during the noise measurements.

A log of meteorological conditions, including cloud cover, precipitation, temperature, humidity and wind speed and direction for the duration of the noise measurements.

A log of all operating quarry plant and equipment shall be compiled for the duration of the noise measurements. This log shall also include details of the location of quarry plant and equipment.

Consideration shall be given to current noise assessment guidance published by the Environmental Protection Agency (EPA), e.g. EPA (2003) Environmental Noise Survey Guidance Document.

Where possible the assessment shall include details of the noise attributable to the quarry as opposed to the overall ambient noise and where necessary this may require short-term sampling techniques or the use of specialist acoustical equipment and/or software.

A detailed report on the noise assessment shall be prepared by a competent person and submitted to the Planning Authority within 4 weeks of the survey work being done.

Document Considered to Assessment. QY Poft 3 5 ASS 5 5 7 10 10 10 10 2012 The noise assessment shall be undertaken in accordance with ISO1996/1-Acoustics-Description and Measurement of Environmental Noise Part 1(First Edition, 1982); Part 2, 1987 (E); and Part 3, 1996-3:1987 (E). As part of the assessment, appropriate penalties for tonal and impulsive elements should be applied to the measure LAeq values in accordance with ISO 1996 Part 2, 1987 (E) and ISO 9612, 1997(E), to determine the appropriate rating level (LArT).

If any doubt or dispute arises about the presence of an impulsive noise, then an objective assessment technique must be used, e.g., ISO 1996-2(1987). This method shall involve measuring the difference between the A-weighted sound pressure level, determined with time-weighting characteristic I, averaged over the same time interval, and LAeq,T. A value of greater than 2dB (i.e., where LAieq, T- LAeq, >2) indicates an impulsive characteristic (ISO 9612,1997(E)).

The above quoted methods shall be used to assess compliance with the pertinent noise limits. Alternative assessment methodologies or procedures shall be agreed in advance with the Planning Authority.

**Reason**: To ensure effective monitoring of the development, to protect amenities of adjacent properties and in the interest of the proper planning and development of the area.

8. Earth mounds shall be erected around the site boundary to minimise the effects of noise on the surrounding neighbourhood, details regarding same shall be agreed in writing with the Planning Authority within 16 weeks of the date of this order.

Reason: In the interests of residential amonity.

9. The total dust deposition (soluble and insoluble) arising from the on site operations associated with the development shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days. No stripping of topsoil or overburden shall be carried in periods of dry and windy weather.

Reason: To protect the amenities of properties in the vicinity

10. No surface water shall be allowed to flow from the site onto the public road.

Reason: In the interest of traffic safety and to avoid pollution.

11. The developer shall not discharge any wastewaters within the proposed site to any existing ditches or watercourses unless otherwise agreed in writing with Meath County Council.

Reason: In the interest of environmental protection. Planning Dept. Decumeral Constitutions in Assessment.

QY Ref: 35

/ IGEOSMENT DATE: 20 JUL 2012

QY/35

12. All surface water run-off from roads and paved areas shall be directed through adequately sized and located oil/petrol interceptors before discharge to surface water drainage. Refuelling should only take place on such paved areas with interceptors. The developer shall ensure that all on site oil/petrol interceptors are adequately serviced and maintained. Detailed records of such services shall be kept on site.

Reason: In the interest of environmental protection.

13. All overground oil or other chemical storage tanks shall be adequately bunded to protect against oil spillage. Bunding should be impermeable and capable of retaining a volume equal to 110% of the capacity of the largest tank. Drainage from bunded areas should be collected and disposed of in a safe manner. The integrity and impermeability of such structures should be assessed by the independent body annually (or as may otherwise be agreed in writing with Meath County Council) and a report submitted to Meath County Council. All waste oil should be removed from the site and disposed of to the satisfaction of Meath County Council.

Reason: In the interest of environmental protection.

14. The developer shall maintain on site an adequate supply of containment booms and suitable absorbent materials to contain and absorb any spillage.

Reason: In the interest of environmental protection.

15. The developer shall carry out monitoring of surface water and groundwater in the vicinity of the site. The monitoring locations, frequency of sampling and suite of water quality parameters to be tested for should be as agreed in advance with, and reported to Meath County Council. Monitoring should be carried out on a quarterly basis (or as otherwise agreed in writing with Meath County Council) and commenced within 16 weeks of the date of this order.

Reason: To protect the environment

16. The developer shall forward, within 6 months of the date of this order, details of the current and proposed sewage treatment/disposal arrangements for the office/showers/drying rooms etc. to the Meath County Council for consideration. The developer shall carry out works to upgrade or provide such facilities where required within 12 weeks of receipt of notice to do so.

Reason: For the protection of public health and to avoid water pollution.

Beetron Charles and a to store the OV Ref: 3 5 SSESSMENT DATE: 20 JUL 2012

17. Within 6 months of the date of this order, the developer shall submit in writing to the Planning Authority a landscaping and restoration programme for the site for written agreement by Meath County Council. Phased restoration should be considered where appropriate. The site shall be fully restored in accordance with the agreed plans following the ceasing of the quarrying and extraction operation on site.

Reason: To ensure satisfactory completion of the development and in the interests of visual amenity.

18. The quarry operator shall undertake a hydrogeological assessment to identify the groundwater flow regime operating in the vicinity of the facility, and the receiving waters for any and all discharges arising from the facility. This shall be undertaken by a suitably competent agency to be agreed with the Planning Authority within 6 months of the date of this order

Reason: To monitor ground water quality, in the interests of public health.

19. Details of the proposed boundary treatment including landscaping and fencing details for the remainder of the site shall be submitted to and agreed in writing with the planning authority within 6 months of date of this order.

Reason: In the interest of visual amenity

20. A wheel wash facility shall be provided at the quarry. Full details of the location, maintenance and type of facility to be installed to cater for HGV traffic entering the site shall be submitted to and agreed in writing with Meath County Council within 16 weeks of the date of the grant of this permission. No dirt shall be carried out on to the public roadway.

Reason: To keep the roadway clean and to protect the amenities of the area.

21. The vibration levels from blasting (if occurring) shall not exceed a peak velocity of 12 mm/second measured in any three mutually orthogonal directions at any sensitive location.

Blasting shall not give rise to air overpressure values at sensitive locations which are in excess of 125 dB (Lin) max peak.

A suitable monitoring programme shall be developed to assess the impact of quarry blasts. Details of this programme shall be agreed in advance with the Planning Authority. A survey and an assessment shall be undertaken during every blast and as a minimum this shall involve the following elements:

Document Constituted is Casessment. 3 5 OY Ref: COSESSMENT DATE: 20 JUL 2012

The measurement and assessment of peak particle velocity and air overpressure at two locations by way of a dedicated survey. The monitoring locations shall include the most vulnerable receptor positions by reason of their proximity and/or ground/ site conditions and all monitoring positions shall be agreed with the Planning Authority in advance of the survey.

A log of meteorological conditions, including cloud cover, precipitation, temperature, humidity and wind speed and direction for the duration of the noise measurements.

Consideration shall be given to current vibration assessment guidance published by the Environmental Protection Agency or other competent authority.

Details of the proposed blast assessment techniques, the proposed instrumentation; calibration records and the competent persons responsible for monitoring shall be agreed in advance of the monitoring programme commencing.

A detailed report on the blast assessment shall be prepared by a competent person and submitted to the planning Authority within 4 weeks of the survey work.

Advance warning signals indicating that blasting operations are about to commence and "all clear" signals indicating that the blasting operations have been completed shall be given (by means of sirens or other audible devices operated by the developer) to members of the public within 500 metres of the location of such blasting operations. The signalling arrangements shall be as agreed between the developer and the planning authority.

An annual review of all blast monitoring data shall be undertaken by a competent and qualified person, the results of which shall be submitted to the Planning Authority within two weeks of completion.

**Reason**: In the interest of public safety and to protect the amenities of the property in the vicinity.

22. The developer shall lodge with the Planning Authority a bond for €250,000.00 (two hundred and fifty thousand euro) of an insurance company, or other security to secure the satisfactory completion and restoration of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion and restoration of the site. The security to be lodged shall be an approved insurance company bond in a sum to be agreed.

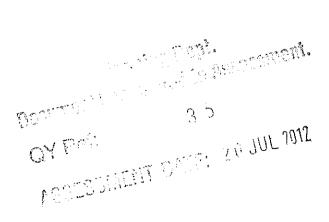
Reason: To ensure satisfactory completion and restoration of the site in ACSESSMENT.

GY Ref: 3 5 ASSESSMENT DATE: 20 JUL 7012

QY/35

23. The developer shall pay a sum of €300,000.00 (three hundred thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000 in respect of road improvement works facilitating the proposed development. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.



Comhairle Chontae na Mí Halla an Chontae, An Uaimh, Contae na Mí Fón: 046-9097000 / Fax: 046-9097001 \* R-phost: info@meatbcoco.ie Web: www.meatb.ie



Meath County Council County Hall, Navan, Co. Meath Tel: 046-9097000 / Fax: 046-9097001 *E-mail: info@meatbcoco.ie* Web: www.meatb.ie

ۍ <del>ک</del>

#### Our Ref: QY/35

Planning Section. 13<sup>th</sup> December, 2006.

J.J. Flood & Sons (Manufacturing) Ltd,, The Murrens, Oldcastle, Co. Meath.

Re: QY35- Application for Registration of Quarry under Section 261 of the Planning & Development Act, 2000.

### Dear Sir,

I refer to your application received on 25<sup>th</sup> April, 2005 for registration of a quarry at Murrens, Oldcastle, Co. Meath under Section 261 of the Planning & Development Act, 2000.

The Planning Authority having considered your application have decided to impose conditions as set out in the schedule below on the operation of the quarry in accordance with Section 261 (6)(a)(i) of the Planning & Development Act, 2000 for the following reasons:-

- The absence of conditions regulating the operation of the development, and
- In respect of the proper planning & sustainable development of the area.

Submissions or observations regarding the draft schedule of conditions may be made by the owner or operator of the quarry to the Planning Authority within six weeks from the service of this notice. The date of service of this notice is 13<sup>th</sup> December, 2006.

The Planning Authority in the final schedule of conditions to be issued to the owner/operator of the quarry, if it so decides, may omit/add conditions from/to the draft schedule of conditions.

If you have any queries in relation to the above you can contact Nicholas O'Kane, Senior Executive Planner at 046/9097000.

Signed on behalf of the said Council this 13<sup>th</sup> day of December, 2006.

Michael Griffin, SENIOR EXECUTIVE OFFICER, PLANNING & ECONOMIC DEVELOPMENT.

## Quarry Ref. QY/35 – J.J. Flood & Sons (Manufacturing) Ltd. at Murrens, Oldcastle, Co. Meath.

#### **DRAFT SCHEDULE OF CONDITIONS**

1. The quarry shall be operated in accordance with the plans and particulars submitted to the Planning Authority except where amended by Conditions hereunder.

Reason: In the interest of proper planning and sustainable development.

2. Within 8 weeks of the date of this order, the owner/operator of the quarry shall agree with the Planning Authority a time frame for the lifespan of the quarry. At the end of agreed period, work shall cease and the site shall be decommissioned and landscaped, unless before the end of that period permission for the continuance of the use beyond that date has been granted.

**Reason:** To define the extent of this permission and in the interests of orderly development.

3. Within 8 weeks of the date of this order, the owner/operator of the quarry shall agree

the exact area of the quarry within which future extraction shall be confined.(a) the maximum depth of quarry excavation.

Reason: In the interests of orderly development.

Reason: In the interests of residential amenity.

5. Specific entrance and roadside boundary details shall be agreed in writing with the Planning Authority within 8 weeks of the date of this order.

Reason: In the interest of proper planning.

6. The quarry entrance shall be adequately signed from both directions on all approach roads and at the quarry entrances. Signs to be placed and maintained at approximately 150m from the quarry roadside entrance and shall be located so that they do not create a traffic hazard. Details of sightlines along the public road at the entrance to the site, of road signage warning the public of the entrance and of proposals for traffic management at the site entrance shall be submitted to and agreed in writing with Meath County Council within 8 weeks of the date of this order.

Reason: In the interests of traffic safety.

50 yours

existence & po accidente

\*

ŧ

•

7. The noise levels associated with day-to-day quarrying activity, when measured from any house in the vicinity of the quarry, shall not exceed 55 dB (A) leq over a measured time interval of one hour by day time and shall not exceed 45 dB (A) leq over a measured time of 15 minutes by night time. These levels may be exceeded to allow temporary but exceptionally noisy phases in the extraction process or for short term construction activity which is required to bring long-term environmental benefits following written consent by Meath County Council.

Reason: In the interests of residential amenity.

8. A quarterly noise survey and assessment programme shall be undertaken to assess the impact of noise emissions from the quarry and submitted to the Planning Authority for agreement and approval. The surveys and assessments shall as a minimum involve the following elements:

The measurement and assessment of noise levels at six noise sensitive locations (NSLs). The NSLs shall include the most vulnerable NSLs by reason of their proximity or elevation and all monitoring positions shall be agreed by the Planning Authority within 8 weeks from date of this order.

A comprehensive evaluation of all pertinent acoustical factors; including tonal elements, impulsive elements, and extraneous noise during the noise measurements.

A log of meteorological conditions, including cloud cover, precipitation, temperature, humidity and wind speed and direction for the duration of the noise measurements.

A log of all operating quarry plant and equipment shall be compiled for the duration of the noise measurements. This log shall also include details of the location of quarry plant and equipment.

Consideration shall be given to current noise assessment guidance published by the Environmental Protection Agency (EPA), e.g. EPA (2003) Environmental Noise Survey Guidance Document.

Where possible the assessment shall include details of the noise attributable to the quarry as opposed to the overall ambient noise and where necessary this may require short-term sampling techniques or the use of specialist acoustical equipment and/or software.

ŝ

;

1

A detailed report on the noise assessment shall be prepared by a competent person and submitted to the Planning Authority within 4 weeks of the survey work being done.

The noise assessment shall be undertaken in accordance with ISO1996/1-Acoustics-Description and Measurement of Environmental Noise Part 1(First Edition, 1982); Part 2, 1987 (E); and Part 3, 1996-3:1987 (E). As part of the assessment, appropriate penalties for tonal and impulsive elements should be applied to the measure LAeq values in accordance with ISO 1996 Part 2, 1987 (E) and ISO 9612, 1997(E), to determine the appropriate rating level (LArT).

If any doubt or dispute arises about the presence of an impulsive noise, then an objective assessment technique must be used, e.g., ISO 1996-2(1987). This method shall involve measuring the difference between the A-weighted sound pressure level, determined with time-weighting characteristic I, averaged over the same time interval, and LAeq, T. A value of greater than 2dB (i.e., where LAieq, T-LAeq, >2) indicates an impulsive characteristic (ISO 9612,1997(E)).

The above quoted methods shall be used to assess compliance with the pertinent noise limits. Alternative assessment methodologies or procedures shall be agreed in advance with the Planning Authority.

Reason: To ensure effective monitoring of the development, to protect amenities of adjacent properties and in the interest of the proper planning and development of the area.

9. Earth mounds shall be erected around the site boundary to minimise the effects of noise on the surrounding neighbourhood, details regarding same shall be agreed in writing with the Planning Authority within 8 weeks of the date of this order.

Reason: In the interests of residential amenity.

The total dust deposition (soluble and insoluble) arising from the on site 10. operations associated with the development shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days. No stripping of topsoil or overburden shall be carried in periods of dry and windy weather.

Reason: To protect the amenities of properties in the vicinity

A wheel wash facility and weighbridge shall be provided at the processing 11. plant and quarry. Full details of the location, maintenance and type of facility to be installed to cater for HGV traffic entering the site shall be submitted to and agreed in writing with Meath County Council within 8 weeks of the date of the grant of this permission. No dirt shall be carried out on to the public roadway.

Reason: To accurately weigh loads and keep the roadway clean and to protect the amenities of the area.

No. gula. dege. 1257 lleu shell w-s.4

..

12. No surface water shall be allowed to flow from the site onto the public road.

Reason: In the interest of traffic safety and to avoid pollution.

13. The developer shall ensure that no untreated surface water run-off from the site shall enter into water courses.

Reason: To avoid pollution.

14. All run-off from roads and paved areas should pass through adequately sized and located oil/petrol interceptors before discharge to surface water drainage. Refuelling should only take place on such paved areas with interceptors.

Reason: To avoid pollution.

15. All overground oil or other chemical storage tanks shall be adequately bunded to protect against oil spillage. Bunding should be impermeable and capable of retaining a volume equal to 110% of the capacity of the largest tank. Drainage from bunded areas should be collected and disposed of in a safe manner. The integrity and impermeability of such areas should be assessed by the developer annually (or as may otherwise be agreed in writing with Meath County Council) and a report submitted to Meath County Council. All waste oil should be removed from the site and disposed of to the satisfaction of Meath County Council.

Reason: To avoid pollution.

16. The developer shall maintain on site an adequate supply of containment booms and suitable absorbent materials to contain and absorb any spillage.

Reason: To avoid pollution.

3

17. The developer shall carry out monitoring of surface water and groundwater in the vicinity of the site. The monitoring locations, sampling procedure and suite of water quality parameters to be tested for should be as agreed in advance with, and reported to Meath County Council. Monitoring should be on a quarterly basis (or as otherwise agreed in writing with Meath County Council) and commenced within 8 weeks of the date of this order.

**Reason:** To protect the environment.

18. The developer shall forward, within 8 weeks of the date of this order, details of the current and proposed sewage treatment/disposal arrangements for the office/showers/drying rooms etc. to the Meath County Council for consideration. The developer shall carry out works to upgrade or provide such facilities where required within 8 weeks of receipt of notice to do so.

.

Reason: For the protection of public health and to avoid water pollution.

#### OY/35

;

•

19. Within 8 weeks of the date of this order, the developer shall submit in writing to the Planning Authority a landscaping and restoration programme for the site for written agreement by Mayo County Council. Phased restoration should be considered where appropriate. The site shall be fully restored in accordance with the agreed plans within six months of ceasing the quarrying and extraction operation on site.

**Reason:** To ensure satisfactory completion of the development and in the interests of visual amenity.

- 20. The vibration levels from blasting (if occurring) shall not exceed a peak velocity of 12 mm/second measured in any three mutually orthogonal directions at any sensitive location.
- Blasting shall not give rise to air overpressure values at sensitive locations which are in excess of 125 dB (Lin) max peak.
- A suitable monitoring programme shall be developed to assess the impact of quarry blasts. Details of this programme shall be agreed in advance with the Planning Authority. A survey and an assessment shall be undertaken during every blast and as a minimum this shall involve the following elements:
- The measurement and assessment of peak particle velocity and air overpressure at six locations by way of a dedicated survey. The monitoring locations shall include the most vulnerable receptor positions by reason of their proximity and/or ground/ site conditions and all monitoring positions shall be agreed with the Planning Authority in advance of the survey.
- A log of meteorological conditions, including cloud cover, precipitation, temperature, humidity and wind speed and direction for the duration of the noise measurements.
- Consideration shall be given to current vibration assessment guidance published by the Environmental Protection Agency or other competent authority.
- Details of the proposed blast assessment techniques, the proposed instrumentation; calibration records and the competent persons responsible for monitoring shall be agreed in advance of the monitoring programme commencing.

A detailed report on the blast assessment shall be prepared by a competent person and submitted to the planning Authority within 2 weeks of the survey work.

Advance warning signals indicating that blasting operations are about to commence and "all clear" signals indicating that the blasting operations have been completed shall be given (by means of sirens or other audible devices operated by the developer) to members of the public within 500 metres of the location of such blasting operations. The signalling arrangements shall be as agreed between the developer and the planning authority.

۰,

÷.,

An annual review of all blast monitoring data shall be undertaken by a competent and qualified person, the results of which shall be submitted to the Planning Authority within two weeks of completion.

**Reason**: In the interest of public safety and to protect the amenities of the property in the vicinity.

21. The quarry operator shall undertake a hydrogeological assessment to identify the groundwater flow regime operating in the vicinity of the facility, and the receiving waters for any and all discharges arising from the facility. This shall be undertaken by a suitably competent agency to be agreed with the Planning Authority within 8 weeks of the date of this order

Reason: To monitor ground water quality, in the interests of public health.

22. Details of the proposed boundary treatment including landscaping and fencing details for the remainder of the site shall be submitted to and agreed in writing with the planning authority within 8 weeks of date of this order.

Reason: In the interest of visual amenity

23. The developer shall lodge with the Planning Authority a bond of an insurance company, or other security to secure the satisfactory completion and restoration of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion and restoration of the site. The security to be lodged shall be an approved insurance company bond in a sum to be agreed.

Annal-

Reason: To ensure satisfactory completion and restoration of the site.

# Comhairle Chontae na Mí

Halla an Chontae, An Uaimh, Contae na Mí

**Fón: 046-902 1581** *Cuirtear Fáilte Roimb Chombfbreagras í nGaeilge* 



# Meath County Council

County Hall, Navan, Co. Meath

Fax: 046-902 1463

eMail: info@meathcoco.ie www.meath.ie

Our Ref: QY/35

Planning Section. <u>7<sup>th</sup> July 2005.</u>

JJ. Flood and Sons, Rosemeem, Carnaross, Kells, Co.Meath.

# Re: Application for Registration of a Quarry under Section 261 Of the Planning & Development Act 2000.

Dear Sir,

I acknowledge receipt of the above application for the quarry at Murrens, Oldcastle on the 25<sup>th</sup> April 2005.

I wish to advise you that your application is receiving attention.

Yours faithfully,

Mary Dunne, Assistant Staff Officer.

To/ Administrative Officer Planning Section Meath County Council County Hall Navan 15-4-05

# Re: - Quarry at the Murrens & Registration under Section 261of the Planning & Development Act

# Dear Sir,

Please find enclosed the required documentation required under section 261 of the Planning & Development Act 2000 for a quarry at the Murrens, Oldcastle for JJ Flood & Sons (Manufacturing) Ltd.

We would indicate that the quarry in question does not require planning in that: -

- The quarry is Pre 63
- The statute of limitations apply

In relation to the operation of the quarry, we would indicate that we are of the view that the quarry does not have any significant environmental impacts in that: -

- The quarry is located in a rural area
- Traffic generated by the quarry is nor excessive, further the receiving road is adequate to cater for the traffic generated
- There are no "liquid" emissions from the quarry in that all of the water used in process is recycled
- Noise levels at the boundaries are at levels that would suggest that the levels at the nearest dwellings are acceptable
- While there are no available measurements, working procedures within the quarry are such that there is no impact on "non-related" properties in the vicinity

#### • Date of Commencement of Operation

1875 as indicated above

### • Quarry Operation Hours

Plant – Weekdays 8am to 8pm Saturday 8am to 4pm Sunday – does not ope

Loading/Haulage - Weekdays 7am to 7pm Saturday 7am to 3pm Sunday - does not open

#### **Exceptional** - none

### • Traffic generated by the quarry

The quarry operated a fleet of 12 trucks on a supply basis, with a small element of ex-works deliveries (circa 10 loads per week). Generally the fleet would average 4 loads/per truck per normal weekday, as such the daily HGV traffic would average 100 trips per day, of which 50 would be laden. We would indicate that driver of the trucks keep their vehicles at home. The quarry would also generate an additional 10-15 trips per day covering office staff, service vehicles, sales representatives and visitors etc. Peaks periods could exceed the norm by some 40-50% depending on the projects been supplied (i.e. the closer to the Murrens, the more deliveries per day)

### Emissions

- (1) There are no emissions of water, as all water used in recycled
- (2) There is no information available on dust levels in the area but we would indicate that the health & safety audits carried out at the quarry since 1998 do not identify dust as a risk. We would point out that all products go through a washing system as such would be resistant to "dust blow". Further procedures are in place in the quarry to "damped" haul roads and exposed areas if necessary.
- (3) We enclose a record of a noise survey carried out in 2002 last at various locations around the site boundaries

Name: - David Flood

Signature: -

**Position with Company: - Managing Director** 

Date

In relation to the above, we would be of the view that any concerns that the planning authority have in relation to the environmental impacts of the quarry could be addressed by way of discussion and condition as allowed for under the Act. In this regard, the company would invite the relevant officials of the council to inspect the quarry and to discuss the operation of the quarry with a view to developing an Environmental Monitoring System that would comply with the recognised norms in the industry (such as the ICF system) and which would be acceptable to the council.

I would indicate that my advisors and I are available to meet and discuss the above with you or your officials.

We await hearing from you.

Regards,

David Flood Managing Director JJ Flood & Sons (Manufacturing) Ltd.

**Encl.: - Required Documentation under 261** 

Appendix IV Meath County Council Section 261A Documentation

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

#### **MEATH COUNTY COUNCIL**

#### PLANNING AND DEVELOPMENT ACTS, 2000 TO 2011

#### SECTION 261A NOTICE 3(a)

#### Planning Authority Reference: QY35

۲.L.

## Name of Quarry Owner/Operator: John J. Flood / David Flood / J.J. Floods & Sons (Manufacturing) Ltd.

#### Address of Quarry: Murrens, Oldcastle, Co. Meath

WHEREAS Meath County Council has considered the above quarry as detailed in the attached aerial photograph in accordance with Section 261A of the Planning and Development Acts 2000-2011;

AND WHEREAS Meath County Council, in considering this determination and decision, had regard particularly to -

- (a) Section 261A of the Planning and Development Acts, 2000-2011
- (b) Any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under Section 261A(1)(a)
- (c) Any information submitted to the authority in relation to the registration of the quarry under Section 261;
- (d) Any relevant information on the planning register;
- (e) Any relevant information obtained by the planning authority in an enforcement action relating to the quarry;
- (f) Any other relevant information.

**AND WHEREAS** Meath County Council has determined that – In accordance with Section 261A(2)(a) the subject quarry has:

(i) Carried out development after 1 February 1990 which was not authorised by a permission granted under Part IV of the Act of 1963, prior to 1 February 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made,

#### <u>Reason;</u>

Having regard to regard to the scale and characteristics of the development undertaken post the transposing of the EIA Directives, to the traffic volumes generated, noise and dust emissions from the site and the proximity of the site to the Lough Naneagh pNHA it is considered that the development was likely to have had significant effects on the environment and thus an EIA was required.

(ii) Carried out development after 26 February 1997, which was not authorised by a permission granted under Part IV of the Act of 1963 prior to 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

#### Reasons;

Having regard to the proximity of QY35 to the White Lough, Ben Loughs and Lough Doo cSAC and the potential for groundwater to be linked between the two areas, in the absence of detailed hydrogeological data it cannot be ruled out that the effects of groundwater drawdown

or contamination as a result of quarrying activities after 1.07.99 could not have caused a significant effect. Therefore all post 1.07.99 activities at QY35 would have required an appropriate assessment in respect of such activities to give rise to impacts on the White Lough, Ben Loughs and Lough Doo cSAC. No such assessment has been completed.

**AND WHEREAS** Meath County Council, hereby decides – In accordance with Section 261A(3)(a) the subject quarry:

(i) commenced operation before 1 October 1964

#### And

(ii) the requirements in relation to registration under Section 261of the Planning & Development Act 2000-2011 were fulfilled,

#### Reason:

The Planning Authority having being so satisfied from it's investigations in respect of this quarry and it's inspection of the Planning Register and Register of Quarries pursuant to S261 of the Planning & Development Act 2000-2011.

#### **DIRECTION:**

You are hereby directed to apply to An Bord Pleanála for substitute consent in respect of this quarry under Section 177E of the Planning and Development Acts 2000-2011, not later than 12 weeks after the date of this notice, or such further period as the Board may allow.

You may apply to An Bord Pleanála, at 64 Marlborough Street, Dublin 1 not later than 21 days after the date of this notice, for a review of the determination of this planning authority under Section 261A(2)(a) or the decision of this planning authority under Section 261A(3)(a), and no fee in relation to either application for a review is payable.

The referral of this notice to An Bord Pleanala for review within the time permitted, by the person to whom this notice is issued, or by any other person entitled to be given a copy of this notice, will have the effect of suspending the operation of this notice, until the review is disposed of by An Bord Pleanala.

Your application for substitute consent should be accompanied by a remedial Environmental Impact Statement or a remedial Natura Impact Statement or both of those statements in accordance with Part XA of the Planning & Development Acts 2000 -2011.

Date of this Notice: \_20th July , 2012

#### Advice Note:

This quarry was assessed solely for the purposes of S261A of the Planning & Development Acts 2000-2011 and this determination is not an indication of its planning status / compliance.

This determination does not inhibit Meath County Council from exercising its statutory powers pursuant to the Planning & Development Acts 2000 – 2011 in respect of the subject quarry at a future date.

#### **Meath County Council**



Section 261A Report

Wendy Bagnall, Senior Executive Planner
David Caffrey, Executive Planner
13 <sup>th</sup> June 2012
QY/35
JJ Flood & Sons Ltd
Murrens, Oldcastle, Co. Meath
252700 274800
Sand, Gravel and Rock with an extraction area of 32.0
hectares and a site area of 36.4 hectares 12 <sup>th</sup> June 2012

#### **1.0 Introduction:**

The extractive industry in Ireland is long established and has played a significant role in the Irish economy in terms of the supply of aggregate materials for the construction sector, delivering strategic infrastructure projects and for the export market. The growth of the Irish Economy in the late 1990's and early 2000's led to a substantial rise in the number of quarries being worked on a permanent basis and an expansion in the size and activity of these quarries. Local concerns about the impact of quarries' operations on communities as a consequence increased.

In order to regulate the sector Section 261 of the Planning and Development Act, 2000 introduced a system of once-off registration for all quarries and which served two purposes: (i) to give an indication of the current use of land for quarrying purposes and (ii) to permit the introduction of new or modified controls on the operation of certain quarries either through the imposition of conditions or to seek planning permission for their continued operation and submit an Environmental Impact Statement.

An ECJ (European Court of Justice) decision in July 2008 necessitated the removal of the facility to apply for retention permission from development which require environmental impact assessment, a determination as to whether EIA was required or an appropriate assessment under the Habitats Directive. A special provision was made for certain quarries with legal issues/operating outside of their consents, in Irish Legislation (Section 57 of the Planning and Development (Amendment) Act 2010) to apply for substitute consent thus providing the final opportunity to regularise their status.

Under section 75 of the 2010 Act, which inserts a new section 261A into the 2000 Act, each planning authority is asked to determine which quarties would, having regard to the dates of implementation of the EIA Directive and the Habitats Directive,

ASSEDE TENT DATE 20 JUL 2012

respectively, have required an EIA, a determination in relation to EIA, or an appropriate assessment in relation to possible effects on the integrity of a European site, but which were not subject to such assessment/determination. This report is therefore, in response to the legislative provisions of Section 261A of the Planning and Development Act.

#### 2.0 Site Location & Description:

The subject site is the existing Flood Group quarry located in "The Murrens", a rural area located approx. 4km west of Dromone (graig) and 5km southwest of Oldcastle town. The site entrance to the existing quarry is from the Regional Road R195. The quarry has an overall area of approx 35 hectares of which circa 25 hectares has been extracted.

A proposed Natural Heritage Area, Lough Naneagh (site reference 001814) is located proximate to the site. This site is proposed as a NHA due to the presence of transitional fen and lake habitats. Species-rich grasslands and woodland lend habitat diversity to the site and enhance its educational potential. Quarry operations were ongoing on the site at the time of site inspection.

I note the report of Mark Farrell (Exec Engineer), which states that the extraction area covers approx 32 hectares and has yielded approx 7.45 million tomes of rock. It is indicated that the water table has been breached at the southern and south-eastern sections of the quarry. It is also indicated that significant extraction took place outside the registration area and which covers approx 5 hectares and yielded 1.9 million tonnes.

#### 3.0 Planning History:

QY35: The quarry on site did register under Section 261 of the Planning and Development Act, 2000. It is noted from inspection of same that it was indicated that quarrying commenced on site approx 1962 Conditions were imposed by MCC on the operation of the quarry.

Under P93/831 (PL17.092394) JJ Flood was granted permission for the reinstatement of sand and gravel pit, which was used as a dump (No maps available)

Under P/97/1223 JJ Flood was granted permission for a new entrance to his dwelling located adjacent to the quarry

Under P98/967 JJ Flood was granted permission to construct an MV E.S.B. sub-station in existing quarry

#### 4.0 Legislative Context:

Section 261A of Planning and Development Act, 2000-2010

Section (2)(a) Each planning authority shall, not later than 9 months after the coming into operation of this section examine every quarry within its administrative area and make a determination as to whether—

(i) development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, or

- QYEV
- AS 211

Page 2 of 10

(ii) development was carried out after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

In summary Section 3 states that where a planning authority makes a determination under subsection (2)(a) that subparagraph (i) or (ii) or both, if applicable, of that paragraph apply in relation to a quarry and the authority also decides that-(i) either the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and

(ii) if applicable, the requirements in relation to registration under section 261 were fulfilled.

the planning authority shall issue a notice, not later than 9 months after the coming into operation of this section, to the owner or operator of the quarry that the person is directed to apply to the Board for substitute consent in respect of the quarry, under section 177E, with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be,

In summary Section 4 states where a planning authority makes a determination under subsection (2)(a) and the authority also decides that-

(i) the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or

(ii) if applicable, the requirements in relation to registration under section 261 were not fulfilled.

the planning authority shall issue a notice, not later than 9 months after the coming into operation of this section, to the owner or operator of the quarry that the planning authority intends to issue an enforcement notice in relation to the quarry under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the authority considers appropriate;

In summary Section 5 states notwithstanding anything contained in subsection (3) or (4), where a planning authority makes a determination under subsection (2)(a) and the authority further determines that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008, the authority shall also decide whether---

(i) the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and (ii) if applicable, the requirements in relation to registration under section 261 were fulfilled.

and shall issue a notice not later than 9 months after the coming into operation of this section to the owner or operator of the quarry that the planning authority intends to issue an enforcement notice in relation to the quarry under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the authority considers appropriate;

5.0 National & Local Policy: 5.1 County Development Plan 2007 The statutory plan relating the application site is the Meath County Development Plan 3 5

Page 3 of 16 2012

- Section 3 relates to economic development
- Section 4 relates to infrastructure
- Section 6 relates to rural development.
- Section 8 relates to cultural, heritage and landscape protection
- Section 10 relates to development management guidelines and standards.

Section 6.6 relates to extractive industry and building materials production. This section of the plan indicates that Meath contains a variety of natural resources in the form of gravel, sand, stone reserves including high purity limestones and shale used in cement and magnesia manufacture and base metal deposits and recognises that aggregates can only be worked where they occur. The plan also indicates recycling of C&D waste should, over time, have a consequential reduction in the need for new quarries. The plan goal in this regard is "to ensure adequate supplies of aggregate resources to meet the future growth needs of the county".

Relevant development plan policies include RD POL 11-17. In summary these policies seek to facilitate the exploitation of the county's natural resources while ensuring such industry would not adversely impact on visual amenity/quality of landscape, environmental quality and adjoining land uses; minimise adverse impacts on road network and cover cost of road improvement generated from such development; to restrict mining and quarrying to areas of known or potential aggregate sources; to ensure all existing workings be rehabilitated to suitable land uses, preferably with inert material; to ensure the quarrying and extraction development does not significantly impact on areas of special amenity or conservation designation, or sensitive landscapes and areas of importance for flora and fauna. (please refer to page 232 and 233 of Development Plan for full listing)This section of the development plan goes on to set out development assessment criteria for extractive industries.

Section 10.15.1 sets out guidelines for extractive industries indicating that it is an objective of the council that extractive developments do not adversely affect the environmental, tourism, local communities, residential qualities and/or any adjoining existing land use in the area, and in particular the council will seek to ensure the protection of groundwaters aquifers NHA's etc.

Other guidance criteria relates to duration, rehabilitation and bonding (please refer to pages 405 & 406 for full listings)

#### 5.2 Regional Planning Guidelines-GDA

Section 5.4.3 of the Regional Planning Guidelines for the Greater Dublin Area 2010-2022 relates to the quarrying and extractive industry. It states that the role of the planning system is to regulate, promote or control the exploitation of natural resources taking into account environmental considerations. Planning, heritage and environmental guidance together with legislative requirements should be used to frame policies for extractive industries. In planning policy terms and in order to strategically plan for future needs, there is a need to take stock of existing aggregate resources and other valuable minerals/ores and identifying potential sources which have major deposits of regional and county importance.

The guidelines also indicate a number of Strategic Recommendations inclusive of:

GY 130: 35

ASSECTABLE TOTTE: 20 JUL 2012

RR8: Development Plans map key natural aggregate resources and protect these where feasible from inappropriate development; and include policies regarding requirements for assessing applications for aggregate extraction which require the addressing of key environmental, traffic and social impacts and details of rehabilitation.

#### 5.3 National Planning Policy:

5.3.1 OUARRIES AND ANCILLARY ACTIVITIES GUIDELINES FOR PLANNING AUTHORITIES, APRIL 2004

The document seeks 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 (Part A)
- be a practical guide to the implementation of section 261 of the Planning and Development Act, 2000 (Part B)

#### 5.3.2 Section 261A of the Planning and Development Act, 2000 and related provisions Guidelines for Planning Authorities, January 2012

The purpose of the guidelines is to provide an overview of the changes to the legislation and to provide guidance on the implementation of Section 261A

#### 5.3.3 Section 261A of the Planning and Development Act, 2000 and related provisions Supplementary Guidelines for Planning Authorities, July 2012

To facilitate the implementation of section 261A clarifying amendments were required and it was also deemed appropriate to issue some supplementary guidelines.

#### 6.0 Submissions/Observations:

3 number submissions/observations have been received on foot of the publication of the notice under Section 261A(1)(a). The following details the main content of same:

- There are significant habitat impacts generated by quarrying of any kind and such quarrying invariably also results in habitat loss and a denigration of biodiversity. This raises issue of requirement of Appropriate Assessment under Habitats Directive
- The provision for substitute consent is retention by a different name. The ECJ . ruled that there must be no grants of retrospective permission for a development where an Environmental Impact Assessment is required
- Any claims as to the continuance of a pre 1963 guarry should be investigated and compared to the 1970s air-corps photographs to determine the validity of such claims
- There are concerns that many quarry operations exceeded the permitted extraction area, thereby engulfing surrounding area. The Planning Authority is requested to examine the issue of permitted extraction area
- An Environmental Impact Assessment is required for any guarries that exceed 5 hectares as required under the Irish regulations implementing Annex 11 of the **Environmental Impact Assessment Directive**

C. 197 -

Page 5 of 10

- Under the Habitats Directive Appropriate Assessment under Article 6 is . required for all quarries which are likely to have an effect on a habitat
- Operator should be requested to complete and EIS to address traffic, noise, dust 1.1 JUL 2012  $Q^{-}$ etc...The quarry is adjacent to Lough Naneagh pNHA

The submissions have been reviewed and taken into consideration

#### 7.0 Assessment:

#### 7.1 Planning Status of Quarry

There is little question that the site was operational as a quarry prior to 1990 with reference made at this juncture to the Section 261 application wherein it was indicated that quarrying commenced in approx 1875 on an intermittent basis and expanded thereafter in the late 1960's and again in the later 80's/early 90's. From an inspection of the mapping available (Ordnance Survey Sheet 14-8 (Revision of 1958)) and from aerial photography dated 1974, 1994, 2000 and 2009 the Planning Authority would concur that quarry operations did commence prior to 1963.

The question arising now therefore is whether the development on site is/was authorised by a *bona fide* pre-1964 use and so may be said to have a "pre-1964 authorisation". In appraising whether post 1990 and/or post 1997 development could reasonably have been envisaged in 1964 questions of direction, intensification and abandonment are relevant.

It would appear from investigation that the issue of abandonment is not applicable or relevant in this particular case given that the evidence available to the Planning Authority would suggest that operations have been ongoing at this specific location on a continuous basis save perhaps for some short time lapses at intermittent times.

The issue of intensification is more relevant to this current assessment having regard to the nature of development and with reference to the role that the extractive industry played in the growth of the Irish Economy in the late 1990's and 2000's. In assessing whether an intensification of use has resulted in the material change of use of lands it must be established that such intensification gave rise to fresh planning considerations or if the works undertaken were proportionate in use to that of the established date i.e. 1964 use.

It is not appropriate to solely assess whether the level of activities on the subject site at the appointed day are commensurate with the existing levels (or recent levels) but rather to test whether there was a marked increase in extraction at a specified time and beyond which would be deemed to be naturally progressive, and furthermore whether additional lands were acquired post 1964 for the purposes of quarrying given that there could be no inference that those lands could have reasonably been envisaged in 1964.

In this particular case the Planning Authority would consider that significant extraction in area terms took place between 1974 and 1994 although this could have taken place on an incremental and progressive basis given the 20 year timeframe between the evidence available. In volumetric terms it would appear as though significant extraction also took place between 1999 and 2009 on the basis of the aerial photography available. Reference is also made to the Section 261 application where it was specified that circa 40,000 traffic movements per annum were taking place at that time (c100 movements per day). There also appears to be an acknowledgement by the quarry owner that operations had intensified at various times through the decades (Documentation submitted under S261 process letter dates 25<sup>th</sup> April 2005) and this would be borne out through the evidence available.

available,

ASSESSED OF REAL 20,101 2012

Page 6 of 10

The final point to note in discussing the status of the quarry on site is to determine whether the lands in 1964 were of the levels now utilised for extraction purposes in that if additional lands were acquired subsequent to 1964, same could not have been reasonably envisaged at that time. It is evident from the Land Registry search that additional lands were acquired in the 1990's for quarrying purposes and which could not have been reasonably envisaged in 1964. Therefore on the basis of the intensification that took place (as acknowledged by the quarry owner) and that excavation has taken place on lands that could not reasonably have been envisaged, it is considered that the quarry is not operating under a "pre 1964 authorisation".

7.2 Determination as to whether EIA or determination as to whether EIA, was required In making a determination as to whether an EIA or a determination as to whether an EIA was required or not, it is a requirement in the first instance to ascertain whether development was carried out after 1 February 1990 having regard to the EIA directive transposed at that date. It is further pertinent to note that if development carried out post the aforementioned date was undertaken on foot of a grant of permission prior to that date or alternatively is/was operating and authorised by a *bona fide* pre-1964 use then EIA is not required.

Having established above that the quarry was not operating as a bona fide pre-1964 use on the basis of an intensification of use such that a material change of use had occurred and given that additional lands were acquired post 1964 for quarrying purposes, an assessment of the nature and quantum of development post 1 February 1990 needs to be undertaken. The extraction area of the quarry is approximately 32 hectares and is still operational with evidence of significant stockpiling on site during inspection. From an inspection of the 1994 aerial photography compared with the latest photography available it would appear as though the area of extraction has altered significantly and certainly to a degree that represented an increase of over 25% of the existing quarry and of itself was above 5 hectares. It can reasonably be asserted therefore that the increase in the quarry area would of itself have necessitated an EIA.

Further to the relevant thresholds, cognisance must be paid to the potential for subthreshold EIS and whether the works would or would not be likely to have significant effects on the environment. This is perhaps the more pertinent point in relation to this particular site in that the extraction area would not be the sole consideration and matters such as the volume of extraction (depth), method of extraction etc...would be considered. The Planning Authority can determine that in 2005 there was an extraction rate of in excess of 1,000 tonnes per day (on the basis of information contained in the Section 261 application). This would have obvious and significant impacts on the environment in terms of traffic movements, the impacts on the local road network and noise and dust associated with such quarrying could be such as to warrant the preparation of an EIS in respect of individual sub-threshold developments in an area.

Having appraised the information available the Planning Authority considers that the works undertaken post 1990 were such that a need for mandatory EIA were required and even in a case where it was contended that a mandatory EIA was not required, as demonstrated above a sub-threshold EIA would have been required. In forming this opinion the Planning Authority had regard to the rate of extraction; the scale of the extraction quarry at c32 hectares and the proximity to sensitive sites and in particular Lough Naneagh (pNHA) 1km from the site.

ASSESSME PARE 20 JUL 2012

#### 7.3 Determination as to whether AA was required

Similar to Section 7.2 above it is a requirement in the first instance to ascertain whether development was carried out after 26 February 1997 having regard to the Habitats directive transposed at that date. Having considered that the quarry was not operational under a pre 1964 authorisation and that post 1997 development did take place, the matter to address is whether such development gave rise to potential impacts on the qualifying interests of the Natura 2000 site. Again it is difficult to deduce the level of development that took place post 1997 save to say that it is clear that significant development did take place on the basis of the Section 261 application.

The nearest Natura 2000 site is located to c1km to the south - White Lough, Ben Loughs and Lough Doo cSAC (Designated 1<sup>st</sup> July 1999). Lough Bane and Lough Glass cSAC is located 2.2km to the southeast with the qualifying interests being Hard oligo-mesotrophic waters with benthic vegetation of Chara spp and White clawed Crayfish Austropotamobius pallipes. There are other quarries that could have been operating in combination with QY35 (QY24, QY41, QY46, QY42, QY71, QY43 and QY9) within 5km. QY24 occupies the same sand and gravel aquifer as QY35 according to data held by Geological survey of Ireland.

QY35 and other surrounding quarries occupy the same sand and gravel aquifer as the cSAC, which relies on the watertable to be unaffected in terms of level and quality. There is no data available on the nature of any linkage between the breaching of the water table at QY35 and the groundwater flows to the cSAC. Lough Naneagh pNHA is located <1km to the west and may also be linked to this system. Whilst there is no evidence of deliberate abstraction or discharge into groundwater, the fact that there is a potential unprotected pathway for contaminants to enter the groundwater is grounds to identify a potential negative impact.

Having regard to the proximity of QY35 to the cSAC and the potential for groundwater to be linked between the two areas, in the absence of detailed hydrogeological data it cannot be ruled out that the effects of groundwater drawdown or contamination as a result of quarrying activities after 1.07.99 could not have caused a significant effect. Therefore all post 1.07.99 activities at QY35 would have required an appropriate assessment in respect of such activities to give rise to impacts on the White Lough, Ben Loughs and Lough Doo cSAC. No such assessment appears to have been completed. Please refer to the Screening for Appropriate Assessment Document prepared by Ms. Joanne Allen-Hamilton (Scott Cawley Environmental Consultancy and Environmental Management Services).

#### 7.4 Determination in respect of subsection (5)

Where it is determined under subsection 2(a) that EIA or an appropriate assessment was required but not carried out, it must make a determination whether development took place after 3 July 2008, which would have required an EIA, a determination in relation to EIA, or an appropriate assessment but such were not carried out.

In appraising the works that have taken place post 3 July 2008, the Planning Authority has had regard to information to hand inclusive of local knowledge, aerial photography and any detail submitted by the application in respect of compliance with conditions imposed under Section 261. Again it can be determined that the quarry was operational post July 2008 on the basis of my site inspection, however the extent of such works cannot be readily determined and certainly not to the extent where it can be ascertained as to whether the works in themselves would have necessitated an EIA and/or Appropriate Assessment.

#### 8.0 Decision on foot of the Determination:

Having determined under subsection 2(a) in respect of the quarry in question that a determination in relation to EIA and that an Appropriate Assessment was required but not carried out it must also be decided (a) whether the quarry at some stage obtained planning permission or whether it commenced operation prior to 1 October 1964 and (ii) whether the quarry fulfilled the requirements in relation to registration under Section 261 (if required to do so). As per Section 7.1 above the Planning Authority is satisfied that quarrying did commence operation prior to 1 October 1964 and is further satisfied that the quarry fulfilled the requirements in respect of Section 261. As the answer to the questions is in the affirmative, it is required to issue a notice requiring the quarry operator to apply for substitute consent in respect of the unauthorised development.

#### 9.0 Recommendation:

In accordance with Section 261A(2)(a) it is determined that the subject quarry has:

(i) Carried out development after 1 February 1990 which was not authorised by a permission granted under Part IV of the Act of 1963, prior to 1 February 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made,

#### Reason:

1. Having regard to regard to the scale and characteristics of the development undertaken post the transposing of the EIA Directives, to the traffic volumes generated, noise and dust emissions from the site and the proximity of the site to the Lough Naneagh pNHA it is considered that the development was likely to have had significant effects on the environment and thus an EIA was required.

(ii) Carried out development after 26 February 1997, which was not authorised by a permission granted under Part IV of the Act of 1963 prior to 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

#### Reasons;

2. Having regard to the proximity of QY35 to the White Lough, Ben Loughs and Lough Doo cSAC and the potential for groundwater to be linked between the two areas, in the absence of detailed hydrogeological data it cannot be ruled out that the effects of groundwater drawdown or contamination as a result of quarrying activities after 1.07.99 could not have caused a significant effect. · \*\*\*\*\*\*\* Therefore all post 1.07.99 activities at QY35 would have required an appropriate assessment in respect of such activities to give rise to impacts on the

Page 9 of 10

3.0

White Lough, Ben Loughs and Lough Doo cSAC. No such assessment has been completed.

**AND WHEREAS** Meath County Council, hereby decides - In accordance with Section 261A(3)(a) the subject quarry:

(i) commenced operation before 1 October 1964

#### And

(ii) the requirements in relation to registration under Section 261of the Planning & Development Act 2000-2011 were fulfilled,

#### Reason:

The Planning Authority having being so satisfied from it's investigations in respect of this quarry and it's inspection of the Planning Register and Register of Quarries pursuant to S261 of the Planning & Development Act 2000-2011.

#### DIRECTION:

You are hereby directed to apply to An Bord Pleanála for substitute consent in respect of this quarry under Section 177E of the Planning and Development Acts 2000-2011, not later than 12 weeks after the date of this notice, or such further period as the Board may allow.

David Caffrey Executive Planner

Wendy Bagnall Senior Executive Planner

.... JUL 2012



### METHODOLOGY FOR DETERMINATION FOR REQUIREMENT FOR APPROPRIATE ASSESSMENT

#### UNDER SECTION 261A(2) OF THE PLANNING AND DEVELOPMENT

#### (AMENDMENT) ACT 2010 (AS AMENDED)

The methodology for undertaking determination of the requirement for Appropriate Assessment was devised through consultation between Meath County Council Planning Department, Meath Biodiversity Project Officer and Scott Cawley Ltd.

The aim of the process was to determine which quarries, in line with appropriate planning, under Section 261A required or did not require an Appropriate Assessment to be undertaken. The determination has then been utilised by Meath County Council Planning Department to fulfil the requirements of Section 261A.

For clarity, steps undertaken for determination of the requirement for Appropriate Assessment, for each quarry and its potential to result in significant impacts on Natura 2000 sites are detailed below.

For clarity, steps undertaken for determination of the requirement for Appropriate Assessment for each quarry are detailed below. During the process if it was determined that, at the relevant point in time, there was no likelihood of significant impacts from the relevant quarrying activities to European Sites<sup>1</sup>, it was determined that no Appropriate Assessment was required. If however, during the process it was determined that, at the relevant point in time, the potential for significant impacts from the relevant quarrying activities to European Sites from the relevant quarrying activities to European Sites was either likely or uncertain, then the need for Appropriate Assessment to have been undertaken has been determined.

# Considerations and steps in undertaking determination for the requirement for Appropriate Assessment:

- Site Description: The description of the quarry was made using the engineers report contained in Section 11 of the quarry file.
- Background Data Review: A review of the quarry site and lands surrounding the quarry was undertaken using aerial photography and available mapping. In some cases a review of digital databases was undertaken for other information relevant to the assessment including the Environmental Protection Agency (EPA), National Parks and Wildlife Service (NPWS), National Biodiversity Data Centre (NBDC) and/or Ordnance Survey Ireland (OSI) web based mapping browsers.
- Identifying Hydrological Pathways: The surface water links between the quarry and designated sites were established from aerial photography and available mapping. A potential breach in the groundwater table was inferred were standing water was noted within

<ul> <li>DoECLG (2012) Section 261A of the Planning and De Supplementary Guidelines for Planning Authorities</li> </ul>	nd Development Act, 2000 and related provisions,		
supported by Subclines for Flamming Authonnes		in an areas in a constant	
	OY IV:	3 5	

CANENT DATE Meath County Council

1

an excavated area (e.g. noted in engineer's site inspection reports, planning documentation/reports, dated photos of the site and/or occasionally from aerial photography). While this does not provide definitive evidence that excavation has breached the groundwater table it indicates, based on best available information, the *potential* for (i) impacts on groundwater resources and (ii) surface water impacts through discharge of standing/collected water from the site.

- Establishing the Zone of Influence: A review of European Sites, advertised at various points in time, within c.15km of each quarry was undertaken. The following European Sites were deemed to be relevant for consideration of potential impacts:
  - (i) European Sites where direct impacts were identified (e.g. footprint of development within a European Site)
  - (ii) European Sites with potential hydrological (surface and groundwater) links to the quarry
  - (iii) European Sites where potential for other impacts (e.g. disturbance from noise and vibration or airborne contamination) were identified
- Establishing European Sites Boundaries: The NPWS digital datasets for boundaries of Special Areas of Conservation and Special Protection Areas dated 2011 were used to establish the location of site boundaries and their proximity to quarry sites. The boundaries of European Sites are likely to have changed over time since their initial legal protection. For example we are aware that there was a significant reduction in the boundary of the River Boyne and River Blackwater cSAC in 2006 (following its initial advertisement in 2003). In order to address possible changes in boundaries over time, where a quarry site was located in close proximity to the current NPWS digital dataset boundaries used, previous site boundaries were also examined to establish boundary changes over time with respect to the quarry location. The relevant boundary is deemed to be that in force at the time of the quarrying activity for unauthorised quarry activities or the date of authorisation for authorised quarry activities.
- Establishing the Sequence of Quarry Development: A review of the sequential development of each quarry was undertaken from aerial photography and from information contained within the quarry file. This identified works undertaken post-1997 and any intensification of use post-1997. The planning file was reviewed to establish whether any new planning application was sought post-1997.
- Undertaking Impact Assessment: The likely significant impacts of quarry developments on European Sites were assessed with reference to the quarries planning status.
  - (i) For authorised quarries the assessment of likely significant impacts was undertaken at the date that planning permission was granted.

(ii) For unauthorised quarries the assessment of likely significant impacts was <u>Contraction</u> of the point in time that each European Site was advertised. Only the elements of the quarry that were in operation, from the date of advertisement of the CY Point European Site forward, were assessed.

## ASSESSMENT DATE: 20 JUL 2012

scott

European Sites are deemed to be offered legal protection under Irish legislation from their date of advertisement. Dates of advertisement for European Sites were supplied by NPWS. In a small number of cases environmental information available in years subsequent to the quarrying activities, such as monitoring results from a discharge licence, were taken into consideration where considered pertinent in determining whether an impact was likely to have been significant. Where this type of information was used, this has been clearly stated in individual assessments.

Determining in-combination impacts: There is insufficient information available currently, to provide a historic assessment of in-combination impacts. However the assessment considers the cumulative impacts of each quarry in combination with other quarries in its vicinity, as cumulative impacts from similar activities on-going in the same area are likely to be very relevant. In many cases assumptions are made that a range of other cumulative impacts are likely to have existed in the landscape (e.g. diffuse sources of pollution from agriculture in rural landscapes or point sources of pollution from industrial facilities or municipal wastewater treatment facilities), although it has not been possible to provide detailed assessments on these types of cumulative impacts due to lack of available information. The assessment therefore provides a determination as to whether there was potential for in-combination impacts to have occurred at that time but does not make inference about the extent of those impacts. The difficulty in assessing in-combination effects is not deemed to have compromised the overall process or determinations made, which have taken a precautionary approach in assessing potential impacts.

#### Bibliography

- **DOECLG** (2012) Section 261A of the Planning and Development Act, 2000 and related provisions, Guidelines for Planning Authorities
- DoECLG (2012) Section 261A of the Planning and Development Act, 2000 and related provisions, Supplementary Guidelines for Planning Authorities
- DoEHLG (2010) Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, Rev Feb 2010)
- **European Commission** (2000). Communication from the Commission on the precautionary principle
- European Commission (2001) Assessment of Plans and Projects Significantly Affecting Natura 2000 sites: Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (European Commission Environment Directorate-General,);
- European Commission (2000) Managing Natura 2000 sites: The Provisions of Article 6 of the Habitat's Directive 92/43/EEC (EC Environment Directorate-General, 2000); hereinafter referred to as "MN2000"

Boener - Keinen -ATSET WEET OWER AN JUL 2017

Section 261A Determination for AA Screening

-

·

.

#### DETERMINATION FOR REQUIREMENT FOR APPROPRIATE ASSESSMENT UNDER SECTION 261A(2) OF THE PLANNING AND DEVELOPMENT (AMMENDEMNT) ACT 2010 (AS AMENDED)

### 1. Description of Project

Site Details	JJ Flood and Sons Ltd
Size and Location	36.4, Murrens, Oldcastle, Co. Meath.
Site reference number	QY35
Site description and description of the development	Sand and gravel and rock quarry with extraction area of 25.4ha within an overall holding of 36.4ha, 4km west of Dromone. Located within an agricultural area.
	The quarry commenced c.1962 and was registered under Section 261. Two planning applications relate to this site, in 1997 and 1998 for non-quarry activities.
	Analysis of aerial photography shows that significant extraction took place between 1974 and 1994 and also between 1999 and 2009. Comparison of extraction between 1994 and latest photographs show significant (>25%) alteration in quarry size.
	The quarry file indicates that there is no trade effluent discharge licence for this quarry. The Council Engineer report dated 13/3/12 states that the water table has been breached at the southern section. The lowest point was recorded at 123 AOD.
	The operators declared in a letter dated 11.4.07 that there were no streams in the vicinity of the quarry and that there are no discharges arising from the operation of the quarry.
	There appear to be 4 no. settlement lagoons at the northern edge of the site but no discharge point can be seen on aerial photography. Therefore the issue of surface water discharges is not deemed to be relevant.
	There was no hydrogeological data available to indicate any linkage or absence of linkages to the surrounding area.
eatures of the surrounding nyironment based on aerial hotography	The location is 4km west of Dromore. It is located at the edge of the Boyne and Shannon Catchments and surface water could in theory drain to either side.
	The nearest European site is located to c1km to the south - White Lough, Ben Loughs and Lough Doo cSAC. Lough Bane and Lough Glass cSAC is located 2.2km to the southeast.
other development nearby which	There are no other quarries that could have been
nay lead to cumulative impacts	operating in combination with QY35 (QY24, QY41, QY46,
pon designated site	QY42, QY71, QY43 and QY9) within 5km. QY24 occupies
	the same sand and gravel aquifer as QY35 according to
the project directly connected	data held by Geological survey of Ireland.
ith or necessary to the	
anagement of the European site	OY Rof
	5 ST 1 ST

1

Site name and	Distance	Qualifying Interests	Do any potential source-
code	from development		pathway-receptor links exist between the proposed development and the
White Lough, Ben Loughs and Lough Doo cSAC IE0001810	c.1km	<ul> <li>Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> spp</li> <li>White clawed Crayfish <i>Austropotamobius</i> pallipes</li> </ul>	European site? QY35 and other surrounding quarries occupy the same sand and gravel aquifer as the cSAC, which relies on the water table to be unaffected in terms of water quantity and quality. There is no data available on the nature of any linkage between the breaching of the water table at QY35 and the groundwater flows to the cSAC. Whilst there is no evidence of deliberate abstraction or discharge into groundwater, the fact that there is a potential unprotected pathway for contaminants to enter the groundwater is deemed to be a potential negative impact. The cSAC was advertised on 1 <sup>st</sup> July 1999 so this linkage would only have been required to be addressed after this time.
Lough Bane and Lough Glass cSAC IE0002120	2.2km	<ul> <li>Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> spp</li> <li>White clawed Crayfish Austropotamobius pallipes</li> </ul>	Based on an examination of EPA and OS (topographical) mapping it has been established that there is no hydrological linkage to this SAC.

### 2. Brief Description of the European Sites

\*Qualifying Interests have been obtained from <u>www.npws.ie</u> viewed in July 2012.

There are no other source-pathway-receptor links between the quarry site and any other European sites.

oter dag Degi. Benutzeal Carshiered in Accorement. 3 5 OY Flot: ASSESSIN<mark>Section 26/1AATE: 20 JUL 2012</mark>

Other plans and projects) thatalone or in combination withImpactstunction of the sitewere likely to give rise to impacts on the Europeanother plans or projects) thatimpactstunction of the siteimpacts on the Europeanwere likely to give rise to sitewere likely to give rise to were likely to give rise to sitetunction of ground waterContarnination of ground waterQuarmes in the surrounding area could have acted in contarnination of ground water by area could have acted in activities to pose negative octionants pullages could causeReduction in water quality and contarnination from hydrocarbons or other toxins could lead to direct impacts to the quality of ground water in the sarroundingIn-combination invater quality. The level invater quality. The level impacts to the quality of ground water in the sarrounding gravel and rock aquifer shared with the cSAC.In-combination invater quality. The level impacts to the quality of demonship of effect is impossible to determine pollution.Drawdown of the water tableDrawdown of the water table area could have acted in gravel and rock aquifer shared with the cSAC.In the absence of hydrogeological data to between QY35 and the cSAC.Drawdown of the water tableDrawdown of groundwater by drawdown of groundwater by drawdown of groundwater by travities to pose negative area could have acted in combination with the excavation drawdown of groundwater by the abitats in the cSAC.In the absence of hydrogeological data, the polution.Drawdown of the water tableDrawdown of groundwater by drawdown of groundwater by drawdown of groundwater by drawdown of groundwater by dr
ferQuarries in the surrounding etc.In-combination impacts caused by contamination of groundwater by accidental spillages could cause reduction in water quality. The level of effect is impossible to determine without hydrogeological data to gravel and rock aquifer shared with the cSAC.In-combination of groundwater by accidental spillages could cause reduction in water quality. The level of effect is impossible to determine without hydrogeological data to between QY35 and the cSAC.Quarries in the surrounding area could have acted in combination with the cSAC.In-combination impacts caused by demonstrate the relationship between QY35 and the cSAC.Quarries in the surrounding area could have acted in combination with the cSAC.In-combination impacts caused by demonstrate the relationship between QY35 and the cSAC.Quarries in the surrounding area could have acted in combination with the cSAC.In-combination impacts caused by drawdown of groundwater by drawdown of groundwater by drawdown of groundwater by drawdown of groundwater by demonstrate the relationship
with the cSAC.between QY35 and the cSAC.with the cSAC.between QY35 and the cSAC.Quarries in the surroundingIn-combination impacts caused by drawdown of groundwater by demonstrate in the sand and gravel and rock without hydrogeological data to aquifer shared with the cSAC.
Quarries in the surroundingIn-combination impacts caused by area could have acted in combination with the excavation activities to pose negative impacts on groundwater levels in the sand and gravel and rock without hydrogeological data to demonstrate the relationship
vels of effect is not possible to determine rock without hydrogeological data to demonstrate the relationship
between QY35 and the cSAC.

С

Meath County Council

s c o t t cawley

#### 4. Screening Conclusion

#### Screening Conclusion

As a result of the assessment, having regard to the proximity of QY35 to the cSAC and the potential for groundwater to be linked between the two areas, in the absence of detailed hydrogeological data it cannot be ruled out that the effects of groundwater drawdown or contamination as a result of quarrying activities after 1.07.99 could not have caused a significant effect. Therefore all post 1.07.99 activities at QY35 would have required an appropriate assessment in respect of such activities to give rise to impacts on the White Lough, Ben Loughs and Lough Doo cSAC. No such assessment appears to have been completed.

i setzitet Boornaal Bershe ind 19 fit is comoni. OY Protein

3 5

ACCENCLERIT ENTE: 20 JUL 2012

Prepared by: Joanne Allen-Hamilton IEEM Position: Senior Ecologist (Scott Cawley Ltd.)

Reviewed by: Aebhin Cawley, MIEEM, CEnv.

Position: Director (Scott Cawley Ltd.)

Date: 19th July 2012

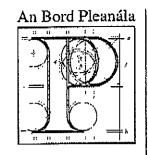
4

scott cawlev

Appendix V An Bord Pleanala Section 261A Referral Documentation

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI

"Our Ref: QV 17.QV0015 P.A.Reg.Ref: QY35 Your Ref: Flood & Sons Ltd.



Frank Burke and Associates, Planning Consultants, Baldara, Trim Road, Navan, Co. Meath.

2 8 JUN 2013

Appeal

Re: Quarry. Murrens, Oldcastle, Co. Meath.

Dear Sir,

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2011. A copy of the order is enclosed.

The effect of this order is to direct you to make an application to the Board for substitute consent not later that 12 weeks after the date of the giving of the Board's decision (or such further period as the Board may allow). The application shall be accompanied by

a remedial environmental impact statement and a remedial Natura impact statement.

Section 177E of the Planning and Development Acts 2000 to 2011 sets out the requirements for a valid substitute consent application and your attention is also drawn to Part 19 of the Planning and Development (Amendment)(No. 3) Regulations, 2011 (S.I. 476/2011) which requires, inter alia, the applicant to submit to the Board a newspaper/site notice." A fee is also payable to the Board in respect of the substitute consent application.

Separately, it would greatly assist the Board to have a soft copy of the entire application submitted with six hard copies. In this regard, the drawings on the soft copy should be in P.D.F. format.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of S years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

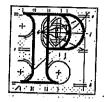
Carmel Morgan Executive Officer Direct Line:

64 Stáid Maoilbhríde, Baile Átha Chath I Teil (01) 858 8100 Tel Glao Áitiúli 1890 275 175 LoCall Paes (01) 872 2684 Fax Láithreán Gréasáin www.pleatula.ce Web Ríomhphost bord@plennala ie Emuil



64 Murihorough Street. Dublin 1.

### An Bord Pleanála



### PLANNING AND DEVELOPMENT ACTS 2000 TO 2011

#### Meath County

### Planning Authority Register Reference Number: QY 35

An Bord Pleanála Reference Number: 17.QV.0015

LOCATION OF QUARRY: Quarry at Murrens, Oldcastle, County Meath.

**REVIEW REQUESTED** by An Taisce of The Tailor's Hall, Back Lane, Dublin and by John J. Flood, David Flood and J.J. Flood and Sons (Manufacturing) Limited care of Frank Burke and Associates of Baldara, Trim Road, Navan, County Meath in respect of;

(i) the determination by Meath County Council, on the 20<sup>th</sup> day of July, 2012, under subsection (2)(a)(i) and (2)(a)(ii) of section 261A of the Planning and Development Act, 2000, as amended by the insertion of section 75 of the Planning and Development (Amendment) Act 2010 and as further amended by the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 and European Union (Environmental Impact Assessment and Habitats) Regulations 2012,

which determination was that development was carried out after the 1<sup>st</sup> day of February, 1990, which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made,

17.QV.0015

An Bord Pleanála

and that development was carried out after the 26<sup>th</sup> day of February, 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such assessment was not carried out, and

(ii) **the decision** by Meath County Council, also on the 20<sup>th</sup> day of July, 2012, under subsection 261A(3)(a) that

the quarry commenced operation before the 1<sup>st</sup> day of October, 1964, and

the requirements in relation to section 261 of the Planning and Development Act, 2000, as amended, were fulfilled.

#### BOARD DECISION

The Board, in exercise of its powers conferred on it under section 261A of the Planning and Development Act, 2000, as amended, decided:

based on the Reasons and Considerations marked (1) set out below, to **confirm** the determination of the planning authority in respect of this development made under section 261A(2)(a)(i) of the Planning and Development Act, 2000, as amended, and

based on the Reasons and Considerations marked (2) set out below, to **confirm** the determination of the planning authority in respect of this development made under section 261A(2)(a)(ii) of the Planning and Development Act, 2000, as amended, and

based on the Reasons and Considerations marked (3) set out below, to **confirm** the decision of the planning authority in respect of this development made under section 261A(3)(a) of the Planning and Development Act, 2000, as amended.

#### MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

An Bord Pleanála

### **REASONS AND CONSIDERATIONS (1)**

Having regard to:

- (a) the submissions of the file including documentation on the review file (planning authority register reference number QY 35), aerial photography and details of site registration under section 261 of the Planning and Development Act, 2000, as amended,
- (b) the nature and scale of operations at the site which entails an extraction area in excess of 5 hectares that was developed after the 1<sup>st</sup> day of February, 1990,
- (c) the provisions of the Planning and Development Acts, 2000 to 2011, as amended, and in particular Part XA and section 261A,
- (d) the Regulations pertaining to Environmental Impact Assessment 1989 to 1999 and the Planning and Development Regulations, 2001, as amended, which restates the prescribed classes of development which require an Environmental Impact Assessment (Schedule 5) which makes provision for a planning authority to require the submission of an Environmental Impact Statement in such cases and the criteria for determining whether the development would or would not be likely to have significant effects on the environment (Schedule 7 thereof), and
- the Department of the Environment, Community and Local Government
   Section 261A of the Planning and Development Act, 2000 and related provisions, Supplementary Guidelines for Planning Authorities, July, 2012,

it is considered that development was carried out after the 1<sup>st</sup> day of February, 1990 which would have required an environmental impact assessment, having regard to the Environmental Impact Assessment Directive, but that such an assessment was not carried out. The Board, therefore, confirms Meath County Council's determination in respect of this development made under section 261A(2)(i) of the Planning and Development Act 2000, as amended.

17.QV.0015

### **REASONS AND CONSIDERATIONS (2)**

Having regard to:

- (a) the documentation on the review file (planning authority register reference number QY35), aerial photography and details of site registration under section 261 of the 2000 Act, as amended,
- (b) the location of the quarry in close proximity to two European sites (White Lough, Ben Loughs and Lough Doo Special Area of Conservation and Lough Bane and Lough Glass Special Area of Conservation),
- (c) the potential cumulative impact on these European sites of quarrying operations at this site and an adjoining location (planning authority register reference number QY24),
- (d) the uncertainty regarding the hydrological linkages between this quarry and the European sites,
- (e) the qualifying interests for the European sites which could have been impacted by this quarry, and
- (f) the dates on which the above sites of Community interest were designated,

it is considered that development was carried out after the 26<sup>th</sup> day of February, 1997 which would have required, having regard to the Habitats Directive, an appropriate assessment. The Board therefore confirms the determination of Meath County Council under section 261A(2)(a)(ii) of the Planning and Development Act 2000, as amended.

### REASONS AND CONSIDERATIONS (3)

Having regard to:

 the planning history of the site, in particular the evidence on file that the quarry site commenced operations prior to the 1<sup>st</sup> day of October, 1964, and

17.QV.0015

An Bord Pieanála

(b) the information relating to the registration of the site under section 261 of the 2000 Act, as amended,

the Board confirms Meath County Council's decision in respect of this development made under section 261A(3)(a) of the Planning and Development Act 2000, as amended.

Member of An Bord Pieanála duly authorised to authenticate the seal of the Board.

Dated this 27 day of June 2013.

17.QV.0015

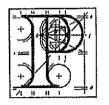
An Bord Pleanála

Page 5 of 5

### An Bord Pleanála Ref. QV17.0015

124

#### An Bord Pleanála



### **Inspector's Report**

Type of Case:	Application under Section 261A(6) for review of notification under Section 261A(3)		
Quarry Owner/Operator:	John J. Flood/ David Flood/ J.J. Flood & Sons (Manufacturing) Ltd.		
· Location:	Murrens, Oldcastle, Co. Meath		
Planning Authority Ref.	QY35		
Applicant (for review):	i.	An Taisce.	
	ii.	John J. Flood/David Flood/ J.J. Flood & Sons (Manufacturing) Ltd.	

Date of Inspection:	21 <sup>st</sup> March 2013
Inspector:	Deirdre MacGabhann

QV17.0015

An Bord Pleanála

Page 1 of 18

#### **1** INTRODUCTION

- 1.1 Under Section 261A 2(a) of the Planning and Development Acts 2000-2011, Meath County Council, in July 2012:
  - a. Determined that the quarry owned by John J. Flood etc. at Murrens, Oldcastle, Co. Meath:
    - i. Carried out development after 1<sup>st</sup> February 1990 which was not authorised, which would have required an environmental impact assessment (or a determination in respect of EIA) and which was not carried out, for the following reason 'Having regard to the scale and characteristics of the development undertaken post the transposing of the EIA Directives, to the traffic volumes generated, noise and dust emissions from the site and the proximity of the site to the Lough Naneagh pNHA it is considered that the development was likely to have had significant effects on the environment and thus and EIA was require', and
    - ii. Carried out development after 26<sup>th</sup> February 1997 which was not authorised, which would have required an appropriate assessment which was not carried, for the following reason 'Having regard to the proximity of QY35 to the White Lough, Ben Loughs and Lough Doo cSAC and the potential for groundwater to be linked between the two areas, in the absence of detailed hydrogeological data it cannot be ruled out that the effects of groundwater drawdown or contamination as a result of quarrying activities after 1.07.99 could not have caused a significant effect. Therefore all post 1.07.99 activities at QY35 would have required an appropriate assessment in respect of such activities to give rise to impacts on the White Lough, Ben Loughs and Lough Doo cSAC. No such assessment has been completed'.
  - b. Decided that the quarry commenced operation before 1<sup>st</sup> October 1964 and that the requirements in relation to registration under Section 261 of the Planning and Development Acts 2000-2011 had been fulfilled.
- 1.2 In their notice under Section 261A 3 (a) (20<sup>th</sup> July 2012) the planning authority therefore directed the quarry owner/operator to apply to the Board for substitute consents in respect of the quarry under section 177AE of the Planning and Development Acts 2000-2011.
- 1.3 Under Section 261A (6) of the Planning Act 2000-2011, the owner/operator of the quarry and An Taisce have applied for a review of the planning authority's notification under Section 261A(3) and in particular the determination under subsection 2(a).
- 1.4 In the event that the Board require an application for substitute consent, the owner/operator of the quarry has sought an extension of time (a period of some 24 weeks) for lodging an application for substitute consent (Board file SH17.0009).
- 1.5 This report comprises a review of the planning authority's notice and determination under sections 261A(3) and 261A(2) respectively. It makes a recommendation to the Board whether to confirm or set aside the determination of the planning authority.

QV17.0015

An Bord Pleanála

Page 2 of 18

#### 2 SITE LOCATION

2.1 The quarry site lies c.5km south west of Oldcastle, County Meath in the townland of Murrens, c.20km west of Kells. The site lies immediately west of the R195 between Oldcastle and Castlepollard and is accessed from this regional road via a short length of minor road, which also serves a residential property. West of the quarry is a large scale quarry operation (Meath County Council's QY24).

#### **3 DESCRIPTION OF EXISTING QUARRY**

- 3.1 The quarry at Murrens extends over a site area of c.35ha. To the north of the site are the site offices, canteen, workshop, bunded oil tank, store and weighbridge (see photographs). From this area an internal haul road runs approximately north south through the quarry and provides access to secondary haul roads within the quarry. The main processing area is to the east of the primary haul road, approximately in the centre of the quarry. It primarily crushing, washing and screening facilities. Immediately east of the processing area is a series of lagoons where washwater is pumped. Washwater moves through these lagoons, under the access road, into settlement ponds to the west of the weighbridge and main haul road. Water is recycled within the quarry within this closed system. A vehicle/lorry wash area is situated between the processing area and the weighbridge to the east of the main haul road (see photographs).
- 3.2 The overburden (sand and gravel deposits) has been removed from most of the quarry site and large stockpiles of graded materials are evident in particular to the west of the main haul road and in the vicinity of the main processing area (see photographs). The extraction area appears to extend south of the registered quarry boundary and finishes in a sharp point. Rock is currently being extracted from an area lying on the eastern side of the quarry (see photographs) by mechanical extraction and water was evident in the void (see photograph 28). As there had been no rain in the weeks prior to the site inspection, it is unlikely that this is surface water.
- 3.3 No water courses were observed in the vicinity of the site.

#### 4 PLANNING HISTORY

Planning Applications

- 4.1 The following planning applications have been made in respect of the quarry site:
  - PA Ref. 97/1223 An application for a new vehicular entrance to serve a dwelling house at Murrens was granted permission in November 1997, subject to 2 no. conditions. The entrance is stated to be onto a minor cul de sac leading to the applicant's quarry/working area.
  - PA Ref. 98/967 An application for the construction of an ESB sub-station at the existing quarry was granted permission in November 1999, subject to two no. conditions. The Location Map shows a quarry site that excludes lands broadly north west of the now main internal haul road.
- 4.2 In addition to the above attached to the file is PL17.092394 (PA Ref. 93/831). Under this reference planning permission was granted by the Board for the re-instatement of a sand

QV17.0015

An Bord Pleanála

Page 3 of 18

and gravel pit on land the east of the quarry (to the east of the R195) at Murrens which was previously used as a dump (applicant J. J. Flood and Sons Ltd). (Enforcement case Under PA Ref. 8/96 applies to this site). I do not consider that development or enforcement case area relevant to the current review.

Section 261 Registration Process

- 4.3 The quarry at Murrens was registered under Section 261 of the Planning and Development Acts 2000-2011. The application process indicated that the quarry had been in operation prior to October 1964 (since 1875) and at the time of registration extended to a total area of 36.4ha with an extraction area of 25.4ha. Quarrying operations were stated to involve the extraction of sand and gravel from the overburden and rock from bedrock. Traffic arising from the quarry was stated to average at 100 HGV trips per day (50 laden trips) and 10-15 trips per day for office staff, service vehicles etc.
- 4.4 The submission includes a noise survey of the quarry machine area (processing area) and at site boundaries, carried out in 2002.
- 4.5 Under Section 261(6)(a)(i) of the Planning and Development Act 2000 the planning authority decided to impose 23 conditions on the operation of the quarry (18<sup>th</sup> April 2007). These included:
  - Condition No. 2 Duration of the permission (20 years).
  - Condition No. 3 Information on the exact area and depth of quarry.
  - Condition No. 4 Hours of operation.
  - Condition No. 5 Entrance signage and sightlines.
  - Condition No. 6 & 7 Noise levels and noise monitoring.
  - Condition No. 8 Earth mounds.
  - Condition No. 9 Dust deposition,
  - Condition No. 10, 11 & 12 Surface water and discharge of wastewaters.
  - Condition No. 13 & 14 Bunding of oil/chemical storage tanks, containment booms etc.
  - Condition No. 15 Monitoring of surface and groundwater.
  - Condition No. 16 Arrangements for sewage treatment/disposal.
  - Condition No. 17 Landscaping and restoration plan.
  - Condition No. 18 Hydrogeological assessment to identify groundwater flow regime in vicinity of site.
  - Condition No. 19 Boundary treatment.
  - Condition No. 20 Wheel wash.
  - Condition No. 21 Vibration and blasting.
  - Condition No. 22 Insurance bond etc. for the restoration of the site.
  - Condition No. 23 Development contribution.
- 4.6 In response to the public notice regarding the registration of quarries and advising that the planning authority were considering imposing conditions in respect of the operation of the quarry, An Taisce requested that the planning authority seek an EIS from the operator in view of the location of the quarry adjacent to QY24 (BD Floods Quarry) and that a detailed restoration plan should also be included.

Enforcement Action

4.7 Under PA Ref. UD05/108 the planning authority wrote to David Flood, c/o J.J. Flood Ltd regarding the quarry at Murrens (letter dated 1<sup>st</sup> February 2005) and requiring the

QV17.0015

An Bord Pleanála

Page 4 of 18

owner/operator to submit information under Section 8(1) & (2) of the Planning and Development 2000-2004. This included planning permission for all buildings and development on site, uses carried out on site and conformance with the Planning and Development Act for all unauthorised development. In response the owner/operator stated that the quarry at Murrens was pre-64 and as such requirement under the Planning and Development Act is for (then) registration which the owner/operator was in the process of completing.

#### 3 SECTION 261A ASSESSMENT

Submissions in Relation to Section 261A Quarries

- 3.1 In response to the planning authority's public notice of its intention to carry out a review of quarries in its administrative area, the following submission were made:
  - Peter Sweetman (on behalf of the Swans and the Snails Ltd) Refers to all quarries listed on the planning authorities quarry register 2011. States that no EIA as required under Article 3 of the EIA Directive 85/337/EEC (as amended by 97/11EC and 2003/35/EC) has been carried out. Under the Habitats Directive 92/43/EC Appropriate Assessment under Article 6 is required for all quarries which are likely to have an effect on a habitat.
  - An Taisce Makes comments on legal obligations on planning authorities with regard to registration of quarries and consideration of applications on (sic) quarries with previous planning consents.

Planning Authority's Section 261A Assessment

- 3.2 The planning authority's Section 261A report on the quarry at Murrens provides a description of the site, its planning history and the legislative context for quarry activity. It assesses the planning status of the quarry and determines whether or not EIA (or determination in respect of EIA) or appropriate assessment was required at the specified trigger dates. The report makes the following points:
  - Extraction Area/Rate Refers to a report on file (Executive Engineer) which
    estimates the extraction area in November 2012 to be 32ha which has yielded
    c.7.45million tonnes of rock, with c.5ha of extraction outside of the registered area
    yielding 1.9 million tonnes.
  - Planning Status Accepts that the quarry was in operation prior to 1964 (OS mapping and aerial photography) and that quarrying has been on-going at the site on a continuous basis except for short lapses of time. Considers that as operations on the site have intensified at various times (1974-1994 and 1999-2009 based on aerial photography and applicant's submission), such that a material change of use has occurred, and as additional lands were acquired in the 1990's for quarrying purposes, which could not have been reasonably envisaged in 1964, the quarry is not operating under a 'pre 1964 authorisation'.
  - EIA/Determination in respect of EIA From an inspection of 1994 aerial photography compared with latest photography available, the area of extraction has altered significantly (over c.25% of the existing quarry and involving and area greater than 5ha). Concludes that the increase in the quarry area would have itself necessitated EIA. In 2005 extraction rates was in excess of 1,000 tonnes/day

QV17.0015

An Bord Pleanála

Page 5 of 18

which would have given rise to significant environmental effects (traffic, noise, dust, proximity to sensitive sites) to warrant sub-threshold EIA.

- Appropriate Assessment Difficult to deduce the level of development that took place after 26<sup>th</sup> February 1997. However, states that it is clear that significant development did take place on the basis of the Section 261 application. Refers to two SAC's in proximity to site which share/may share the same sand and gravel aquifer as the quarry (including nearest site, c.1km to south White Lough, Ben Loughs and Lough Doo, designated 1<sup>st</sup> July 1999). Also could be operating in combination with other quarries. As the quarry extracts below the water table, in the absence of hydrogeological data, potential exists for contaminants to enter groundwater system and groundwater drawdown in quarry to affect SAC. Therefore considers all post 1<sup>st</sup> July 1999 works would have required an appropriate assessment.
- Development Post 3<sup>rd</sup> July 2008 Determines that the quarry was operational post July 2008, however the extent of works cannot be readily determined and certainly not to the extent where it can be ascertained as to whether the works themselves would have necessitated an EIA and/or AA.
- 3.3 The report recommends that the planning authority determine that the quarry:
  - a. Carried out development after 1<sup>st</sup> February 1990 which was not authorised and which would have required an EIA or determination in respect of EIA, but that such assessment or determination was not carried out, and
  - b. Carried out development after 26<sup>th</sup> February 1997 which was not authorised and which would have required an AA but that such an assessment was not carried out.
- 3.4 Reasons are set out in the report and relate to the issues summarised above (section 1 above).
- 3.5 The report also recommends that the planning authority decide that the quarry commenced operation prior to October 1964 and fulfilled the requirements in relation to registration under Section 261 of the Planning and Development Acts 2000-2011.
- 3.6 Attached to the Section 261A Report is:
  - A Methodology for Determination for Requirement for Appropriate Assessment Under Section 261A(2) of the Planning and Development (Amendment) Aot 2010 (as amended). It sets out the planning authority's approach to determining the requirement for appropriate assessment in respect of quarry development.
  - A Screening for Appropriate Assessment report on the quarry at Murrens on which the conclusions in the Section 261A report are based.

#### **4 NOTIFICATION UNDER SECTION 261A(3)(a)**

4.1 Consistent with the Section 261A Report, the planning authority's notice under Section 261A(3)(a) directs that the owner/operator of the quarry apply to the Board for substitute consent in respect of the quarry at Murrens.

QV17.0015

An Bord Pleanála

Page 6 of 18

#### 5 SUBMISSIONS BY REVIEW PARTIES

5.1 Two parties request that the Board review the planning authority's notification in respect of the quarry at Murrens, An Taisce and the owner/operator of the quarry, David Flood and J.J. Flood (John J. Flood is deceased). The review parties make the following comments:

#### An Taisce

- The European Court of Justice Judgement C215-06 of 3/7/08 addressed the circumstances in which retrospective EIA of a development could be deemed allowable. The judgement states 'While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception' (paragraph 57).
- The Section 261A notice issued by the planning authority is one of 18 to date for different locations across the County directing the operation to apply to the Board for substitute consent. This is due to large scale legal non-compliance across the quarry industry for systematic enforcement failure by the State and Local Authority.
- The site is in close proximity to Lough Naneagh, p NHA and the White Loughs and Lough Doo cSAC.
- As the suitability for quarry development was not subject to EIA in the first instance and the actual and continuing impacts are significant, there is no justification for determining this application on the basis of retrospective EIA.
- Board should dismiss any application for substitute consent lodged.

#### Operator/Owner

- No notice should have been issued to John J. Flood (deceased).
- Land within Meath Folio 5536 Land owned by John J. Flood was contained within Meath Folio 5536. Quarrying of these lands commenced pre-64. Development of lands for quarrying would not therefore require an EIA under EIA directive or an assessment under the habitats directive.
- Land within Meath Folio 5534 Pre- 1964, J.J. Flood had a lease on all of the lands that comprised the townland of Murrens (enclose 1960/61 copy of insurance policy in which Mr. Flood is described as a 'sand pit owner and manufacturer of cement blocks'). The section of land that is included in the quarry working, that is not included in Folio 5536, is covered by Folio 5534. This land was owned by the Flood family pre-64 but had to be disposed of following a High Court case. In order to retain these lands in family ownership they were jointly purchased by David Flood and his cousin John Flood, who agreed to split the lands between them. There were difficulties with the legal process arising from the implementation of Court Orders and the lands were not formally transferred until 2001. Arising from the above it could have been reasonably envisaged in 1964 that the additional lands which were acquired in the 1990's were always intended to be used by the Flood family for quarrying purposes.

QV17.0015

An Bord Pleanála

- The planning authority erred in making its determination under section 261A(2)(a) that the development would have required an EIA and appropriate assessment, where no such EIA or appropriate assessment was required as the extent of the intended area of the quarry pre 1904 (sic) included the lands in Folio 5534.
- In respect of the EIA determination:
  - The Lough Naneagh pNHA is in a different catchment area that the quarry in that the surface water drains towards Lough Sheelin rather than the Shannon.
  - The separation distance between the cSAC and the quarry is c.2km, the lake is located to the north west and Q24 lies between the subject quarry and the pNHA.
  - o There are no other quarries operating in combination with Q35.
  - The Murrens quarry is not part of the Flood Group, which is managed by John Flood.
  - Quarry output pre-90 would have been substantial (major supplier of clause 804 material to projects such as Navan Inner Relief Road (early 80s), Kells/Oldcastle Regional Water Supply Scheme (late 70s) and Meath and Cavan County Councils.
  - Noise and dust monitoring carried out by the company indicate that there is no nuisance arising from the operation.
- The applicant contends therefore that the operations at the quarry have not impacted on the pNHA and there was no intensification of activity to warrant the preparation of an EIA.
- In respect of the appropriate assessment determination:
  - The White Lough, Ben Lough and Lough Doo cSAC is in a different catchment area that the quarry (surface water drains towards Lough Sheelin rather than the Shannon).
  - The separation distance between the quarry and the cSAC is some 2km, the lakes are located to the south.
  - o The lowest level in the quarry (123OD) is below the level of various lakes.
  - o There is no discharge from the quarry (all process water is recycled).
  - There are no streams in the vicinity of the quarry.
  - o There are no other quarries operating in combination with Q35.
  - o There is no drawdown of groundwater on-site.
  - There is no breach of ground water table on-site. Water observed by planning authority was an accumulation of surface water entering the quarry.
- The applicant contends therefore that the operations at the quarry have not impacted on the cSAC and there is no potential risk from quarrying activity at the Murrens Quarry on the cSAC.
- Taking the above into account, no substitute consent in respect of the quarry under section 177E of the Planning and Development Acts 2000-2011 is required.
- If the Board find otherwise the owner/operator is seeking 24 weeks after the date of their determination to apply for substitute consent.

QV17.0015

An Bord Pleanála

Page 8 of 18

#### 6 RESPONSES TO THE REVIEW

6.1 The review parties make the following comments on the above submissions:

#### An Taisce

- Note the 1060-61 insurance policy.
- No documentary evidence has been presented which establishes the nature and extent of the quarrying in 1964.
- The issue of Lough Sheelin is not clear. White Lough, Ben Lough and Lough Doo is the candidate SAC referred to by the planning authority. The catchment affect by the site needs to be clarified.

#### Owner/Operator

• No new points made.

6.2 The planning authority make no further comments on the reviews sought.

#### 7 LEGISLATIVE AND POLICY CONTEXT

#### **Planning Policy Context**

National Legislation and Guidance

7.1 Nationally the government has provided guidance on the implementation of section 261 A of the Planning and Development Act 2000 in two publications 'Section 261A of the Planning and Development Act, 2000 and related provisions: Guidelines for Planning Authorities' (January 2012) and 'Section 261A of the Planning and Development Act, 2000 and related provisions: Supplementary Guidelines for Planning Authorities', (July 2012).

#### **Regional Planning Guidelines**

7.2 Section 5.4.3 of the Regional Planning Guidelines for the Greater Dublin Area 2010-2022 refers to quarrying and extraction. The plan recognises that extractive industries are essential to the economy in terms of supply of aggregate material for the construction sector and for the export market but that there is potential for conflict in the operation of these industries with wider environmental considerations. In assessing applications for extractive industries the plan states that considerations and impacts as they relate to the objectives of the Water Framework Directive and other EU Directives (including those regarding wildlife and habitats) should be central to the decision making process.

#### County Development Plan

7.3 The quarry site falls within the administrative area of the Meath County Development Plan 2013-2019. Section 9.7 deals with Natural Heritage. Policy objective NH OBJ 3 affords protection to Natura 2000 sites and policy objective NH OBJ 2 states that the planning authority will ensure that an appropriate assessment is carried out in respect of any plans or project not directly connected to the management of a site but likely to have a significant effect on a Natura 2000 site(s), either individually or in combination with other plans or projects, in view of the sites conservation objectives. Section 10.12 deals

QV17.0015

An Bord Pleanála

Page 9 of 18

with the extractive industry. Policies of the plan seek to facilitate the exploitation of the county's natural resources whilst ensuring that such developments are carried out in a manner which would not unduly impinge on the visual or environmental quality of the area (Policy RD POL 22). Policy RD POL 21 ensures that projects associated with the extractive industry carry out screening for appropriate assessment in accordance with Article 6(3) of the EC Habitats Directive and Policy RD POL 27 seeks to ensure that development for aggregates/ mineral extraction, processing and associated processes does not significantly impact on Natura 2000 sites, NHA's and pNHA's and other sites of conservation interest.

## **Environmental Impact Assessment**

#### Mandatory EIA

- 7.4 The European Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment required, in 1990, the mandatory assessment of projects set out in Annex I of the Directive and an discretionary assessment of projects set out in Annex II, where member states considered that their characteristics so require. Quarrying activities are not listed in Annex I of the Directive but are cited in Annex II (extraction of minerals).
- 7.5 Directive 85/337/EEC was transposed into Irish law in the European Communities (EIA) Regulations, 1989 and the Local Government (Planning and Development) Regulations, 1989. The European Communities (EIA) Regulations 1989 required environmental impact assessment of all projects specified in the First Schedule of Regulations including in Part II 2 Extractive Industry, '(d) Extraction of stone, gravel, sand or clay, where the area involved would be greater than 5 hectares'.
- 7.6 The second EIA Directive (97/11/EC) amended Annex I of the Directive to require mandatory EIA for quarries in excess of 25ha and introduced a requirement for EIA of changes or extensions to projects already authorised or being executed which may have significant effects on the environment. The Directive was transposed into Irish law in the EC (EIA) (Amendment)(Regulations),1999 and required EIA for the extension of a quarry which brought the total quarry to in excess of 5ha and represented an increase of over 25% of the existing quarry, provided that the extension itself exceeded 2.5ha.

#### Sub-Threshold Development

- 7.7 The Government's Supplementary Guidelines on Section 261A of the Planning and Development Act state that criteria for determining whether a sub-threshold development would or would not be likely to have significant effects on the environment were introduced in European Communities (EIA) Regulations 1999. (These are now set out in Schedule 7 of the Planning and Development Regulations, 2001 (as amended)). The Governments Guidelines on Section 261A state that these criteria should be applied in the case of development which took place after that date and can be used as a guideline in respect of development before that date (i.e. 1999).
- 7.8 The Government's Guidelines also refer to the requirement under section 261A(2)(a) to determine not only whether post-1990 development would have required EIA, but whether it would have required 'a determination as to whether an EIA was required'. In making this determination the Guidelines suggest that planning authorities decide whether the need for EIA could be ruled out without any substantial screening, 'where the need for EIA can be ruled out in this way it is clear that the development did not require a determination as to whether EIA was required'.

OV17.0015

An Bord Pleanála

Page 10 of 18

7.9 In 2003 the government published guidance 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-Threshold Development'.

## Habitats Directive 92/43/EEC

- 7.10 Article 6(3) of the EU Habitats Directive on the conservation of natural habitats and wild fauna and flora (as amended) requires the competent authority to carry out an appropriate assessment of any plan or project which is likely to have a significant effect on a Natura 2000 site, prior to any decision being made to allow the project to proceed.
- 7.11 Natura 2000 sites in Ireland comprise Special Areas of Conservation (including candidate SACs) and Special Protection Areas. SACs are selected for the conservation and protection of habitats listed in Annex I and species (other than birds) listed on Annex II of the Habitats Directive and their habitats. SPAs are sites which have been selected for the conservation and protection of bird species listed on Annex I of the Birds Directive and regularly occurring migratory species and their habitats.
- 7.12 The Habitats Directive was transposed into Irish law by the European Communities (Natural Habitats) Regulations 1997 which came into operation on the 26<sup>th</sup> February 1997. Regulation 27 of these Regulations required a local authority, when considering an application for planning permission in respect of a proposed development which would be likely (either individually or in combination with other developments) to have a significant effect on a European site, in view of its conservation objectives, to ensure that an appropriate assessment was undertaken.
- 7.13 Regulation 2 defined a European site as:
  - (a) A special are of conservation,
    - (b) A site of Community importance which has been placed on the list referred to in the third subparagraph of Article 4(2) of the Habitats Directive,
    - (c) An area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive.
- 7.14 To date no special areas of conservation have been formally designated. With regard to (b) NPWS deem a site to have been included on the list when the Minister for Heritage notifies his/her intention to designate (i.e. by notice to the landowner, the planning authority etc.).
- 7.15 The Government's Supplementary Guidelines for Planning Authorities on Section 261A clarify that until 13<sup>th</sup> December 1997 (decision of European Court of Justice in case C-418/04) provided that an EIA was carried out which included the direct and indirect effects of flora and fauna, then the appropriate assessment requirements could be deemed to be adequately assessed.
- 7.16 Guidance on appropriate assessment is provided in the Department of Environment's 'Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities' and in the European Commission's 'Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC'.
- 7.17 The government's Guidelines on Section 261A state that it is important to note that in making a determination as to whether an appropriate assessment was required planning authorities should do so on the basis of the designations in place at the time the development was carried out.

QV17.0015

An Bord Pleanála

Page 11 of 18

#### 8 ASSESSMENT

## Scale of Development Post Trigger Dates

- 8.1 On file are aerial photographs of Murrens quarry for 1973/4; 1994/5; 1999/2000; 2004/2005 and 2009/2010. Each photograph shows the registered quarry boundary and the registered extraction area (under section 261).
- 8.2 In 1973/4 quarrying activity is evident in the northern most part of the site and appears to comprise the northern part of a single agricultural field adjacent to the access road. By 1994/5 quarrying had progressed in a southerly direction to include an area approximately 4-5 times the size of the original quarry area and several agricultural fields (see attachments). By 1999/2000 land to the north west of the original area was being worked (and a smaller area to the east of it), almost doubling the size of the working area since 1994/5. By 2004/5 the quarry had been extended again primarily around the southern and eastern periphery of the site, with further extensions to this area by 2009/2010. In my inspection of the site it would appear that the quarry has extended further south again (see attachments).
- 8.3 Clearly there has been substantial development of the quarry at Murrens post 1<sup>st</sup> February 1990 and post 26<sup>th</sup> February 1997.

## Planning Status of Development

- 8.4 The land comprising the quarry at Murrens is contained within two Meath Folio's Nos. MH5536 and MH5534. Folio No. 5536 was acquired by John Flood in 1917 (Register of Freehold on file). The land was used at the time for farming and to produce lime for local estate projects (the OS 25" historical map completed between 1897 and 1913 shows a lime kiln on the site). The owner/operator of the quarry states that the lime business closed in the 1920's but that the then owner's son Bernard Dominic operated on an ad hoc basis in the 1930's<sup>1</sup> and 1940's extracting gravels for local projects and his other son John extracting gravel in the late 60's and early 70's, installing a crushing and working facilities in the mid 1970's.
- 8.5 Ownership transferred to John J. Flood upon the death of his father in 1955. He (John J. Flood) initially operated the quarry as a sole trader but in 1977 set up J.J. Flood and Sons (Oldcastle Ltd) and operated the quarry under this company until his retirement in 1995. His son, David Flood, took over the operation in 1995 and set up his own company J. J. Flood and Sons (Manufacturing) Ltd to operate the quarry. John J. Flood leased all of his lands to J. J. Flood and Sons (Manufacturing) Ltd and David Flood states that company continues to quarry the lands under this lease today.
- 8.6 Folio No. MH5534, comprises land to the north-west and south west of Folio No. MH5536. The owner/operator of the quarry argues that pre-1964 J.J. Flood had a lease on all lands that comprise the townlands of Murrens, with the existing quarry only occupying an area of 40% of the townland. (A copy of insurance for land at Murrens is attached for the year 1960/61. In this policy Mr Flood is described as a 'sand pit owner and manufacturer of cement blocks').

OV17.0015

An Bord Pleanála

Page 12 of 18

<sup>&</sup>lt;sup>1</sup> There is a letter on file from Michael Gilligan who states that he was employed by BD Flood at the Flood family pit in Murrens in 1937, loading a Morris Truck with sand and gravel

- 8.7 The owner/operator of the quarry also argues that the lands comprising MH5534 were in the ownership of the Flood family pre-1964 i.e. it was transferred from Patrick Flood who acquired it in 1944 to his son Christopher Flood in 1981 but that Christopher Flood was required to sell the lands following a High Court case (1992). (I note that at the time of registration Christopher Flood is described as a farmer in the Land Registry documents). The Folio No. 5534 lands were subsequently acquired by David Flood and his cousin John Flood. Due to difficulties in the legal process arising from the implementation of court orders lands were not formally transferred until 2001.
- 8.8 Whilst I accept that the overall Murrens land holding comprising Folio Nos. MH5534 and MH5536 has been in the Flood family since pre-1964, and that quarrying has taken place on lands comprising Folio No. 5536 since this time, I consider that the planning status of the quarrying activity (i.e. whether or not the works are authorised) is dependent of whether or not the extent of quarry works that took place post 1964 could have been reasonably anticipated in 1964 (as per case law provided in *Waterford County Council v John A Wood Ltd* (IR 556) and are the continuation to completion of the particular works that commenced before 1<sup>st</sup> October 1964. In coming to a view on this matter I note the following:

• The quarry appears to have extracted sand, gravel and rock from the same reserve i.e. the lands have been progressively worked and have not leaped-frogged any significant land holding/boundary or extracted material from a separate reserve.

- However, additional lands were acquired in 2001 (but worked prior to this date) from the wider Flood family (Christopher Flood). At the time of sale Christopher Flood was identified as a farmer. Further, it is apparent from the information on file that the lands were only disposed of by Christopher Flood by virtue of a judgement against Christopher Flood. There is no information on file from Christopher Flood or other parties to the review to indicate an earlier intention to quarry this land. I do not consider therefore that the acquisition and mining of these lands could have been reasonably anticipated in 1964.
- The extent of quarrying activity is significantly different in scale from the original quarry area identified in aerial photographs in the 1970's and the nature of the operation on site has changed post 1964 from simply extracting sand and gravel to the processing of extracted material. (The owner operator states that crushing facilities were first added in the 1970's). I am not confident that the significant expansion of works or the introduction of processing could have been reasonably anticipated in 1964, some of which would have been fuelled by the economic boom in the country (c.1995-2008). It would certainly be unreasonable that the quarry could expand *ad infinitum* across the family lands at Murrens.
- 8.9 Having regard to the above, I consider that the extent of quarry works which have taken place since 1<sup>st</sup> October 1964 could not have been reasonably anticipated in 1964 and that they do not comprise simply the continuation to completion of the works commenced at the time. By virtue of the significant increase in land worked as at Murrens and the introduction of processing on the site I consider that there has been a material change of use of the site. I do not consider therefore that the works which have taken place on site since 1964 and in particular the two trigger dates of 1<sup>st</sup> February 1990 and 26<sup>th</sup> February 1997 are authorised by virtue of the pre-1964 status of the quarry.

**Registration of the Quarry** 

QV17.0015

An Bord Pleanála

Page 13 of 18

- 8.10 Section 261 of the Planning and Development Acts 2000-2011 requires the owner or operator of a quarry to register the quarry with the planning authority. Subsequent provisions of Section 261 require the planning authority to publish a notice of the registration of the quarry and in this notice to state where planning permission has not been granted, in respect of the quarry, whether the planning authority is considering imposing conditions on the operation of the quarry or requiring the making of a planning application and the preparation of an EIS. Under section 261(7)(a) where the continued operation of a quarry (that commenced before 1 October 1964) would be likely to have significant effects on the environment a planning authority is required to notify the owner/operator within one year of the registration of the quarry, requiring that the owner/operator apply for planning permission and to submit an EIS.
- The planning authority received an application from the owner/operator of the quarry 8.11 at Murrens on the 25th April 2005 for the registration of the quarry. This was accepted by the planning authority who in October 2006 advised the owner/operator that (as per the public notice) they were considering imposing conditions on the operation of the quarry. On 18th April 2007 the planning authority formally advised the owner/operator of the conditions they were imposing on the operation of the quarry. On 5<sup>th</sup> September 2007 the planning authority advised the owner/operator that they would be carrying out an audit of the quarry to establish the level of compliance with the conditions imposed. On the 24th September 2007 the owner/operator of the quarry wrote to the planning authority stating that they had not received the letter of the 18th April 2007. In this same correspondence, the owner/operator refers to a previous submission to the planning authority in respect of the (then) draft conditions proposed to be imposed (received by the planning authority on the 11th April 2007). This includes detailed comments on the proposed conditions including estimated reserves, contour map showing extent of quarry, entrance details, noise levels (accepted), arrangements for noise monitoring, absence of blasting at the site etc. There appears to be no further correspondence on file, by either party, regarding compliance with conditions imposed or the issues raised by the owner/operator. As the issue of compliance is one which falls with the planning authority, and as issues raised by the owner/operator remain unanswered, I am of the opinion that the owner/operator has, in so far as it has been possible, fulfilled the requirements in relation to the registration of the quarry.

# Requirement for EIA/Determination for EIA

- 8.12 The European Communities (EIA) Regulations, 1989 required environmental impact assessment of all projects specified in the First Schedule of Regulations including in Part II '2. Extractive Industry, (d) Extraction of stone, gravel, sand or clay, where the area involved would be greater than 5 hectares'.
- 8.13 Post 1<sup>st</sup> February 1990 the quarry at Murrens expanded significantly to comprise at the time of registration in April 2005 a total area of 36.4ha and an extraction area of 25.4ha. It is not possible to identify the extent of the quarry in 1990, but in 1994/5 the extraction area extended to c.12ha (see aerial photographs). Therefore post 1<sup>st</sup> February 1990, the extraction area of the quarry has increased by at least c.13.5ha. As this area is greater than the 5ha threshold set out in the EC(EIA) Regulations 1989, in place at the time, EIA for the works taking place post 1<sup>st</sup> February 1990, would have been required.

QV17.0015

An Bord Pleanála

Page 14 of 18

### **Requirement for AA**

Within the vicinity of the site are the following protected sites both advertised in 8.14 1999:

- Approximately 1km south west of the site is White Lough, Ben Loughs and Lough Doo SAC and pNHA (site code 001810).
- Approximately 2.2km south east of the site is Lough Bane and Lough Glass SAC (site code 002120).
- The European Commission's advice on appropriate assessment<sup>2</sup> and the Department 8.15 of Environment's guidance document on appropriate assessment' recommend screening to determine whether appropriate assessment is necessary, including the following key steps:

## Management of the Site

The proposed development is not directly connected to the management of the site. 8.16

## Description of the Project

- The quarry development at Murrens that took place post 26th February 1999 8.17 comprises the extraction of sand and gravel from overburden and rock extraction from the bedrock, from a site of c. +10ha (based on aerial photographs of work carried out since 1999/2000). In 2005 the owner/operator of the quarry stated that it then operated a fleet of trucks with an average of 100 HGV trips per day (50 trips laden) and 10-15 trips/day by office staff, service vehicles etc.
- Materials are crushed, washed and graded on site with washwater recycled in a closed 8.18 system. At the time of site inspection I noted no streams on or immediately adjoining the site or discharges from the site. In the main working area towards the east of the site (in the area of the quarry identified in the 2004/5 and/or 2009/10 aerial photographs) it appeared that the water table had been breached. A lorry wash area on site appeared not be contained (i.e. with dirty water running into ground beside the wash down area).
- As stated there is a large scale quarry operation immediately north-west of the 8.19 Murrens quarry (PA Ref. Qy24).

# Characteristics of the European Site

White Lough, Ben Loughs and Lough Doo Special Area of Conservation comprises 8.20 four hard water lakes, a habitat listed in Annex I of the EU Habitats Directive, in a small, poorly draining valley. White Clawed Crayfish (Austropotamobius pallipes), a species listed in Annex II of the EU Habitats Directive has been recorded from the lakes. Conservation objectives are to maintain or restore the favourable conservation condition of the Annex I habitat and/or the Annex II species for which the site has been selected (Hard oligo-mesotrophic waters with benthic vegetation of Chara. spp and Austropotamobius pallipes respectively). The NPWS Standard Data Form for the site that the main threat to the site is agricultural improvement.

OV17.0015

An Bord Pleanála

<sup>&</sup>lt;sup>2</sup> Assessment of Plans and Projects Significantly Affecting Natura 2000 sites, EC, 2001

<sup>&</sup>lt;sup>3</sup> Appropriate Assessment of Plans and Projects in Ireland, Department of Environment, Heritage and Local Government, 2009

- Lough Bane and Lough Glass cSAC comprises three lakes situated in a shallow 8.2.1 valley. Lough Bane is a good example of a hard water marl lake with well-developed stonewort (Chara spp.) communities (an important Annex I habitat). An important population of White-clawed Crayfish was known from the lakes but was wiped out by a fungal plague in the 1980s. NPWS intend to re-introduce them to Lough Bane.
- Conservation objectives are to maintain or restore the favourable conservation 8.22 condition of the Annex I habitat and/or the Annex II species for which the site has been selected (hard oligo-mesotrophic waters with benthic vegetation of Chara. spp and Austropotamobius pallipes respectively). The NPWS Standard Data Form for the site states that the site is vulnerable to eutrophication (mainly runoff from surrounding fields), afforestation and increased use of the lake for boating (physical damage to Chara communities).

### Identification of Adverse Effects

The proposed development is removed from the European sites and would not affect 8.23 them directly e.g. by way of habitat loss. Indirect effects e.g. rising from noise, dust and disturbance are also improbable given the distance of the two Natura 2000 sites from the quarry. However, indirect effects are possible if there is a hydrological link between the quarry and the Natura 2000 sites. As the quarry is one of a number operating in the area, there is the risk of cumulative hydrological impacts if these are also linked to the protected sites.

Likelihood of Significant Effects on the Conservation Objectives of the Natura 2000 Site The quarry at Murrens and the quarry north-west of it (PA Ref. QY24) both lie in a 8.24 sand and gravel aquifer identified on the OSi National Draft Gravel Aquifer map. White Lough, Bens Lough and Lough Doo cSAc lies partly (eastern most area) within the aquifer. The National Draft Bedrock Aquifer map describes the underlying bedrock aquifer as 'Lk, locally important aquifer, karstified'. The bedrock aquifer extends across a wide area and includes the quarry, PA Ref. QY24, White Lough, Bens Lough and Lough Doo cSAC and Lough Bane and Lough Glass cSAC.

The owner/operator states that White Lough, Ben Lough and Lough Doo cSAC is in a 8.25 different catchment area to the quarry in that surface water drains towards Lough Sheelin rather than the Shannon. However, there is no evidence to support this statement and I note that one of the planning authority's conditions imposed on the quarry is to carry out a hydrogeological assessment to identify the groundwater flow regime operating in the vicinity of the facility. There is no information on file to suggest that this has been carried out and in the absence of same, I do not consider that it is possible to accurately determine the hydrological relationship between the site and the terrestrial ecosystems comprising the two candidate SACs in the vicinity of the site. Whilst I accept that the quarry neither abstracts water from the lands nor discharges water, it would appear that groundwater on the site has been breached and there is a risk of direct contamination of groundwater with consequent risk to related ecosystems.

## Residual Impacts and AA Conclusion

Having regard to the proximity of the quarry to two candidate Special Areas of 8.26 Conservation, the absence of detailed hydrogeological data on the groundwater flow regime in the area, the apparent breaching of groundwater in the quarry site and the operation of the quarry in conjunction with other large scale extractions within the

OV17.0015

An Bord Pleanála

immediate vicinity of the quarry site (notably PA Ref. QY24), I consider that it is not reasonable to conclude that the quarry, individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and in particular the White Lough, Ben Lough and Lough Doo cSAC (site code 001810) and Lough Bane and Lough Glass cSAC (site code 002120) in view of the sites' conservation objectives and that an appropriate assessment would therefore be required.

# 9. SUMMARY AND RECOMMENDATION

9.1 In summary, having regard to the above, I recommend that the Board:

- i. Confirm the determination of the planning authority under section 261A(2)(a) of the Planning and Development Acts 2000-2011, for the reasons and considerations set out below.
- ii. Confirm the decision of the planning authority under section 261A(3)(a) for the reasons and considerations set out below.
- iii. Following from the above, grant the owner/operator an extension of time in which to apply to the Board for substitute consent (as sought under Board file SH17.0009).

## **RECOMMENDATION (1)**

1. To confirm the determination of the planning authority under Section 261A(2)(a) that:

- i. The subject quarry has carried out development after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, and
- ii. The subject quarry has carried out development after 26 February 1997 which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.

## **REASONS AND CONSIDERATIONS (1)**

Having regard to:

i.

- Part II of the First Schedule of the European Communities (EIA) Regulations 1989, which required EIA for quarries where the area involved for extraction of stone, gravel, sand or clay was greater than 5ha, and the c.13.5+ha of lands at Murrens from which sand and gravel has been extracted since 1994/5 (as demonstrated in aerial photography), it is considered that an environmental impact assessment or determination as to whether an environmental impact assessment was warranted.
- ii. Having regard to the proximity of the quarry to two candidate Special Areas of Conservation, the absence of detailed hydrogeological data on the groundwater flow regime in the area, the apparent breaching of groundwater in the quarry site and the

QV17.0015

An Bord Pleanála

Page 17 of 18

Ŵ

operation of the quarry in conjunction with other large scale extractions within the immediate vicinity of the quarry site (notably PA Ref. QY24), it is considered that it is not be reasonable to conclude that the work carried out at the quarry, post 1<sup>st</sup> February 1997, individually and in combination with other plans or projects would not have had a significant effect on any European site and in particular the White Lough, Ben Lough and Lough Doo cSAC (site code 001810) and Lough Bane and Lough Glass cSAC (site code 002120) in view of the sites' conservation objectives and that an appropriate assessment would therefore have been required.

## **RECOMMENDATION (2)**

2. To confirm the decision of the planning authority under Section 261A(3)(a) that:

- i. The quarry development commenced operation before 1 October 1964, and
- ii. The requirements in relation to registration under section 261 were fulfilled.

# **REASONS AND CONSIDERATIONS (2)**

### Having regard to:

i.

- The ownership of lands at Murrens by the family of the quarry owner/operator since 1917, the information presented by the owner/operator demonstrating the use of these lands for quarrying prior to 1964 (reflected in historic OS maps) and their on-going use for quarrying since, it is considered that the quarry development at Murrens commenced operation before 1 October 1964.
- ii. The registration documentation on file with regard to the quarry at Murrens, the decision by the planning authority to impose conditions on the operation of the quarry and the correspondence on file from the applicant to the planning authority in respect of these conditions, it is considered that the requirements in relation to registration under section 261 were fulfilled.

Deirdre MacGabhann

Planning Inspector

11<sup>th</sup> April 2013

QV17.0015

An Bord Pleanála

Page 18 of 18

\* \* Y Y

3

·

•

P.1/5

Frank Burke and Associates Baldara Trim Road Navan Co. Meath 046-9022064 or 086-8264402

To Secretary An Bord Pleanala 64 Marlborough St. Dublin 1 31-7-12

RE: Meath County Council QY35 - Appeal in respect of a determination under Section 261A of the Planning and Development Acts 2000-2011 in respect of a quarry at the Murrens, Oldcastle, Co. Meath.

#### Dear Sir,

We act for the executor of John. J Flood, David Flood and J.J.Flood and Sons (manufacturing) Ltd who have received notification under Section 261A that Meath County Council has made: -

(1) a determination under 261 A (2) (a) that development has taken place at the quarry after 1/2/90 by a permission granted under Part IV of the Act of 1963 and that having regard to the Environmental Impact Assessment Directive would have required an EIA and

(2) a determination under 261 A (2) (a) that development has taken place at the quarry after 26/2/97 by a permission granted under Part IV of the Act of 1963 and that having regard to the Habitats directive would have required an "appropriate" assessment and

that Meath County Council decided in accordance with Section 261A (3) (a) that the subject quarry:

(i) Commenced operation before 1/10/1964 and

(ii) The requirements in relation to regristration under Section 261 of the Planning and Development Acts 2000-2011 were fulfilled

but directed that: -

)

You are directed to apply to An Bord Pleanala for substitute concent in respect of the quarry under 177E of the Planning and Development Acts 2000-2011, not later than 12 weeks after the date of this notice or such further period as the Bord may allow.

In the Notice setting out the determination, it is indicated that my clients "may apply to An Bord Pleanala" ... "not later than 21 days after the date of this notice, for a review of the determination of this planning Authority under Section 261A (2)(a) or decision of this planning Authority under Section 261A (3)(a)." We now wish to

# apply to the Bord to review the determination of the Meath County Council, we enclose a copy of the notifications received from Meath County Council in respect of the guarry, which were dated the 20/7/12 last.

In regard to the notices issues, we would contend that no notice should have been issued to John J Flood. John Flood is deceased, he died on the 29/4/12 last. Copy of death certificate enclosed. Further the Bord should note that the land owned by John J Flood was contained within Meath Folio 5536, the quarrying of the lands contained in this Folio commenced Pre 64, as such the development of these lands for quarrying purposes would not require an EIA under the EIA directive or an assessment under the Habitats directive.

In respect of the notices issued to David Flood and J.J. Flood (manufacturing) Ltd., we would contend that the development of these lands for quarrying purposes also would not require an EIA under the EIA Directive or an assessment under the Habitats Directive and that in the Council erred in making their determination. In this regard, we would refer the Bord to the first paragraph on page 7 of the Planner's Report (David Caffrey) of the 13/6/12 last and in particular his rational for concluding that the "quarry is not operating under a pre 1964 Authorisation" as "It is evident from the Land Registry search that additional lands were acquired in the 1990's for quarrying purposes and which could not have been reasonably envisaged in 1964." We would have to content that Mr. Caffrey did not research fully the history of either the land holding or the operation of quarrying activity in the Murrens area, as the following points demonstrate: -

1) Qurrying on the Flood lands at the Murrens commenced in the late 1800's. Indeed John J Flood operated a quarry on his holding since he acquired it on the death of his father in 1955. Initially he operated as a sole trader and in 1977 he set up his own company J.J. Flood and Sons (Oldcastle) Ltd. He operated the quarry at the Murrens under this company until he retired in 1995. His son, David, took over the operation in 1995 and set up his own company J.J. Flood and Sons (Manufacturing) Ltd. to operate the quarry. John J Flood leased all the lands on his Folio 5536 to J.J. Flood and Sons (Manufacturing) Ltd., a copy of the said lease can be supplied to the Bord, if required. Indeed J.J. Flood and Sons (Manufacturing) Ltd to this day continue to quarry the said lands under the terms of the said lease.

2) Pre 1964, JJ Flood had a lease on all of the lands that comprised the townland of the Murrens, the existing quarry would only occupy about 40% of the area of the townland. In this regard, we enclose for the year 1960/61 a copy of an insurance policy from the Northern Assurance Co. Ltd. held by John Joseph Flood for the Murrens. In this policy, Mr. Flood is described as "a sand pit owner and manufacturer of cement blocks".

3) The section of land in the Murrens that is included in the quarry working that is not covered by Folio 5536 (lands owned by John J Flood), is covered by Folio 5534.We enclose a copy of Folio 5534 for the information of the Bord. This is the section of

P.2/5

land that Mr. Caffrey refered to in his report as "the land acquired in the 1990's for quarrying purposes". This land was Flood family land Pre 64 in that it was owned by Patrick Flood who transferred it to his son, Christopher Flood. The lands in question had to be disposed off by the said Christopher Flood following a High Court case taken by Christopher and Phyllis Kelly against Christopher Flood in 1991. The Flood family sought to retain these lands in their ownership and in this regard, David and John Flood (owner of BD Flood Ltd. and first cousin of David's) jointly purchased Christopher Flood's holding and agreed to split the lands between them. It is clear from this that it was always the intention of the Flood family to quarry the lands that form part of Folio 5534, indeed the folio shows the Christopher Flood linkage and the court orders. Arising from the above, we would have to contend that it could have been reasonably envisaged in 1964 that the additional lands which were acquired in the 1990's, were always intended to be used by the Flood family for quarrying purposes. Indeed a land registry search on Folio 5334 would have indicated to the Council of both the Flood ownership and the presence of Court Orders on Christopher Floods holding. There were difficulties with the legal process arising from the implementation of Court Orders and the purchase, the result was that the lands were

not formally transferred until 2001.

Arising from the foregoing, that we would have to contend on behalf of the Executor of John. J Flood (deceased), David Flood and J.J.Flood and Sons (Manufacturing) Ltd. that that Meath County Council erred in: -

(1) making a determination under 261 A (2) (a) that development has taken place at the quarry after 1/2/90 by a permission granted under Part IV of the Act of 1963 and that having regard to the Environmental Impact Assessment Directive would have required an EIA, when no such EIA was required as the extent of the intended area of the quarry pre 1904 included the lands in Folio 5534 and

(2) making a determination under 261 A (2) (a) that development has taken place at the quarry after 26/2/97 by a permission granted under Part IV of the Act of 1963 and that having regard to the Habitats directive would have required an "appropriate" assessment when no such assessment was required for the same reason.

Further, in respect of the EIA determination and the reason for making the said determination that an EIA is required under the EIA Directive due to the traffic volumes generated, noise and dust emissions and the proximity to the Lough Naneagh pNHA from the quarrying operation, we would point out that: -

1) The pNHA is in a different catchment area than the quarry in that the surface water

í

003534622064

drains towards Lough Sheelin rather than the Shannon

2) The seperation distance between the quarry and the cSAC is some 2km, the lake is located to the north west, indeed QY24 lies between the subject quarry and the pNHA.

3) There are no other quarries operating in combination with QY35, in this regard the report of the planner is clearly incorrect (see page 8)

4) The Murrens quarry is not part of the Flood Group, which is managed by John Flood.

5) Quarry oupput pre 90 would have been substantial, in this regard the Murrens quarry was the major supplier of clause 804 material to major projects such as the Navan Inner Releif Road (early 80's), Kells/Oldcastle Regional Water Supply Scheme (late 70's) as well as Meath and Cavan County Councils.

6) Noise and dust monitoring carried out by the company indicate that there is no nuisance arising from the operation.

Accordingly, we would have to contend that operations at the quarry have not impacted on the pNHA and that there was no intensification of activity to warrent the preparation of an EIA.

Further, in respect of the Assessment determination and the reason for making the said determination that an assessment is required under the Habitats Directive due to the potential impact on the ground water and the impact on the White Lough, Ben Lough and Lough Doo cSAC from the quarrying operation, we would point out that: -

1) The cSAC is in a different catchment area than the quarry in that the surface water drains towards Lough Sheelin rather than the Shannon

2) The seperation distance between the quarry and the cSAC is some 2km, the lakes are located to the south

3) The lowest level in the quarry (1230D) is below the level of the various lakes

4) There is no discharge from the quarry in that all process water is recycled

5) There are no streams in the vicinity of the quarry

6) There are no other quarties operating in combination with QY35, in this regard the report of the planner is clearly incorrect (see page 8)

7) There is no drawdown of ground water on-site

8) There is no breach of the ground water table on-site, water observed by Council Engineer was an accumulation of surface water entering the quarry

Accordingly, we would have to contend that operations at the quarry have not impacted on the cSAC and indeed there is no potential risk from quarrying activity at the Murrens quarry to the cSAC.

In conclusion, we would ask that the Bord take the above points into consideration in their assessment of the determinations made by Meath County Council in respect of Quarry 35. Taking all of the above into consideration, my client believes that no substitute concent in respect of the quarry under 177E of the Planning and Development Acts 2000-2011 is required. In the event that An Bord Pleanala do not agree with us, that they allow us some 24weeks after the date of their determination to apply for the substitute concent.

I would be obliged if the Bord would acknowledge receipt of this submission both directly to me and also to my clients at the following address: - David Flood, c/o JJ Flood (manufacturing) Ltd., Murrens, Oldcastle, Co. Meath.

P.5/5

Regards,

**Frank Burke Chartered Engineer** 

Encl.: - (1) Determinations from Meath Co. Co. in respect of QY35

- (2) Copt of Death Certificate for John J Flood
- (3) Copy of Prc 64 Insurance Policy for the Murrans
  (4) Copy of Folio 5534

Appendix VI Letter from Creed McStay (Solrs) re Judicial Review

William Smyth BE, LLB(Hons), MBA, Dip. EIA Mgmt, Adv. Dip. Pl. & Env. Law, Eur. Ing., C.Eng FIEI



DX 1043 Four Courts

T: 01 640 0040 F: 01 640 0048

www.creedmcstay.ie info@creedmcstay.ie

An Bord Pleanála Marlborough Street Dublin 1

Our Ref: BFC/SB/FLO0030001 Date: 27 March 2025

Our Client:JJ Flood & Sons (Manufacturing) LtdRe:Substitute Consent Application to An Bord Plenála

Dear Sirs,

We act for JJ Flood & Sons (Manufacturing) Sons Ltd. Hereunder, I set out a summary of the legal history of the site, the subject matter of the within application for substitute consent.

#### Legal Status and Planning History of Lands

The site the subject for which is the subject matter of the substitute consent application has been operated since long before 1964. The Flood family business has always been that of quarrying. Our client and previously the family of the current Director, Mr David Flood, has always believed as did the Council at one point in time that the development was an established development for the purposes of the Planning and Development Acts 2000. All references to family members hereunder refer to those parties directly related to Mr. David Flood.

At the appointed day, namely the 1<sup>st</sup> of October 1964, all of the lands the subject matter of the development were in the ownership of the Flood family. It was fully contemplated that the lands comprising the quarry would be developed as such. Our clients and previously his various family members have been in the quarrying business since his grandfather John Flood together with his granduncle, Christopher Flood commenced business at this location in or around the year 1900. The quarry was operated in accordance with its pre-1964 user. All of the lands comprising the development were in the ownership of members of the Flood family since in or around the year 1900. Historically, the lands comprising in Folio 5534 County Meath were owned initially by various family members our client's granduncle, Christopher and then subsequently, by his cousin, Christopher Junior. These lands were always intended to be developed as a quarry. Our client company then acquired these lands from Christopher Flood Junior in 1995.



DX 1043 Four Courts

T: 01 640 0040 F: 01 640 0048

On the 1<sup>st</sup> of October 1964, the lands comprising Folio 5536 County Meath was in the ownership of John Joseph Flood, the father of David Flood and was being operated as a quarry. Mr. John Joseph Flood had a lease over all of the lands comprising in The Murrens and had an insurance policy covering same. This policy refers to our client's father as a 'sand pit owner and manufacturer of cement blocks' the policy also clearly refers to all of the lands comprising The Murrens, which is from where the quarry is operated. The above-mentioned lands remain part of the same reserve of material and, it was always intended that these lands would be developed as a quarry. Not only was it reasonably in contemplation at the appointed day, it was in contemplation as reflected by the insurance policy and also as set out in the 1958 Ordnance Survey Map which clearly shows the existence of both quarries on lands owned by our client's family at that time. For your ease, we append the relevant documentation to this letter.

Accordingly, it was our client's belief that as the lands were being developed in accordance with this established use, the development being carried out on the lands was authorised development, no application for planning permission was ever made in respect of the site, nor was one ever sought by the Council. Since our client commenced occupation the only planning application made in respect of the lands related was made in respect of an ESB Sub Station and this was made on 10th day of September 1999 under Planning Reference Number 98/967. In 1999 Meath County Council undertook works to resurface the entrance to the quarry and this work was carried out by them under a Community Involvement Scheme and for which the company contributed IR£3,500 at their request. Other than the application to construct the ESB Substation, no application for planning was ever made or required in respect of the quarry development itself.

Following the commencement of the provisions of section 261 of the Planning and Development Act 2000, the quarry was registered with, Meath County Council pursuant to the relevant section on the 25th of April 2005. As is clear from the application itself, this application for registration was made on the basis that the quarry was a pre-1964 quarry. The Council accepted that the quarry was a pre-1964 quarry and pursuant to section 261(6)(a)(i) the Council imposed 23 conditions on the operation of the quarry by way of Managerial Order of the 30th of April 2007 (Order No. P8994G). As appears from the said decision, condition 2 stated as follows: -

"2. This permission shall be for a period of 20 years beginning from the commencement of the date of this order. After this period, all plant and machinery items shall be removed from the site and the site shall be restored to an agricultural use. No quarrying/excavation shall be permitted outside the red line as identified on site map no. JA submitted to the planning authority on the 25/04/2005, unless a separate grant of permission has been obtained. No excavation shall be permitted within 20 metres of any public road.

Reason: To define the extent of this permission and in the interests of orderly development."



DX 1043 Four Courts

T: 01 640 0040 F: 01 640 0048

The remainder of the conditions-imposed controls on the operation of the site and prescribed emission limit values and required the construction of specified infrastructure, the carrying out of monitoring and the entering into of a bond. The company complied with all such conditions notwithstanding how onerous and costly these conditions were. These Conditions provided for and/or envisaged a 20-year period for the development.

On foot of the enactment of Section 261A of the Act, the Council considered the status of the quarry again. On the 20<sup>th</sup> of July 2012, the Council made a determination pursuant to section 261A(2)(a) of the Act that the quarry was unauthorised and that an Environmental Impact Assessment (EIA) and an Appropriate Assessment (AA) was required in respect of the quarry but that same had never been carried out. As appears from this determination, the Council also determined that the development on the site commenced prior to the 1st of October 1964 and that the requirements of section 261 had been complied with. Accordingly, the Council pursuant to Section 261A(3)(a) directed the applicant to apply for substitute consent in accordance with section 177E of the Act.

Notwithstanding the above, the Council decided that the development on the site was not in contemplation on the appointed day on the basis of our client's acquisition of the lands in the year 1995. Our client believed that the transfer of these lands from our client's cousin Christopher Junior to our client and our client's cousin John James, did not alter the established planning status of the lands in any way. The position was that these lands which remained within our client's family since in or around the year 1900 had always been held in contemplation of future quarrying. As appears from the decision, the Council also determined that the development of the lands for quarrying activities intensified since 1964. Our client accepts that the intensity of activities at the site increased at a number of times over the life of the quarry. This occurred to meet the varying levels of demand over the years.

It was our client's belief that the Council had no evidence before it at that time that could have entitled it to form the conclusion that the site had intensified to the extent that constituted a material change of use as there was nothing in either the recommendation of the Senior Executive Planner or in the determination of the Council itself that entitled the Council to conclude that a material change of use occurred. The S.261A determination was contrary to the Council's earlier determination pursuant to section 261, whereby the Council concluded that the quarry was a pre-1964 quarry and imposed conditions thereon. Our client always acted in compliance with these conditions at great cost and expense to it. As appears from its face, the Council decision pursuant to section 261 envisaged and purported to set conditions on the development for a period of 20 years.



DX 1043 Four Courts

T: 01 640 0040 F: 01 640 0048

However, the Council chose not to require the applicant to make an application under s.261 at the time and/or furnish an Environmental Impact Statement and opted instead to condition the development. Having so decided, it was perplexing to our client that the Council opted to reverse this decision at the time without explanation. Upon been conditioned under section 261 of the Act, the Company continued its operation on foot of this decision.

The Quarry was registered under s.261 of Planning and Development Act 2000 Our client was later directed to apply for substitute consent under s.261A. The Quarry has been operating since pre-1964, registered in 2005 under s.261. Meath County Council directed the quarry to apply for substitute consent in 2012 under s.261A.

#### 2013 proceedings and 2020 judgment

Our client challenged the 261A direction on a number of grounds in proceedings entitled *JJ Flood* & *Sons (Manufacturing) Ltd v An Bord Pleanala [2013] 673JR.* The challenge was based on whether it could be said that a pre-1964 user was exempt quarry from EU directives and whether a s.261A direction meant quarry is "*unauthorised*" whether it could be said that a s.261 registration preclude later s.261A direction and the constitutionality of s.261A in relation to fair procedures.

The Court (Ní Rafertaigh J) in *JJ Flood & Sons (Manufacturing) Ltd v An Bord Pleanala [2020] IEHC 195* ultimately determined that a pre-1964 user does not automatically exempt from EU directives. In respect of s.261A(2)(a) it was held that it focuses on development post-1990/1997, not pre-1964 status and that it did not mean quarry is "*unauthorised*", just non-compliant with EU law, In addition Ni Rafertaigh J held that s.261 registration does not preclude later s.261A direction and that s.261A procedures are constitutionally adequate.

The court emphasised that section 261A was introduced to bring Irish law into compliance with EU environmental directives. It allows quarries to regularise their position even if compliant with domestic law. The fact that a quarry may have been operating lawfully under Irish law does not exempt it from EU law requirements. The court refused to quash the direction and held that the quarry must apply for substitute consent as directed. This was one of the first decided cases of the Superior Courts that clarified the relationship between domestic planning exemptions of pre-1964 Quarries and EU environmental law requirements in the quarrying sector.

#### Conclusion

In *Case C-215/06 Commission v Ireland*, Ireland was condemned for not expressly requiring *competent authorities* to carry out EIAs. The consequences of this failure by the state to carry out its EU law obligations properly was visited on many quarry owners, including our client who was requested to apply for substitute consent. Our client sought to challenge the position in the High Barry Creed Partner | Nick McStay Partner



DX 1043 Four Courts

T: 01 640 0040 F: 01 640 0048

Court proceedings at the time in circumstances where there was significant uncertainty in relation to legal issues.

Our client is now applying for substitute consent in accordance with the (one stage) process provided for by the Planning and Development, Maritime and Valuation (Amendment) Act 2022 on the 16<sup>th</sup> of December 2023. Prior to this point, it was not possible for our client to make an application for further development of the quarry in harmony with regularisation and there was no such mechanism available until the coming into force and commencement of S.37L. Our client now avails of this procedure after having retained planning and environmental consultants to make such an application over the past year.

Our client recognises the need to regularise the position in respect of the quarrying site and relevant areas of extraction and respectfully submits that in all of the circumstances, the application for substitute consent meets the *exceptionality* requirement set out in *Commission v Ireland.* The development had been carried out without any enforcement action on the part of the Council for over fifty years on common understanding as to its status. The planning authority itself registered the quarry, accepted it as pre-1964 and allowed it to continue in operation and in those circumstances and with the resolution of difficult legal issues over the past 15 years, our Client now submits the application for substitute consent in order to regularise the position and secure the future of a quarry and what is a family business that has been in existence for generations and which provides considerable employment in the local community.

Yours faithfully,

Creed McStay Solicitors LLP

barrycreed@creedmcstay.ie