

STATEMENT OF EXCEPTIONAL CIRCUMSTANCES
IN SUPPORT OF A
SECTION 177E APPLICATION FOR SUBSTITUTE CONSENT
BY PATRICK MCCAFFREY & SONS LTD.
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1. Introduction

Patrick McCaffrey & Sons Ltd. (hereafter 'McCaffreys') operates a construction materials manufacturing development at Ballymagroarty Irish and Glasbolie, Ballintra, Co. Donegal. The site was formerly a quarry development with pre-63 origins, with operations dating back to 1948, and McCaffreys taking over operations in the late 1960s.

These quarrying activities included the extraction of rock by blasting and the subsequent crushing, and screening of aggregates (no washing), with ancillary manufacturing (concrete products and bitumen macadam/asphalt) added over the following decades. The site was registered under Section 261 in 2005.

The Section 261A process of 2012 began with a requirement for Substitute Consent based on both EIA and AA determinations, but with an extraordinary finding by Donegal County Council that the site was post 63 without the benefit of planning permission. Following confirmation of the two determinations under Section 261A(2), and a quashing of that Section 261A(4) decision by An Bord Pleanala on referral, a new decision was issued which acknowledged the pre-63 origins, and which allowed the site to apply for Substitute Consent with the benefit of the sunset clause provision of Section 261A.

Following the required application to An Bord Pleanala under Section 177E, a dispute arose between McCaffreys and the Board as to the area which should be within the red line application boundary. Ultimately, the Board chose to dismiss the application as not in line with the development which required Substitute Consent. Maintaining that a substantial area had ongoing pre-63 rights, McCaffreys judicially reviewed the dismissal by An Bord Pleanala. Years later, following a hearing of the substantive matter in the High Court, the actions of the Board were found to be lawful; leave to appeal the judgement to the Supreme Court was denied. This has left the site with a requirement to re-apply for Substitute Consent but without the benefit of the sunset clause provision of Section 261A, lost as a result of the dispute.

The current application seeks Substitute Consent for past quarrying in line with the now accepted outcome of the judicial review. Additionally, consent is sought for past planning irregularities associated with the historical ancillary manufacturing activities. As quarrying overwhelmingly finished over a decade ago (2013), save for some very minor works, the site has relied on imported rock which is processed on site and used for the applicant's needs, primarily the ongoing use of concrete and macadam/asphalt manufacturing as well as re-export as aggregate products. As no new works are being proposed, the continued use of the site uses is sought for a 30-year period to be followed by restoration of the remaining site area thereafter.

The continuation of existing site uses is consistent with a grant of Substitute Consent, in that no new works may be consented to by that process other than site restoration, as has been the case on other sites where manufacturing occurs (see ABP-300037-17 which covered a similar range of ongoing manufacturing activities as is present in this case).

While getting to this point from 2012 was not through an unwillingness by McCaffreys to enter the Substitute Consent process, 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. 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.

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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, as is the role of various parties in the journey to date.

2. Planning History to Section 261

The overall site is essentially made up of two distinct areas, described throughout the application as the South Quarry and the North Quarry, see Site Layout Map at Appendix I.

Extraction of rock with blasting at this site dates back to the 1940s and only involved the South Quarry for many decades until 1986 by which time that original area was almost completely exhausted. Naturally, it has always been the position of McCaffreys that this South Quarry extractive development was carried out under the pre-63 user authorisation and was clearly not subject to the EIA or Habitats legislation as it was concluded prior to the 1990 transposition of the former directive and 1997 coming into force of the latter regulations. This is what primarily influenced the eventual stance against the Board in the refusal to include this area in the application area in the original Substitute Consent application, and the subsequent judicial review of the outcome to that. The South Quarry extracted area was 4.90 hectares and cumulative impacts with the North Quarry were considered for EIA and AA purposes within that application.

Further lands were purchased in the early to mid-1980s, notably the ground which was to become the North Quarry. Following the effective exhaustion of the South Quarry by 1986, an area of c.4.62 hectares in close proximity to the South Quarry was developed and extraction with blasting began. It was this area, known as the North Quarry, which supplied site won aggregates until 2013 when operations in this area ceased, the relatively small footprint having been extracted to a very great depth. This area had required de-watering and subsequently was allowed to flood to its current relatively static level.

It is important to put the above in context in terms of the evolution of relevant planning jurisprudence to the timing of extractive development subsequently found to require regularisation. While the concept of intensification was progressing since the 1970s, the key caselaw on the physical extent of pre-63 rights was, by the late eighties, only being set out for the first time in a case concerning a quarry at Recess, Co. Galway (*McGrath Limestone Works/Lackagh Quarries v Galway County Council* 1988 WJSC-HC2627 (No.114JR/1988)) which was a High Court decision suggesting quite expansive potential for pre-63 quarrying rights subject to little restriction. It was a decade later when the Supreme Court, in *Waterford County Council v John A Wood Ltd.* [1998] IESC 32, a case stated from the Circuit Court, set out the fundamental and more restrictive principles underpinning pre-63 interpretation still applicable to this date. These matters included reasonable anticipation based on ownership/control on the appointed date, 1st October 1964. This decision in *John A Wood*, properly interpreted, effectively identified the North Quarry as beyond the reasonably anticipated extent of pre-63 extension and a realisation that this area was unauthorised. The North Quarry footprint was largely as it is by that time.

Following the *John A Wood* Supreme Court decision, McCaffreys sought permission for 'extension to and retention and completion of existing quarry operations and associated buildings' which would have regularised the North Quarry as well as various buildings, a garage and store and extinguishment of a public right of way. This application, 01106, was granted by Donegal County Council on 6th March 2003 but was refused by An Bord Pleanála on third party appeal on 23rd October 2003.

By that time, Section 261 commencement was within months of commencement and the general view across the extractive industry was to register existing developments and await the eventual outcome,

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noting the various options (imposition of conditions or full planning application for Continuance of Use with EIS) for pre-63 quarries.

In time, the site was registered as required under Section 261 (reference QY01), and included submission of details of a roadmap for the eventual extraction of a total of c.34 hectares as well as details of the existing extent of the quarry. However, following receipts of very many registrations under Section 261, Donegal County Council made a decision to not implement the provisions of the section and, instead, wrote a generic letter to all registrants confirming lack of implementation and continuance of unchanged planning status; on balance, this was regrettable for the assessment of historic and ongoing works which were to be ultimately the subject of the Section 261A review which had very serious consequences.

In 2007, two planning applications were made, one for retention of the North Quarry and another for prospective extraction in a separate area contiguous to the historic South Quarry, noting the South Quarry contained all of the processing area. There were delays due to documentation and the process then overlapped with ECJ C-215/06 in 2008; this resulted in invalidation of the retention application (EIS deemed required) and refusal to entertain a separate prospective extension in the presence of the inability to regularise the offending area at that stage in late 2008. The pre-63 status of the original South Quarry was never questioned in the processing of these two applications.

This history of applications after the *John A Wood* decision and then post Section 261 at least demonstrated the continuing intention in relation to regularisation of the offending development, and the basis for the reasonably held belief that the South Quarry continued to be viewed as authorised despite the reliance post 1990 on the North Quarry for site won reserves. No new greenfield area was developed post the first application on 22nd February 2001, with only the continued deepening of the North Quarry ongoing in extraction terms.

3. Manufacturing Development

The South Quarry area contains both a macadam plant and concrete manufacturing facilities, and these facilities do not appear to have the benefit of planning permission or pre-63 authorisation which is regrettable. However, these activities are not recent in origin. The original macadam/asphalt plant was erected in 1968, and was replaced by the current plant in 1992. The original concrete plant was erected in 1979, with relocation and plant renewal in 1994.

Thus, these activities, neither of which are EIA activities, were in existence and in their current locations well before Habitats legislation was introduced in 1997, and even further before relevant Natura sites were even candidate sites (see Section 5 below). The macadam plant has an Air Pollution Licence (APL 05/01), and the South Quarry has its own distinct water discharge licence which includes management of water run-off from manufacturing and aggregates processing development and has been in place since 2006 (LWAT 48).

It is submitted that, while planning should have been sought and would not have been difficult to achieve in the early years of origination of both plants, the potential environmental impact of these activities is very limited, especially once water management measures are in place. As a matter of historical fact, though not as an excuse, there is a high proportion of sixties to eighties manufacturing development without the benefit of planning permission across the construction materials industry and this site is one of many examples. The presence of such unauthorised development was not even considered during the Section 261A process or even mentioned in the legislation.

However, professional advice at the time was that regularisation of the North Quarry was seen as the primary requirement to achieve before regularisation of manufacturing should be attempted. Ultimately, this has meant the continued use without the benefit of permission but with the requisite environmental licences in place as control for potential environmental impact. It is of note that the air emissions licence was granted by An Bord Pleanála on appeal.

There is precedent for regularisation of much larger manufacturing development within a quarry, see ABP-300037-17. Note that, in that case, the manufacturing was by way of separate application as the quarry was allowed apply for substitute consent through Section 261A which, as before, did not provide for inclusion of non-quarry related development. In this application, there is no such impediment and this application is not made on foot of Section 261A, and is appropriate as the concrete and macadam plants have been an integral part of the wider site for decades, including the entire duration of operation of the North Quarry.

4. Section 261A

The potential path to regularisation for this and so many other extractive sites nationally was set out in legislation over two years, 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 24th August 2012.

Accordingly, in 2012, Donegal County Council assessed the site in accordance with the provisions of Section 261A, reference EUQY01, and made determinations under Section 261A(2) that both Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) offences existed on the site, see Donegal County Council Section 261A Report at Appendix III. Rather incomprehensibly, Donegal County Council then decided, under Section 261A(4), that the site was post 1964 without the benefit of a planning permission and that enforcement was to be initiated, see Section 261A Notice of Donegal County Council at Appendix II.

Clearly, McCaffreys anticipated that where EU law offences were certain that a decision would be made under Section 261A(3) acknowledging the site's original pre-63 authorisation and Section 261 registered status, and directing an application for Substitute Consent with the appropriate 'remedial' documents. Consequently, McCaffreys and third parties referred the outcome to An Bord Pleanála for a *de novo* assessment of both the determinations that offences were present and the decision, if a decision was required (if the Board determined that offences were present).

During the course of its review, on 18th February 2013, the Board sought information on the quarry extent, the pre-63 origins of the site, and verification of ownership of the lands at 1st October 1964. This was responded to on 2nd April 2013. Having reviewed all the documentation, the Board confirmed both determinations but quashed the Section 261A(4) decision of the Planning Authority, see An Bord Pleanála Order reference 05E.QV.0128 of 16th October 2013 at Appendix III, thereby acknowledging the pre-63 origins of the site. It is of importance to note that extraction had ceased in the North Quarry by this date and did not subsequently re-commence.

This left the Planning Authority with the need to issue an amended Section 261A notice with the original determinations but with an amended decision, now under Section 261A(3), so as to provide a pathway to regularisation for the site through an application for Substitute Consent with remedial EIAR and remedial NIS under Section 177E with the benefit of the sunset clause provision as was available for sites arriving at this situation on foot of Section 261A. This amended notice was issued on 22nd May 2014, see attached at Appendix IV.

5. Existing Authorisations By 2012

Before examining the application for Substitute Consent, the context within which the decision of the Board on the Section 261A referral was made is important. By this is meant that the site authorisations for discharge of water, the air emissions licence for the macadam/asphalt plant, and the effective dates of designation of the Natura sites screened in as potentially impacted by the site activity, as identified in the rNIS and Biodiversity Chapter of the rEIAR submitted with this application, are all relevant.

The site has two water discharges, one from the South Quarry and one from the North Quarry. A discharge licence, reference LWAT48, was first granted by Donegal County Council to the operator in respect of the South Quarry discharge on 16th September 2005, and later confirmed by the Board following a third-party appeal on 28th July 2006 (An Bord Pleanála reference 05F.WW.0303). The North Quarry discharge licence, reference LWAT41) was granted by Donegal County Council on 6th December 2006, and later confirmed by the Board on 18th February 2008, following a third-party appeal (An Bord Pleanála reference 05F.WW.0330). It is of significance that An Bord Pleanála carried out Appropriate Assessment with regard to Durnish Lough SAC in the course of positively deciding a licence appeal, and by inference clearly having ruled out both Donegal Bay SPA and Durnesh Lough SPA as requiring Appropriate Assessment.

It is of scientific significance and legal importance to note that both of these licences were reviewed and updated in 2016 without a requirement for a NIS to be submitted for either review; this has clear implications as to how the Competent Authority's Environmental Services section viewed the discharges in 2016 in a contrary manner to the view of the Planning Section in the Section 261A which identified a discharge based AA offence in 2012. The only difference in site activity between the Section 261A assessment in mid-2012 and the 2016 discharge licence reviews is that the extraction in the North Quarry had ceased by then, the site was flooded, and the discharge was less frequent and of lower volumes.

The South Quarry discharge water has continued to be collected in channels and directed to settlement lagoons and then through a fuel class interceptor prior to discharge. These measures, post ECJ C-721/21, would not be legally regarded as mitigation measures as they are standard design measures for any quarry with a process water discharge, see DECHLG Quarry Guidelines 2004 and EPA Environmental Management in the Extractive Industry Guidelines 2006.

An air pollution licence is required with the macadam/asphalt plant. This was granted by Donegal County Council on 22nd March 2005, reference APL 05/01, and later confirmed by the Board on 2nd November 2005 following a third-party appeal.

6. Natura Designations By 2012

The rNIS submitted with this application provides information for assessment with regard to three Natura sites which were screened in as having potential to be impacted by the development. The designation dates of the three sites are relevant to whether historic development could legally have had an impact on these sites as Natura sites, noting the discharges were long established by the time of even candidacy status.

The three sites are: (i) Durnesh Lough SAC (Site Code 000138), a candidate SAC from December 1999, whose S.I. No. 415 of 2018 was not signed until 9th October 2018, and whose Site Specific Conservative Objectives (CCSOs) were not established until 5th October 2016; (ii) Durnesh Lough SPA (Site Code 004145), proposed as an SPA in July 2010, whose S.I. No. 294 of 2011 was not signed until 16th June

2011, and whose SSCOs were not determined until 7th February 2025; and (iii) Donegal Bay SPA (Site Code 004151) proposed SPA in February 2004, whose S.I. No. 295 of 2011 was also signed on 16th June 2011 and whose SSCOs were only decided upon on 17th May 2012.

With the exception of Durnish Lough SAC, all three site licences were in process at least or were granted by the time of candidacy or proposal of the Natura sites, many years before formal designation and very many years before SSCOs were established.

The matter of the legal status of Natura sites where SSCOs were not in place is currently the subject of a referral by the Irish Court of Appeal to the European Court of Justice (C-27/25 Knocknamona) following *Power and Wild Ireland Defence CLG v An Bord Pleanala and Knocknamona Windfarm* [2024] IEHC 108. If as is set out in Article 6(1) of the Habitats Directive, that the Member State shall establish Site Specific Conservation Objectives and Measures, then these Natura sites are only legally protected from the SSCO dates above and all emissions authorisations were in place, with Durnish Lough SAC having gone through Appropriate Assessment. This would, therefore, cast legal doubt as to whether a Habitats offence actually exists on the site.

It is submitted that compliance with the site licences as issued was reasonably viewed by McCaffreys as *de facto* proof of lack of impact on those sites, and reasonable belief that the development, with emissions which pre-dated the designations, was not having an adverse impact on any European site. This was not previously considered by the Board and certainly never before in terms of exceptional circumstances with regard to a retrospective AA offence.

7. Substitute Consent Application SU0128

It is submitted that Donegal County Council did at all times treat the South Quarry as fully authorised and this is evidenced by the decision to grant retention and extension of the North Quarry in 01106 on 6th March 2003 (as previously stated this was overturned on appeal), noting also that this was after the candidate SAC designation of Durnish Lough SAC. The subsequent treatment of Section 261 registered quarries had done nothing to clarify any issues. Both the initial and revised Section 261A notices referred indiscriminately to the quarry; given the acceptance of pre-63 matters and that the South Quarry was extracted pre-1990, this was immediately and reasonably taken by McCaffreys to mean the extraction area in 01106 which has been refused retention on appeal (North Quarry). It is submitted that, based on the Decision to Grant 01106, there was no reason to think that the South Quarry was impugned by the revised notice.

It is relevant that extraction in the North Quarry had ceased in 2013 and that area was flooding/flooded by the date of the Substitute Consent application. A small number of very minor blasts took place on remaining outcrops in the South Quarry but were incidental in terms of the overall development and merely served to allow for a safer access into the South Quarry floor and manufacturing area. By then there was total reliance on imported rock for processing; this had been an ongoing activity for years in relation to high PSV stone but now all manufacturing and civil engineering stone requirements were met from imported stone. This continues to this day. Obviously, sand is also imported for concrete manufacturing as is bitumen for macadam production.

Following the decision by An Bord Pleanala on the Section 261A referral, the appointed consultant engaged in correspondence with Donegal County Council who in turn was in contact with an administrative officer in An Bord Pleanala and there appeared to have been agreement that it was, in fact, the North Quarry which was to be the subject of the required Section 177E application for Substitute Consent in 2014, on foot of the revised notice from Donegal County Council. McCaffreys immediately sought to comply with the notice and, after a time extension for preparation of the

significant applicant, the Substitute Consent application was submitted on 4th December 2014 based on the above understanding as to the appropriate area and that there were ongoing pre-63 rights in the South Quarry.

An Bord Pleanála gave the application planning reference SU0128. On 9th January 2015, the Board wrote to the applicant seeking to know the rationale for only including the North Quarry in the application; this was quickly responded to on 13th January 2015 and included the email correspondence between Donegal County Council and An Bord Pleanála. There then followed correspondence between the Board and various parties. On 29th June 2015, citing various regulations, guidance documents and an Inspector's Report (which was not made available to the applicant until 2017), the Board by letter stated that it deemed it appropriate to consider the entirety of the site as a single entity. The applicant did not agree with this statement and set out its considered position in a letter to the Board on 21st July 2015.

There was then a period while the applicant expressed an intention to add a parallel application for 'further quarrying' under the then newly enacted and commenced Section 37L. This was submitted on 19th January 2016, QD0018 refers.

Meanwhile, on 18th September 2015, the Board had written to the applicant stating that it considered there was pre-63 activity of some sort going on in some part of the southern land which enabled the Section 261A(3) decision and expressly stated its requirement that the Substitute Consent application encompass the entirety of the quarry lands. The applicant's response was to submit a revised rEIS and rNIS which leaned more heavily into the cumulative effects of the entire quarry on 15th December 2015, and which then had to be re-advertised. A chronology of the correspondence is set out by the then consultant at Appendix V.

On 24th May 2017, An Bord Pleanála dismissed the Substitute Consent application SU0128, see An Bord Pleanála Order at Appendix VI. The reason given for the dismissal was the failure to include the entire site within the application area.

The Board also refused Section 37L application QD0018 on the same date; indeed, it was legally bound to do so given the absence of a grant of Substitute Consent on the parent site.

8. Judicial Review and Outcome

This outcome obviously had severe consequences for this site. Dismissal is not one set out in Section 177, and the reasoning behind the dismissal was effectively setting at naught any pre-63 rights within the South Quarry area. Leave to apply for judicial review of the SU0128 decision (and of legal necessity the QD018 decision) was applied for and received within the statutory period of 56 days from the decisions, [2017] 586 JR refers.

Primarily due to Covid related delays, it was to take seven years before the substantive issue was heard in the High Court and decided upon, see decision of 14th June 2024 in *Patrick McCaffrey and Sons Ltd. v An Bord Pleanála* [2024] IEHC 315, see https://www.courts.ie/acc/alfresco/2cdc6dc7-0ead-46e4-81ff-8b81752504cc/2024_IEHC_315.pdf/pdf#view=fitH. An Bord Pleanála was found to have acted within its powers and the outcome stands. An application for a certificate to appeal the judgement was subsequently refused.

This then led to the need for this application and this was begun following the refusal of a certificate to appeal in the High Court.

9. Current Status

This leaves the site with determinations regarding EIA and AA offences which still require regularisation on foot of unauthorised development. Both areas of the site were viewed as a single entity, but extraction in the South Quarry to 1990 when extraction ceased cannot be considered part of the offending development as it occurred prior to the introduction of all of the legislation of which it is accused of offending.

Therefore, the offending development in the southern part of the overall site may be summarised as the historic infrastructure and processing in support of the North Quarry, the erection of concrete and macadam/asphalt and the historic and ongoing use of that plant, the historic importation and ongoing processing of rock.

The land on which the North Quarry is situated was purchased in the mid-1980s and was developed from 1986 onwards, so pre-1990, and was then subject to ongoing deepening from 1990 to its closure in 2013. The offending development in the North Quarry area is, therefore, the extraction by blasting and haulage of rock to the southern part of the site from the footprint there to 2013.

Little has changed at the site since the date of submission of the failed application for Substitute Consent. It is submitted that the applicant is essentially in the same position as of that date save for the delay and the need to establish exceptional circumstances now that the sunset clause provision of Section 261A is absent. It is submitted that a legitimate legal dispute, provided for constitutionally and in planning law, through which the sunset clause of Section 261A has been lost is, of itself, exceptional and that exceptional circumstances exist such as to allow for this fresh Substitute Consent application in line with the outcome of the High Court.

This is unfortunate as McCaffreys pursued their path through the application and subsequent judicial review on a point of trying to vindicate pre-63 rights and arrive at this point not as a result of a refusal of Substitute Consent or lack of engagement with the process. This application seeks to regularise the site in line with the wishes of the Board and judgement of the High Court and to provide for the ongoing use of the established plant and structures. This leaves further matters relating to exceptional circumstances for analysis.

10. Exceptional Circumstances Considerations

An Bord Pleanála 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 case is made above that the dismissal of the original Substitute Consent application and the legal proceedings which followed, based on McCaffreys view that ongoing pre-63 user rights were being infringed, with the subsequent loss of the Section 261A 'sunset clause' provision providing for access to the Substitute Consent process for this site are, of themselves, exceptional circumstances. Again, it is of particular noteworthiness that little or no change has occurred within the site since An Bord Pleanála confirmed the two Section 261A(2) determinations in late 2013.

Beyond that, considerations 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.

- (i) ***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 South Quarry was extracted by 1986. The North Quarry was under development from then on, with further extraction post 1990 resulting in deepening of already developed ground. The added manufacturing development are not activities which come under the EIA Directive, and are controlled within the South Quarry site management system.

Upon dissemination of the landmark John A Wood case across the industry in 1998/99, McCaffreys identified the North Quarry as beyond the newly established jurisprudence on pre-63 extent, and immediately sought to regularise matters. This was granted but refused on appeal. Thereafter, a fresh application was made and the subsequent delay while a requested EIS was being prepared (North Quarry only) resulted in overlap with ECJ C-215/06 which meant it was by then beyond the power of the Planning Authority to make a decision post the public consultation process. Post Section 261A, the applicant complied with the requirement for Substitute Consent as soon as such pathway was provided by the amended notice.

The site was registered under Section 261 and could and indeed may have been made subject to a Section 261(7) requirement for Continuance of Use with EIS had the Planning Authority implemented the provisions of the section.

It is submitted that the offending extraction area post 1990 is the deepened 4.7 hectares, and is less than the mandatory threshold for EIA. The North Quarry was in development prior to the introduction of the EIA Directive and the South Quarry was exhausted by then save for a couple of outcrops. As such, taken under 2025 legislation (commencement of amendments to Section 34(12) in December 2023 etc), a screening for EIA would have to be undertaken and confirm that EIA is required before an EIA offence could be confirmed. The Section 261A 'offence' of requiring a sub-threshold EIA determination is no longer an offence.

The necessary water discharge licences were achieved in close timing with the candidate/proposed designation of two of three Natura sites in the locality (with which a potential or actual hydrological link exists). On appeal, the Lough Durnesh SAC required Appropriate Assessment by An Bord Pleanála at Further Information stage before confirmation of grant and by inference that no impact was present on that Natura site. The infrastructure, channels, lagoons and fuel class interceptor, which are part of the management of the South Quarry discharge (the discharge likely to be most prone to contamination), are post ECJ C-721/21 to be seen as standard industry design measures and not mitigations as would previously have been the approach (such as in 2012).

It is submitted that the site has tried to regularise several times, including with EIS, and that the submitted rEIAR and rNIS both serve to implement the purpose of the EIA and AA legislation. The detail of the submitted rEIAR and rNIS strongly support the notion that the EIA Directive has not been circumvented.

The manufacturing developments are not EIA activities and all pre-date the Habitats legislation and even more so the candidacy/proposed designation of the relevant Natura sites upon which the site impacts were not screened out at Stage 1. Of importance is the presence of the water discharge licences and air emission licence which have been in place for nearly two decades and which together control the key sources of potential impact to the Natura sites. Consequently, no impact on Natura sites was expected and the Habitats legislation has not been circumvented.

(ii) Did the applicant or could the applicant reasonably have had a belief that the development was authorised?

As set out above, the pre-1990 extraction in the South Quarry is not impugned when the site was operating to a pre-63 authorisation. It is the post 1990 extraction in the North Quarry (started pre-1990) which has been found to offend the EIA Directive, and which of necessity includes the supporting infrastructure in the South Quarry. As previously detailed, the North Quarry was identified as unauthorised following the *John A Wood* case some c.13 years after the development of the North Quarry, and development since then until closure continued within the limited footprint.

It is submitted that the applicant did not make matters worse following identification of the unauthorised extractive development and made every effort to regularise matters once that was known.

Like many sites post ECJ C-215/06 on 3rd July 2008, the applicant was awaiting the commencement and outturn of Section 261A to advance the regularisation of the identified unauthorised extraction area. The applicant is now in the current position of still trying to achieve sound planning status because of trying to vindicate their then perceived pre-63 property rights over the majority of the site and not as a result of a refusal of Substitute Consent.

Admittedly, the manufacturing development was clearly unauthorised but was developed in the sixties and seventies. It then became secondary to the regularisation of the North Quarry. As before, the potential impacts are controlled through all required environmental site licences.

(iii) 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?

As detailed, the applicant endeavoured on multiple occasions, including with EIS, to regularise the identified post 1990 extractive development. The EIA development is relatively limited in scale, actually comprising of the deepening of 4.62 hectares developed pre-1990. As stated earlier, the actual development would not constitute an automatic EIA offence in 2025 legislation without a confirmation post EIA screening determination.

Historic photography and knowledge have been used to establish the development timeline, noting the footprint of the site by 1990 included the practical completion of extraction in the South Quarry and the early stages of development of the North Quarry.

No EIA activity of any consequence has taken place post 2013. It is submitted that public participation has been afforded through multiple applications, and taken up by a persistent third-party objector who appears in documentation across the entire planning history of the site. Regardless of the manner in which the previous application for Substitute Consent turned out, the application facilitated public consultation (as did the Section 261A process). There has not been any material change to the site since the last application.

All site licences have been in place years prior to the formal designation of the local Natura sites screened in for the rNIS, and the SSCOs for each site, and ECJ referral C-27/25 Knocknamona must be noted as to casting doubt on when these Natura sites were actually legally in place and capable of resulting in an AA offence on this site.

It must be presumed that the 2016 review of the water discharge licences also underwent consideration for AA, noting that there was no request for an NIS from the Competent Authority during those reviews.

The historic nature of the manufacturing development is such that it pre-dates all of the relevant European legislation, especially the Habitats legislation under which it is being assessed. The previous Substitute Consent, borne out of the Section 261A process, did not provide for the inclusion of anything beyond the definition of quarrying. It has been necessary to try to regularise the quarrying prior to regularising manufacturing. It is submitted that public participation has not been substantially impaired and is now being rectified in relation to manufacturing, noting the absence of observation, objection to or comment on manufacturing specifically in past applications.

(iv) 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 rNIS adequately provide for assessment of the likely potential impacts past and present from the entire development post introduction of the relevant legislation. The several past applications also provide historical information assisting this application.

Additionally, the presence of water discharge licences and air emissions licence prior to the Natura designations in the area is important in being able to confidently assess the likely potential for environmental or adverse effects on any European site. No material impact has been recorded or reported to date.

(v) 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 loss of a small amount of relatively poor habitat at the North Quarry, the South Quarry having been authorised pre-63. The historic nature of the site is relevant to any such assessment; the habitats were effectively lost prior to 1990, and this application provides a mechanism for the restoration of all areas with environmental/biodiversity benefit.

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

The site does not have any planning permissions to comply with primarily due to its pre-63 origins; as Section 261 was not fully implemented by Donegal County Council, there are no binding conditions with which to assess compliance. It is accepted that the ancillary manufacturing is unauthorised and now included in this application for the first time; Section 261A did not run to inclusion of development outside the definition of quarrying and the view was that the North Quarry required regularisation first. However, the necessary site licences, two water discharge licences and an air emission licence, were achieved and complied with decades ago. Of relevance here is that the applicant made several attempts to regularise the site over time as detailed above. Regularisation of the historic manufacturing required the regularisation of quarrying in the first instance; since 2008, this is only the first application that could have included manufacturing activities.

An EMS based on the established industry best practice has been in place since 2006, as set out in the failed Substitute Consent application and detailed in this application. This is the only site operated by the applicant.

(vii) Such other matters as the Board considers relevant

As detailed earlier, the site licences were achieved years prior to the formal designation of the Natura sites screened in for the purposes of the rNIS and the SSCOs for each site. Additionally, the established emissions were part of the local environment prior to transposition of either EIA or Habitats legislation. On this basis, it is hard to see the legal justification in linking the site to an AA offence based on those emissions in a source-pathway-receptor model. It is submitted that the alleged AA offence may be ill founded.

11. Conclusions

It is submitted that this application is essentially a continuation of the process started in 2012 with Section 261A, as reviewed by An Bord Pleanála in 2013, and beyond which date there has been no material change in the site development works.

Section 261A was time restricted in terms of the once off availability of the 'sunset clause' provision providing access for qualifying sites to the Substitute Consent process, and that this was lost in the course of the original application dismissal and subsequent High Court outcome. The applicant has complied with the High Court outcome in making this application. It is submitted that these circumstances are exceptional.

The development is substantially pre-1990 in terms of footprint development, and has not materially laterally expanded post the outcome of the defining *John A Wood* caselaw. The applicant has on several occasions sought to engage with the planning process, and achieved all necessary environmental licences. Manufacturing dates back over 50 years at this site.

It is submitted that An Bord Pleanála carried out AA in the course of an appeal of a water discharge licence for Durnesh Lough SAC c.20 years ago and went on to confirm the grant of the licence. Both discharge licences were reviewed in 2016 without requiring Stage 2 AA. Additionally, ECJ C-27/25 referral re the need for SSCOs as the first step in designating site, rather than generic conservation objectives currently calls into question whether the key Durnesh Lake SAC was capable of giving rise to an AA offence in 2012, noting also the hydrological link which was controlled by discharge licence, and the AA carried out by the Board in granting that licence.

In light of the above, An Bord Pleanála is respectfully requested to find that exceptional circumstances exist as to warrant consideration of this Substitute Consent application.

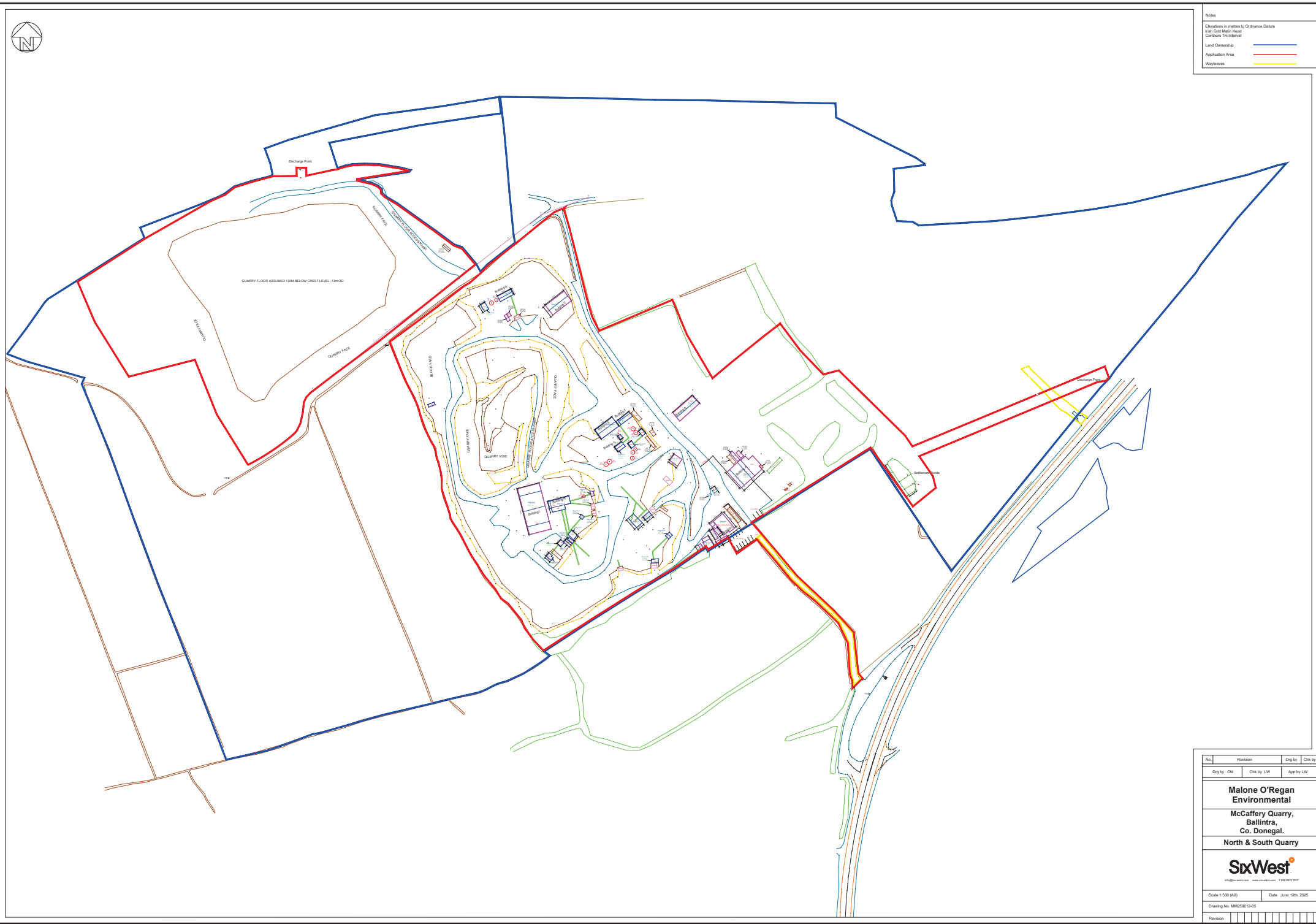
William Smyth FIEI
(unsigned as transmitted electronically)

3rd July 2025

Appendices

Appendix I	Site Layout Map;
Appendix II	Section 261A Report EUQY01 2012;
Appendix III	An Bord Pleanála Section 261A Referral Order 5th June 2013;
Appendix IV	Amended Section 261A Notice 22nd May 2014;
Appendix V	Earth Science Partnership Chronology of Section 261A and Section 177E;
Appendix VI	An Bord Pleanála Order SU0128 24th May 2017.

Appendix I Site Layout Map



Elevations in metres to Ordnance Datum
Irish Grid Malin Head
Contours 1m Interval

Land Ownership —————

Application Area —————

Wayleaves —————

No.	Reactivation	Drig by	Chk by
Drig by	OM	Chk by	LW
App by LW			
<p>Malone O'Regan Environmental</p> <p>McCaffery Quarry, Balintra, Co. Donegal.</p> <p>North & South Quarry</p> <p>SixWest[®] <small>enquiries@sixwest.com www.sixwest.com 0800 2851 1017</small></p>			
Site# 1500 (A00) Date: June 13th, 2025 Drawing No. MK250508-12-05		Revision	

Appendix II Section 261A Report EUQY01 2012

DONEGAL County Council

PLANNING AND DEVELOPMENT ACTS, 2000 TO 2011

SECTION 261A(4)(a) NOTICE

Planning Authority Reference: EUQY01

Name of Quarry Owner: Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart, Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra, Co. Donegal

Name of Quarry Operator: Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal

Address of Quarry: Ballymagroarty Irish, Ballintra, Co. Donegal

WHEREAS Donegal County Council has examined the above quarry in accordance with Section 261A of the Planning and Development Acts 2000-2011;

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

- (a) Section 261A of the Planning and Development Acts, 2000-2011
- (b) All relevant information available to it including 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 Donegal County Council hereby determines – In accordance with Section 261A(2)(a) that:

(i) Development was carried out 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, and that such an assessment or determination was not carried out or made,

And

(ii) Development was carried out 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, and that such an assessment was not carried out.

Reasons:

The quarry appears to have commenced post 1st October 1964, and no planning permission was granted in respect of the quarry.

AND WHEREAS Donegal County Council, hereby decides - In accordance with Section 261A(4)(a) that:

(i) the quarry commenced operation on or after 1st 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,

You are therefore notified that the Planning Authority intends to issue an Enforcement Notice in relation to the quarry under Section 154 of the Planning and Development Acts 2000-2011 requiring the cessation of the operation of the quarry and the taking of such steps as the Authority considers appropriate.

You may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination under subsection (2)(a) or the decision of the planning authority under paragraph 4(a), and that no fee in relation to either application for a review shall be payable.

SIGNED: _____

Conall McGettigan

A/Senior Executive Planner
Planning & Economic Development

DATED THIS 22nd DAY OF August 2012

Manager's Order No: 2012PH0635

PLANNING AND DEVELOPMENT ACT 2000 – 2011 (Section 261(a) & related provisions)

SECTION 261(a)

Decision of the Planning Authority & the issue of the Notice under 261(a), Subsection (4a)

Reference Number: EUQY 01

Operator: Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal

Landowner: Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart, Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra, Co. Donegal

Nature of Application: EXAMINATION UNDER SECTION 261(a) OF THE PLANNING AND DEVELOPMENT ACT 2000-2011

SUBMITTED: Report and Recommendation dated the day of 22nd August 2012 from Ms Sharon McMorran, Executive Planner in relation to the quarrying of lands & extraction of gravel at **Ballymagroarty Irish, Ballintra, Co Donegal** as detailed above.

In her report she has outlined her investigation of the matter and the basis for her recommendation, and in so doing, has recommended the Quarry be issued with a Notification under 261(a) Subsection 4a. The quarry appears to have commenced post 1st October 1964, and no planning permission was granted in respect of the quarry.

The requirements in relation to registration under Section 261 were fulfilled.

RECOMMENDATION: That the Council now decide to Notify the Owners Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart,

Manager's Order No. continued: 2012PH0635

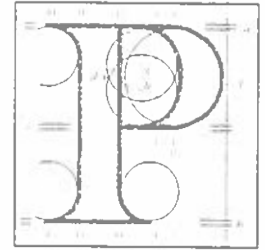
Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra & the Operator of the Quarry, Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal, under Section 261(a) and this Notification is attached herewith.

Signed 
SENIOR STAFF OFFICER
PLANNING & ECONOMIC DEVELOPMENT

ORDER: Recommendation approved. In accordance with Section 261(a) of the above Act, I therefore order that a Notification under Section 261(a)(4)(a) now issue on the above named Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart, Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra, Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal, and that Conall McGettigan, A/Senior Executive Planner, Planning and Economic Development is hereby authorised to sign the Notice on behalf of the Council.

Signed 
A / SENIOR EXECUTIVE PLANNER,
PLANNING & ECONOMIC DEVELOPMENT

Dated this 22nd day of August 2012.



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

10th September 2012

Appeal **Re:** Quarry (4).
 Ballymagroarty, Ballintra, Co. Donegal.

Dear Sir/Madam,

An Bord Pleanála has received your notification in relation to the above-mentioned reference number.

The Board will revert to you in due course.

Yours faithfully,

Vincent Dillon
Administrative Assistant
Direct Line: 01-8737134

QBACK

Section 261A FORM

QB.0713

Notice

Review

Extension of Time

Lodged: 3-9-2012

Dev. Type: 04 No:

Case Type:

Class: 80

EO: BT

Category: 81

Development: Quarry (4)

Ballymagroarty Irish, Ballintea, Co. Donegal

PA Code: DSE Reg.Ref: EU QY 01 Application Type: S.261A Notice Applic. Lodged:

PA Dec: issue notice PA Dec Date: 3-9-2012 OH Request Date:

Issue Code: Priority No 24-9-2012 EIS:Y/N Size:

Correct Fee: Y/N N/A Name/Address Appellant: N/A Ack: N/A

OPERATOR: Patrick McCaffrey & Sons

Address/Agent:

OWNER:

Address/Agent:

Patrick John McCaffrey, James, Jack, William and Edward McCaffrey; Patrick McCaffrey & Sons Ltd; James McCaffrey; John P., Edward & William McCaffrey; John K. Cathcart; William Oliver Doherty.

MR. Dillon

PA notified by phone

Yes ☐ EO: No ☐ Date:

PA Contact:

EO: C. Nolan Date: 7-9-2012 AA: V.A. Date: 10.09.2012

1. Acknowledge with: QB ack LTS ✓

Merge:

(1) psplit (4) omitdoc
(2) msplit (5) info
(3) revplan (6) xmas

2. Issue copy to: (a) PA: (b) Other parties

3. Return with:

Comments:

Manager's Order No: 2012PH0635

PLANNING AND DEVELOPMENT ACT 2000 – 2011 (Section 261(a) & related provisions)

SECTION 261(a)

Decision of the Planning Authority & the issue of the Notice under 261(a), Subsection (4a)

Reference Number: EUQY 01

Operator: Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal

Landowner: Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart, Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra, Co. Donegal

Nature of Application: EXAMINATION UNDER SECTION 261(a) OF THE PLANNING AND DEVELOPMENT ACT 2000-2011

SUBMITTED: Report and Recommendation dated the day of 22nd August 2012 from Ms Sharon McMorran, Executive Planner in relation to the quarrying of lands & extraction of gravel at **Ballymagroarty Irish, Ballintra, Co Donegal** as detailed above.

In her report she has outlined her investigation of the matter and the basis for her recommendation, and in so doing, has recommended the Quarry be issued with a Notification under 261(a) Subsection 4a. The quarry appears to have commenced post 1st October 1964, and no planning permission was granted in respect of the quarry.

The requirements in relation to registration under Section 261 were fulfilled.

RECOMMENDATION: That the Council now decide to Notify the Owners Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart,

Manager's Order No. continued: 2012PH0635

Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra & the Operator of the Quarry, Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal, under Section 261(a) and this Notification is attached herewith.

Signed _____
SENIOR STAFF OFFICER
PLANNING & ECONOMIC DEVELOPMENT

ORDER: Recommendation approved. In accordance with Section 261(a) of the above Act, I therefore order that a Notification under Section 261(a)(4)(a) now issue on the above named Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart, Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra, Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal, and that Conall McGettigan, A/Senior Executive Planner, Planning and Economic Development is hereby authorised to sign the Notice on behalf of the Council.

Signed _____
A / SENIOR EXECUTIVE PLANNER,
PLANNING & ECONOMIC DEVELOPMENT

Dated this day of August 2012.

DONEGAL County Council

PLANNING AND DEVELOPMENT ACTS, 2000 TO 2011

SECTION 261A(4)(a) NOTICE

Planning Authority Reference: EUQY01

Name of Quarry Owner: Patrick John McCaffrey, Cavan, Ballyshannon, Co. Donegal, James, Jack, William and Edward McCaffrey, Glasbolie, Ballyshannon, Co. Donegal, Patrick McCaffrey & Sons Limited, Rockville, Ballyshannon, Co. Donegal, James McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John P, Edward & William McCaffrey, Ballymagroarty, Ballintra, Co. Donegal, John K Cathcart, Glasbolie, Ballintra, Co. Donegal and William Oliver Doherty, Glasbolie, Ballintra, Co. Donegal

Name of Quarry Operator: Patrick McCaffrey & Sons, Ballymagroarty, Ballintra, Co. Donegal

Address of Quarry: Ballymagroarty Irish, Ballintra, Co. Donegal

WHEREAS Donegal County Council has examined the above quarry in accordance with Section 261A of the Planning and Development Acts 2000-2011;

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

- (a) Section 261A of the Planning and Development Acts, 2000-2011
- (b) All relevant information available to it including 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 Donegal County Council hereby determines – In accordance with Section 261A(2)(a) that:

(i) Development was carried out 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, and that such an assessment or determination was not carried out or made,

And

(ii) Development was carried out 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, and that such an assessment was not carried out.

Reasons:

The quarry appears to have commenced post 1st October 1964, and no planning permission was granted in respect of the quarry.

AND WHEREAS Donegal County Council, hereby decides - In accordance with Section 261A(4)(a) that:

(i) the quarry commenced operation on or after 1st 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,

You are therefore notified that the Planning Authority intends to issue an Enforcement Notice in relation to the quarry under Section 154 of the Planning and Development Acts 2000-2011 requiring the cessation of the operation of the quarry and the taking of such steps as the Authority considers appropriate.

You may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination under subsection (2)(a) or the decision of the planning authority under paragraph 4(a), and that no fee in relation to either application for a review shall be payable.

SIGNED: _____
Conall McGettigan

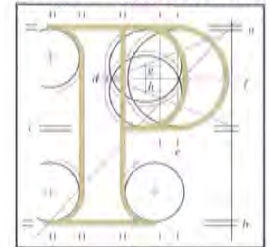
A/Senior Executive Planner
Planning & Economic Development

DATED THIS DAY OF August 2012

Appendix III An Bord Pleanála Section 261A Referral Order 5th June 2013

Our Ref: 05E.QV.0128
P.A.Reg.Ref: EUQY01
Your Ref:

An Bord Pleanála



Earth Science Partnership (Ireland) Ltd.,
Tonranny,
Westport,
Co. Mayo.

17 OCT 2013

Re: Quarry.
Ballymagroarty and Glasbolie, Ballintra, Co. Donegal.

Dear Sir,

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

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 5 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.

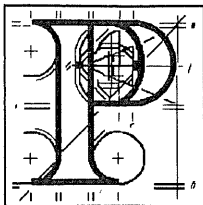
Yours faithfully,

Miriam Baxter
Executive Officer

Encl:

BP 100N.ltr

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2011

Donegal County

Planning Authority Register Reference Number: EUQY01

An Bord Pleanála Reference Number: 05E.QV.0128

LOCATION OF QUARRY: Ballymagroarty and Glasbolie, Ballintra, County Donegal.

REVIEW REQUESTED by James Gorman of Ballymagroarty, Ballintra, County Donegal and by Pearse O'Gorman of Ballymagroarty, Ballintra, County Donegal and by Patrick McCaffrey and Sons Limited care of Earth Science Partnership of Tonranny, Westport, County Mayo in respect of;

- (i) **the determination** by Donegal County Council, on the 22nd day of August, 2012, under subsection (2)(a)(i) and subsection (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 1st 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,

u
WIF

and that development was carried out after the 26th 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 Donegal County Council, also on the 22nd day of August, 2012, under subsection (4)(a) that

the quarry commenced operation on or after the 1st day of October, 1964, and

no permission was granted in respect of the quarry under Part III of the Planning and Development Acts, 2000 to 2011 or Part IV of the Local Government (Planning and Development) Act, 1963.

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,

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 **set aside** the decision of the planning authority in respect of this development made under section 261A(4)(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.

REASONS AND CONSIDERATIONS (1)

Having regard to:

- (a) the provisions of the Planning and Development Acts, 2000 to 2011, and in particular Part XA and section 261A,
- (b) 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) and 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),
- (c) the Department of Environment, Community and Local Government – Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, March 2013,
- (d) the Department of the Environment, Heritage and Local Government - Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development, August 2003,
- (e) the submissions on file, including documentation on the planning authority file (register reference number EUQY01), and aerial photography,
- (f) the planning history pertaining to the entirety of the site, (An Bord Pleanála references PL05.131103, 05.WW.0298, 05F.WW.303, 05F.LA.0053, and planning register reference numbers 07/21124, 07/21125), submission to the planning authority under section 261 of the Planning and Development Act, 2000, as amended,

- (g) the submission by the consultants for the operator in response to further information request by the Board received on 2nd day of April, 2013,
- (h) the extent to which the area of extraction of the quarry expanded after the 1st day of February 1990, which exceeded five hectares, and the current overall scale of the quarry,
- (i) the number and proximity of residential uses in the area,
- (j) the traffic volumes generated, and noise and dust emissions,
- (k) proximity to Durnesh Lough Special Area of Conservation (site code 004145), and,
- (l) the report of the Inspector,

it is considered that development was carried out after the 1st day of February, 1990, that would have required an environmental impact assessment, but that such an assessment was not carried out.

REASONS AND CONSIDERATIONS (2)

Having regard to:

- (a) the provisions of the Planning and Development Acts, 2000 to 2011, and in particular Part XA and section 261A,
- (b) Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended,
- (c) the "Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government, 2009/2010,
- (d) the submissions on file, including documentation on the planning authority file (register reference number EUQY 01) and aerial photography,

- (e) the planning history of the site (An Bord Pleanála references PL05.131103, 05.WW.0298, 05F.WW.303, 05F.LA.0053, and planning register reference numbers 07/21124, 07/21125), submission to the planning authority under 261 of the Planning and Development Act, 2000, as amended,
- (f) the submission by the consultants for the operator in response to further information request by the Board received on the 2nd day of April, 2013,
- (g) the scale of the quarry, the extent to which the subject quarry expanded after the 1st day of March, 1997,
- (h) the nature extent and intensity of the quarrying activity and the nature of the underlying rock which allows filtration of water through fissures on joints in the limestone,
- (i) the proximity to Durnesh Lough Special Area of Conservation (site code 004145), and the qualifying interests of the same,
- (j) the proximity of other quarrying activities in proximity to the subject quarry and the need for assessment of cumulative impacts, and
- (k) the report of the Inspector,

it is considered that development at this quarry carried out after the 26th day of February 1997, having regard to the Habitats Directive, would have required an appropriate assessment but that such assessment was not carried out.

REASONS AND CONSIDERATIONS (3)

Having regard to:

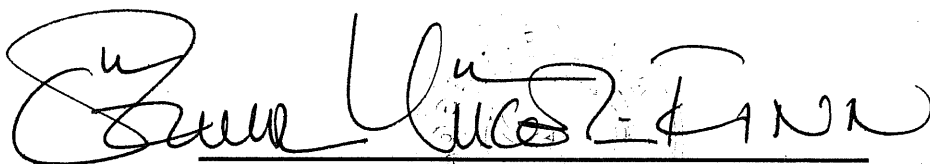
- (a) the provisions of the Planning and Development Act 2000, as amended, and in particular section 261A,
- (b) the Guidelines and Supplementary Guidelines for Planning Authorities on section 261A, issued by the Department of the Environment, Community and Local Government in July 2012,



- (c) the submissions on file, including documentation on the planning authority file (register reference number EUQY 01), and aerial photography, and
- (d) the affidavits contained in submission dated 2nd April 2013, which state that the quarry commenced operation before the 1st day of October 1964,

it is considered that:

- (i) the quarry commenced operation before the 1st day of October 1964, and
- (i) the requirements in relation to registration under section 261 of the Planning and Development Act, 2000, as amended, were fulfilled.

A handwritten signature in black ink, appearing to read 'Euan MacFinn', is written over a horizontal line.

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

Dated this 16th day of Oct, 2013.

JUDICIAL REVIEW NOTICE

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act 2000 (as amended)

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, **www.citizensinformation.ie**.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

Modified 30/11/2011

FÓGRA FAOI ATHBHREITHNIÚ BREITHIÚNACH

Athbhreithniú breithiúnach ar chinneadh a rinne An Bord Pleanála faoi fhorálacha an Achta um Pleanáil agus Forbairt, 2000 (arna leasú)

Nuair is mian le duine agóid dhlíthiúil a chur in aghaidh cinnidh an Bhoird caithfear é sin a dhéanamh trí athbhreithniú breithiúnach amháin. Tá na forálacha chun agóid dhlíthiúil a chur in aghaidh cinnidh an Bhoird le fáil in ailt 50, 50A agus 50B san Acht um Pleanáil agus Forbairt, 2000 (arna ionadú le halt 13 den Acht um Pleanáil agus Forbairt (Bonneagar Straitéiseach) 2006, le hailt 32 agus 33 den Acht um Pleanáil agus Forbairt (leasú), 2010 agus le hailt 20 agus 21 den Acht Comhshaoil (Forálacha Ilghnéitheacha), 2011.)

Ní féidir ceistiú a dhéanamh in aghaidh cinnidh an Bhoird ach amháin trí iarratas ar athbhreithniú breithiúnach faoi Ordú 84 de Rialacha na nUaschúirteanna (I.R. Uimhir 15 de 1986). Faoi réir fho-alt 50(6) den Acht um Pleanáil agus Forbairt, 2000 déanfar iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach laistigh den tréimhse 8 seachtain den dáta a rinne an Bord an cinneadh nó laistigh d'aon síneadh ama a cheadaíonn an Ard-Chúirt faoi fho-alt 50(8). Tabhair faoi deara nuair atá athbhreithniú breithiúnach i gceist faoi alt 50 nach féidir ach bailíocht an chinnidh a cheistiú agus ní thugann an Chúirt aon chinneadh faoi fhiúntas na forbartha ó thaobh prionsabail pleanála cuí nó forbairt inchothaithe na háite nó éifeachtaí ar an timpeallacht. Tá sé leagtha síos in alt 50 nach ndeonófar cead d'athbhreithniú breithiúnach muna bhfuil an Chúirt sásta go bhfuil forais shubstaintiúla ann chun argóint a dhéanamh go bhfuil an cinneadh neamhbhailí nó gur ceart é a neamhniú agus go bhfuil suim shásúil ag an iarratasóir leis an ábhar i gceist san iarratas nó i gcásanna a bhaineann le measúnacht tionchair timpeallachta gur eagraíocht í an t-iarratasóir a chomhlíonann coinníollacha áirithe.

Tá forálacha in alt 50B mar gheall ar chostais maidir le himeachtaí san Ard-Chúirt i dtaobh athbhreithniú breithiúnach i gcásanna áirithe (lena n-áirítear imeachtaí faoi chinntí nó gníomhartha de bhun dlí de chuid an Stáit lena dtugtar éifeacht do na forálacha faoi rannpháirtíocht an phobail agus rochtain ar an gceartas atá leagtha amach i dTreoir 85/337/CEE i.e. an Treoir faoi mheasúnacht tionchair timpeallachta agus na forálacha i dTreoir 2001/42/CE maidir le héifeachtaí pleananna agus clár áirithe ar an timpeallacht a mheasúnú). Is í an fhoráil ghinearálta in imeachtaí lena mbaineann alt 50B ná go n-íocfaidh gach páirtí a chostais féin. Is féidir leis an gCúirt costais a bhronnadh i gcoinne aon pháirtí i gcásanna áirithe. Chomh maith le sin tá forálacha i bhfeidhm ionas gur féidir leis an gCúirt iomlán a chostas nó cuid díobh a bhronnadh ar an iarratasóir, in aghaidh fhreagróra nó fhógrapáirtí i gcásanna ina bhfaightear faoiseamh mar gheall ar gníomhú nó neamhfheidhm an fhreagróra nó an fhógrapáirtí.

Tá eolas ginearálta faoi athbhreithniú breithiúnach le fáil ar an suíomh idirlín www.citizensinformation.ie.

Séanadh: Tá an t-eolas thuas tugtha mar threoirlíne. Ní éilítear gur léirmhíniú dlí faoi na forálacha ábhartha atá ann agus dá mbeadh sé ar intinn ag éinne cás dlí a thógáil in aghaidh an Bhoird bheadh sé innholta comhairle dlí a fháil ar dtús

Athbhreithnithe 30/11/2011

Appendix IV Amended Section 261A Notice 22nd May 2014



22/05/2014

P. Mc Caffrey & Sons Ltd.,
Ballymagroarty,
Ballintra,
Co. Donegal

Our Ref: EUQY 01	Bord Pleanála's Ref: QV.05E.QV0128.
Re: Substitute Consent Notice – Quarry at Ballymagroarty & Glasbolie, Ballintra, Co. Donegal.	


A Chara,

With reference to the above I attach hereto notice in accordance with Part XA Section 177B of the Planning & Development Acts 2000 (as amended)

The contents of this Notice are self explanatory, and you are now invited to submit your application to An Bord Pleanála within 12 weeks of the date of the notice.

I trust this clarifies the position.

Is mise le meas,


Conall McGettigan,
A / Senior Executive Planner,

Section 261A of The Planning & Development Act, 2000 (as amended)

Substitute Consent Notice

Refers: EU QY 01 (Bord Pleanála Ref: QV.05E.QV0128).

Location: Ballymagroarty & Glasbolie, Ballintra, Co. Donegal.

Owner & Operator: P. Mc Caffrey & Sons Ltd., Ballymagroarty, Ballintra, Co. Donegal.

Subsequent to the decision of An Bord Pleanála (dated 16th October 2014,) to set aside the Decision of Donegal County Council under Section 261A – Subsection 4(a), and to confirm the Decision of the Planning Authority under Section 261A 2(a)(i) that: *“development was carried out after the 1st day of February, 1990, that would have required an environmental impact assessment, but that such an assessment was not carried out”*, and to confirm the Decision of the Planning Authority under 261A 2(a)(ii) that: *“development was carried out after the 26th day of February 1997, having regard to the Habitats Directive, would have required an appropriate assessment but that such assessment was not carried out”*.

The Planning Authority hereby gives notice pursuant to Section 261A(12) of the Planning and Development Act 2000 (as amended) directing the owner and operator of the quarry to apply to An Bord Pleanála for Substitute Consent. The application shall contain:

1. **A Remedial Natura Impact Statement**
2. **A Remedial Environmental Impact Assessment**

and shall be submitted to The Bord **not later than 12 weeks after the date of this Notice** (or such further period as the Board may allow).

Signed;


Martin McDermott,
Executive Planner,

Dated this 22nd day of May, 2014.

Appendix V Earth Science Partnership Chronology of Section 261A and Section 177E

DATE		DESCRIPTION	TAB
02/11/2005	1.	In 2005 an application was made on behalf of P. McCaffrey & Sons Ltd to Donegal County Council for an Air Emissions Licence for their premises at Ballintra, Co. Donegal. The draft Licence was issued by Donegal Co.Co. on 22/3/2005 and appealed to An Bord Pleanala by the O'Gorman family. The Board reviewed the appeal and directed Donegal Co.Co. to issue the Licence to P.McCaffrey & Sons Ltd. The Licence was issued on 2 nd November 2005.	1
28/07/2006	2.	An application for a Water Discharge Licence was made to Donegal Co. Co. to discharge effluent from the South Quarry and this was granted by Donegal Co.Co. on the 16/09/2005 under Licence No. LWAT48. The O'Gorman family appealed the Discharge Licence to An Bord Pleanala. An Bord Pleanala granted the Licence which was issued and dated 28/07/2006 (A.B.P. Ref. 05F.WW.0303)	2
18/2/2008	3.	An application for a Water Discharge Licence was made to Donegal Co. Co. to discharge effluent from the North Quarry and this was granted by Donegal Co.Co. on 06/12/2006 under Licence No. LWAT41. The O'Gorman family appealed the decision to An Bord Pleanala. An Bord Pleanala granted the Licence which was issued and dated 18/02/2008 (A.B.P. Ref. 05F.WW.0330)	3
	4.	In 2007 P.McCaffrey & Sons Ltd registered the Quarry in accordance with Section 261. Donegal Co.Co. accepted the application but did not proceed in accordance with the Section 261 registration. There was no further action in relation to the Quarry by Donegal Co. Co.	4
June 2006	5.	An Environmental Management System for the Quarry was drawn up in 2006. The objective of the E.M.S. was set out in the Environmental Policy Statement which stated the commitment of P. McCaffrey & Sons Ltd to prevent pollution, minimise all impact on the environment and the local community arising from its activity, comply with all relevant legislation and continuously improve on their environmental performance in accordance with the draft consultation document – 'Environmental Management in the Extractive Industry (Non-scheduled Minerals) Guidance for Operators' – EPA October 2003	5

22/08/2012	6.	In 2012 Donegal Co. Co. carried out an assessment of the site in accordance with Section 261A of the Planning & Development Act 2001 – 2011. The assessment was carried out by Ms. Sharon McMorran, Executive Planner, Donegal Co.Co. and she submitted her report and recommendations on the 22/08/2012. She recommended the Quarry be issued with a Notification under 261(a) Subsection 4(a).	6
22/08/2012	7.	Donegal Co. Co. issued a notice and Managers Order to P. McCafftey & Sons Ltd under Section 261(a) 4(a). These were also issued on 22/08/2012	7
06/09/2012	8.	Earth Science Partnership lodged an appeal to An Bord Pleanala on the 6 th September 2012. The appeal consisted of a report with; (i) Donegal Co.Co. Section 261(a) Notice (ii) Section 261 Registration Form (iii) Aerial Photo outlining Planning units within the Quarry lands (iv) Environmental Management System (v) Copy of Water Discharge Licence & Air Emissions Licence	8
04/10/2012	9.	An Bord Pleanala wrote to Earth Science Partnership on the 4 th October 2012 with copy of objections from the O’Gorman family and inviting a response to these submissions within 3 weeks	9
22/10/2012	10.	Earth Science Partnership replied to An Bord Pleanala letter and submission by the O’Gorman Family on the 22/10/2012	10
31/10/2012	11.	An Bord Pleanala acknowledged receipt of our submission by letter dated 31/10/2012	11
18/02/2013	12.	An Bord Pleanala wrote to Patrick McCaffrey & Sons Ltd on 18/02/2013 seeking additional information and giving 6 weeks to make a response. The information required was; (a) 1:2500 map showing excavated areas and boundaries (b) Verification of ownership of lands prior to 1964 (c) Evidence which demonstrates quarrying activity commenced prior to 1 st Oct 1964	12
02/04/2013	13.	Earth Science Partnership replied to An Bord Pleanala on 02/04/2013 addressing the issues raised in the An Bord Pleanala request for further information.	13

10/04/2013	14.	An Bord Pleanala replied by letter dated 10/04/2013 and acknowledged receipt of information	14
16/10/2013	15.	An Bord Pleanala issued its decision on Section 261a appeal dated 16/10/2013. The Board confirmed the determination of the Planning Authority in respect of the development made under Section 261a (2)(a)(i) and 2(a)(ii). The Board set aside the decision of the Planning Authority made under Section 261a 4(a)	15
05/06/2013	16.	Copy of An Board Pleanala's Inspectors Report (dated 05/06/2013) was received 4 days after the Notice of the 261A decision	16
22/05/2014	17.	Donegal Co. Co. issue Notice on 22/05/2014 in accordance with Part XA Section 177B of the Planning & Development Act 2000 (as amended) pursuant to Section 261A (12) directing the Quarry owners to apply to An Bord Pleanala for Substitute Consent and shall contain; (1) A remedial NIS, (2) Remedial E.I.A. Within 12 weeks of the Notice	17
27/06/2014	18.	Earth Science Partnership wrote to An Bord Pleanala on 27 th June 2014 seeking an extension of time and attaching a copy of the Substitute Consent Notice from Donegal Co. Co.	18
14/07/2014	19.	An Bord Pleanala responded on the 14/07/2014 granting an extension of time for a further 16 weeks from the end of the original 12 week period	19
Sept 2014	20.	<p>We contacted Donegal Co. Co. in early September 2014 to clarify the exact area which should be included as part of the Substitute Consent Application. Conal McGettigan, Planning Executive, Donegal Co. Co. emailed David Curran, An Bord Pleanala on 10/09/2014 at 16.15pm explaining the issue in relation to the appropriate area to be included as part of the Substitute Consent Application. (See 20A)</p> <p>David Curran responded by email on 10/09/2014 at 16.46pm stating that he had passed the query to the A.D.P. with responsibility for Quarry review cases and that he would be in touch. (20B)</p> <p>Conal McGettigan responded on the 11/09/14 at 11.32am thanking David Curran for his response. 20(C)</p>	20

		Conal McGettigan sent email to Earth Science Partnership stating that he had submitted a query 2 weeks previously and had received a follow up phone call from David Curran. Mr. Curran stated that he had discussed the matter with the relevant Board Inspector and confirmed that it is the area North of the County Road (i.e. the North Quarry) which is the area for which Substitute Consent is required. 20(D)	
03/12/2014	21.	The application was made for Substitute Consent on 03/12/2014. Please find attached cover letter.	21
09/01/2015	22.	An Bord Pleanala wrote a letter dated 09/01/2015 asking for a rational behind our submission of an area of 4.4 hectares for Substitute Consent	22
13/01/2015	23.	Earth Science Partnership wrote a response dated 13/01/2015 outlining our rational and attaching copies of both the An Bord Pleanala letter dated 09/01/2015 and emails between An Bord Pleanala, Donegal Co. Co. and Earth Science Partnership to this matter.	23
20/01/2015	24.	An Bord Pleanala acknowledged receipt of our submission in letter dated 20/01/2015	24
27/02/2015	25.	An Bord Pleanala wrote a letter on 27/02/2015 with Section 177I report from Donegal Co. Co. to An Bord Pleanala attached inviting a Submission in response to this report.	25
27/02/2015	26.	An Bord Pleanala wrote a letter on 27/02/2015 with submissions from the O'Gorman family attached and inviting a response to the issues raised	26
18/03/2015	27.	Earth Science Partnership wrote a response to the O'Gorman family submission on 18/03/2015	27
18/03/2015	28.	Earth Science Partnership wrote a response to Donegal Co. Co. Section 177I Report on 18/03/2015	28
24/03/2015	29.	An Bord Pleanala acknowledged receipt if submission by letter dated 24/03/2015	29
29/06/2015	30.	An Bord Pleanala wrote a letter on 29/06/2015 sighting a number of regulations, guidance documents the Section 261A Inspectors Report, Submissions on file and a report of the	30

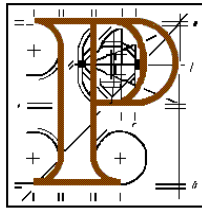
		Inspector (Paul Caprani) which was not made available to us under 2017. The letter stated that the Board has determined that it would be appropriate to consider the entirety of the site as a single entity. In accordance with Section 132 of the Planning & Development Act we are required to submit a revised application including a revised rE.I.S. and revised rN.I.S. to enable the Board to complete an E.I.A. and A.A. in relation to the overall quarry development (i.e. North Quarry, South Quarry and Quarried lands to the East of the public road and West of the N15.	
20/05/2015 (Received 27/05/2015)	31.	The Inspectors Report (Paul Caprani) is dated 20/05/2015 however it was not made available until after the decision by An Bord Pleanala on the 23/05/2017.	31
21/07/2015	32.	Earth Science Partnership responded to the Board on 29/06/2015 by seeking legal advice on the matter and following this advice we responded by letter on 21/07/2015	32
11/08/2015	33.	An Bord Pleanala wrote on the 11/08/2015 inviting the Quarry to apply for leave to make a direct application under Section 37L of the Planning & Development Act 2000 (amended)	33
02/09/2015	34.	Earth Science Partnership responded to An Bord Pleanala on 02/09/2015 stating that it intends to make an application under Section 37L and seeking a meeting	34
07/09/2015	35.	Earth Science Partnership wrote to An Bord Pleanala on 07/09/2015 stating that the Board had not responded to our letter dated 21/07/2015 and seeking a response	35
08/09/2015	36.	An Bord Pleanala responded to ESP letter in relation to the 37L application acknowledging receipt	36
16/09/2015	37.	An Bord Pleanala responded to ESP letter in relation to the matter of increasing the area of the Substitute Consent Application (See Tab 32 & 35) stating that they are considering the matter raised and giving assurance that the matter would not be dismissed or otherwise determine the application without further notice	37
17/09/2015	38.	An Bord Pleanala wrote on 17/09/2015 drawing ESP attention to Article 7 of SI 301 of 2015 with regard to time lines	38

18/09/2015	39.	An Bord Pleanala responded to our correspondence (21/07/2015 (Tab 32) stating that 'the Board considered some activity having the benefit of a pre 1964 authorisation was ongoing on part of the Southern lands and therefore the Quarry should be considered under Section 261A 3(a)..... 'I consequence the Board expressly require that the Substitute Consent Application encompass the entirety of the quarry lands' (See letter attached)	39
15/12/2015	40.	ESP resubmitted the revised rEIS and the revised rNIS together with a cover letter on the 15/12/2015. The letter stated that in accordance with An Bord Pleanala requirements the revised documents took into consideration the in combination effect of the entire quarry.	40
19/01/2016	41.	On 19 th January 2019 ESP made an application under Section 37L for further development of the Quarry (See cover letter)	41
19/01/2016	42.	An Bord Pleanala wrote on 19/01/2016 further to the Substitute Consent new application the Board required a revised newspaper notice and site notice in accordance with Section 132 Planning Development Act 2000	42
02/02/2016	43.	Earth Science Partnership responded by letter dated 02/02/2016 attaching copy of newspaper and site notices	43
15/02/2016	44.	On 15/02/2016 An Bord Pleanala acknowledged receipt of letter dated 02/02/2016 (Tab 46)	44
29/03/2016	45.	29/03/2016 An Bord Pleanala invited our response to Donegal Co. Co. Section 37L (12)(A) report which was submitted to the Board	45
18/04/2016	46.	18/04/2016 Earth Science Partnership responded to Donegal Submission in relation to Section 37L Application	46
22/04/2016	47.	22/04/2016 An Bord Pleanala acknowledged receipt of Earth Science Partnership submission	47
25/05/2016	48.	An Bord Pleanala letter dated 25/05/2016 extending time for determination of their decision	48
12/10/2016	49.	An Bord Pleanala dated 12/10/2016 extending time for decision	49

24/05/2017	50.	An Bord Pleanala issued letter dated 24/05/2017 with the Board decision attached in relation to the Substitute Consent application for the Quarry. The Board in accordance with Section 133 of the Planning & Development Act 2000 decided to dismiss the application for Substitute Consent.	50
27/05/2017	51.	Inspectors Report in relation to this matter was made in May 2015 and is attached in Tab 31 of this report	51
24/05/2015	52.	An Bord Pleanala issued letter dated 24/05/2017 in relation to Section 37L with decision attached. The Board refused permission for further development of the Quarry	52
27/05/2017	53.	Inspectors Report in relation to Section 37L Application	53

Appendix VI An Bord Pleanála Order SU0128 24th May 2017

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

Donegal County

Planning Register Reference Number: EUQY01

An Bord Pleanála Reference Number: 05E.SU.0128

APPLICATION FOR SUBSTITUTE CONSENT by Patrick McCaffrey and Sons Limited care of Earth Science Partnership (Ireland) Limited of Tonranny, Westport, County Mayo in accordance with section 177E of the Planning and Development Act, 2000, as amended.

LOCATION OF QUARRY: Ballymagroarty Irish and Glasbolie, Ballintra, County Donegal.

BOARD DECISION

The Board, in accordance with section 133 of the Planning and Development Act, 2000 decided to **DISMISS** the application for substitute consent based on the Reasons and Considerations set out below.

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.

REASONS AND CONSIDERATIONS

The Board noted that an application for substitute consent is required to be made in relation to the development in respect of which the planning authority has made a determination under section 261A(2)(a) of the Planning and Development Act, 2000, as amended. The determination affecting the subject quarry related to the entirety of the quarry (planning authority reference number EUQY01).

The review undertaken by An Bord Pleanála of the planning authority's order (An Bord Pleanála reference number 05E.QV.0128) also referred to the entirety of the quarry.

The application for substitute consent initially received by An Bord Pleanála did not relate to the entire quarry and the Board, by means of a notice under section 132 of the Planning and Development Act, 2000 sought on two occasions (by letter dated the 29th day of June, 2015 and by letter dated the 18th day of September, 2015) to give the applicant an opportunity to address the deficiencies in the application, specifically to ensure the application and the supporting documentation extended to the entire site (as per the planning authority's order) and not one element only.

Notwithstanding these communications and the responses received, the Board considered that the identified deficiencies have not been resolved and that consequently the application in respect of this quarry does not comply with the requirements of section 261A(14) of the Planning and Development Act, 2000, as amended. The Board is precluded under sections 177K(1) and 261A(14) of the Planning and Development Act, 2000, as amended, from making a decision in these circumstances to grant or refuse substitute consent and, accordingly, the Board decided to dismiss the application pursuant to section 133 of the Planning and Development Act, 2000.

In not accepting the Inspector's recommendation to refuse permission, the Board considered that this option was not available to it having regard to the failure of the applicant to submit an application compliant with section 261A(14) of the Planning and Development Act, 2000, as amended.

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

Dated this day of 2017.