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1. INTRODUCTION

1.0 Introduction

This remedial Environmental Impact Statement (rEIS) has been prepared to accompany an application to An Bord Pleanála for Substitute Consent in respect of a quarry located at Gortlettragh, Stranorlar, Co Donegal. The application for Substitute Consent has been prepared on behalf of Patton Bros. Quarry Limited.

The application for Substitute Consent is made in accordance with the requirements of Section 177E of the Planning and Development Act 2000 (as amended) while this rEIS has been prepared in accordance with the provisions of Section 177F of the Planning and Development Act 2000 (as amended).

1.1 Background to Application

This section sets out a brief background to the legislative processes that have applied to the quarry under the Planning and Development Act 2000 (as amended). A more detailed planning history can be found in the Planning Report that accompanies the application for Substitute Consent.

1.1.1 Section 261 Registration

Section 261 of the Planning and Development Act 2000 came into effect on 28th April 2004 and required that: -

261.—(1) The owner or operator of a quarry to which this section applies shall, not later than one year from the coming into operation of this section, provide to the planning authority, in whose functional area the quarry is situated, information relating to the operation of the quarry at the commencement of this section, and on receipt of such information the planning authority shall, in accordance with section 7, enter it in the register.

The Quarry Guidelines published in April 2004 by the DOEHLG to coincide with the commencement of S261 state that ‘Section 261 of the Planning and Development Act, 2000 introduced a new system of once-off registration for all quarries. Only those for which planning permission was granted in the 5 years before section 261 became operative are excluded¹.

Notwithstanding the fact that Patton Bros. Quarry Limited has secured a grant of permission from Donegal County Council in January 2000, which was less than 5 years before the coming into effect of S261 and were not required to register their quarry, they nevertheless sought to register the quarry prior to April 2005, the registration was accepted by Donegal County Council and it is recorded as quarry QY31 on Donegal County Council’s official register of quarries, which contains 186 quarries.

¹ Section 1.2 - Quarries and Ancillary Activities - Guidelines for Planning Authorities - April 2004 - Department of the Environment, Heritage and Local Government

The total quarry area registered was stated to be 4.906ha while the area of extraction area was stated to be 1.315ha.

1.1.2 Substitute Consent

A decision of the European Court of Justice (ECJ) in July 2008 (case C-215/06) heralded the removal of the facility in Irish Planning Legislation that permitted applicants *to apply for retention permission for developments which require environmental impact assessment ... except in exceptional circumstances*².

In order to deal with cases of ‘exceptional circumstances’, a new Part XA was inserted into the Planning and Development Act 2000 by way of Section 57 of the Planning and Development (Amendment) Act, 2010. This new section covering Sections 177A-177Q makes provision for a ‘Substitute Consent’ process for the regularisation of certain developments coming within the scope of the EIA Directives.

Section 261A³ of the Planning and Development Act 2000 (as amended) came into effect on 15th November 2011. Section 261A required each Planning Authority to examine every quarry within its administrative area in order to determine, *in relation to that quarry, whether having regard to the Environmental Impact Assessment Directive and the Habitats Directive, one or more than one of the following was required but was not carried out—*

- (i) an environmental impact assessment;*
- (ii) a determination as to whether an environmental impact assessment is required;*
- (iii) an appropriate assessment.*

Where a planning authority determined that a quarry came within one of the three categories, the planning authority was then required to make a further decision in relation to the planning status of the quarry, including its registration status. Following from this decision, the planning authority either required the owner/operator to make an application for substitute consent or takes enforcement action requiring the owner/operator to cease unauthorised quarrying and take such steps as it considers appropriate.

The determination of the planning authority that EIA, a determination in relation to EIA, or an appropriate assessment was/were required but was/were not carried out was reviewable by the Board as was the decision on the planning/registration status of a quarry.

² Section 261A of the Planning and Development Act, 2000 and related provisions - Guidelines for Planning Authorities.

³ Section 261A was inserted by Section 75 of the Planning and Development (Amendment) Act 2010

1.1.3 Section 261A Determination and Decision – Donegal County Council (June 2012)

Donegal County Council carried out its functions in accordance with the provisions of S261A and on 9th June 2012 wrote to Patton Bros. Quarry Limited to inform them of its determination and decision under S261A and to tell them that they could seek a review of the decision and determination from An Bord Pleanala.

The determination of Donegal County Council was that: -

(i) Development was carried out after 1st February 1990 which was not authorised by a permission granted under Part IV of the Act of 1963, prior to 1st 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 26th February 1997, which was not authorised by a permission granted under Part IV of the Act of 1963, prior to 26th 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.

Donegal County Council concluded that one of the following was required: -

- either (a) an EIA or (b) a determination as to whether an EIA was required, and
- An Appropriate Assessment was required

and in both instances neither an assessment nor a determination had been carried out.

The notification concluded that: -

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

A request for a review of the decision/determination of Donegal County Council was submitted to An Bord Pleanala by McCullagh Architecture and Surveying Ltd on behalf of Patton Bros. Quarry Limited.

1.1.4 An Bord Pleanála Direction (June 2013)

An Bord Pleanála issued its decision on 13th June 2013 and the direction of the Board stated that: -

The Board decided as follows:

1. To **confirm** the Determination of the planning authority in respect of this quarry made under section 261A(2)(a)(i) of the Planning and Development Act 2000 (as amended); and
2. To **set aside** the Determination of the planning authority in respect of this quarry made under section 261A(2)(a)(ii) of the Planning and Development Act 2000 (as amended)

The Board decision regarding Section 261 261A(2)(a)(i) is generally in accordance with the Inspector's recommendation.

In deciding not to accept the Inspector's recommendation regarding 261A(2)(a)(ii) the Board had regard to history of planning permissions on site including the 2009 permission when the impacts of the surface water discharges from the development to the River Finn SAC were considered at further information stage. The Board also noted that this application was considered in advance of the publication of the 'Appropriate Assessment for Plans and Projects in Ireland – Guidance for Planning Authorities' and noted the planning authority's issuance of a licence to discharge trade effluent to a tributary stream of the River Finn SAC.

1.1.5 Application for Substitute Consent – Not Submitted to An Bord Pleanála (2013)

Following from the decision of the Board on 13th June 2013 Patton Bros. Quarry Limited were required to apply for Substitute Consent within a period of 12 weeks of that decision.

As there were still 18 months remaining in the life of an existing grant of permission reg. ref. 09/60062, the applicants did not apply for Substitute Consent and once the life of permission 09/60062 expired in December 2014, no additional permission existed under which the quarry could operate.

Donegal County Council did agree to allow the orderly wind-down of the operations by permitting all worked stone to be removed from the stockpiles on site.

1.1.6 Planning Reg. Ref. 15/50834 (June 2015)

Patton Bros. Quarry Limited only became aware of the consequences of the S261A decisions and determinations when in July 2015 a planning application was submitted to Donegal County Council on their behalf, for a development of the following description: -

Planning Permission and Retention Planning Permission for the following: -

(1) extension to and continuation of use of existing stone quarry which includes extraction of stone including blasting, excavating, crushing and screening of rock and all ancillary and associated site works including all associated landscaping and restoration works and (2) provision of a designated area for storage of demolition waste materials, the waste storage will including (a) demolition brick, concrete and stone to be recycled at the plant; producing crushed aggregates to be used as fill materials; (b) demolition wood to be stored and sent for recycling and (c) steel and metals to be stored and sent to local scrap metal recycling plant and retention permission for (1) existing quarry to include weighbridge, wheel wash, lagoons, storage of machinery ancillary to existing quarry site office, canteen and associated structures including septic tank; (2) removal of top soil over area of proposed extension of quarry and all associated and ancillary site works. the planning application is accompanied by an E.I.A. and an N.I.S.

A letter from Donegal County Council dated 20th August 2015 notified the applicants that the application could not be considered and stated that: -

*I wish to advise you that **the Planning Authority has determined that an Environmental Impact Assessment would have been required for the retention element of the application had an application for permission been made before it was commenced.***

In this regard Section 34(12) of the Planning and Development Act, 2000 (as amended) states that “A Planning Authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out – (a) an environmental impact assessment, (b) a determination as to whether an environmental impact assessment is required, or (c) an appropriate assessment.” Section 34(12B) of the Act further states “where a planning authority refuses to consider an application for permission under subsection (12) it shall return the application to the applicant, together with any fee received from the applicant in respect of the application, and shall give reasons for its decision to the applicant.”

Accordingly I am to advise you that your application cannot be considered by the Planning Authority and is returned herewith.

1.1.7 Application for Leave to Apply for Substitute Consent (March 2016)

Following the decision of Donegal County Council to invalidate application reg. ref. 15/50834 an application was submitted to An Bord Pleanala for leave to apply for Substitute Consent in

accordance with Section 177C (Part XA) of the Planning and Development Act 2000 (as amended) (where notice not served by Planning Authority).

On 23rd February 2017, the Board granted leave to apply for substitute consent. The reasons and considerations set out by the Board for deciding to grant permission are as follows: -

REASONS AND CONSIDERATIONS

Having regard to Section 177D(1) of the Planning and Development Acts, 2000, as amended, and to the conclusions reached by the Board in its review of the determination made by the Planning Authority under Section 261A of that Act with respect to the quarry on the site (reference number 05. QV.0012), the Board is satisfied that an Environmental Impact Assessment was required for the development upon the site and that one was not carried out.

The Board concluded that exceptional circumstances exist by reference to the following matters:

- the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment Directive,
- the relatively small scale of the development when compared to the threshold set at class 2(b) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001,
- the uncertainty regarding the applicant's belief that the development was not unauthorised and that the applicant might reasonably have believed that the development was not unauthorised,
- the ability to carry out an Environmental Impact Assessment and provide for public participation has not been substantially impaired,
- the limited nature of the actual or likely significant effects on the environment resulting from the development,
- the extent to which significant effects on the environment, if any, can be remediated, • the location of the development and relevant development plan policies and objectives in respect of development of this type and at this location, and • the planning history of the site based, inter alia, on the information available from the planning authority including:
 - the applicant's history of general compliance with permissions elsewhere and resolution of matters at an early stage,
 - the non-compliance with planning permissions which arose from exceeding the duration of permissions rather than any significant expansion beyond authorised site boundaries, and
 - the applicant's unsuccessful and incomplete engagement in the Section 261A substitute consent process,

and considered that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the site's Conservation Objectives. Having regard to that assessment and the conclusions reached by the Board in its review of the determination made by the planning authority under Section 261A of that Act with respect to the quarry on the site (reference number 05. QV.0012), the Board is satisfied that the development, either individually or in combination with other plans or projects, would not have been likely to have had a significant effect on the River Finn Special Area of Conservation (Site Code: 002301), or any other European site, in view of the site's Conservation Objectives.

1.2 Additional Period for submitting Application

In a decision dated 7th June 2017, An Bord Pleanála granted an extension of the period allowed for making the application by a further period of 10 weeks. The application is therefore required to be submitted on or before 15th August 2017. See Appendix 1.1.

1.3 Remedial Environmental Impact Assessment

As per Section 177F(1) of the Planning and Development Act 2000 (as amended):

177F. - (1) A remedial Environmental Impact Statement shall contain the following:

(a) a statement of the significant effects, if any, on the environment, which have occurred or which are occurring or which can reasonably be expected to occur because the development the subject of the application for substitute consent was carried out;

(b) details of—

(i) any appropriate remedial measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy any significant adverse effects on the environment;

(ii) the period of time within which any proposed remedial measures shall be carried out by or on behalf of the applicant;

(c) such information as may be prescribed under section 177N.

This rEIS has been prepared in accordance with the requirements of the following legislation: -

- Planning and Development Acts, 2000 (as amended) (S.I. 30 of 2000 – as amended);
- Planning and Development Regulations, 2001 (as amended) (S.I. 600 of 2001- as amended).

The contributors to the EIS also had regard to the following publications: -

- Guidelines on the information to be contained in Environmental Impact Statements; (EPA) 2002;
- Advice Notes on Current Practice in the preparation of Environmental Impact Statements; (EPA) 2003.
- Quarries and Ancillary Activities - Guidelines for Planning Authorities; (DoEHLG) 2004
- Environmental Management Guidelines - Environmental Management in the Extractive Industry (Non-Scheduled Minerals): (EPA) 2006

1.4 Structure of rEIS

The rEIS is structured as follows: -

Introduction – Describes the legislative background to the making of the application, the structure and content of the rEIS, the extent of scoping and consultation that was carried out and provided details of all contributors to the rEIS.

Description of Development and Policy Context – Describes the site location, the nature and extent of the quarry operations and provides an overview of relevant national, regional, and local planning policy.

The impacts of the quarry on the environment have been examined in ten chapters under the following headings: -

- **Introduction**
- Description of Development and Policy Context
- Human Beings
- Flora and Fauna
- Soils, Geology and Hydrology
- Existing Operations and Environmental Management – Water, Dust, Noise
- Landscape and Visual Impact
- Cultural Heritage
- Material Assets
- Interactions

This EIS follows the “Grouped Format” structure (as detailed in the Guidelines on the Information to be contained in Environmental Impact Statements EPA) with each of the above relevant sections considering the following: -

- Introduction outlining the purpose of the chapter;
- Methodology used during the assessment;
- Description of the existing environment;
- Description of significant impacts generated by the existing quarry;
- Mitigation measure’s already in place or proposed, to avoid, reduce and where possible remedy significant negative impacts that have been identified;
- Reinstatement (where applicable)

Schedule 7 to the Planning and Development Regulations 2001 (as amended) describes the criteria for determining whether a development would or would not be likely to have significant effects on the environment. These criteria have been taken into account in the preparation of this remedial EIS.

1.5 List of Contributors

Details of the study team are given below: -

Joe Bonner Town Planning Consultant 127 Lower Baggot Street Dublin 2	Introduction, Description of Proposed Development and Policy Context, Human Beings, Landscape, Cultural Heritage, Co-ordination and editing EIS Chapters Non-Technical Summary
Catherine Storey, Environmental Consultant Upper Kilraine Glenties Co Donegal BSC CEnv MIENvSc, MCIEM.	Flora and Fauna / Ecology Soils and Hydrology Air and Climate Noise and Vibration Interactions Co-ordination and editing EIS Chapters Non-Technical Summary
Stephen Storey NVQ II Landscape and Habitat Management	Landscape/Visibility
BPH Laboratories New Road Thomondgate Limerick Ireland	Materials Testing and environmental Monitoring results
McCullagh Archtecute and Surveying, Glenfin Road, Ballybofey, Co. Donegal	Site Surveys, Architectural Plans and Drawings

These specialist contributors have prepared individual chapters in accordance with the methodology described in the EPA’s ‘Guidelines on the Information to be contained in Environmental Impact

Statements, and *'advice notes on current practice (in the preparation of Environmental Impact Statements)'* as well as from past experience of preparing Environmental Impact Statements to accompany planning applications.

1.6 Baseline Information

While no formal pre application consultation has been carried out to scope the key issues to be addressed in this rEIS, regard has been had to the reports of the planning authority and An Bord Pleanala in respect of the previous planning applications submitted in relation to the quarry, the S261 Registration process and the S261A review of the quarry by Donegal County Council and the subsequent review by An Bord Pleanala of the decision.

Issues identified by the Planning Authority and the Board include, landscape/visual impact, flora and fauna, recorded monuments, noise and dust, water, traffic and impact on nearby residential properties. These and other issues have been addressed as part of the rEIS and will be addressed in greater detail in the relevant chapters.

The information provided in those application and ongoing monitoring results provide information that has informed the process of preparing this rEIS.

The individual sections prepared for this application have been prepared specifically for this remedial EIS and have used a combination of desk top studies as well as field surveys and monitoring of specific environmental criteria such as for the Water, geology, Dust and Noise chapters to establish a baseline against which all environmental assessments have been carried out for the relevant substitute consent period.

1.7 Alternatives Considered

As the 'substitute consent' process has been specifically designed to rectify site specific planning issues pertaining to developments such as quarries, on foot of a decision of the European Court of Justice, it is not considered necessary to consider alternatives in the case of Patton Bros Quarry at Gortlettragh.

1.8 Statement of Difficulties Encountered

No significant difficulties were experienced in compiling the information necessary for the preparation of this remedial EIS.

1.9 Non-Technical Summary

The non-technical summary addresses in non-technical language, the key issues that have been addressed in the EIS.