



**Príomhoifigeach Sláinte Comhshaoil
Seirbhís Sláinte Comhshaoil**

Clinic Contae,
Campas Ospidéal Naomh Conal,
Leitir Ceanainn, Co. Dhún na nGall
F92 FW6Y

**Principal Environmental Health Officer
Environmental Service**

County Clinic, St Conal's Hospital Camps,
Letterkenny, Co. Donegal
F92 FW6Y

www.hse.ie
[@hselive](https://twitter.com/hselive)

t 074 91 23759
e finan.gallagher@hse.ie

An Bord Pleanála
64 Malborough Street
Dublin 1

28th October 2022

**EHS ref: ID2740
Planning ref: ABP 314181-22
Applicant: Ian Tinney T/A Tinney's Quarry**

**Substitute Consent Application
Tinney's Quarry, Trentaghmucklagh, St Johnstown, Co Donegal**

Enclosed is a submission by the Environmental Health Service (EHS) with regard to the above substitute consent application.

Any queries or clarification on the contents of this submission should be directed in the first instance to Finán Gallagher, Principal Environmental Health Officer, Donegal at: finan.gallagher@hse.ie

The following HSE stakeholders were notified of the application on the 30th September 2022

- Emergency Planning – Kay Kennington
- Estates – Helen Maher/Stephen Murphy
- Assistant National Director for Health Protection – National Director for Health Protection.
- CHO – Dermot Monaghan

Finán Ó Gallchobhair

Príomhoifigeach Sláinte Comhshaoil | Principal Environmental Health Officer

Seirbhís Sláinte Comhshaoil Clinic Contae, Campas Ospidéal Naomh Conal, Leitir Ceanainn, Co. Dhún na nGall F92 FW6Y.
Environmental Health Service County Clinic, St Conal's Hospital Campus, Letterkenny, Co Donegal, F92 FW6Y.

[0873772170](tel:0873772170) | Finan.Gallagher@hse.ie



Observation of the Environmental Health Service (EHS)

Remedial EIA and Substitute Consent

The EHS notes the ongoing enforcement action under the Planning Acts instigated by Donegal County Council on the 7th September 2021 in the District Court. This is with regard to operation of the site for non-compliance with a Planning Enforcement Notice to cease use of the land for quarrying.

The EHS also notes the position by An Bord Pleanála of a previous application for substitute consent in 2013 for the quarry, Case Number; SU0010, Case reference SU05E.SU0010. It is noted that An Bord Pleanála state in the accompanying documentation on the consideration of the 'exceptional circumstances' test for granting leave to apply for substitute consent in this instance, that the previous application was not refused but due to the lack of the required further information requested **'the Board is precluded from giving further consideration to the granting of substitute consent for the development the subject of the application'**.

The Board also states that this application for substitute consent meets the criteria the applicant had or could reasonably have had a belief that the development was not unauthorised. The rationale that this criteria has been met seems to be that the applicant would not consider the development site unauthorised because his advisers did not tell him. This is set out in page 4 of 15 of the Board's decision. This is despite a previous application for substitute consent in 2013 and direct request by the Board for further information on this application. The applicant did not respond to this request.

It is difficult to reconcile the decision made by the Board that the non-response to the further information request in 2015, that prevented the Board considering the applicant further, can be anything other than refusal of the application. If this is the case, then it obviously sets a significant precedent with regard to responses to further information requests made by the Board and in particular to those requests made on the basis of submissions made by statutory consultees or 3rd parties, for example the Environmental Health Service.

It is also difficult to be in agreement with the position of the Board that the applicant could not have had a reasonable belief that the quarry was not unauthorised. The statement by the Board in reaching this decision has far reaching implications, if accepted at face value:

'Considering that no response was lodged with An Bord Pleanála in respect of the request for further information, Mr. Tinney was clearly not aware of the implications of failing to address the Board's concerns and it is now six years after the request was issued on 23rd March 2015, that the implication of the Board's previous decision have come to light for Mr. Tinney.

As none of Mr. Tinney's advisors involved in the quarry over the years seemed to have been aware of the planning status of the quarry, it is very reasonable to conclude that Mr. Tinney who is not a planning expert had a belief that the development was not unauthorised'

In effect the Board are stating that if a request is made for further information on an application by the Board, it is reasonable for an applicant to take 6 years to realise the importance of this request and in the meantime it is reasonable for the applicant to continue operating an unauthorised development that should have had an Environmental Impact Assessment, without any assessments being carried out. Furthermore, the Board are also stating that it is reasonable for an applicant to not comply with development



controls depending on what advice they might, or might not, have been given. The advice given to the applicant is not detailed.

The outcome of the above is that it has been known for at least 10 years that the quarry should have had an assessment of the likely significant effects on, amongst other areas, population and human health. There is a period of at least 10 years when any mitigation measures to protect environmental and human health should have been put in place with regard to the operation of the quarry or the quarry should have ceased operating.

Visit to the Site

A site visit was carried out by Ms Catherine Strathern, Environmental Health Officer, and the following was reported:

The site is located in the townland of Trentaghmucklagh approximately 4 km west of the village of St Johnston in Co Donegal. The quarry is above the village at the top of a hill. The predominant land use in the area is agriculture.

The quarry is surrounded by agricultural land, except to the north-eastern side where a high bank separates it from a quarry in different ownership. Residential development is in the form of one-off houses along the local road network.

Twenty one residential homes are located within 500m of the existing quarry site.

Within the village of St. Johnston (4km distance).
A national school
A crèche
A day centre for the Elderly (one day per fortnight)
A GP surgery.

Surface water discharges via a series of two settlement ponds to a stream located to the west of the site. The quarry owners have been permitted a discharge licence which is monitored annually by Donegal county Council.

The EHS has seen copies of the discharge licence and monitoring results.

Drinking water is provided to most of the residential homes by the mains water supply. HSE Env Health records show that 1 property in the neighbouring townland of Brockagh uses a private well for its source of drinking water. Sample results were satisfactory when this water was analysed.

An historical supply of drinking water known as the 'Ardagh Well' is in the neighbouring townland of Ardagh. Anecdotally, the EHS has been made aware that some local people are still using this well. Donegal County Council have not sampled at this location.

Noise and Vibration

The use of an absolute noise exposure limit at noise sensitive locations is not a measurement of the impact from development of the quarry as an unauthorised development.

The impact from the unauthorised development is the change that the operation of the unauthorised development has had in the noise environment as a consequence of operating.



Attenuation of noise impacts due to the low level of the quarry base is only due to the progress of the unauthorised quarrying and should not be relied on in an assessment in a rEIA.

A remedial EIA is required to assess the likely significant impacts that the development has had due to its unauthorised operation. A more representative assessment of the likely significant effects from noise from the unauthorised development is therefore the change caused by the unauthorised development from the existing background noise level, if the development had not taken place, or taken place as an authorised development with required mitigation.

The noise section of the rEIAR concludes:

9.11 Residual Impacts

It is not expected that there has been an adverse impact on noise quality in the vicinity of the application site assuming that mitigation measures and best practice has been applied.

There is no evidence to support this conclusion in the rEIAR. The comparison of the exiting noise exposure at noise sensitive locations does not consider the change in the noise environment over the lifetime of the unauthorised development and what consequences that has had on local residents and services. The conclusion is confusing stating 'adverse impact on noise quality' as a criteria and making an assumption.

Clarification as to the criteria 'noise quality'

Clarification as to whether noise mitigation and best practice was applied. The rEIAR cannot state that this would have been the impact if the mitigation we have identified now was employed during the period of unauthorised development and then state there would have been no adverse impact. The rEIA needs to consider what the actual impacts were after whatever mitigation was implemented at the time (if any).

Dust Emissions

Dust monitoring results are reproduced below

The dust monitoring should include results in dry summer months when dust generation and deposition is likely to be highest.

The conclusion from the rEIAR

10.15 Impact Assessment Conclusion

The impact on air quality and in particular dust generation and dust deposition from the site is assessed as having no significant negative effects.

The unauthorised development has been active for a number of years. It would therefore be reasonable to monitor dust during periods of dry summer months when dust generation would be at a maximum in order to assess the likely significant effects of dust.

Averaging of dust deposition over a 30 day period can include significant high levels of dust deposition for short periods of time that can be a nuisance whilst there is still compliance with the standard. The daily deposition should also be included in the rEIAR as a better indicator of potential nuisance events and not just an averaged over 30 month period.

Protection of Ground and Surface Water

The EHS has received confirmation from Donegal County Council of compliance with the discharge limits for pH and suspended solids under the license Lwat67.

It is noted that this trade effluent license was granted in 2009.



8.4.2 Site Services in Water & Wastewater

There are no longer welfare facilities provided on site. In the past a canteen and toilet facilities were made available near the entrance to the site. Wastewater was treated in a septic tank and associated percolation area. These have since been made redundant and the septic tank has been removed from site. The containers used for the office, canteen and toilet remain on the site in a state of disrepair. For the past number of years, toilet and canteen provision for the family business is made at the applicants dwelling approximately 200 m southwest of the quarry entrance.

The EHS notes the following:

Ground Water

The EHS notes the current monitoring results of ground water and that there are no exceedances of the Environmental Quality Standards. This would be the most beneficial aspect of the rEIAR in determining the likely significant effect on ground water from the unauthorised development

With regard to protection of surface and ground water contamination from hydrocarbons the EHS is satisfied that if the proposed mitigation is implemented in full there will adequate protection of Public Health if substitute consent is granted.

With regard to protection of surface and ground water contamination from hydrocarbons the EHS is satisfied that if the proposed mitigation is implemented in full there will adequate protection of Public Health.

The rEIAR states:

8.8.11 Conclusion

With the implementation of the mitigation measures listed, the implementation of the project as outlined will not have caused a significant negative effect on the surface water or groundwater environment.

It is not clear what this is stating:

1. Is it stating that if the mitigation was implemented there would not have been a significant negative effect, or
2. The mitigation was implemented and there was no negative effect, or
3. There was a negative effect but it wouldn't have happened if the mitigation was implemented,
3. There were no negative effects and the mitigation will be implemented and there will continue to be negative effect.

The use of the above ambiguous conclusions is used in a number of sections of the rEIAR and it is not clear exactly what it means.

The EHS understanding of the objectives of the rEIA process are:

- a) To identify what the likely significant effects have been from the unauthorised development (if any),
- b) To identify what mitigation is required to ensure no adverse effects from continuation of the development if Substitute Consent is given.



Conclusions should be clear within the above context.

A handwritten signature in blue ink, appearing to read 'A Sulley', written over the printed name and title.

Andrew Sulley
Senior Environmental Health Officer

A handwritten signature in blue ink, appearing to read 'Catherine Strathern', written over the printed name and title.

p.p. Catherine Strathern
Environmental Health Officer
28th Oct 2022

