



An Bord Pleanála  
64 Marlborough Street  
Rotunda  
Dublin 1  
D01 V902

Our Ref: 141215  
Your Ref:

23<sup>rd</sup> September 2020

Re: **Section 5 Referral in respect of Quarrying Activity at P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal**

Dear Sir/Madam,

On behalf of our client Pearse O’Gorman, Ballymagroarty, Ballintra, Co. Donegal we refer to a Section 5 application made to Donegal County Council (Ref: S5 19/02), in respect of ongoing quarrying activity at the P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal. In its declaration issued on 4<sup>th</sup> September 2020 the Planning Authority confirmed that the activity referred to above **is development and is not exempted development**. We enclose for information purposes the declaration as well as the information submitted by our client, Pearse O’Gorman, to Donegal County Council with the original Section 5 Application. This information sets out the planning history of the quarry and also includes a detailed photographic record of the activities that have taken place there.

We are making this referral to An Bord Pleanála in order that the Board can confirm the position adopted by Donegal County Council. Please find enclosed the statutory fee of €220. Should you require any additional information in respect of this matter please do not hesitate to contact this office.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Sean McCarthy', written over a horizontal line.

Sean McCarthy BSc. (Hons) MURP MRTPI  
Project Planner  
MKO

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>031103-20</u>
ABP-	_____
25 SEP 2020	
Fee: €	<u>220</u> Type: <u> cheque</u>
Time: _____	By: <u> Post</u>

Enc.







**Ref. No: S5 19/02**

4th September, 2020

Pearse O'Gorman  
C/o Sean McCarthy  
McCarthy Keville O'Sullivan Ltd  
Planning and Environmental Consultants  
Block 1  
GFSC  
Moneenageisha Road  
Galway

**AN BORD PLEANÁLA**

25 SEP 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

**MKO**  
Received on  
08 SEP 2020  
14/215-a  
Sean McCarthy

**Re: Quarrying activity at a quarry at Ballymagroarty, Ballintra, Co. Donegal**

A Chara,

I refer to your request received on 23<sup>rd</sup> March, 2020 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

  
for A/Senior Ex. Planner  
Planning Services  
/MP

**Planning and Development Acts, 2000 (as amended)**  
**(Declaration and Referral on Development and Exempted Development)**

**DECLARATION**

**Chief Executive's Order No:** 2020PH1600

**Reference No:** S5 19/02

**Name of Requester:** Pearse O'Gorman  
C/o Sean McCarthy  
McCarthy Keville O'Sullivan Ltd  
Planning and Environmental Consultants  
Block 1  
GFSC  
Moneenageisha Road  
Galway

**Summarised Description of development the subject matter of request:**  
*Quarrying activity at a quarry*

**Location of Development:**  
*Ballymagroarty, Ballintra, Co. Donegal*

**IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE**

**IS** Development

**IS** NOT Exempted Development

**WITHIN THE MEANING OF THE ABOVE ACT**

**The Planning Authority in considering this referral, had regard particularly to:**

**The Planning Authority in considering this referral, had particular regard to the following sections of the Planning and Development Act, 2000 (as amended), any relevant Articles and Classes of Exempted Development within the Planning and Development Regulations 2001(as amended) and relevant Section 5 referrals decisions made by An Bord Pleanala :**

- (a) Section 2(1)
- (b) Section 3(1)
- (c) Section 4
- (d) Section 177B
- (e) Section 177U(9)
- (f) Section 261A

***And concluded that:***

The proposal IS development within the meaning of the Planning and Development Act, 2000 (as amended) and IS NOT exempted development.

**DATED THIS 4th DAY OF SEPTEMBER 2020**

*J. O'Connell*  
\_\_\_\_\_  
**for A/Senior Ex. Planner**  
**Planning Services**



**Ref. No: S5 19/02**

4<sup>th</sup> September, 2020

Pearse O'Gorman  
C/o Sean McCarthy  
McCarthy Keville O'Sullivan Ltd  
Planning and Environmental Consultants  
Block 1  
GFSC  
Moneenageisha Road  
Galway

AN BORD PLEANÁLA	
25 SEP 2020	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

**Re: Quarrying activity at a quarry at Ballymagroarty, Ballintra, Co. Donegal**

A Chara,

I refer to your request received on 23<sup>rd</sup> March, 2020 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

  
for A/Senior Ex. Planner  
Planning Services  
/MP

***Planning and Development Acts, 2000 (as amended)***  
***(Declaration and Referral on Development and Exempted Development)***

**DECLARATION**

Chief Executive's Order No: 2020PH1600

Reference No: S5 19/02

Name of Requester: Pearse O'Gorman  
C/o Sean McCarthy  
McCarthy Keville O'Sullivan Ltd  
Planning and Environmental Consultants  
Block 1  
GFSC  
Moneenageisha Road  
Galway

**Summarised Description of development the subject matter of request:**  
*Quarrying activity at a quarry*

**Location of Development:**  
*Ballymagroarty, Ballintra, Co. Donegal*

**IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE**

**IS** Development

**IS** NOT Exempted Development

**WITHIN THE MEANING OF THE ABOVE ACT**

**The Planning Authority in considering this referral, had regard particularly to:**

**The Planning Authority in considering this referral, had particular regard to the following sections of the Planning and Development Act, 2000 (as amended), any relevant Articles and Classes of Exempted Development within the Planning and Development Regulations 2001(as amended) and relevant Section 5 referrals decisions made by An Bord Pleanala :**

- (a) Section 2(1)
- (b) Section 3(1)
- (c) Section 4
- (d) Section 177B
- (e) Section 177U(9)
- (f) Section 261A

***And concluded that:***

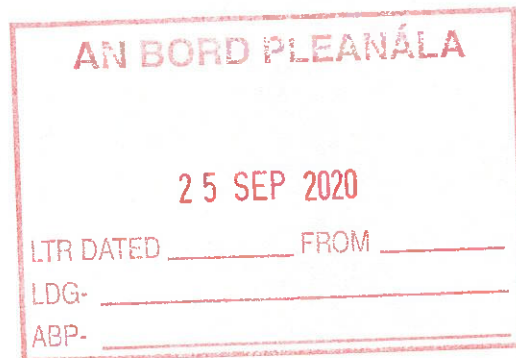
The proposal IS development within the meaning of the Planning and Development Act, 2000 (as amended) and IS NOT exempted development.

**DATED THIS 4th DAY OF SEPTEMBER 2020**

*J. O'Connell*  
\_\_\_\_\_  
**for A/Senior Ex. Planner**  
**Planning Services**



Planning Department  
County House  
The Diamond  
Lifford  
Co. Donegal



11<sup>th</sup> February 2019

Our Ref:

141215a

Your Ref:

**Re: Section 5 Declaration in respect of Quarrying Activity at P McCaffrey & Sons Ltd  
Quarry, Ballymagroarty, Ballintra, Co. Donegal**

Dear Sirs,

On behalf of our client, Pearse O'Gorman, we are making an application to seek a Declaration of Development under the terms of Section 5 of the Planning and Development Act 2000, as amended, in relation to the ongoing quarrying activity and ancillary works taking place at P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal.

This Section 5 application seeks a declaration from Donegal County Council on the following:

*'Whether the ongoing quarrying and ancillary activities at P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal is or is not development requiring planning permission from Donegal County Council and is or is not exempted development'.*

For context the following is a planning history of the site beginning in 2001.

#### **2001 Planning Application**

In 2001 the applicant applied for planning permission for an extension to, retention and completion of an existing quarry operation and associated buildings [offices, laboratory, garage, store and gravelstore] and the extinguishment of a public right-of-way adjacent to the quarry [Pl Ref: 01/106]. This grant of permission was appealed to An Bord Pleanála who subsequently refused planning permission [Ref: 05.131103] and the primary reason given was that-

*'It is considered that that the proposed development, if permitted, would seriously injure the amenities and depreciate the value of properties in the vicinity of the site and would be unacceptable in terms of risk to environmental pollution and traffic safety'.*

While there is some considerable confusion and contradictory information in this planning application with respect to the overall site area, and this is referred to in the Inspectors Report, this application encompassed both the north and south quarry areas. The application refers to a site area of 19.8HA and an excavation area of 10HA.

For the purposes of this Section 5 application it is important to note that this planning application was made in respect of the entire quarry and the Inspectors report readily identifies this. For ease of reference the extent of the quarry area is identified below.



**Figure 1 – Quarry Extent**

#### **Application for Registration under Section 261**

Section 261 of the Planning and Development Act 2000, which deals with the Control of Quarries, came into effect on the 28th April 2004. Section 261 introduced a once off system of registration for all quarries, except those for which planning permission was granted in the previous 5 years. In 2006 the subject quarry was registered under Section 261 of the Planning and Development Act as set out above. The total site area at that time was stated to be 33.9ha with an extraction area of 10.6ha. This registration related to the entire quarry.

#### **Section 261A**

The Planning & Development [Amendment] Act 2010 contained significant changes relating to quarry developments, particularly in relation to applications for retention permission and to planning enforcement. Under section 75 of the new Act (which inserts a new section 261A into the 2000 Act) each planning authority must determine which quarries in its administrative area, would, having regard to the dates of implementation of the EIA Directive and the Habitats Directive, respectively, have required an environmental impact assessment, a determination in relation to environmental impact assessment, or an appropriate assessment in relation to possible effects on the integrity of a European site, and which have not had such assessment/determination carried out.

In 2012, pursuant to section 261a as set out above, Donegal County Council notified the operator of the McCaffrey Quarry of their intention to issue an Enforcement notice requiring the cessation of the operation of the quarry. This determination was undertaken on the basis that the quarry had commenced operation on or after 1st October 1964 and no planning permission had been granted in respect of the quarry.

The applicants made an application for review under section 261A to An Bord Pleanála (ABP) following the Planning Authority's determination. This review and its assessment by ABP relates to the entire quarry operation including both the north and southern quarry areas. Section 2 of the Inspectors report includes a description of the quarry subject to the review. This clearly relates to the entire quarry area.

Section 12 of the Inspectors Report is also relevant and the following is an extract from this section:



25 SEP 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

"it is the submission of the quarry owner that notwithstanding that the entire area was registered under S261, the northern quarry (quarry B) is a separate development unit and should not be associated with the main quarry (quarry A).

I do not accept this argument. It is a statement of fact that the entire area - quarry A, Band C- were registered as a single quarry under section 261. In addition, the planning application for development at the quarry (PL05. 1311 03) included the northern quarry within the development boundary, as have several other submissions from the quarry owner during the lengthy planning history. On the date of my site inspections, material was being excavated in the northern quarry and brought to the main quarry for processing.

It is my reasoned opinion that each of the three quarry areas are intrinsically linked, by ownership, by operation (with the exception of area C which has not been developed) and by custom. I am satisfied that the quarry is a single operation and should be assessed as one.'

The Boards direction on this review application includes a note as follows:

"Having regard to the nature and extent of operations, landownership, and the extent of lands indicated during the S261 registration process, the board considered that it would be appropriate to consider the entirety of the site as a single entity.'

On 5<sup>th</sup> June 2013 the Board's Inspector found that the quarry had commenced operation before 1st October 1964 and therefore Donegal County Council's decision to issue an enforcement notice was incorrect and should be set aside. This opened the way for the quarry operator to apply to An Bord Pleanala for Substitute Consent.

#### **Substitute Consent Application**

In December 2014 the quarry operator applied to An Bard Pleanala for substitute consent under Section 261A of the Planning & Development Act 2000. This substitute consent application related to the northern quarry area only (Area B).

On 9th January 2015 An Bord Pleanala wrote to the quarry operator stating:

*'Having regard to the report by Donegal County Council on the 261A process and the Inspector's Report, Board Direction and Order in relation to QT/0128, you are requested to submit the rationale behind your submission of an area of 4.4 hectares for substitute consent and the exclusion of the remainder of the estimated 10.35 hectares [2010 aerial photograph] extracted/working area.'*

The applicant's agent responded by way of a letter on 19th January 2015. This response, in our view, relies entirely on an informal communication between Donegal County Council and An Bord Pleanala which was interpreted such that the southern quarry area was deemed to not require substitute consent.

On 29th June 2015 An Bord Pleanala wrote to the quarry operator requesting the following be submitted:

*'A revised application including a revised remedial Environmental Impact Statement and revised remedial Natura Impact Statement to incorporate sufficient information to enable the Board to complete an environmental impact assessment and appropriate assessment 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".'*

On the 15th December 2015 the quarry operator submitted, to An Bord Pleanála, a revised remedial Environmental Impact Statement (rEIS) and a revised remedial Natura Impact Statement (rNIS). The red line boundary of the substitute consent application site remained unchanged still only encompassing the northern quarry area (Area B) however the revised remedial Natura Impact Statement and revised remedial Environmental Impact Statement which formed the 'revised application' had an extended 'study area' which included the southern quarry area (Area A).

By the applicant's own admission in Section 1.3 of the Revised Remedial EIS, the northern quarry area has supplied stone which is processed in the southern quarry area. While the northern quarry area is not being operated at present, with the exception of disposal of waste material from the southern quarry area, the overall operation involves processing a stockpile of stone extracted from the northern quarry area during a period of intense activity from approx. 2012 when, we understand, an estimated 250,000 tonnes of stone was extracted and stockpiled in the southern quarry area. Both the northern and southern quarry areas therefore form the overall quarry development and operation.

On 23<sup>rd</sup> May 2018 An Bord Pleanála issued their decision on this case dismissing the application for the following reason:

*'The Board noted that the 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).*

*A 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 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 the 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.'*

25 SEP 2020



**Figure 2 – Quarry Areas**

### Section 37L Application

Section 37L of the Planning and Development Act 2000 (as amended) allows for applications to further develop existing quarries, which are currently the subject of a substitute consent application under Section 261A of the Act. The legislation states-

*'Where an application for substitute consent is or was required to be made by the owner or operator of a quarry pursuant to subsection {7}, {10} or {12} of section 261A, the owner or operator may apply for permission to further develop that quarry in accordance with this section.'*

The quarry operator made a planning application to An Bord Pleanála under Section 37L of the Planning & Development Act and consisting of-

*'Quarrying of 6.2 hectares down to a level of 85m00 and will be subject to extraction primarily by drilling and blasting means and all associated ancillary facilities/works, screening berms and landscaping over a 35 year period.'*

An extract from the Environmental Impact Assessment [Non-Technical Summary], which accompanies the planning application, explains the nature of the development in further detail-

*'It is proposed to extend the quarry void of the existing main quarry into the application area where suitable reserves have been proven to exist. In order for extraction to take place, overburden will be removed from the surface of the rock and used to construct berms around the boundary of the quarry. These will be shaped and planted with native trees and shrubs to provide screening. Rock will be extracted from the application site using conventional blasting methods which will fragment the rock to into a manageable size. This will be undertaken on an as required basis by competent contractors. The blasted material will be stockpiled on the quarry floor and transported to the manufacturing area of the main quarry for processing at the fixed crushing and screening plant.'*

The 'existing main quarry' referred to in the excerpt above is the Southern Quarry Area referred to throughout this submission i.e. (Area A - the area which has no planning permission and was omitted from the red line boundary of the substitute consent application. On 23<sup>rd</sup> May 2017 An Bord Pleanála decided to refuse planning permission for the extension of the quarry for the following reason:

*'The Board considered that the Environmental Impact Statement submitted with the application is deficient on the grounds that the document failed to adequately quantify the volume of material to be extracted on site and the consequential impact that this would have on the processing and manufacturing of materials within the main quarry area. As a result the Board is unable to adequately identify and assess the impacts of the proposed extension in terms of traffic, noise and dust generation arising from the proposed extension in isolation and in combination with existing processing and manufacturing activities on site. The Board is, therefore, not satisfied the proposed development, as a consequence of such impacts, would not seriously injure the residential amenities of neighbouring and nearby properties and depreciate the value of such property. It is therefore considered that the proposed development would be contrary to the proper planning and sustainable development of the area'.*

#### **Current Situation & Section 5 Declaration**

The Planning and Development Act 2000 (as amended) defines a quarry and quarrying as follows:

*"quarry" means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include—*

*(i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;*

*(ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;*

*(iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;*

*(iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.*

It should be noted that quarrying activities as specified above are ongoing at the P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal in the absence of any planning permission. Therefore it is our contention that the entire quarry operation on this property is unauthorised. Appended to this letter is a photographic records of activities that have been taking place at the quarry during the period October 2013-February 2019.

The purpose of this Section 5 Declaration Application is to establish Donegal County Council's position on the following:

***'Whether the ongoing quarrying and ancillary activities at P McCaffrey & Sons Ltd Quarry, Ballymagroarty, Ballintra, Co. Donegal is or is not development requiring planning permission from Donegal County Council and is or is not exempted development'.***

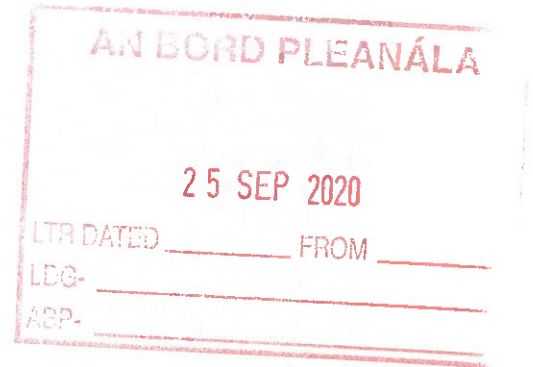
Enclosed with this Section 5 Declaration Application are the appropriate application form and the statutory fee.

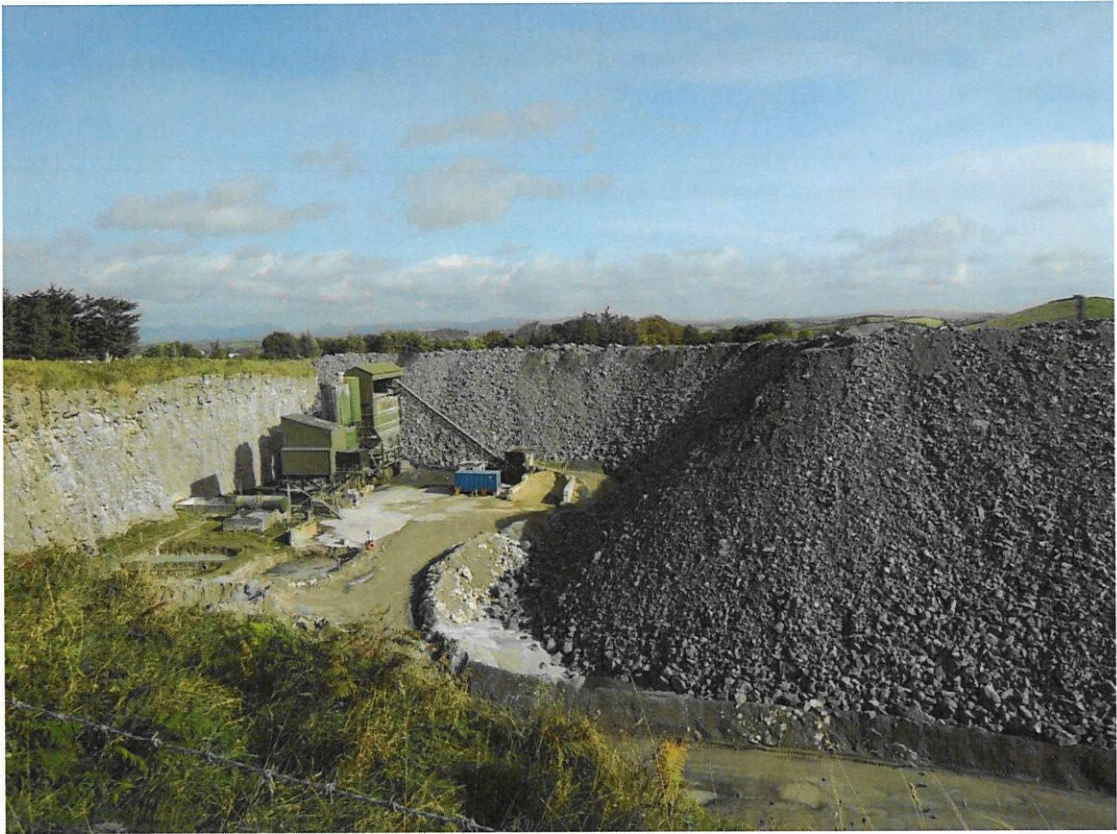
I trust that the above and enclosed is in order. Should you require any further information in respect of this matter please do not hesitate to contact this office.

Yours sincerely,



Sean McCarthy BSc. (Hons) MURP MRTPI  
Project Planner  
McCarthy Keville O'Sullivan Ltd.





October 2013 – materials excavated in the north quarry stockpiled in the south quarry



October 2013 - materials excavated in the north quarry stockpiled in the south quarry

AN BORD PLEANÁLA

25 SEP 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_



October 2015 – stockpiled materials exhausted and quarry operator commences quarrying on floor of south quarry



October 2015 – quarry operator commences quarrying in the floor of the south quarry



November 2015 – quarrying in south quarry



November 2015 – quarrying in south quarry



25 SEP 2020

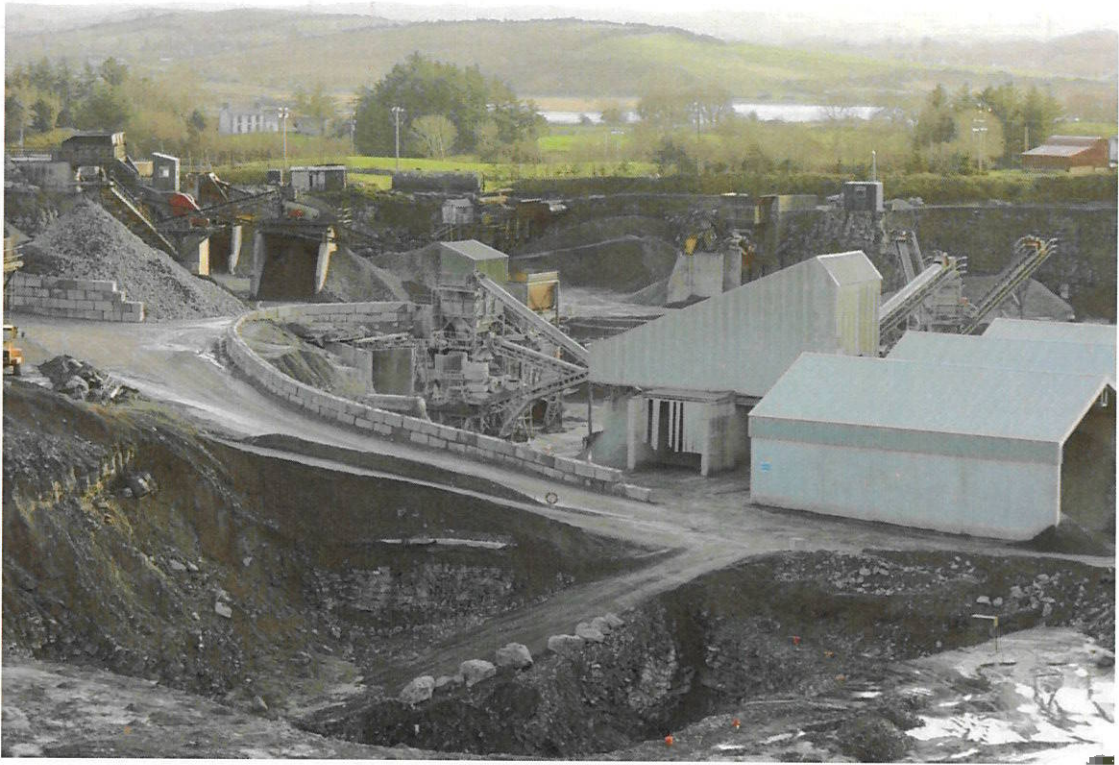
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_



November 2015



December 2015



December 2015



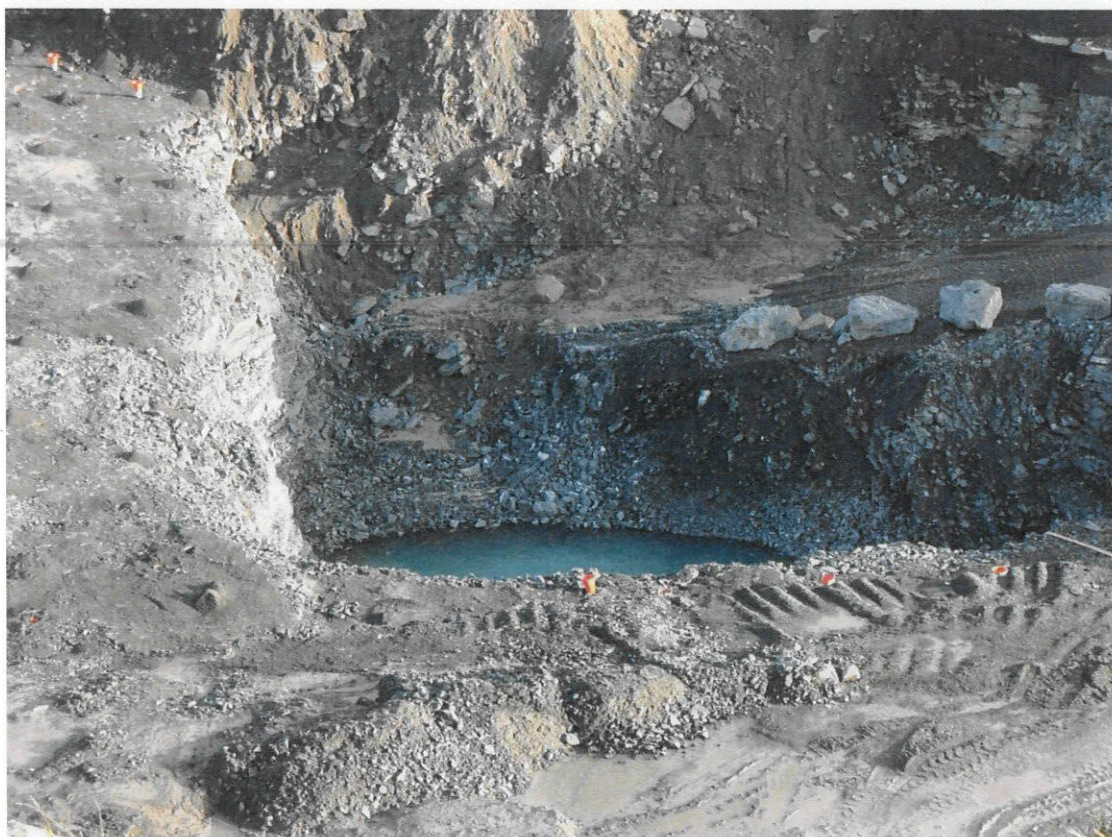
December 2015

AN BORD PLEANÁLA

25 SEP 2020



December 2015



December 2015



January 2016



January 2016

AN BORD PLEANÁLA

25 SEP 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

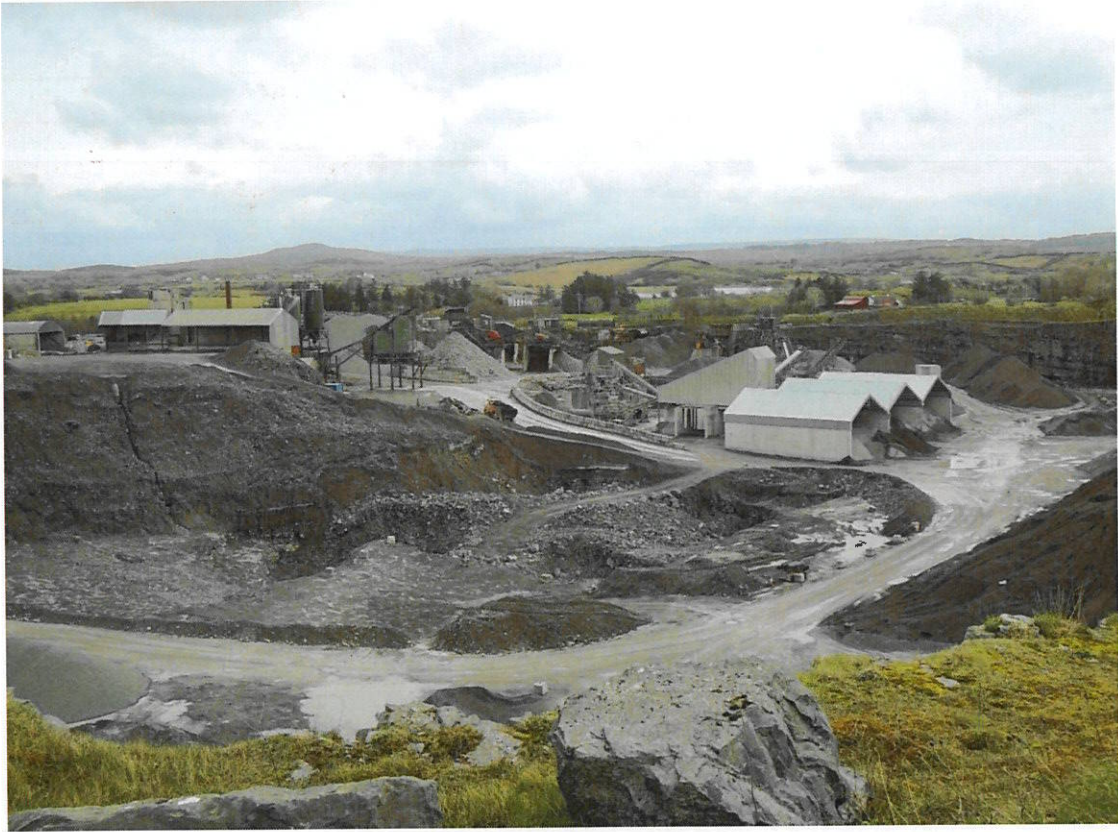
ABP- \_\_\_\_\_



March 2016



April 2016



April 2016



May 2016

AN BORD PLEANÁLA.

25 SEP 2020



8 May 2016



8 May 2016



11 May 2016



11 May 2016





5 June 2016



19 June 2016



12 July 2016



1 August 2016

AN BORD PLEANA

25 SEP 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

L.D.G. \_\_\_\_\_



7 August 2016



7 August 2016



7 August 2016



4 September 2016

AN BORD PLEA

25 SEP 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



18 September 2016



25 September 2016



30 October 2016



2 January 2017

AN BCRD PLAN

25 SEP 2020

LTR DATED \_\_\_\_\_ FR \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



2 January 2017



22 January 2017



11 March 2017



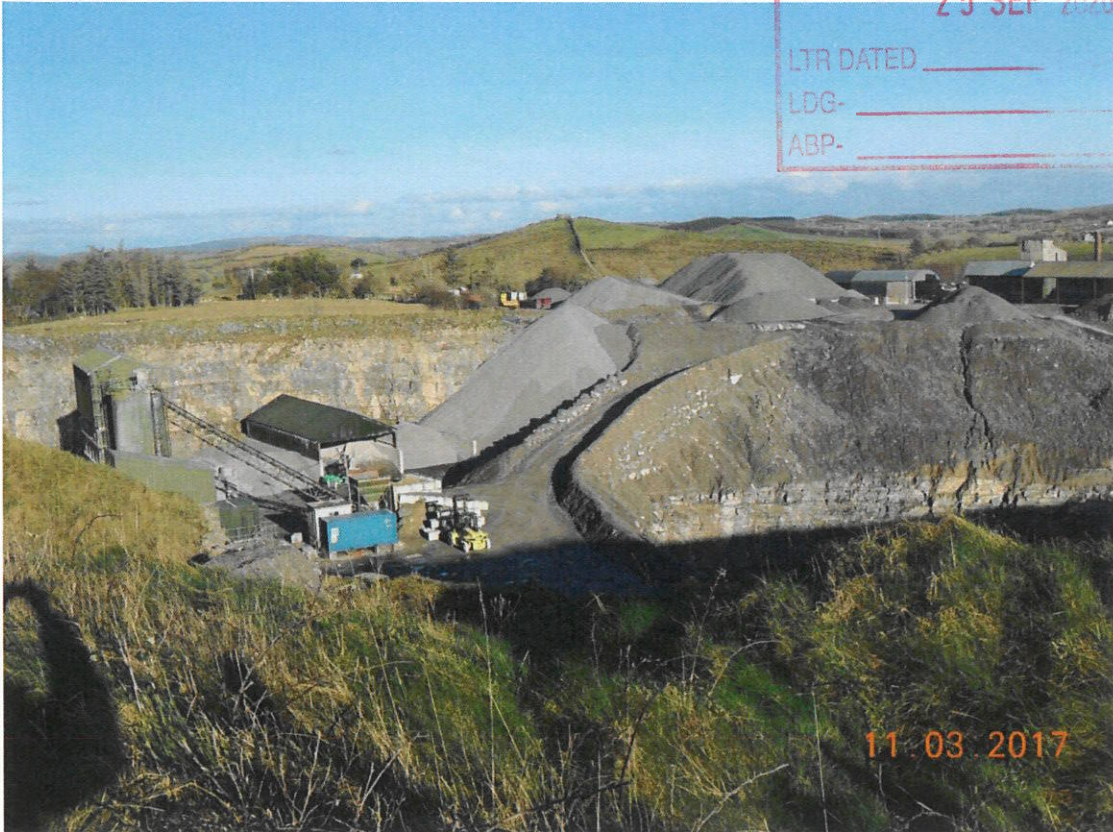
11 March 2017



AN BORD I

25 SEP 2020

LTR DATED \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_



11 March 2017



10 June 2017



10 June 2017



10 June 2017



10 June 2017



9 July 2017



9 July 2017



19 November 2017



19 November 2017



19 November 2017



19 November 2017



29 December 2017

AN BO  
25 Sep 2020  
LTR DATED \_\_\_\_\_  
LDG- \_\_\_\_\_



29 December 2017



29 December 2017



11 March 2018



19 March 2018



AN B

MINERALA

12 5 SEP 2020

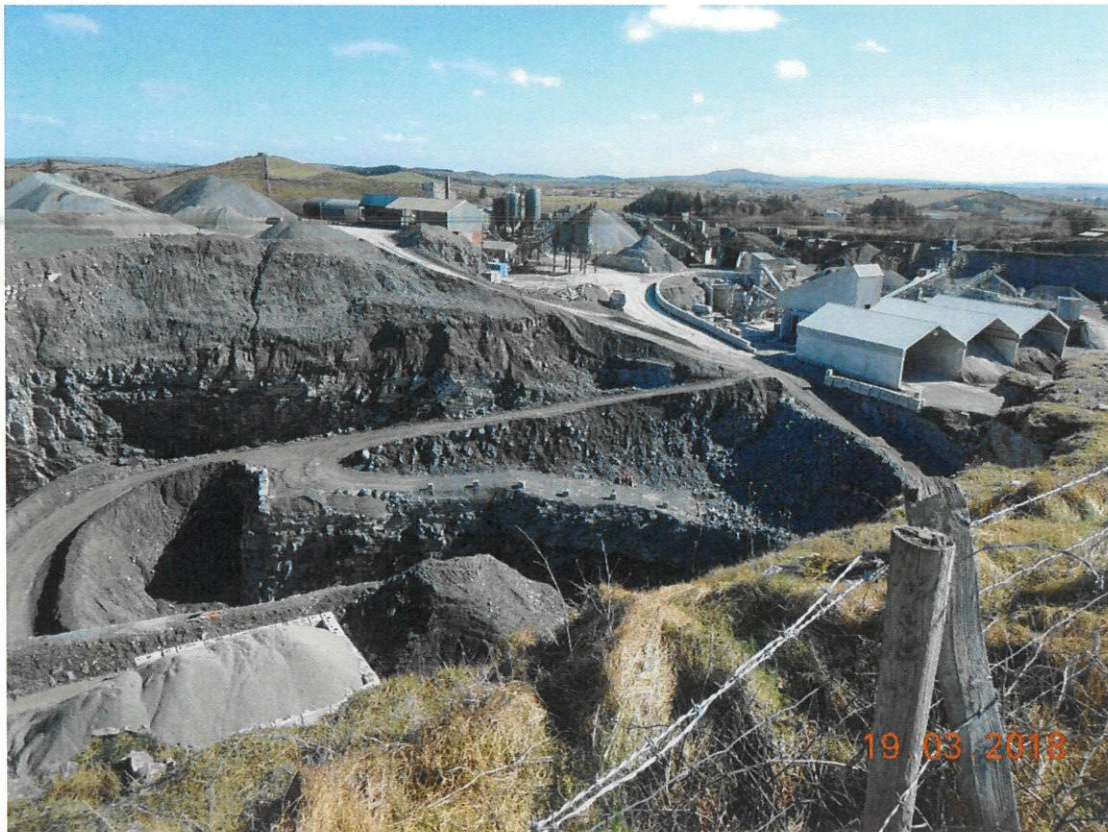
LTR DATED \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



19 March 2018



19 March 2018



13 May 2018



13 May 2018

AN E ...  
125 SEP 2020  
LTR DATED \_\_\_\_\_  
LDG- \_\_\_\_\_



10 June 2018



10 June 2018

2023 046 PV



February 2019



February 2019

**AN BORD PLEANÁLA**

**2 5 SEP 2020**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

APP. \_\_\_\_\_