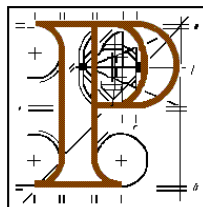


An Bord Pleanála



Inspector's Report

Development: Site works which may necessitate rock breaking, new Fish Processing Facility with offices, laboratories, plant equipment, cold storage, staff changing and rest rooms at Stoney Hill Industrial Park, Killybegs, Co. Donegal

Planning Application

Planning Authority:	Donegal County Council
Planning Authority Reg. Ref.	14/50993
Applicant:	Biomarine Ingredients Ireland, Ltd.,
Type of Application:	Permission
Planning Authority Decision:	Grant

Planning Appeal

Appellant(s): An Taisce

Observers: Pat The Cope Gallagher
Friends of the Irish Environment

Type of Appeal: Third Party
Date of Site Inspection: 26/05/15

Inspector: Gillian Kane

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1.0.0 SITE LOCATION AND DESCRIPTION

- 1.0.1 Killybegs is situated along the R263 Regional Road and just off the N56 National Secondary Road in south eastern Donegal. It is located 27km west of Donegal Town and 26km east of Glencolmcille.
- 1.0.2 The subject site is located on the outskirts of Killybegs town, to the south of the recently completed new Industrial Road. This road runs from Roshine Road and Shore Road which serves the harbour in the centre of the town, serves the Stoneyhill Industrial Estate and runs back northwards to join the R263 at a new roundabout to the west (see attached maps).
- 1.0.3 A new service road off the Industrial Road serves the existing Premier Fish plant located to the east of the subject site and provides two entrance points to the subject site, roughly at the northern and southern ends of the site. A footpath runs along both sides of the service road. The EIS submitted with the application describes this service road as dissecting the two portions of the site (volume1, section 3 and Volume II, Figure 3.1), also referring to two components of the application area. The Board will note that permission has been sought for a single site, with an area of 5ha. (see application form), located to the northeast of the service road (see drawing no. AP201 which shows the application within the larger landholding). It can be assumed that the site to the east of the service road will be the subject of a future application, however for the purposes of this application it is not relevant, nor to be considered.
- 1.0.4 The northern section of the application site has an access point directly off the Industrial Road and is bound by wire construction fencing. On the date of the my site inspection, ground works as approved under 11/20203 had been undertaken with the result that the ground level of this section of the site was raised approx. 1.5m higher than the remainder of the site to the north (see photo 1). It was not possible to determine what material was used to raise the ground level but the top layer immediately underfoot comprised large rock / stone. On the date of my site inspection, a number of vehicles were removing rock from this section of the site.
- 1.0.5 Between the two distinct sections of the site lies an undisturbed water body with a large area of reeds and grassland (see photo no.s 1 and 17). A wire temporary fence closes the service road approximately at this point. To the south of this, the land has been

roughly cleared and levelled with rough tracks leading south and towards the western boundary. The land rises steeply to the south and west with mounds of soil and rock deposited at various points. To the south, west and north the land is open countryside containing scrub/gorse and the remainder of a felled forest to the south.

- 1.0.6 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

2.0.0 PROPOSED DEVELOPMENT

- 2.0.1 Permission was sought for the construction of a new fish processing facility with associated offices (total 5,700sq.m.), laboratories, plant equipment, cold storage, product storage, staff changing and rest rooms. Another part of the proposed development is site works to include reduced level excavations to provide suitable levels for the building, vehicular access and circulation, carparking and yard. The proposed development will include a 30m high cylindrical drier building, a chimney stack and other associated items of plant and equipment outside of the main building envelope.

- 2.0.2 The development description states that the excavations may include rock breaking. The proposed plant will process up to 50,000 tonnes of fish p.a. producing high end proteins, oils and calcium for dispatch as food ingredients. The overall site is stated to be 5ha. with a gross floor area of 9,323.4sq.m proposed works.

- 2.0.3 The planning application form indicates that the applicant in this instance is not the owner of the sites but is a prospective purchaser.

- 2.0.4 The application was accompanied by the following, each of which are discussed in greater detail in section 11.0 below.

- Planning Report
- Traffic & Transport Assessment
- Environmental Impact Statement
- Natura Impact Statement

- 2.0.4 The public notices for the proposed development state that “The application relates to a development which is for an activity

requiring an Industrial Emissions Licence under class 7.8(a)(i) of the new First Schedule to the EPA Act as amended”

2.0.5 A number of objections to the proposed development were submitted to the Council.

2.1.0 Reports on File following submission of application

2.1.1 **Environmental Protection Agency:** The proposed development will require a licence under the EPA Acts 1992, as amended but an application has not yet been received. The EIS does not seem to address the interaction of effects, also particular attention should be paid to the impact of air emissions and odour on human beings during the assessments undertaken.

2.1.2 **Roads and Transportation:** Recently completed Industrial Road incorporates all water, domestic sewer, industrial sewer, and storm water services. No road openings proposed. New Industrial Road has been designed to cater for any traffic that this development will generate. No objection subject to levy of €50,000.

2.1.3 **Fire Service Report:** Access to stair 4 should be by way of corridor only to ensure the travel distance limits are not exceeded for lab 2 and lab 3. No access or egress shown from the ‘Optiblast’ room or cold store. If plant room is deemed ‘high rise’ a second means of escape may be required. Inadequate means of escape from hygienic area, process room and water treatment rooms. Clean area and packaging area must be provided with a direct or corridor escape route. Fire hydrant to be provided.

2.1.4 **Water & Environment:** Applicant to provide waste management plan for construction works. No objection under waste management act 1996.

2.1.5 **Department of Arts, Heritage and the Gaeltacht, DAU:** proposed development is large in scale and is in the vicinity of the archaeological potential established around Recorded Monuments DG097-015 – Settlement Deserted, DG097-01501 Castle Site, DG097-01502 Church and Graveyard, DG 097-01503 Holy Well, DG097-01504 Castle, which are subject to statutory protection in the Record of Monuments and Places. Given the scale, extent and location of the proposed development it is possible that subsurface archaeological remains could be encountered during the construction phases that involve ground disturbance. It is this Departments recommendation that the following condition pertaining to an Archaeological Impact Assessment should be included in any grant of planning permission. (standard condition recommended).

- 2.1.6 **An Taisce:** An assessment is required on ecology, particularly in respect of local site specific interests in and directly adjacent to the National Park.
- 2.1.7 **Roads Design:** No objection, Roads Design were involved in some pre-planning discussions and the matters raised appear to have been addressed. Consult with Area Roads Engineers.
- 2.1.8 **Irish Aviation Authority:** No observations.
- 2.1.9 **Department of Arts, Heritage and the Gaeltacht, DAU Nature Conservation:** The Dept. have reviewed the EIS, including the NIA (AA Screening Report). A stage 2 AA is not required. The proposed mitigation measures for flora and fauna and for surface water management have been noted. The facility will be subject to an IPCC licence. The Department have no comments / recommendations.
- 2.1.10 **Environmental Protection Agency:** The development proposed will require a licence under the EPA Acts 1992 as amended. The agency has not received a licence application relating to the proposed development. It is noted that the EIS does not appear to address the interaction of effects. Particular attention should be paid to the impact of air emissions and odour on human beings during the assessments undertaken. The Agency shall ensure that before the licence is granted, the licence application will be made subject to an EIA as respects the matters that come within the functions of the Agency. If and when a licence application is received by the Agency all matters to do with emissions to the environment from the activities proposed, the licence application documentation and the EIS will be considered and assessed by the Agency. You are advised of the following documents:
BREF on the Food Drink and Milk Processes Industries (08.2006),
BREF on the Slaughterhouses and Animal By-Products Industries (05.2005), and National Legislation regarding emissions. The agency cannot issue a proposed determination on a licence application until a planning decision has been made.
- 2.1.11 **Irish Water:** Further information required. The proposed development cannot operate without connection to the existing water services infrastructure and there are three elements to the application that directly impacts on the Water Services Authority infrastructure as follows:
1 Water Production: It would be strongly recommended that this applicant be advised to contact Irish Water in this regard. Question: Can applicant demonstrate that the water supply network can accommodate this proposed development.
2. Waste Water Municipal foul: Can applicant confirm domestic foul wastewater loadings and that the wastewater network can

accommodate this proposed development? Applicant advised to consult with Irish Water.

3. Wastewater (Industrial Foul) This development will require a licence to discharge to the foul sewer. The overall discharge to the receiving waters is covered by licence issued by the EPA and is held by the Water Services Authority (Irish Water). Individual trade discharges to the networks included in the overall system such as is proposed in this application must have a licence to operate. This proposed development will not be permitted to connect to the waste water networks without a licence being in place. The conditions of this licence will require treatment to be provided onsite prior to discharge. The parameters may require a treatment system that has planning implications. The network has capacity.

2.1.12 **Appropriate Assessment Screening:** Site is 7.4km from West Donegal SPA, 6.3km from Inishduff SPA and 4.1km from St Johns Point SAC. Having regard to the distance to the site no question of inter-relationship arises and the development of the site is not considered to be connected to same. Stage 2 AA not required.

2.1.13 **Planning Report:** Use as an Industrial park is established. Subject site is only partly within the site granted permission under PL. ref 11/20203 and extends further to the west relative to the extant permissions application site. Site is well served by sufficient capacity roads from Killybegs Harbour. Proposed development complies with policy ED-O-2, ED-O-3, ED-O-4, ED-O-5, ED-P-1, ED-P-2, ED-P-3, ED-P-4, ED-P-5, ED-P-9, ED-P-13 and ED-P-16 of the development plan. The 2008 – 2014 LAP for Killybegs has expired and site is unzoned in Donegal Development Plan. The report makes the case that notwithstanding that the boundary of the town is not defined in Appendix A of the development plan, the subject site is clearly within the town and not a country area. Submitted EIS has failed to directly assess in terms of the existing environment and the predicted impacts the proposed development would have on those attributes of the environment. The EIS does not include a specific dialogue in relation to relation to any difficulties encountered in relation to the compilation of the EIS. It does not contain a dedicated section on the interaction of impacts but where relevant, certain technical chapters contain consideration. Applicant should be requested to submit further information regarding the receiving environment and predicted impacts. The planning report discusses the issues raised by a third party objector and responds to each issue individually. Regarding the AA, the report notes that an AA screening report rather than an NIS was submitted. The reference to an NIS in the public notices is

not considered material. The report recommends that further information be sought.

2.2.0 Further Information Request

2.2.1 The applicant was requested to provide the following information:

- 1 Applicant to submit evidence of a site selection process which evidences which alternative sites were considered in the site selection process and which demonstrates why the current application site was selected above the available alternative with particular reference being made to any site available in the Killybegs Fishery Harbour Centre.
2. Applicant to submit a study of the impact of the proposed development on the viability and vitality of existing fish processing facilities and associated employment in Killybegs in order to enable the Planning Authority to determine whether or not the proposed development is in compliance with the suite of policies and objectives in the County Development Plan 2012-2018 (as varied). Such study submitted shall be carried out by a suitably qualified person and shall include detailed market analysis in terms of resource and product demands.
- 3 Applicant shall submit documentary evidence of consent to connect to the existing private water main supply.
- 4 Applicant to submit documentary evidence of consent to connect to the existing private foul main sewer (municipal and industrial foul). Applicant is advised that Irish Water have informed the Planning Authority that the final branch of the water and foul network serving the subject site is in private ownership.
- 5 Applicant to separately confirm the municipal and industrial foul wastewater loadings which will occur as a result of the proposed development
- 6 Applicant to submit clarification of the discharge licencing route it is intended to pursue in respect of the proposed development (i.e. IPPC or Section 16)
- 7 Applicant to submit proposals for the installation of on-site treatment of industrial wastewaters prior to discharge to the foul sewer. The details submitted shall include the following: (i) a revised site layout plan, drawn to an appropriate scale and detailing the location of the on-site pre-treatment system proposed together with any connection pipework, (ii) the liquid capacity, operational details and specification of the system to be installed. Applicant is advised to liaise with Irish Water in respect of the requirements of items 5,6 & 7 above, prior to submitting a response to same. It is in the Applicants interest to ensure that any response provided to items 5,6 &7 have first

been agreed with, or subject to consultation with Irish Water prior to responding.

- 8 Applicant to submit proposals, inclusive of a time frame, which provide for the amenity development of that part of the application site to the east of the lake in a manner compliant with the requirements of the parent planning permission granted for the completion of the Industrial Park granted under pl. application ref. 11/20203 and in particular the provision of the viewing / picnic area and green open space as per the drawings approved under the said permission and more particularly Drawing no. 4759/PL/003.
- 9 Applicant to submit a landscaping plan that provides for substantial tree planting in order to mitigate against the visual impact of the proposed development and to help integrate the proposed development into the landscape. The landscaping plan shall detail types, maturity, species and numbers of trees to be planted together with a timeframe for the implementation of same and an ongoing management plan.
- 10 Applicant to submit detailed proposals for a colour scheme for the proposed buildings. Applicant to submit a revised site layout plan drawn to an appropriate scale and which provides details of the following (i) bunded areas for the storage of waste oils, (ii) areas for the storage of others waste including general refuse and (iii) the provision of cycle parking in accordance with the technical requirements of the County Development Plan
- 11 Applicant to submit a Visual Impact Assessment (VIA) of the proposed development that takes account of any vantage points from the local residential areas, areas of strong archaeological and cultural heritage and the Wild Atlantic Way. The VIA should include a number of photomontages that clearly demonstrate how the proposed development would integrate into the local landscape and should be drafted having specific regard to the response provided to Item no. 9 and 10.

2.2.1 The further information request contained a **Second Schedule** which required the following:

- 1 Applicant to submit an addendum to the EIS submitted in support of the application providing for the following:
 - (a) An additional technical chapter to the EIS on Material Assets, to include an assessment of the existing Archaeological, Architectural and Cultural Heritage and the predicted impacts the proposed development would have on same.

(b) An additional technical chapter to the EIS on Air, to include an assessment of the existing environment and the predicted impacts the proposed development would have on same.

(c) An additional technical chapter to the EIS on Climatic Factors, to include an assessment of the existing climatic dynamic and the predicted impacts the proposed development would have on same.

(d) An additional technical chapter to the EIS on Landscape, to include an assessment of the existing landscape and the predicted impacts the proposed development would have on same.

(e) An amended technical chapter on Flora and Fauna, that takes account of tree and bird species present in the receiving environment and any revised landscape proposals that arise from this overall further information request.

(f) A competent assessment carried out by a suitably qualified person that predicts the impact of the artificial illumination that would be associated with the proposed development on all sensitive receptors and proposals for mitigation / avoidance if deemed necessary

(g) A map that shows a survey plan of the lake that graphically demonstrates dominating vegetation types, the margin of open water and the margin of saturated or inundated ground,

(h) Clarification of the times and intervals and for what duration the baseline noise survey was carried out

(i) A map showing what real estate properties will be notified of imminent rock blasting and what local buildings it is proposed to photographically survey prior to the proposed rock blasting taking place,

(j) Details of the extent and format of pre-blasting notification at construction phases and

(k) Evidence that consideration has been given to alternative quieter plant machinery for the operational phase of the proposed development.

2.3.0. Further Information Response

2.3.1 The Applicant responded to the request for further information on the 9th December 2014.

2.3.2 In relation to **site selection**, the Applicant states that sites in the Killybegs Fishery Harbour Centre and Polar Fish Processing Plant are too small and therefore the subject site in an Industrial Park with good access roads was chosen. Responding to the **impact on existing facilities**, the Applicant states that the proposed development will have a different product, different processing technology and a different market. Letters of consent to connect to

the private water main, municipal and industrial sewers was submitted (**items 3 & 4**). Details of municipal and industrial waste water loadings were submitted (**item 5**). Regarding the **discharge licencing route (item 6)**, the applicant stated that the proposed plant will produce approx. 46 tonnes of finished product per day. This is based on two shifts with an intake of 50,000tonnes of fresh fish per annum. The FI response states that this is substantially below the 75 tonne of finished product per day set out in class 7.8(a)(i) of the new first schedule of the EPA act as amended and therefore an EPA industrial waste licence will not be required. A discharge licence under section 16 would be sought. All fish processing **waste water** (item 7) will be treated on-site as part of a Section 16 licence. Revised **landscape plan** drawing no. AP- 403 submitted in response to item 8. In response to item 9, a colour scheme of dark grey **colour scheme** is proposed. Drawing no. AP401 shows location of general refuse on site. In response to the request for a **VIA**, the applicant submitted a series of photomontage images.

2.3.2 In response to schedule 2 of the FI request An addendum to the EIS was submitted.

2.4.0 **Reports on File following submission of Further Information**

2.4.1 **Planning Report:** The Applicants response to items 1 to 7 are considered acceptable to the Planning Authority. In relation to the requested landscaping (items 8 and 9), the planning report notes that the response is inadequate but that the issues can be resolved by way of condition. Items 10 and 11 are noted as being satisfactory. Each of the additional chapters of the addendum to the EIS is discussed in the planning report, with most being described as acceptable. Issues relating to landscaping and archaeology are recommended to be addressed by way of condition attached to a grant. Recommendation that revised public notices are required.

2.5.0 **Reports on File after Revised Public Notices**

2.5.1 **DAU of DAH&G:** Dept. concurs with recommendation in section 2.6 and 2.7 of the overall EIS, no archaeological objections to the proposed development proceeding.

2.5.2 **DAU of DAH&G, Nature Conservation:** No objection

5.5.3 **Planning Report:** Decision to discharge waste water via a Section 16 licence rather than the Industrial Waste Licence mentioned in the public licence is not material. Amended EIS concludes that there would be no significant environmental impacts. Recommendation to grant subject to conditions.

3.0.0 PLANNING AUTHORITY DECISION

3.0.1 By order dated 16/02/15 a notification of decision to GRANT permission subject to 18 no. conditions issued. Conditions of note include the following:

3: In accordance with the proposal made in parts 6.2.6 of the Addendum to the EIS submitted and received by the Planning Authority on the 8th of December 2014, no construction works on the development hereby permitted shall take place during the months of March, April or May unless and notwithstanding condition no.s 1 & 2 above, alternative mitigation measures are submitted to the satisfaction of the Planning Authority and the Planning Authority has given the developer notification of its agreement to the alternative measures in writing. Reason: In the interest of nature conservation.

5: The building hereby permitted shall not be occupied until such time as all infrastructural works permitted under planning permission Ref. No. 11/20203 that are necessary to serve the development hereby permitted, including the provision of the estate access road and pedestrian footpaths for the full site frontage are completed to the satisfaction of the Planning Authority. Reason: To cater for the orderly development and to clarify the terms of the permission.

7: The person or company that takes benefit of the permission shall, prior to the commencement of development, submit a more detailed landscaping scheme prepared by a qualified landscape Architect to the Planning Authority for written agreement in line with the landscaping scheme submitted and received by the Planning Authority on the 8th December 2014 but that accurately depicts the same area and shape of open space approved under Plref. 11/20203 and a greater degree and density of tree planting as approved under Pl.ref. 11/20203. The plan shall include planting densities and numbers of plants to be planted and specifications for planting methodology and materials (the plan should incorporate substantial use of tree species recorded in Table AD6.1 of the addendum to the EIS submitted and received by the Planning Authority on the 8TH December 2014). Upon receipt of written agreement and prior to occupation and operation of the facility hereby permitted, said approved landscape plan shall be implemented in full. Reason: In the interest of visual amenity.

8: The person or company that takes benefit of the permission shall, prior to the commencement of development, submit a detailed proposal for an artificial heronry and tree planting within the site (or outside the site with full proof of legal entitlement) that has been prepared by a qualified Environmental & Ecological

Consultancy Contractor to the Planning Authority for written agreement in line with Parts 6.2.5 and 6.2.6 of the Addendum to the EIS submitted and received by the Planning Authority on the 8th December 2014. Upon receipt of the written agreement and prior to occupation and operation of the facility hereby permitted the developer shall implement the approved proposal in full. Reason: In the interest of nature conservation.

9: *No landfilling shall effect any encroachment on the lake within the application site or the saturated reed beds around it.*

4.0.0 PLANNING HISTORY

4.1.0 Subject site

4.1.1 Planning Authority reg ref: **02/377**: refers to permission for construction of Stoneyhill Industrial Park, including access roads, footpaths, foul sewers, storm water drains, electrical and telecom services and associated site works. Condition 5 of the permission states that no blasting shall be carried out to facilitate the development.

4.1.2 **PL05E.215810** (Planning Authority reg. ref. 05/20058): Planning permission was granted for rock excavation by controlled blasting during construction works which have planning approval granted by Donegal County Council under planning register reference 02/377. Construction works will consist of rock removal to allow new site formation levels, access roads, footpaths, foul sewers, storm water drains, electrical services, telecom services and associated site works.

4.1.3 Planning Authority reg ref: **07/20076**: Planning permission granted to extend the duration of 02/377 for the development of the development of a Stoneyhill industrial park until 18/08/2010.

4.2.0 Adjoining Site to South-East

4.2.4 Planning Authority reg. ref: **11/20203**: Planning permission granted for the retention of the re-aligned access road junction into the Stoneyhill Industrial Park from the Killybegs town bypass road and reduced site side slopes of 0.19ha (previously approved under 02.377), completion of site works for remaining industrial estate development of 6.28ha, including completion of internal site access roadway / footpaths, parking area, installation of site services including foul water pumping station, site reduction, landscaping and other associated site works.

4.2.5 Planning Authority reg. ref **11/20247**: planning permission granted to PFP Teoranta for the construction of a fish processing plant and all ancillary accommodation, installation of a 200mm diameter pressurised industrial waste pipe including on site treatment plant and discharge to sewer, construction of storm water sewer and interceptor trap discharging to existing water course, all site works to include car parking, foul sewage network to discharge to existing sewer, associated signage, retaining wall and perimeter fencing.

4.2.6 Planning Authority reg. ref **13/51589** Planning permission granted to PFP Teoranta for the construction of a dry storage shed and retention of ground works completed on site.

4.3.0 Adjoining Site to North-West

4.3.7 Planning Authority reg. ref. **14/50238**: Planning permission granted to Killybegs Stevedoring Ltd. for the construction of a storage yard with weigh bridge, boundary fence and all associated site development works.

5.0.0 NATIONAL POLICY

5.0.1 BREF on the Food, Drink and Milk Processes Industries

In their submission on the proposed development, the EPA recommended that the Applicant consider the Integrated Pollution Prevention and Control Reference Document on Best Available Techniques in the Food, Drink and Milk Industries, dated August 2006. I note that that document is specifically for the treatment and processing of animal raw materials (other than milk) with a finished product production capacity greater than 75 tonnes per day. The guidance is therefore not relevant to the proposed development which shall produce no more than 50 tonnes of finished product per day.

5.0.2 BREF on the Slaughterhouses and Animal By-Products Industries

This guidance covers the industrial activities specified in Annex I, paragraphs 6.4.(a) and 6.5. of the Directive, i.e. *6.4.(a) Slaughterhouses with a carcase production capacity greater than 50 tonnes per day and 6.5. Installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tonnes per day.* Neither of these criteria include the proposed development and therefore the guidance is not to be considered.

5.0.3 **North Western River Basin management plan 2009-2015**

The North Western International River Basin District covers the north west corner of the island of Ireland, but stretches across in a south easterly direction to a large extent also taking in much of the drumlin belt that stretches through many of the border counties - from south Donegal, through Leitrim, Fermanagh, Longford, Cavan, Monaghan, and onwards. Major rivers and lakes include the Erne system, which supports boating and leisure tourism as well as some hydroelectric power generation, to the River Finn and Foyle systems that drain much of the mountains of Donegal and the Sperrin mountains. Angling and sea fisheries are important aspects of the area, with the largest sea port in Ireland being at Killybegs on the Donegal coast.

5.0.4 **New FIRST SCHEDULE to EPA Act 1992 to 2013** **Activities to which Part IV Applies**

7.8 (a) The treatment and processing, other than exclusively packaging, of the following raw materials, whether previously processed or unprocessed, intended for the production of food or feed from:

(i) only animal raw materials (other than exclusively milk) with a finished product production capacity greater than 75 tonnes per day;

(ii) only vegetable raw materials with a finished product production capacity greater than 300 tonnes per day or 600 tonnes per day where the installation operates for a period of no more than 90 consecutive days in any year;

(iii) animal and vegetable raw materials, both in combined and separate products, with a finished product production capacity in tonnes per day greater than:

(I) 75 if A is equal to 10 or more; or

(II) $[300 - (22.5 \times A)]$ in any other case,

where 'A' is the portion of animal material (in percent of weight) of the finished product production capacity.

(b) For the purposes of clause (a), packaging shall not be included in the final weight of the product.

(c) Clause (a) shall not apply where the raw material is milk only.

6.0.0 LOCAL POLICY

6.1.0 DONEGAL COUNTY DEVELOPMENT PLAN

6.1.1 The site is governed by the policies and provisions contained in the Donegal County Development Plan 2012-2018. The application was submitted during the lifetime of the Killybegs Local Area Plan 2008 – 2014. For the purposes of this report I will give details of both, the Board will note however that the Killybegs LAP has not been reviewed nor has a new plan been adopted.

6.1.2 Killybegs is identified as a Tier 2 town in the development plan. Policies of note in the County Development Plan include:

6.1.3 Core Strategy

CS-O-9: To support economic growth in the county at key locations of strategic and infrastructural importance as well as high level, large employment generating growth in the Gateway. This will be achieved through:

c) The establishment of the tier 2 settlements of Killybegs and Bridgend as key growth centres for new economic activity. Focus in Killybegs will be in relation to the fisheries and associated industries, harbour related, tourism, oil exploration and as a centre of excellence for renewables and services including investigating the potential of establishing a Strategic Development Zone under Part IX of the Acts for appropriate areas in Killybegs.

CS-P-2 It is the policy of the Council that proposals for development other than residential in Ballyshannon and Killybegs, will be considered in the light of all relevant material planning considerations, relevant policies of the County Development Plan, other regional and national guidance/policy, the relevant Local Area Plan, relevant environmental designations and particularly the Council Policy WES-P-10.

6.1.4 Energy

Section 7.2 of the development plan states that the Council and the County Development Board aim to develop Killybegs as a Centre of Excellence for the green economy with the development of a strong, vibrant and proactive cluster of support businesses.

Policy E-O-3: To facilitate the sustainable development of Killybegs as a Centre of Excellence for the green economy and other energy industries, with the development of a strong, vibrant and proactive cluster of support businesses and research and development facilities.

6.1.5 **Fishing / Marine**

In relation to the fishing industry, **section 8.2** of the development plan states that fishing and the marine sector are identified as important elements of the Border Regional Planning Guidelines with Killybegs and Greencastle being two of the most significant fishing ports on the Region. Expansion of activity in the marine area would create opportunities for the further diversification of the Region's industrial base. It will also be important to diversify marine activity into other areas, to maximise the usage of the sea as a natural resource and provide alternative employment in coastal areas.

Policies to support this objective include:

MCZM-O-2: To safeguard and enhance the role of Killybegs, Greencastle and Burtonport as centres of fleet activity, processing and ancillary services.

MCZM-P-7 It is a policy of the Council to safeguard and enhance the roles of Killybegs, Greencastle, Burtonport, Downings and Rathmullan as centres of fleet activity, processing and ancillary services, and, to facilitate the diversification of such locations into new areas of appropriate investment and employment opportunities, including marine related economic activity, that accords with the proper planning and sustainable development of the area.

MCZM-P-10 It is a policy of the Council to manage development proposals, to ensure they do not adversely compromise the recreational and environmental amenity of designated and proposed Blue Flag Beaches, River Basin Management Districts, Special Protection Areas, Special Areas of Conservation, Natural Heritage Areas and areas of Especially High Scenic Amenity.

6.1.6 Water protection policies include the following:

WES-O-1: Seek to ensure a satisfactory level of service, through sustainable systems, in respect of:

a) Water Supply: An adequate and secure supply of clean and wholesome drinking water to existing areas of supply and to those areas identified for growth in the settlement hierarchy, Protect and improve the quality of the existing drinking water supply in accordance with the most current drinking water regulations, An adequate supply of water for industrial and commercial need, where appropriate through partnership with the private sector; Protecting and conserving the County's water resources through

minimisation of leakage and promotion of public awareness and involvement in water conservation.

b) Waste Water: Providing adequate treatment for all waste water entering a public collection system in accordance with the relevant waste water discharge licence issued by the Environmental Protection Agency; Adequate waste water treatment capacity for priority urban areas identified in the settlement hierarchy; Adequate controls for the treatment and disposal of commercial and industrial waste water, where appropriate through partnership with the private sector.

WES-O-4: To maintain, protect, improve and enhance the quality of surface waters and ground waters in accordance with the Programme of Measures contained within the North Western River Basin (NWIRBD) Management Plan 2009-2015.

WES-O-5: To provide for environmental protection, through: The protection of surface water and ground water from pollution in accordance with the River Basin Management Plan, Groundwater Protection Scheme and Source Protection Plans for public water supplies; The protection against soil contamination; Minimising air and noise pollution; Supporting remediation of all existing pollution; Ensuring full compliance with relevant National and European Regulations, Statutes and Directives through monitoring and control of relevant activities.

6.1.7 Economic Development

ED-O-2: To ensure that sufficient land is provided at appropriate locations for employment generating uses and that such land will be protected from inappropriate development that would prejudice its long-term development.

ED-O-3: To facilitate and direct appropriate employment generating developments into the Gateway centre of Letterkenny and the Tier 2 centres (Strategic Support Towns).

ED-O-4: To provide adequate infrastructure, including water, wastewater treatment and waste management facilities to accommodate future economic growth and job creation in the Gateway centre of Letterkenny and the Tier 2 centres (Strategic Support Towns).

ED-O-5: To encourage sustainable mixed use settlements in which residential and appropriate employment developments are located in close proximity to each other.

ED-P-1 It is a policy of the Council to implement the Economic Development Strategy to sustain existing employment and facilitate job creation in appropriate locations in the County.

ED-P-2 It is a policy of the Council that any economic development proposal that meets the locational policies set out hereunder (policies ED-P-3 – ED-P-15) must also comply with the criteria set out in Policy ED-P-16 and be consistent with the proper planning and sustainable development of the area.

ED-P-3 It is a policy of the Council to permit economic development proposals involving an industrial building or process (as defined in Art 5 of the 2001 Planning Regulations) within the defined settlements on land zoned for such use in a local plan or specified in a settlement framework in this Plan subject to any environmental considerations and policy

ED-P-2. Industrial development will also be permitted in an existing industrial/ employment area within settlements provided the proposal is of a scale, nature and form appropriate to the location and complies with policy ED-P-2. Elsewhere within the settlements, proposals for industrial use (not comprising light industrial use) will be permitted only in Tier 1 and Tier 2 settlements and where it can be demonstrated:- that there is no available zoned land or land on an existing industrial area; that the proposal is for a firm rather than speculative proposal; and that the development would make a substantial contribution to the economy of the area. Development involving Industrial buildings or processes will not be permitted outside the boundary of settlements in the open countryside unless related directly to a site specific product resource and the development proposed could not be located in a settlement in line with this policy.

ED-P-4 It is a policy of the Council that economic development proposals involving a light industrial use will be permitted within settlements on land zoned for such use in a local plan or specified in a settlement framework in this Plan or on land comprising an existing industrial/employment area, provided the proposal is of a scale, nature and form appropriate to the location and complies with policy ED-P-2. Elsewhere within the defined settlements,

proposals for light industrial use will be determined on their individual merits having regard to the scale and character of the settlement, the availability of necessary infrastructure and compliance with policy ED-P-2. Development involving light industrial buildings or processes will not be permitted outside of settlements in the open countryside unless related directly to a site specific product resource or a project under the terms of any of the policies ED-P-10 to ED-P 15.

ED-P-13 It is a policy of the Council to consider favourably proposals for a major industrial development in the countryside which makes a significant contribution to the economy of the County where it is demonstrated that the proposal, due to its site specific requirements or size, requires a countryside location. An application for a development proposed under this policy must be accompanied by evidence to support the case of economic benefit to the economy of the County and in the case of rural location on the grounds of size, detailed information on the search conducted to secure a suitable site within the boundary of a settlement. The provisions of policy ED-P-16 will also be taken into account and a Travel Plan must be prepared to address the issue of accessibility by various modes of transport. Developer-led infrastructural improvements will be conditioned in appropriate cases. Development proposals will be assessed in the light of all relevant material planning considerations, relevant policies of the County Development Plan and other regional and national guidance/policy, relevant environmental designations including demonstration of compliance with Article 6 of the Habitats Directive.

ED-P-16 It is a policy of the Council that any proposal for economic development use, in addition to other policy provisions of this Plan, will be required to meet all the following criteria;

- (a) it is compatible with surrounding land uses existing or approved;
- (b) it does not harm the amenities of nearby residents;
- (c) there is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified and delivered;
- (d) the existing road network can safely handle any extra vehicular traffic generated by the proposed development or suitable developer-led improvements are identified and delivered to overcome any road problems;
- (e) adequate access arrangements, parking, manoeuvring and servicing areas are provided in line with standards set out in

Appendix B or as otherwise agreed in writing with the planning authority;

(f) it does not create a noise nuisance;

(g) it is capable of dealing satisfactorily with any emission(s);

(h) it does not adversely affect important features of the built heritage or natural heritage including Natura 2000 sites;

(i) it is not located in an area at flood risk and/or will not cause or exacerbate flooding;

(j) the site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity;

(k) appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;

(l) in the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape;

(m) it does not compromise water quality nor the programme of measures contained within the North Western River Basin (NWIRBD) Management Plan 2009-2015.

6.2.0 Killybegs Local Area Plan 2008-2014

6.2.1 The Killybegs LAP was in force while the application was submitted but had expired by the time a decision issued from the PA. The provisions of the plan can not be considered for the purposes of this appeal, nonetheless I outline some of the relevant policies and objectives as a background to the context under which the application was submitted.

6.2..2 The LAP states Killybegs is the premier fishing port in Ireland and that fish processing and onshore-based ancillary activities support both local and international fishing industries, and are extremely important to the town. The LAP states that the Council recognises the importance of the related socio-economic activity centred in Killybegs. The maintenance and continued growth of the critical mass in port related businesses is essential for future development. Consequently the Council are committed to safeguarding the role of Killybegs as a centre of fleet activity, processing and ancillary services. The town is capable of positioning itself as a premier European fishing port due to its strategic location, deep-water port and unrivalled onshore infrastructure.

6.2.3 Regarding Stoneyhill Industrial estate, the location of the subject site, the LAP states "The Council will not prescribe specific

employment uses within the Enterprise Park as these will be market led. Notwithstanding this, the processing of frozen foods is considered to be a viable opportunity within the Enterprise Park”.

6.2.4 Policies of note in the LAP include:

IE1 Facilitate the development of an Enterprise (Industry/Employment) Park in Stoneyhill.

IE2 Ensure that all industrial/commercial proposals adhere to Appendix A: Development Guidelines and Technical Standards, Section 3, Industrial and Commercial Development, County Development Plan 2006 – 2012.

IE3 Ensure that all industrial/commercial proposals can be integrated/landscaped within their environments, and are interlinked with good accessibility, room for vehicular movements/deliveries, onsite car-parking and infrastructural services.

IE4 Ensure that proposed uses shall be compatible with existing land uses.

6.2.5 Map 1 of the LAP shows the subject site zoned as “Enterprise (industry/ Employment) Park with a Local Amenity zoning objective around the body of water in the northern section of the subject site. A new pedestrian walkway / cycleway is shown leading from the water body to existing walkways in the town.

7.0.0 GROUNDS OF APPEAL

7.0.1 The grounds of the third party appeal are grouped under the following headings:

7.1.0 Adverse Impact on Irish and North Atlantic Marine Eco System

7.1.1 It is submitted that the substantive grounds of the appeal relate to the impact of the proposed development on the marine eco system by the targeted exploitation of boarfish, blue whiting and other fish life species. The grounds of the appeal are set out in a report by Dr. Edward Fahy. This is discussed in greater detail in section 7.5 below.

7.1.2 It is submitted that the proposed development generates a new environmental impact in the new targeting of fish kill to serve the plant. It is recommended that the proposed development warrants the input of a marine ecosystem scientist.

7.2.0 Inadequate integration with Marine Strategy Framework Directive (MSFD)

7.2.1 It is submitted that the identification of individual species of fish is not based on proper evaluation of the combination and interaction of individual fish species in the marine life feeding chain. The protection of the ocean eco system which is a requirement of the MSFD is undermined by commercial fishing. The proposed development is based on the strategy of marine exploitation, which was adopted without consideration of climate and ecological impact. An Taisce is highly critical of the MSFD, discussed in greater detail in section 7.6 below.

7.3.0 Role of Fish life in Carbon Capture and Storage

7.3.1 It is submitted that the proposed development fails to address the role of fish life in capturing and storing carbon. This introduces a new imperative to restore the global fish population.

7.4.0 Failure of EIS and compliance with EIA Directive

7.4.1 It is submitted that the Board must assess the impact of the fish life feed source for the plant in the assessment of direct and indirect impacts for an industrial processing project. The Board should request further information regarding the marine life source supply and the ecological impact of extracting this life. The consideration of alternatives should have addressed the possibility of extracting protein oils or calcium from sources other than marine life.

7.5.0 Report of Dr. Edward Fahy

7.5.1 The report which is submitted with the appeal states that insufficient evidence has been provided on the raw material required to keep the plant in operation. It is submitted that a single fish species is unlikely to be enough and past experience has shown that over fishing inevitably occurs. It is submitted that this will be at the expense of marine coastal communities. The report states that notwithstanding that boarfish is undergoing a population explosion at the present time, total stock biomass is currently declining. Total allowable catch at 134,000t is unjustifiably optimistic at greater than the peak of 144,000t in 2010. A seasonal moratorium on the operation of the boarfish industry is recommended.

7.5.2 Past experience has shown a series of new opportunities to save the fishing industry, funded by national and European which result in a fishing fleet which exceeds the capacity of the resource to support it. Horse Mackerel and Blue Whiting have historically been

managed yet stock fluctuates considerably from one year to another. It is submitted that it is inconceivable that a single species should provide the basis for the largest marine food ingredients plant in the world. Dr Fahy claims that as stock is unreliable, a market may be created for discards (fish which are unsaleable due to immaturity or over fishing). A fish processing plant established in 1957 in Killybegs failed despite significant over fishing and a discernible toll in fish species. The report concludes by saying that fisheries have a finite extent, are over worked and performing less than optimally. It is submitted that the proposed development will greatly impoverish a large number of people.

7.6.0 An Taisce comments on Marine Strategy Framework Directive Monitoring Programmes (article II)

7.6.1 The appellant has submitted a copy of their comment on the MSFD, submitted in response to the Public Consultation in Sept 2014. The relevance of the An Taisce comment to the subject appeal is their claim that the MSFD promotes over fishing, fails to protect the marine environment and has insufficient baseline data. The comment contains an Appendix which has excerpts of three scientific papers: Addressing Ocean Acidification, How Fish Cool Off Global Warming and Deep sea fish remove one million tonnes of CO₂ every year from UK and Irish Waters.

8.0.0 SUBMISSIONS IN RESPONSE TO THE APPEAL

8.1.0 Planning Authority Response

8.1.1 Killybegs is designated as an Urban Centre and a Major Fishing Port in the National Spatial Strategy 2002 – 2020. These designations are reinforced in the Border Regional Authority Regional Planning Guidelines 2010- 2022. It is considered that the proposed development is an expansion of activity in the marine area and would be an innovative marine-based enterprise. The proposed development would be consistent with the County Development Plan. It is stated that the impact of the proposed development on marine ecosystems is governed by the imposition of fishing quotas and a separate regulatory process / authority. Marine ecosystem environments are not within the functional area of the Local Authority and the Planning Authority must rely on the competence of those authorities whose function it is to appropriately regulate such environments. It is noted that the Appellants objection to the proposed development did not mention the impact on marine ecosystems. It is submitted that there are ample input resources to supply the proposed development. Finally

it is submitted that Killybegs would greatly benefit from the proposed development. The Board is requested to grant permission.

8.2.0 Applicants Response to Third Party Appeal

8.2.1 The appellants claim that the proposed development will have an adverse impact in the marine eco system is unfounded. The proposed development will process boarfish, blue whiting and offcuts from existing fisheries operating under total allowable catch (TAC) regulations, fish that are already targeted under the Common Fishery Policy. The end product of these existing fisheries is currently fish meal. The proposed development changes the end product to high end proteins, oil and calcium. This is not a new environmental impact. It is submitted Dr Fahys report does not identify a new environmental impact nor does it identify adverse impacts other than the use of boarfish leading to over fishing. It is stated that the proposed development would be responsible for 0.05% of the global catch and it is scientifically impossible to determine what impact this would have on ocean ecosystems.

8.2.2 It is submitted that implementation of the MSFD is a work in progress and therefore cannot be labelled unfit for purpose. It is submitted that the draft report of Department of Environment, Community and Local Government on the state of fisheries finds that the status of commercially exploited marine species is satisfactory. It is noted that the report quoted by An Taisce is 5 years out of date.

8.2.3 In responding to the Appellants comments regarding fish and the storage of carbon, the First Party examines the scientific papers cited in the scientific reports quoted by An Taisce. Applying the analyses to Boarfish, blue whiting and other large mesopelagic fish, the Applicant states that they contribute only 1.1% of carbon. Further, the reports state that no major community shifts in fish fauna have been found. Evidence used in these researches was undertaken during periods of boarfish and blue whiting harvest vastly exceeding those required to supply the plant. It is concluded that the continued harvest of boarfish and blue whiting will not threaten the carbon storage ecosystem services performed by these and other species. It is submitted that this is not a planning consideration.

8.2.4 It is stated that the proposed development is not comparable to a road or energy project with direct and indirect effects as suggested

by An Taisce. The proposed development is a terrestrially based production facility and is not an application to exploit fish stocks. The focus of the EIA should be on the direct and indirect impacts which may be caused by the proposed development. It is submitted that the EIA is appropriate to the scale and nature of the proposed development. It does not need to quantify the raw fish resource given that there are alternatives. The requirement to study the raw fish stock in an industry which is regulated to prevent over fishing is not applicable to a terrestrially based production facility. 'Upstream' impacts are already comprehensively governed. Notwithstanding this, further research has been carried out and is appended to the response. This research has provided the Applicants with reassurance that fish supplies are sustainable.

8.2.5 The EIS considered alternative strategies for mitigating direct and indirect impacts. The proposed site was the only viable choice. Existing infrastructure, the existing economic community, availability of staff, local network of similar business and well established road networks were all taken into consideration. Alternative sources of protein oils or calcium were not considered as the proposed source is environmentally sustainable. Boarfish and blue whiting is typically used for fish meal, which has a great degree of wastage of the raw material. The proposed facility intends to utilise all of the raw fish stock. Fish input is not open ended as claimed by the Appellant but is controlled by EU legislation.

8.2.6 The response is accompanied by the following:

- Appendix A: AQUAFACT response to AN Taisce. The report supports the statements made by the Applicant in relation to TAC, lack of a new environmental impact, unknown ecological role and significance of boarfish in the NE Atlantic. The report states that the Appellant did not identify any adverse impacts on the ecosystem other than over fishing which is already controlled by TAC.
- Appendix B: Employment Impact of the proposed development. Report outlines the predicted turnover, history of the Boarfish fishing industry, effects on the local economy and details of the financial impacts of construction of the proposed plant. The report concludes that the pelagic fleet will see reduced costs, services in the local economy will increase due to greater activity in the port, increase in price for boarfish and creation of new jobs.

- Appendix C: History and Status of Boarfish Industry
- Appendix D: Extracts from Killybegs LAP
- Appendix E: Extracts from County Development Plan
- Appendix F: Details of reg. ref. 11/20203

8.3.0 Appellants Response to Applicants Submission

8.3.1 The Board will need to consider the adequacy of the EIS in respect of source material and consequential impacts of the operation but also the total set of plant and development proposed and the extent of impacts such as road development, disposal of rock material.

8.3.2 It is submitted that the proposed development is project splitting in terms of rock already removed from the site and further rock disposal planned. It is submitted that elements of development integral to the proposed development are not included in the proposed development, nor in the previous planning permission 11/20203, nor the EIA. It is submitted that retention issues arise, and the Board must note that regularisation of development that required EIA can only be done in exceptional circumstances. No such case has been made here.

8.3.3 The Appellant states a concern that the proposed development has not been adequately described in public notices. The proposed development creates remedial EIA issues, which was noted by the Applicant in section 17 of the application form submitted to the Council. The appellant recommends that any infrastructural changes required consequent on the EPA's role in licencing the development should be completed in advance of any assessment by the Board.

8.3.4 The response is accompanied by a report by Dr E. Fahy. Dr Fahy states that the Board is compelled to assess the direct and indirect impacts of this hitherto unexploited fishing resource. In responding to the statements of the Applicant, the report states that the new source of material came on stream in Jan 1 2015, the biological resources in the North East Atlantic are not healthy and management of fish stocks is inadequate.

8.3.5 Dr Fahy states that the Applicant is remiss is not addressing where the raw material comes from. Discards and over-quota are brought on-shore as of Jan 1 2015 and so are "new". This process will be difficult to monitor and will create a market for discards.

- 8.3.6 Regarding the health of the North East Atlantic, the report states that contrary to the claims of the Applicant, the biomass of marine fish is accepted to be in sharp decline. It is submitted that the principals of the application company are involved in annual quota allocations and therefore involved in the upstream sustainability of stocks and fishing activity. The case is made that the claims of the Applicants that sustainability is EU governed are incorrect.
- 8.3.7 It is submitted that the economic benefits espoused by the Applicants are based on an unlimited fish supply. Dr Fahy repeats his claim that both the volume and value of fish landings has fallen and will continue to fall. It is suggested that the pressure to maintain raw material for the proposed plant will cause destruction of the biological base and that this should be considered as an indirect impact.
- 8.3.8 Dr Fahy states that the EIA should have been prepared in accordance with 2011/92/EU and not 2014/52/EU as indicated by the Applicant as the application was lodged before the 16th May 2017 (date after which 2014 directive applies to projects). It is submitted that the EIS is deficient in respect of direct, indirect, cumulative, short, medium, long term, permanent and temporary effects of the proposed development. The Board is advised that Art 9 requires that they are satisfied that there is sufficient boarfish and blue whiting stock for the proposed development and that information is provided in their decision should they decide to grant. The report states that Art 3 of the Directive requires not only do the direct and indirect impacts need to be considered but also the interaction between them. It is submitted that the plant cannot be taken in isolation.
- 8.4.0 Planning Authority response to First Party Submission**
- 8.4.1 The Council wish to rely on their previous reports and observations. The Board is requested to uphold the Council's decision to grant having regard to the proper planning and sustainable development of the town of Killybegs and the Border Midlands West Region.

9.0.0 OBSERVATIONS

9.1.0 Friends of the Irish Environment

9.1.1 Board requested to consider the direct and indirect impacts of the abstraction of 50,000 tonnes of Boarfish as the primary source of raw material for the proposed plant. It is submitted that the EIS does not adequately address the impacts or viability of taking more than the stated amount. It is stated that Boarfish are a slow growing species that take longer to become reproductively mature and produce fewer young. It is stated that the status of boarfish stocks is 'unknown'. It is stated that the Seafood Development Operational Programme 2007- 2013 states that 24% of stocks are overfished, that no formal advice was received on the status of boarfish. It is submitted that the proposed development could undermine Targets 6 and 14 of Irelands National Report to the Convention of Biological Diversity (October 2014) which seeks to maintain or restore fish stock levels and to manage and harvest sustainably. It is submitted that the proposed development is premature until such issues have been fully addressed.

9.2.0 Pat The Cope Gallagher

9.2.1 Letter in support of the proposed development which is it is submitted would transform Killybegs and the wider seafood sector. It is stated that the proposed 400 jobs from the development are very important to the area and are in accordance with Government policy "Food Harvest 2020 Strategy". It is submitted that the proposed development has the full support of the community.

10.0.0 THIRD PARTY SUBMISSIONS TO AN BORD PLEANALA

10.1.0 Geological Survey of Ireland

10.1.1 No geological heritage sites within the study area.

10.2.0 Environmental Protection Agency

10.2.1 The proposed development will require an Industrial Emissions Licence under the EPA acts as amended. No application to date. No evidence that a waste licence is required, the following observations made:

- EIS does not appear to address the interaction of effects. Particular attention should be paid to the impact of air emissions and odour on human beings during the assessments undertaken

10.2.2 As part of licence consideration, Agency shall carry out an EIA in respect of the matters that come within its functions. All matters to do with emissions from the proposed development, the licence

application documentation and EIS will be considered by the Agency. A licence cannot be granted where the proposed activities can be carried on or regulated under a licence. The agency cannot issue a proposed determination on a licence application until a planning decision has been made.

11.0.0 ASSESSMENT

11.0.1 I have read the contents of the file including the EIS & addendum report, the NIS and I have visited the site. I have also had particular regard to the issues raised in the grounds of appeal and all responses to it. I consider that the pertinent issues in determining the application and appeal before the Board are as follows:

- Principle of the development
- Proposed Development
- Boarfish as a Raw Material and Upstream, Direct and Indirect Impacts
- The quality and contents of the EIS
- The licensing of the subject site by the EPA
- The Natura Impact Statement
- Environmental Impact Assessment
- Appropriate Assessment

11.1.0 Principle of the Development

11.1.1 As noted in section 6 above, the application was submitted to Donegal County Council during the lifetime of the Killybegs LAP (2008-2014). The lifetime of the LAP has now passed and the application was assessed by DCC under the County Development Plan.

11.1.2 The boundary of Killybegs town is not defined in the County Development Plan, only the now out-of-date LAP. The quandary therefore is that the Industrial Park zoning that facilitated the establishment of the Stoneyhill Park and the service road for the proposed development is not carried through to the development plan. The subject lands are unzoned in the development plan.

11.1.3 The Planning report of the Council makes the case for considering the Industrial Park and the subject site within the boundaries of the town. The lands are fully serviced by road, water and waste water

infrastructure and are the subject of a long planning history to establish the Industrial Park.

11.1.4 Killybegs is designated a Tier 2 town in the development plan and an identified important fishing port and industry. A large number of policies and objectives of the development plan seek to encourage the economic development of the town, particularly the fishing and associated industries. Many of the policies specifically refer to industrial / economic zoning objectives in LAP's, however such development on unzoned lands is also provided for. Policies MCZM-O-2, MCZM-P-7, E-O-3, ED-P-13 specifically provide for the development of Killybegs, without reference to a designated zoning.

11.1.5 I am satisfied that the principle of the proposed development is supported by the policies and objectives of the Development Plan. The proposed development would be acceptable in principle subject to all other planning considerations being satisfactorily addressed.

11.2.0 Proposed Development

11.2.1 The application was accompanied by a planning report outlining the background to the proposed development. It stated that the proposed plant will process boar fish and blue whiting, over 16 hours (two 8 hour shifts) over the whole year. Fish intake from Killybegs harbour will occur during the fishing season – Sept. to March with 50% of the catch being frozen for processing during the off season (April to July). The month of August will be used for maintenance to the plant. The proposed plant will extract proteins, oils and calcium from fish stocks to use as food ingredients. The process will use a cold press, in a completely closed system. The process is stated to be “clean”, with three measures: minimal open handling of fish, processing of frozen rather than thawed fish and no chemical use. The report states that the plant is designed with an intake capacity of 40 tonnes of fresh fish per hour during the fishing season. By my calculations this would result in an intake capacity of 960 tonnes per day or 201,600 tonnes over the fishing season for a 24 hour operation or 640 tonnes per day / 134,400 over the fishing season. The proposed process is described in the planning report as being a “clean” process, albeit one which requires an Industrial Waste Licence from the EPA. All emissions will be controlled under this licence

- 11.2.2 The subject site is approx. 12acres (4.85ha) and can be divided into two sections based on land ownership and also proposed site development works. The northern section of the site has already undergone ground works including levelling to 45 / 46mOD and the provision of an access road along the eastern boundary as approved under 11/20203. The southern section of the site has an existing ground level of 61mOD at the highest point. Permission is sought to excavate to 46m OD and to create an access road to the east of the site. This will require blasting. It is stated that the total quantity of soil and rock to be removed from the site is 26,600m³ and 104,000m³ which will be disposed of on the adjoining site to the east (separate planning application required). According to the planning report, all blasting will be supervised and carried out in accordance with best practice. Blasts will require the stopping of traffic on the adjoining R263 and so it is proposed to provide traffic control stations on the Kilcar Road and at the junction of the Industrial road and the Roshine road.
- 11.2.3 The proposed building takes the form of two warehouse units of 2,500sq.m. and 3,200sq.m. with a 2.2m floor level difference to accommodate the change in ground levels. The proposed plant is similar to the two plants in the immediate vicinity and should not create any adverse visual impacts.
- 11.2.4 The application was accompanied by a Traffic and Transport Assessment. The report states that it was prepared in accordance with the National Roads Authority Traffic and Transport Assessment Guidelines 2014. Access to the proposed development is via the recently completed R263, Killybegs industrial road with a dedicated left turning lane into the subject site. The report states that the R263 was designed to cater for an increase in future industrialisation based on the LAP and the zoning of the lands. Traffic assessments are based on a worst case scenario of the plant operating at maximum capacity – 18HGV's per 8 hour shift during the fishing season of Sept. to March (total 108 movements). This involves sealed tankers travelling from Killybegs harbour. Of the product, 50% will be processed daily while 50% will be frozen and processed during the off-season. Dispatch traffic is stated to be 3 no. tankers per day containing fish oils and 4 no. tankers containing powdered protein finished product. 65 no. staff vehicle movements will be generated plus an undefined numbers of fuel tankers and service vehicle movements. The report states that the proposed volumes are assumed to be less than the National Roads Authority threshold of 10% of the

traffic flow on the adjoining road. Regarding parking provision and internal traffic movements, the report states that the proposed development will adequately cater for the requirements of the development at peak operation.

11.3.0 Boarfish as a Raw Material and Upstream, Direct and Indirect Impacts

11.3.1 A substantive issue of the third party appeal is the issue of the source of raw material for the proposed development. The appellants state that the targeting of Boarfish and Blue whiting is a new enterprise, one which will cause over fishing, destruction of the marine environment and crucially one which has indirect impacts which must be assessed in the EIA. The export report submitted with the appeal provides details of historic over fishing of certain species, of new opportunities to save the industry creating over fishing and a lack of information about the relatively recent Boarfish stock. The appellants state that the targeting of an hitherto unexploited fishing resource creates a new environmental impact which necessitates the assessment of direct and indirect impacts.

11.3.2 The Applicants response is that the catching of boarfish and blue whiting is not a new process. The Applicant provides considerable detail about Total Allowable Catch (TAC). A report prepared by Aquafact International Services and submitted to the Board in response to the appeal, states that in 2014 the EU TAC for Boarfish was 127,509 tonnes and 1.2million tonnes for Blue Whiting. The report states that the proposed development's use of 50,000 tonnes of boarfish, blue whiting and other fish will not alter the TAC. *"These species will be fished anyway, as allowed within the TAC's regardless of their ultimate use"* (page 3). Both the report and the Applicants response point out that the proposed development will merely change the use of these species from being processed into fish meal which occurs currently, into the new protein, oils and calcium's. The Applicant states that TAC is currently caught and processed into fish meal. The proposed development changes that end product to proteins, oils and calcium's, therefore no new environmental impact occurs, no over fishing occurs and no requirement to environmentally assess upstream impacts such as fish stocks arises.

11.3.3 It is useful at this junction to identify the key difference, in my opinion, between the stances of both parties. The Appellant states that boarfish is currently caught as part of a discards / over fishing process only – it is not specifically targeted as a raw material in its

own right. The targeting of boarfish as a market in itself, as opposed to it being the discards is a new venture. The Appellant states that this is a new environmental impact and one which must be addressed in the EIA.

- 11.3.4 The applicant states that boarfish is already caught, that they are not creating a new raw material – they are merely using one that already exists. As of Jan 1 2015 discards / over quota fish can legally be brought on land and used, as opposed to the previous discard at sea.
- 11.3.5 In my opinion, the intricacies, minutiae and political wrangling of the CFP is not a matter for the Board. That the policy promotes over fishing, degradation of the marine environment or conversely creates an economic benefit is irrelevant. The fact is, boarfish is currently legally caught, governed with EU Regulations (notwithstanding the Appellants objections to same) and currently used by the fishing industry. The proposed development plans to use that raw material – as it currently exists. I accept that the creation of a demand for a particular product may result in unsustainable pressure on a particular market, however, that is not a planning concern. That is the economics of the market. Permission is being sought to construct a factory that utilises a particular raw material. One must draw a line around the remit of the assessment of the proposed development. I hear the Appellants arguments about direct and indirect effects of upstream impacts, and am cognisant of the changing dynamic of what is and is not to be considered. However, I am satisfied that on the basis of the information before me in the form of the EIS and all other documentation, that the proposed development involves an existing product, does not create an entirely new raw material and so does not create a new environmental concern for the marine environment.
- 11.3.6 It is clear that the proposed development will utilise a raw material that is currently being processed by existing fish processing plants, and create a different end product. One that has the additional bonus of less waste as the entire fish stock is used.
- 11.3.7 I am satisfied that no new environmental impact arises which is not assessed and discussed in the EIS. Likewise, I am satisfied that the Board is not compelled to require further information on other direct and indirect impacts on marine ecosystems. The Applicant has made clear, the raw material already exists, they are merely

changing the end product. As noted by the Applicant, the proposed processing is entirely terrestrial. I am satisfied with this reasoning.

- 11.3.8 With regard to the assessment of alternative for raw material, I accept the Applicants assertion that the raw material to create their product exists, is commercially viable and is environmentally sustainable.

11.4.0 The quality and contents of the EIS

- 11.4.1 The grounds of appeal argue that the EIS is inadequate and substandard and does not allow the Board to make an adequate assessment of the proposed development. It is incumbent upon the applicant to submit an environmental impact statement having regard to the nature of the activity proposed. This is the statutory requirement as the proposal lies above the threshold set out in Schedule 5 Part 2(7)(h) of the Planning and Development Regulations 2001 as amended. In accordance with the provisions of the EIA Directive and Section 171A of the Planning and Development Act 2000 the EIS submitted must assess the direct and indirect effects of the proposed development on the following:

- (a) Human beings, flora and fauna,
- (b) soil, water, air, climate and the landscape,
- (c) material Assets and cultural heritage, and
- (d) the interaction between the factors mentioned in (a), (b) and (c) above.

- 11.4.2 In addition Article 94 Schedule 6 of the Planning and Development Regulations 2001 as amended sets out the information to be contained in an EIS.

- 11.4.3 The issue of direct / indirect and upstream impacts and whether the proposed development creates a new environmental impact is addressed in section 11.3 above. I do not propose to revisit that issue.

- 11.4.4 With regard to the Appellants claim that the subject EIS inadequately assessed alternatives, I have addressed the issue of alternative raw materials in section 11.3.8 above. The issue of alternative sites was raised by the Planning Authority in the request for further information. The applicant provided details of the site selection process that led to the subject site. The process and the criteria are sound.

- 11.4.5 An Taisce have claimed that project splitting has occurred with the separation of the road development and rock removal already undertaken on the subject site. They state that the disposal of rock which is necessary to facilitate this development, should have formed part of the EIA.
- 11.4.6 The road to serve the subject and adjoining sites has been the subject of two planning applications (02/377 and 11/20203 refer). Likewise, permission has previously been granted by the Board for the removal of rock on a site of which the subject site forms part (PL05E.215810 refers).
- 11.4.7 Chapter 3 of the EIS clearly states that the development being assessed includes the subject site, the adjoining site for rock disposal (and for which planning permission will be sought at a later date) and the service road. I am satisfied that the entire development has been the subject of EIA and there are no issues of project splitting. An Taisce make the case that as in the Derrybrien case, the removal of rock to facilitate the proposed plant must be assessed. In terms of the road already constructed and the rock already removed, the environmental impacts of same could only be assessed in retrospect and in how they interact with the other environmental impacts caused by the proposed development. Retention planning permission is not being sought so there is no requirement for a remedial EIA. The proposed development can be seen as one element within the larger Stoneyhill Industrial Estate. While services for the estate are necessary for the proposed development to operate, the entire industrial development cannot be re-examined every time an application is made to develop a site within the estate. That is neither reasonable nor realistic. The principle of the estate has been established and assessed under the appropriate development consent procedures. Each application within the estate does not need to go back to first principles.
- 11.4.8 The EIS was criticised by both the Planning Authority and the EPA for not addressing the interaction of effects, the impact of air emissions and odour on human beings, no air and climatic factors assessment, inadequate assessment of landscape, no mention of bird species: receiving environment deficient, no mention of tree or shrub species, no mention of impact on marine habitats, fish species, populations, foodchains etc. As noted above, an addendum EIS was requested on foot of a request for further information.

- 11.4.9 Chapters 4 and 5 of the EIS deal with **soils, geology and the hydrogeological** conditions of the subject site. Depth to bedrock on the site is less than 3m, resulting in poor filtration. This is compounded by the removal of much of the overburden / soil destruction which occurred under previous planning permissions. The proposed removal of further rock at the southern end of the site will increase the vulnerability of the underlying groundwater. Mitigation measures proposed include regular maintenance of on-site vehicles, on site chemical spill kits and the construction of a low level containment wall around the periphery of the site to prevent untreated surface water leaving the site.
- 11.4.10 The issue of **surface water** is addressed in chapter 6. The chapter refers to “an existing mesotrophic lake located approx. 20m east of the site”. As noted on the date of my site visits and as shown in photo no.s 1,12 and 17 there are two water bodies within the application site boundary. A small water body located in the south-eastern corner of the site and a larger body of water located towards the northern section of the site. I can find no evidence of a lake to the east of the site. The corresponding figure 6.2 in the EIS shows a red line site boundary around the approx. location of the proposed plant (as opposed to the red line boundary of the application site) with a water body to the north . I must assume that the reference to “east” is an error and that it is intended to be “north-east”. It is proposed that all surface water shall drain into the lake and subsequently on to the storm water culvert along the northern boundary of the site. Existing ground water conditions were found to be good. The proposed mitigation measures of good practice handling of chemicals / fuels and the containment wall will result in a negligible risk from the proposed development. Details of the proposed site drainage scheme are given which will ensure that residual discharge waters continue to conform to an appropriate water quality standard. The applicant indicated in the response to the Planning Authorities request for further information that discharge from the site shall be under a s16 Water pollution act licence sought from Irish Water as licences by the EPA. Should the Board be minded to grant planning permission, this can be addressed by way of condition.
- 11.4.11 In relation to **Air Quality**, chapter 3 of the addendum to the EIS states that the primary concerns resulting from the proposed development are atmospheric dust generation, particulate matter and nitrogen dioxide. Traffic flows are predicted to be low so traffic emissions were not considered necessary. The EIS states that the

Bergerhoff method of dust monitoring was used, at 4 sample points over “the relevant number of days” (pg. 30 Vol 1, Issue no. IV). Table AD3.2 provides the results with the range being 38-62mg/m²/day. The accepted limits for dust generation at a site boundary are 350mg/m²/day. It is unfortunate that the number of days of testing is not provided, other than stating that the test was undertaken in October 2014. A series of mitigation measures are recommended in section 3.15. The EIS concludes that if these measures are implemented then no significant nuisance dust emission should occur. I note that no information has been presented in relation to the existing air quality environment other than a reference to the subject site being located within a regionally Rural West category of 1-Good (pg. 29 Vol1, Issue no. IV Addendum EIS). Nor is there any reference to the two fish processing facilities in the immediate vicinity of the subject site and the cumulative impact of the proposed development on the character of the existing and proposed air quality.

- 11.4.12 As noted above, the Applicant was advised that both the EPA and the Planning Authority noted the lack of assessment of climate in the EIS. Chapter 4 of the addendum to the EIS states that the issue of **climate** was addressed throughout each issue in the original EIS but that a secondary chapter was prepared to address the assessment. The chapter is generic in nature, with no site specific conditions, impacts or mitigation measures proposed. There is no description, baseline data or contextual information of the microclimate surrounding the subject site. Nor is there any information of potential emissions from the proposed plant and how they may impact climatic conditions. It is possible that the proposed development may not have any emissions that are likely to alter meteorological conditions with possible weather effects, however no evidence to that effect has been submitted to the Board. I note that the Applicant has indicated that an IED licence will not be sought, therefore it is incumbent on the applicant to provide all information on possible emissions from the plant to the Board as the competent authority in this instance.
- 11.4.13 The addendum EIS also addressed the issue of **landscape** with a series of 3D images submitted. As noted above, the wider area is industrial in nature, the subject site has been cleared as part of the parent application and little of the original rural landscape remains.
- 11.4.14 The prior clearance of the site also colours the chapter on **Flora & Fauna** in the addendum EIS. The only habitat of note remaining on

the site is the immediate north and south of the site. To the south, some of the higher ground remains as scrub with a larger forested area further south. The addendum EIS notes that grey herons were observed in this area. To the north, the mesotrophic lake is to be retained as amenity. Mitigation measures proposed in an earlier chapter in the EIS, notably surface water management plan, prevention of fuel or chemical spillage etc. are identified as mitigation measures to protect the flora of the site. Native planting is recommended to compensate for the loss of habitat, with recommendations for native trees and hedgerows along the sloped boundaries to the north-east and north-west. This would have the dual function of providing new habitat but also soil stability. Table AD6.2 provides the results of the winter bird Survey carried out over two dates: 28/10/14 and 12/11/14. The very short survey period is problematic. That the survey was done as a reactionary response to the FI request rather than as a more environmentally conscious assessment of the proposed development over a number of seasons, gives only a snapshot of likely significant impacts rather than a comprehensive picture. Notwithstanding this criticism, I acknowledge that the site is part of a wider industrial development for which planning permission has been granted, and under which significant site clearance has already occurred. Compensation and mitigation measures are proposed, most of which appear reasonable. A detailed assessment of the mesotrophic lake in the northern section of the site is submitted.

- 11.4.15 I am satisfied based on the information contained in the EIS that the proposed development will not have any adverse impact on the **cultural heritage** of the area. The site is not located on or in close proximity to any historical monuments or protected structures and as such the proposal will not in my view adversely affect the composition or setting of any archaeological or architectural heritage structures.
- 11.4.16 The proposal is also deemed to be acceptable from a **visual amenity** point of view. The proposed plant is typical of industrial processing plants and in keeping with the existing two plants in close proximity to the subject site. The size and scale of the buildings proposed are typical industrial buildings which are reflective of the Industrial Park character of the area.
- 11.4.17 The proposed plant will process raw fish in a 'clean' environment with no cooking of raw fish stock (pg. 86, Vol1, Issue no IV gives an explanation of the difference between heating and cooking of raw

fish stock and the impact this has on **odour** control). A positive air flow system, recommended stack height of the spray drier stack (30m) and boiler flue (35m) and the distance of residential and therefore odour sensitive properties from the site (minimum 280m) means odour impacts will be negligible.

- 11.4.18 I note the absence of any assessment of **human beings**, as required by the statutory requirements for EIS. Likewise, there is no specific chapter on the interaction of effects, nor is this matter addressed in each specific chapter. Evidence of a formal ‘scoping out’ of human beings was not presented, nor can I find evidence of it being addressed in a direct format structure. One of the secondary elements of the third party appeal was the impact of the proposed development on the working population of Killybegs Harbour. I find the absence of any meaningful economic assessment of the proposed development on existing business and the Harbour of Killybegs significant. I note that the Applicants response to the Appeal addressed the economic impact of the proposed development (appendix B). This information, in isolation can aid the Boards EIA of the application but is required to be contained within the EIS so that it can be assessed as part of the larger EIA. The EIS also does not mention any social consideration, land use impacts, or health & safety impacts. The assessment of the impacts of the proposed development on Human Beings is a requirement of the EIA directive and section 171A of the Planning and Development Acts.
- 11.4.19 With some notable exceptions – i.e. the impact of noise on flora and fauna, the **interaction** of the required environmental topics has not been assessed. All environmental factors are inter-related to some extent. This heading draws attention to significant interaction and interdependencies in the existing environment and is a key requirement of the EIA process.
- 11.4.20 The Directive and the Planning and Development Acts are clear, an EIA shall address the direct and indirect effects of a project on each the listed factors. The list is accepted as the minimum requirements of EIA. That two of the required environmental topics have not been addressed by the Applicants EIA can only lead one to a single conclusion: that insufficient evidence has been submitted to the Board to allow it carry out an EIA of the proposed development.

11.5.0 **Natura Impact Statement**

- 11.5.1 The public notices for the proposed development states that an NIS was submitted as part of the application. Chapter 9 of the EIS is titled 'Natura Impact Statement' but it is actually an AA screening report.
- 11.5.2 Three Natura 2000 sites were identified in the report as being within 10km of the subject site: **West Donegal Coast SPA** (site code 004150), **Inishduff SPA** (site code 04115) and **St Johns Point SAC** (site code 000191). The screening report discounted St Johns Point SAC due to the set back distance, topography and characteristic of the designation. St Johns Points SAC, although only 4km south of the subject site as the crow flies, is actually quite removed from the site due to its location at the end of a peninsula to the east of Killybegs. The qualifying interests of the site are such that without a direct source-pathway-receptor link, significant environmental impacts which would adversely affect the conservation impact of the site are unlikely. I am satisfied that the screening report was correct in screening out St Johns Point SAC.
- 11.5.3 The screening report addresses the **West Donegal Coast SPA**, which is 7.4km west of the site along the coastline and the **Inishduff SPA** which is 6.3km south-west of the site. The potential threats to the sites from the proposed development are identified as removal of feeding or nesting habitat through rock removal, operational noise and air quality impacts through dust generation.
- 11.5.4 The screening report states that the subject site does not provide any of the supporting habitats, foraging grounds or food sources for the identified bird populations in the West Donegal SPA or the Inishduff SPA. Further, the report notes the distance between the subject site and the SPAs and states that any pollution incidences are unlikely to affect the marine habitat in and around either SPA. Likewise, noise and air quality pollution is unlikely to reach either SPA. The report concludes that the conservation objectives of the SPAs are unlikely to be affected and there is no need to move to stage 2.
- 11.5.5 Both sites have generic conservation objectives: "To maintain or restore the favourable conservation condition of the bird species listed as special conservation interest for the SPA" For Inishduff, the bird species is the Shag *Phalacrocorax aristotelis* and for the West Donegal SPA the list is as follows;

Bird Code	Common Name	Scientific Name
A009	Fulmar	<i>Fulmarus glacialis</i>
A017	Cormorant	<i>Phalacrocorax carbo</i>
A018	Shag	<i>Phalacrocorax aristotelis</i>
A103	Peregrine	<i>Falco peregrinus</i>
A184	Herring Gull	<i>Larus argentatus</i>
A188	Kittiwake	<i>Rissa tridactyla</i>
A200	Razorbill	<i>Alca torda</i>
A346	Chough	<i>Pyrrhocorax pyrrhocorax</i>

11.5.6 The separation distances between the development site and the identified habitats is such that a defined source-pathway-receptor link would need to be in place for any ground water pollution to cause adverse impacts on the habitat type, thereby threatening the conservation objectives of the habitats. I agree with the findings of the screening report that dust pollution and air quality impacts are unlikely to travel such distances. The removal of rock and rock blasting would have a significant negative impact on habitats in the immediate vicinity of the subject site but I am satisfied that the separation distance is sufficiently great to avoid same.

11.5.7 It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any other European site in the vicinity, in view of the site's Conservation Objectives and therefore a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

11.6.0 EPA Licensing

11.6.1 The public notices for the proposed development stated that "The application relates to a development which is for an activity requiring an Industrial Emissions Licence under class 7.8(a)(i) of the new First Schedule to the EPA Act as amended". In their submission to the Council, the EPA confirmed that the proposed development would require a licence under the EPA Acts 1992 as amended but that a licence had not yet been submitted.

11.6.2. In accordance with section 42 of the Waste Management Act 1996, as inserted by Article 7 (1F) of the European Union (Environmental

Impact Assessment) (Waste) Regulations 2012 the Board requested a comment from the EPA on the following:

- (i) Confirm to An Bord Pleanála that the proposed development the subject of the application for permission is development comprising or for the purposes of an activity requiring a licence or a review of a licence on the application, under section 40 of the Act.
- (ii) If a licence is required, you are also requested to submit to An Bord Pleanála observations you may have on the application for permission including the environmental impact statement and addendum report.

In addition, you are requested to make observations in respect of the following specific matters:

- (i) The adequacy of the baseline data, methodologies employed, and any assumptions used to inform the assessment of the likely impacts on and proposed mitigation measures to protect the Killybegs Harbour & Coastal Water Quality Status contained in the submitted EIS.
- (ii) The adequacy of the baseline data, modelling methods employed, and any assumptions used to inform the assessment of the following:
 - air quality with particular emphasis on odour
 - climatic factors, contained in both the submitted EIS and addendum reports .
- (iii) the assessment of the interaction of effects, in particular the impact of air emissions and odour on human beings during the assessments undertaken
- (iv) any comments you may wish to make in respect of mitigations measures proposed or the acceptability or otherwise of the residual impacts identified in the Environmental Impact Statement in the context of the control of emissions.
- (v) any comments you may wish to make in relation to any BAT guidance documents in relation to the processing of animal carcasses and by-products that would set out the best available techniques for emissions.

11.6.3 In response to the above, the EPA stated that the proposed development will require an Industrial Emissions License (IED) under the EPA Acts as amended but that no license application had been received. Regarding waste, the EPA state that there is no evidence that a waste license is required and so an observations is made in relation to the EIS, namely that it does not appear to address the interaction of effects and that particular attention

should be paid to the impact of air emissions and odour on human beings during the assessments undertaken.

11.6.4 Section 7.8(a) of the new first schedule to the amended EPA acts states that Part IV applies to the treatment and processing, other than exclusively packaging, of the following raw materials, whether previously processed or unprocessed, intended for the production of food or feed from only animal raw materials (other than exclusively milk) with a **finished product production capacity greater than 75 tonnes per day**. For the purposes of clause (a), packaging shall not be included in the final weight of the product.

11.6.5 The applicant states in their response to the Councils request for FI that proposed plant will produce approx. 46 tonnes of finished product per day. This is based on two shifts with an intake of 50,000tonnes of fresh fish per annum. The FI response states that this is substantially below the 75 tonne of finished product per day set out in class 7.8(a)(i) of the new first schedule of the EPA act as amended and therefore an EPA industrial waste licence will not be required. A discharge licence under section 16 would be sought.

11.6.6 There appears to be a discrepancy between the position of the EPA and that of the Applicant. The Applicant has said they do not require an IED licence under section 7.8 of the first schedule of the EPA amended acts as their output is less than the threshold. The EPA have stated that the proposed development does require a licence. I am minded to be guided by the information on file before the Board which clearly states that the proposed development, with a **finished product production capacity of less than 75 tonnes per day** is below the threshold set by the EPA act as amended. I am satisfied that, as currently proposed the proposed development does not require an IED license. Should this position change, the applicant is free to seek a license after a planning decision has been made by the Board.

11.7.0 **Environmental Impact Assessment**

11.7.1 Article 3 of the EIA Directive (2011/92/EU, see section 11.5.24 below) specifies the nature of the assessment which must be carried out as follows:

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and indirect effects of a project on the following factors:

- a) *Human beings, flora and fauna;*
- b) *Soil, water, air, climate and the landscape;*
- c) *Material assets and the cultural heritage;*
- d) *The interaction between the factors mentioned in points (a), (b) and (c)*

11.7.2 Similar wording is contained in section 171A of the Planning Act.
 171A (1) *In this Part, ‘ environmental impact assessment ’ means an assessment carried out by a planning authority or the Board, as the case may be, in accordance with this Part and regulations made thereunder, that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the Environmental Impact Assessment Directive, the direct and indirect effects of a proposed development on the following:*

- (a) human beings, flora and fauna,*
- (b) soil, water, air, climate and the landscape,*
- (c) material assets and the cultural heritage, and*
- (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).*

11.7.3 The Directive and the Planning and Development Acts are clear: an EIA shall address the direct and indirect effects of a project on each the listed factors. The list is accepted as the minimum requirements of EIA. That two of the required environmental topics have not been addressed by the Applicants EIA can only leads one to a single conclusion: that insufficient evidence has been submitted to the Board to allow it carry out an EIA of the proposed development.

11.7.4 The Appellant states that the EIA carried out by the Applicant was incorrectly prepared under the Directive **2014/52/EU**. They hold article 3 of the 2014 Directive states that “projects shall be subject to the obligations referred to in Article 3 and Articles 5 to 11 of Directive 2011/92/EU prior to its amendment by the Directive, where before 16 May 2017....(b) the information referred to in Article 5(1) of the Directive 2011/92/EU was provided”.

11.7.5 Article 3** of the **2014 Directive** states:
 1. Projects in respect of which the determination referred to in Article 4(2) of Directive 2011/92/EU was initiated before 16 May 2017 shall be subject to the obligations referred to in Article 4 of Directive 2011/92/EU prior to its amendment by this Directive.

2. Projects shall be subject to the obligations referred to in Article 3 and Articles 5 to 11 of Directive 2011/92/EU prior to its amendment by this Directive where, before 16 May 2017:

(a) the procedure regarding the opinion referred to in Article 5(2) of Directive 2011/92/EU was initiated; or

(b) the information referred to in Article 5(1) of Directive 2011/92/EU was provided.

11.7.6 Article 3 of 2014 Directive states:

1. The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in points (a) to (d).

2. The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.’;

11.7.7 One could argue that the requirements of the 2014 Directive are more onerous on the Applicant, given that new elements to be introduced in the 2014 Directive result in a broader scope of the EIA covering new issues (climate change, biodiversity, risks prevention), From the Applicants point of view, compliance with the codified 2011 Directive is somewhat easier.

11.7.8 From the Boards point of view, the end result remains the same, the EIS submitted following the EIA carried out by the first party is deficient in that it omits two fundamental requirements of the EIA process, namely assessment of the likely significant impacts of the proposed development on human beings and an assessment of the interaction of the environmental topics assessed.

11.7.9 The Board may wish to address this by way of a s132 further information request. However, it is noted that the Applicant was requested by the Planning Authority in accordance with Article 94 of the Planning and Development Regulations as amended, to

submit further information to address the issues that had not been assessed in the EIA. It is considered unjust at this point to provide a further opportunity under article 94 to address the deficiencies of the EIS. It is considered reasonable to recommend a refusal of permission based on an inadequate EIA, and that insufficient evidence has been presented to the Board on which to carry out an EIA. It is considered that the Board is precluded from considering a grant of planning permission for the proposed development.

12.0.0 CONCLUSION

I have read the submissions on file, visited the site, and have had due regard to the provisions of the Donegal County Development Plan, the planning history of the subject and adjoining sites and all other matters arising. It is considered that the EIA carried out by the First Party does not comply with Article 3 of the EIA Directive and section 171A of the Planning and Development Acts, as amended, as it does not assess the likely significant impacts of the proposed development on human beings, nor does it address the interaction of environmental topics required under article 3.

13.0.0 RECOMMENDATION

I recommend permission be refused on the following grounds:

- 1 Having regard to the nature of the proposed industrial development, to Article 3 of Directive 2011/92/EU and section 171A of the Planning and Development Acts, as amended, it is considered that insufficient information has been presented to the Board on which to carry out an EIA of the proposed development. The EIS submitted with the application fails to address the likely significant impacts of the proposed development on human beings and fails to assess the interaction of the required environmental topics. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

Gillian Kane
Planning Inspector
11/06/15