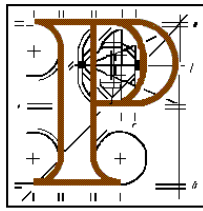


An Bord Pleanála



Inspector's Report

Development: Waste recovery, recycling and transfer depot consisting of a shed for sorting/loading waste, office building, car parking, wastewater treatment system and all associated site works.

Location: Ardlenagh and Lurganboy,
Donegal Town, Co. Donegal.

Planning Application

Planning Authority:	Donegal County Council
Planning Authority Reg. Ref.:	14/51324
Applicant:	Shaun Molloy & Sons Limited
Type of Application:	Permission
Planning Authority Decision:	Grant Permission

Planning Appeal

Appellant:	Harry & Martin McLaughlin
Type of Appeals:	3 rd v Grant
Date of Site Inspection:	21 st January 2016
Inspector:	Dolores McCague

1 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site is situated in the townlands of Ardlenagh and Lurganboy, Donegal Town, Co. Donegal, some distance south of Donegal Town. The site is located on agricultural land adjoining the R267, formerly the national primary, which now accesses the southern part of the town from the N15 by pass. Adjoining the site to the west, sharing an access with the subject site, there is a large furniture showrooms and factory which has the advantage of a prominent location on the regional road. To the north, also fronting the R267 is Abbott, Ireland, Diabetes Care.
- 1.2 The site is located close to inlets of Donegal Bay.
- 1.3 The site includes the side of a drumlin shaped hillock and low lying land at the bottom of the hillock. A stream forms the southern boundary.
- 1.4 The site area is given as 2.65ha.

2 PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises a waste recovery, recycling and transfer depot consisting of a shed for sorting/loading waste, office building, car parking, wastewater treatment system and all associated site works.

3 PLANNING AUTHORITY DECISION

- 3.1 The planning application was lodged on the 19th November 2014. The application was accompanied by a letter stating that the applicants currently operate a permitted waste management facility at Kilrairie, Glenties, Co Donegal. The company offer a waste collection service in Central, Western and Southern Donegal and have operated for over 30 years.

3.2 Waste currently being collected in south and south-west Donegal is currently taken to the facility in Kilraine for sorting, separating and onward transportation for further recycling and recovery. The company offers a weekly collection. The location of the current facility and the infrastructure between it and south Donegal can mean vehicles operating in dangerous and difficult conditions during inclement weather. Any disruption of service can cause difficulties for householders. The service to south Donegal would be substantially improved by the new facility.

3.3 A **Screening Statement for Appropriate Assessment**, prepared by Earthy Matters, Environmental Consultants, accompanied the application. It identifies possible impact on Donegal Bay SAC and Donegal Bay SPA via a creek which drains from the site to the protected sites.

Potential impacts identified include impacts on freshwater ecology from sediment loss of excavated materials; risk to downstream water quality due to accidental spillages from construction machinery and post-construction risks from increased run-off and accidental discharges.

The screening statement concludes that no direct or indirect impacts on the qualifying conservation interests of the SAC and SPA are foreseen. No cumulative impacts are envisaged.

3.4 A further letter accompanying the application states that:

A pre-planning meeting (pp4071) took place and arising from the meeting they make the comment:

The site is located within the settlement framework envelop for Donegal Town as defined in the County Development Plan 2012 – 2018.

The activity of sorting waste is an industrial process as defined under article 5 of the Planning & Development Regulations 2001.

Per policy ED-P-3 the proposed development is within a defined settlement.

Per policy ED-P-16:

a) the building adjacent is an industrial building which manufactures kitchens. A previous planning application (04/1013) was approved for a Cattle Auction Building. The development is compatible with surrounding land uses both existing and approved.

b) the development does not harm the amenities of nearby residents.

c) a mains water supply is located in the public road. Effluent disposal will be by on-site treatment system.

d) access to the R267 was approved under 04/1013 and 07/20022. The proposed development has significantly less traffic movements than the approved Cattle Auction Building.

e) adequate access, parking manoeuvring and service areas are shown.

f) all operations take place within the recovery and recycling shed.

g) there are no emissions.

h) there are no impacts on the built or natural heritage.

i) there is no history of flooding; attenuation tanks are to be installed.

j) the development and landscaping are of high quality.

k) appropriate boundary treatment and means of enclosure are proposed to be provided by means of new trees to the roadside boundary and the formation of an earth bank in front of the proposed shed with planting to partially screen the building.

l) it integrates into the landscape with minimal cutting or excavation.

m) the development will not compromise water quality or the programme of measures contained in the North Western River Basin Management Plan 2009-2015.

The floor of the shed is to be bunded by means of lowering the floor level 150mm below external ground levels thus preventing any potential discharge to external areas. Internal discharge is to be collected and directed to a bunded tank which is to be emptied by a registered contractor and disposed of to a registered facility.

An archaeological survey was undertaken for a previous application and nothing of archaeological interest was noted.

- 3.5 Reports:
- 3.6 Inland Fisheries Ireland (IFI) – 24th November 2014 – recommending conditions.
- 3.7 Waste Regulation Officer - 24th November 2014 - recommending conditions.
- 3.8 Killybegs Executive Engineer – 20th November 2014 – no objection.
- 3.9 Acting CFO – 8th November 2014 – recommending conditions.
- 3.10 Environmental Health Officer (EHO) 15th December 2014 – recommending further information, re attenuation.
- 3.11 DAHG, DAU nature conservation – 11th December 2014 – recommending conditions.
- 3.12 DAHG, DAU archaeology – 15th December 2014 – recommending conditions.
- 3.13 Planning – 17th December 2014 – recommending further information.

- 3.14 A request for further information issued on 19th December 2014 – on 6 points, per planning report:
- 1 details of intended use.
 - 2 report on noise.
 - 3 details of attenuation tanks.
 - 4 flood risk assessment and justification test.
 - 5 clarify likely impact on existing surface water regime.
 - 6 trial hole.
 - 8 revised layout showing spot levels/contours and finished floor level of control house.
- 3.15 Further Report - EHO - 15/5/2015 - recommending conditions.
- 3.16 A request to extend the period for responding to the request for further information was submitted on 10th June 2015; period extended to 27th September 2015.
- 3.17 A response to the request for further information was submitted by Brannigan Associates Chartered Building Surveyors, on 30th July 2015: including:

Revised site layout, building plans, etc.

Planning report by Joe Bonner, Town Planning Consultant, which includes:

Reference to the national and regional planning context, the Donegal Waste Management Plan, which refers to the roll out of brown bins, and the Connaught – Ulster Region Waste Management Plan which refers to recycling reaching a rate of over 60%. The goals of the regional Waste Management Plan include increasing the level of source-segregated kerbside collections in the region. The provision of collection and treatment services will primarily rest with the private sector. Industry will be responsible

for the delivery of collection and treatment infrastructure required in the region.

The County Development Plan 2012-2018 contains clearly defined policy in terms of location and use that encourages and facilitates the development of waste management facilities such as the proposed Waste Recovery, Recycling and Transfer Depot in the key settlements of the county including Donegal Town, and it is considered that the proposed development complies with all of the policies and objectives set out.

The planning history of the site is addressed:

94/1868 permitted the provision of a driving range and clubhouse.

04/1013 (PL 05.209175) permitted the erection of a livestock auction building and associated facilities. The permitted development included a significantly greater level of excavation of the hillside than is now proposed.

05/20089 amendments to previous permission – changes to permitted opening hours.

05/20279 erection of two commercial buildings, using an entrance shared with the proposed mart.

07/20022 change to 05/20279 kitchen manufacturing and associated office and showroom.

08/20689 extension to existing building, consisting of 4 retail warehousing units.

Responding to item 1: the types of waste to be processed are: mixed solid municipal (MSW), mixed dry recyclables (MDR), cardboard, plastic, glass and cans. Approximately 23% of waste brought to the facility will be commercial, 2% industrial and 75% domestic.

The facility is a transfer facility where waste is brought, bulked and transferred. The process varies depending on the particular type of waste. All processes will occur within the building and no transferring will occur outside the building. The vehicles delivering and removing waste will be covered when they arrive/leave. Entry to the premises is via fast closing electronic doors that automatically open/close to keep the building at negative pressure.

MSW is tipped in the MSW waste handling area, transferred to a screener where fines (biodegradable element) will be removed. The waste will then transfer to a conveyor belt and short picking line, where paper, cardboard, tin and aluminium and plastic are removed. Waste will be reloaded as appropriate for transfer to other facilities for recovery or composting.

Biodegradable Kitchen/Canteen Waste (brown bin) is reloaded to a separate trailer in order to be transferred for composting and no processing is carried out. Accounting for approx. 8-9% of the MSW currently collected by the applicant, the amount of the biodegradable waste in the MSW will drop dramatically with the further roll out of the brown bins. These have been operating in Donegal town, Bundoran and Ballyshannon, in the collection catchment, since July 1st 2015. The service will be extended to 16 towns and villages in 2016, some in the collection catchment.

Mixed Dry Recyclables – this material is taken to the screening area to remove any domestic residue. It travels to the picking line where some high quality paper, cardboard, plastic and cans may be recovered, to be baled and sent to appropriate facility for recovery. Any materials remaining will be reloaded and sent to an appropriate recycling facility. Separately collected commercial cardboard and plastics go directly to the baling area. Different waste streams are collected on alternate weeks: MSW one week, recyclable materials the next; thereby significantly reducing the amount of sorting of waste that has to be carried out on site.

Glass mostly arrives segregated, and is delivered to bays. When sufficient glass is accumulated it is reloaded and sent for recycling.

Skip waste – skips are brought to the skip handling area, the contents are tipped and segregated by machine, with manual input. All recyclable materials are recovered within the building and sent to relevant bays /storage skips as appropriate. Residue is removed to the MSW area. 95% - 100% of waste in skips is recyclable.

Machinery – screener/trammel to remove biodegradable waste and fines; conveyor – for manual picking and sorting; bailer – to compress, bale and tie the waste; forklifts – for moving waste and loading/unloading vehicles; front loader – for moving waste and loading/ unloading vehicles; and grab excavator – to sort wastes, particularly from the recycling skips.

The facility will not be open to the general public for drop-off of waste material. It will accept particular waste types directly from the public. It will be open from 8.00 to 18.00 Monday to Saturday.

Responding to item 2 – a noise impact assessment and an odour impact assessment are provided.

The noise impact assessment submitted indicates that the main noise source to the neighbouring residential properties to the north and south, is traffic on the surrounding road network, especially the R267. The predicted noise level of the future operations at the nearest noise sensitive properties to the south-east and north-west does not have the potential to result in complaints during daytime operating hours. No specific mitigation measures are proposed.

The odour impact assessment submitted states that composting will not take place on the premises and organic waste will be removed at least every 48 hours, which will significantly reduce the potential for a build-up of odorous gases in high concentrations in the waste acceptance building. The use of appropriately designed ventilation system that will allow for a minimum of two air changes per hour, and a subsequent emission of odours to atmosphere, through a 15m high stack, is recommended. Dispersion modelling has shown that there will be no reasonable cause for annoyance at sensitive receptors and a suitable working environment can be achieved.

Changes are proposed to the development arising from the flood risk assessment: relocation of the building and wastewater treatment plant; changes to building height and finished floor level. The eaves has been reduced in height from 10m to 9m and the ridge from 12.65m to 11.65m. The finished floor level has been raised from 5.4m to 6.53m. The building height will be only 0.13m higher than the original proposal although the finished floor level will be 1.13m higher. The building is now 130m from the road rather than 77m. External finishes will blend into the existing buildingscape. Permeable paving is proposed on part of the access road. The part of the hillside to be excavated will involve a much smaller area of excavation that was previously permitted by Donegal County Council and An Bord Pleanála. The excavated area will be supported by a combination of concrete retaining wall at the bottom, above which will sit a vegetated retaining wall and slope stabilisation 'flex MSE' (a proprietary vegetated retaining wall).

Responding to item 4 and 5 – a flood risk assessment and justification report is attached. It includes: the development will be served by a positive drainage system out-falling via surface water balancing facilities to the existing stream to the south-east of the lands. The attenuation tank will be sized to accommodate surface water run-off arising from the development for up to and including the 1 in 100 year rainfall event, plus an allowance for climate change. Storage required is calculated as 280cu.m. to be provided by means of sealed box culverts at an invert level of 4.972 A.D., slightly below flow zone 'A' level of 5.3m. The entire drainage network will be sealed; backflows due to flooding will not enter the system. A tidal valve will be incorporated into the system at the outfall. Runoff in excess of 1: 100 + 20% will be routed towards the existing surface water stream.

A **Storm Water Drainage Design Report** prepared by CST Group Consulting Engineers, considers three options for surface water drainage and selects the option of discharging at a controlled rate to the existing open stream to the south east. By controlling the rate of discharge to existing green field run-off rates, assurance can be given that no detrimental effects will be caused to the stream, the existing culvert under the Regional Road or the downstream element of the open water course. The use of box culverts is proposed for the attenuation.

A **Noise Impact Assessment**, was prepared by Envest Environmental Ltd. A worst cast noise level within the building, of 85 dB $L_{Aeq,1hour}$ is assumed. Noise from refuse collection vehicles and from the forced mechanical ventilation system of the building are considered. Table 7 of the report sets out the measured ambient sound levels at two points: along the R267 and at Ard Aobheann to the north-west of the site, and calculates the predicted sound level from the proposed development with acoustic feature correction, (i.e. a 3 dB(A) penalty due to potential tonal aspect of the noise sources). Predicted sound level is lower than the lowest measured background sound pressure level, and therefore there is no potential for adverse impact.

An **Odour Impact Assessment**, was prepared by Envest Environmental Ltd. The principle of Best Available Technique has been used to attain an acceptable ground level concentration in proximity to the proposed facility. An odour target value of $C_{98, 1-Hour}$ 3 ou_E/m³ at the nearest sensitive receptor should be achieved;

this is the level below which odour would not be recognised by the general public or constitute a nuisance. The removal of organic waste at least every 48 hours, which will significantly reduce the potential for a build-up of odorous gases in high concentrations in the waste acceptance building, is proposed. The use of appropriately designed ventilation system that will allow for a minimum of two air changes per hour, and subsequent emission of odours to atmosphere through a 15m high stack, is recommended. Dispersion modelling has shown that there will be no reasonable cause for annoyance at sensitive receptors, and a suitable working environment can be achieved. The highest predicted odour concentration at the nearest sensitive receptor will be $C_{98, 1\text{-Hour}} 1.1 \text{ ou}_E/\text{m}^3$. No significant odour impact will occur due to the operation of the proposed development.

A **Site Assessment Report** has been prepared by TecSoil, to establish the suitability of the ground for wastewater disposal, together with proposals for the wastewater treatment system.

A **Detailed Flood Risk Assessment and Justification Test**, prepared by Tynan Environmental, Environmental and Hydrogeological Consulting, includes: surficial deposits, comprising alluvial soils/subsoils, have been mapped by (Teagasc/EPA(2004), www.gsi.ie) around the river in the lower part of the catchment. These are likely to indicate past flood events, although these events may have occurred in the distant past and or be related to historically higher sea levels. Part of the site and parts of the river catchment have been delineated under the OPW (2011) preliminary Flood Risk Assessment (PFRA) as being subject to an indicative 1% AEP (Areas for Further Assessment) (1 in 100 year) fluvial flooding event. A narrow coastal strip, (estimated to be 30m or less), at the coast, south of the site, has been delineated under the same assessment as being subject to an indicative 0.5% AEP (1 in 200 year) coastal flooding event. Part of the site and parts of the river catchment have been delineated on the OPW (2015) draft Flood Maps for Areas for Further Assessment as being subject to a 1% AEP and 0.1% AEP fluvial flooding event. The draft Flood Maps for Areas for Further Assessment mapping indicates a 0.5% AEP and 0.1% AEP tidal flood event. Fluvial flooding would be caused by the capacity of the river channel being exceeded and excess spilling out onto adjacent low level areas. Estuarial flooding may occur at the bottom end of the catchment due to a combination of tidal and fluvial flows.

The report refers to modelling which was carried out, for a length of 1.4km extending upstream from the river discharge point to the sea; a longer length of channel than will exert hydraulic control in the vicinity of the site.

The modelling indicates that areas of the catchment upstream of the culvert beneath the R267 regional road (including the site), are subject to flooding from the combined 0.1% river and 0.5% coastal flood levels and up to the combined 0.01% river and 0.01% coastal flood levels. In actuality the flooding upstream of the R267 is probably not estuarial flooding but solely fluvial as the elevations and dimensions of the culvert are likely to hydraulically disconnect the upstream and downstream channels.

Estimated flood zone boundaries, comprising the maximum flood levels across four modelled sections adjacent to the site, plus 0.2m addition for potential uncertainty between two sets of topographic levelling are given:

Flood zone 'A' less than or equal to 5.3m OD – high probability: a greater than 1% AEP (1:100 year) probability of river flooding and/or greater than 0.5% AEP (or 1:200 year)) probability of coastal flooding; 0-1.8m maximum in-channel flood depth.

Flood zone 'B' greater than 5.3m OD, less than 6.5m OD; moderate probability: between 1% and 0.1% AEP (1:1000 year) probability of river flooding and/or greater than 0.5% and 0.1% AEP probability of coastal flooding; 0-3m maximum in-channel flood depth.

Flood zone 'C' greater than 6.5m OD; low probability: less than 0.1% AEP (1:1000 year) probability of river flooding and/or coastal flooding.

A design flood level of 5.3m OD was calculated and a minimum finished floor level was set at 5.8m, being design flood level + 0.5m freeboard.

Arising from the flood risk assessment the location and design of the proposed development has been significantly modified from the original planning application. No development element has been located in a Flood Zone for which its vulnerability is inappropriate. The development element locations and flood

avoidance design measures are listed in table 4 of the submission and include within flood zone 'A', 55m of access road, stated to have low vulnerability to flooding, and as flood avoidance measures, a pedestrian egress and access route is designated through flood zoned 'B' and 'C'. A pedestrian egress route has been provided to allow occupants of the building to avoid the Zone 'A' flood, during which a short section of road would be flooded.

- 3.18 Further Technical Reports
- 3.19 Planning Report – 19/8/2015 - recommending that new notices be published.
- 3.20 Waste Regulation Officer – 21/8/2015 – no objection.
- 3.21 IFI -10/9/2015 – recommending conditions.
- 3.22 Appropriate Assessment Screening Report – 18/9/2015 – this concludes that it can be excluded on the basis of objective scientific information that the proposed development would have significant effect on a European Site – Donegal bay (Murvagh) SAC (site code 000133) and Donegal Bay SPA (site code 000133).
- 3.23 Planning Report – 14/9/2015 - recommending planning permission subject to 18 conditions.
- 3.24 Decision to grant planning permission 17th September 2015 – subject to 18 conditions, including:
 - 1 The development to be carried out as amended.
 - 4 No infilling of the SAC/SPA shall occur.
 - 7 At least four hundred broadleaved trees native to the area and one hundred and fifty coniferous trees shall be planted on the site within the first planting season following commencement of the development, any trees dying within subsequent years shall be replaced. Prior to the commencement of the development the developer shall submit a full and professionally prepared landscape plan

for the overall site to the planning authority for written agreement and upon receipt of written agreement shall implement the agreed plan prior to occupation and operation of the development hereby permitted.

- 10 Prior to commencement of development the developer shall submit to the planning authority for written agreement proposals for the management of vermin on site and shall implement said agreed proposals upon occupation and operation of the waste facility hereby permitted.
- 17 No filling of the area denoted as 'Zone A' on the site layout plan received by the Planning Authority on the 30th July 2015, in association with the planning application, shall be carried out without a prior grant of planning permission, unless specifically agreed as part of the landscape plan referred to in condition no 7 above.

3.25 The decision was in accordance with the planning recommendation.

4 PLANNING HISTORY

Given in Planner's report

PL 05.209175 Planning authority reg ref. 04/1013, permission granted for a livestock auction building and associated facilities, including 193 car parking spaces, 30 lorry parking spaces, security fencing and signage; access arrangements involve the construction of a priority junction onto the R267.

05/20089 amendment to previous permission granted.

5 GROUNDS OF APPEAL

5.1 The third party appeal against the decision to grant permission has been submitted by Mr Harry McLaughlin and Mr Martin

McLaughlin, Cherrymore Kitchens & Bathrooms, Ardlenagh, Lurganboy, Donegal Town: which can be summarised as follows:

- 5.2 Conditions 4 and 5 were imposed to ensure the protection of the Special Area of Conservation. Given the type of waste development proposed, protection of the SAC has to be considered from early construction stage through to operation of the facility. In the third party's opinion it is impossible to mitigate against the Donegal Bay (Murvagh) Special Area of Conservation and protection will not be afforded.
- 5.3 Condition no. 7 requires 550 trees (400 broadleaved trees and one 150 coniferous) to be planted on the site. The scale of planting is consistent with screening a quarry and illustrates how unsuitable the proposal is, given the excessive lengths that have to be undertaken to ensure the proposal can be satisfactorily absorbed into the landscape.
- 5.4 Condition no. 8 recommends a pumped fed soil polishing filter in order to force the lands to accept foul effluent.
- 5.5 Third parties are concerned about the proposal particularly the revised plans and particulars on which the permission was granted.

6 RESPONSES

6.1 Planning Authority Response.

6.2 The Planning Authority has responded to the grounds of appeal. The response includes:

6.3 Donegal County Council screened out the need for Appropriate Assessment.

6.4 The number to trees specified was dictated by the Council's regard to the scenic nature of the location, the size of the site and

scale of the housing to be provided for the facility. These trees are meant to be one metre high 'whips'.

6.5 The use of pump fed polishing filter is common practice and is specifically provided for in the EPA Code of Practice on Wastewater Treatment and Disposal Systems serving Single Houses', (October 2009).

6.6 **First Party Response.**

6.7 Brannigan Associates Chartered Building Surveyors, have submitted a response to the grounds of appeal on behalf of the first party; prepared by Joe Bonner, Town Planning Consultant.

6.8 The planning context is referred to: the national and regional planning context, the Donegal Waste Management Plan, the Connaught – Ulster Region Waste Management Plan and the County Development Plan. Attached to the report is a copy of the a report submitted to the planning authority. The response refers to the planning history and to the expertise of the group involved in the response to the request for further information.

6.9 Responding to the grounds of appeal:

Re. conditions 4 and 5 - the plans clearly indicate that no part of the SAC or SPA will be filled or interfered with. The surface water output from the site will be limited to existing greenfield run-off rate and surface water will flow through petrol interceptors and, in times of significant rain, will be diverted to settlement tanks before being released. Mitigation measures proposed will be carried out. The DAHG has no objection.

Re. conditions 5a – the condition reiterates what the applicant had stated in the application. Re. the photograph submitted to support the grounds of appeal, in mid 2015 due to the breakdown of a company vehicle, at a time when the company was streamlining its bin collection service, to coincide with the delivery of new bins to new customers, following of the acquisition of another waste business sin the area, a number of vehicles were stored overnight. No waste was deposited on the site and this photograph does not reflect the nature of the business operated by the first party. The development poses no threat to the SAC.

Re. landscaping – there is nothing offensive about the proposed development or the proposed landscaping plan. The appellant’s development was required to implement a comprehensive landscaping plan, which would have meant that their premises would not be visible from the public road. The applicant intends to implement the proposed landscaping plan. Condition no. 10 of the 2004 permission required dense planting. The external appearance of the proposed building will be identical to the Cherrymore (third party) building. Landscaping conditions are standard conditions.

Condition no. 8 is a standard wastewater treatment condition, similar to the previous permission for the site.

6.10 Re submission of the 3rd December 2014 –

condition no 2 of the decision addresses sightlines. The entrance is the same as that granted in 2004. There will be no significant intensification of movements over that which the junction is designed for.

The response to the request for further information addressed all matters to do with flooding.

Trapped rainwater shown in the photograph is due to the fact that the earth embankment adjoining the stream is higher than the lowest lying part of the field, an area which will remain unaffected by the proposed development.

6.11 Re submission of the 7th September 2015 –

A comprehensive site specific Flood Risk Assessment has been carried out. ‘Likely flood rates’, refers to the fact that the site has never been flooded in the manner the appellants are portraying, which is different to the accumulation of rain water shown in the photos.

Two trial holes were excavated.

The proposed building is significantly smaller than the appellant’s existing building and located significantly further from the public road.

6.12 The proposed development is consistent with policy initiatives at all levels. Public and private investment in waste facilities of the

very highest quality is encouraged. There is no preferential site test for waste facilities in Ireland; each application will be considered on its own merit having regard to other relevant planning policies. The planning authority deemed the revised proposal acceptable, and in compliance with development standards. The site benefits from proximity to the regional road and N15 and to the large towns within its catchment: Donegal Town, Bundoran and Ballyshannon; in which the applicant's company already operates. The building will be easily assimilated into the landscape. It is an important response to government and regional policy; a critical response to the county's ambition to provide modern waste transfer facilities that will serve the needs of an ever expanding population. The request the planning authority's decision to be upheld.

7 BOARD CORRESPONDENCE

- 7.1 The Board informed The Heritage Council, of the appeal on the 19th November 2015, no reply has been received.

8 POLICY CONTEXT

- 8.1 **The Donegal County Development Plan 2012-2018** is the operative plan.

The aim in relation to economic development is to set the coordinated framework for the development of the County that will guide the location of new growth, perform as a mechanism to coordinate investment programmes, ensure sufficient supply of zoned housing land and implement necessary environmental safeguards.

Donegal Town is a 'Strategic Support Towns (Tier 2)'; these towns have an identifiable physical strategic infrastructure link with Letterkenny and have an important strategic sub - county role as a service centre.

The Development Plan provides for 'Settlement Frameworks'. In relation to Donegal Town an LAP is to be prepared but in the interim period, a settlement framework has been prepared as part of the CDP. The Settlement Frameworks for Donegal Town, attached as appendix A to the Plan, includes a settlement envelop, which encloses an extensive area, within which are identified a town centre, residential areas and amenity areas and the remainder of the area within the boundary is unidentified. The text accompanying the framework states that the central and northern portions of the town display a compact form, but that a considerable amount of linear development has taken place along arterial roads at a significant distance from the town centre, in particular to the south east, south west and northwest of the town. The town's key assets include the Estuary of the River Eske and associated harbour, and the steep sided drumlins on the edges of Donegal Bay and in the town's immediate hinterland. The Department of the Environment, Heritage and Local Government has identified Donegal Town as an Historic Town for general protection. Safeguarding the environmental and visual amenities of the town, by ensuring that new development does not compromise key visual and environmental amenities, is one of the issues the framework identifies.

The Development Plan policies include (CS-P-1): that proposals for development other than residential at Tier 2 and 3 towns, will be considered on all lands within the settlement envelopes that do not have a specific land use zoning assigned. Any such 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.

Each Settlement Framework consists of lands that, although not positively zoned for a particular use, are still important lands to be included within the settlement envelope in the context of supplying needs other than residential uses such as community, educational, recreational, health and employment. The Settlement Frameworks consist of a development envelope which delineates the extent of the town and the point of transition to rural area (at which point rural policy applies) together with specific zonings where appropriate, identification of important constraints/opportunities as well as information in relation to the function and role of the town. The Settlement Frameworks are not designed to be exhaustive in the presentation of all the relevant matters that may be considered in the determining of a planning application, as further issues may evolve over time or may be pertinent in certain site specific cases.

Objectives are included in the plan for the provision of 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; to seek to provide adequate services for the collection, treatment and disposal of household waste; and the collection, treatment and disposal of commercial and industrial waste, where appropriate through partnership with the private sector.

Locational criteria for economic development are set out in chapter 3 of the Plan:

ED-P-2 requires economic development proposal that meet the locational policies (policies ED-P-3 – ED-P-15) to 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: sets out as policy 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-16 requires 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 (this is referred to in detail in a letter accompanying the planning application):

- (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, maneuvering 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.

An Environmental Report attached as Appendix C to the Plan, refers to the flood risk guidelines which require the planning system to: avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere; adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk; and incorporate flood risk assessment into the process of making decisions on planning applications and planning appeals.

8.2 **Development Plans**, Guidelines for Planning Authorities, DEHLG, June 2007. This guides planning authorities in the making of Development Plans. Planning authorities should endeavour to make reasonable and logical estimates of anticipated needs and zone sufficient land to meet such needs. In order to maximise the utility of existing and future infrastructure provision and promote the achievement of sustainability, a logical sequential approach should be taken to the zoning of land for development: zoning should extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, 'leapfrogging' to more remote areas should be avoided. It is vitally important to take account of the physical suitability of lands for development, notably lands subject to, or with potential impacts on, flood risks.

8.3 **The Planning System and Flood Risk Management**, Guidelines for Planning Authorities, DEHLG and OPW, November 2009. This provides guidance on how the planning system should respond to the issues of climate change and flood risk management: following a protocol of avoiding development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere; adopting a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk; and incorporating flood risk assessment into the process of making decisions on planning applications and planning appeals.

Zoning or designating lands which are at risk of flooding should only occur where: it is required to achieve the proper planning and sustainable development of the urban settlement and is essential to facilitate regeneration and/or expansion of the centre of the urban settlement; it comprises significant previously developed and/or under-utilised lands; it is within or adjoining the core of an established or designated urban settlement; it will be essential in achieving compact and sustainable urban growth; and there are no suitable alternative lands for the particular use or development type, in areas at lower risk of flooding within or adjoining the core of the urban settlement.

In flood zone 'A' development other than water-compatible development is required to meet the criteria of the 'Justification Test'. The Justification Test includes reference to the subject lands having been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of the Guidelines.

In the assessment of major proposals for development in areas of flood risk, pending implementation of the Guidelines, proposals should be considered as though the land was not zoned for development. In such situations the applicant should be required, in consultation with the planning authority, to prepare an appropriate SFRA and to meet the criteria for the Justification Test as it applies to development plan preparation. The planning authority must then assess the proposal against the Justification Test as it applies to the development management process. Where the information is not sufficient to fully assess the issues involved, the development should not be approved on the basis of flood risk and / or on the grounds of prematurity prior to addressing flood risk as part of the normal review of the development plan for the area.

9 ASSESSMENT

9.1 The issues which arise in relation to this development are: appropriate assessment, industrial use, principle of development, flood risk, and impact on the amenities of the area, and the following assessment is addressed under these headings.

9.2 Appropriate Assessment

9.3 In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed

development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document 'Appropriate Assessment of Plans and Projects in Ireland' was published by the DoEH&LG on the 10 December 2009.

- 9.4 The first stage in the process is screening: to determine, on the basis of a preliminary assessment and objective criteria, whether the project, alone and in combination with other plans or projects, could have significant effects on a Natura 2000 site in view of the site's conservation objectives and whether therefore appropriate assessment is required.
- 9.5 In order to carry out screening: the Board must consider whether or not the project either individually or in combination with other plans and projects, could have significant effects, in view of the sites' conservation objectives, on Donegal Bay (Murvagh) SAC (site code 000133) or Donegal Bay SPA (site code 004151), which are the European sites with potential to be impacted by development at this location.
- 9.6 The qualifying interests for the SAC are:
Mudflats and sandflats not covered by seawater at low tide
Harbour Seal *Phoca vitulina*
Fixed coastal dunes with herbaceous vegetation ('grey dunes') (a priority habitat), and
Humid dune slacks
- 9.7 Conservation objectives for the SAC could be summarised as:
to maintain the favourable conservation condition of the listed species Harbour Seal in Donegal Bay (Murvagh) SAC, defined by the list of attributes and targets in the NPWS (2012) Conservation Objectives document;
to maintain the favourable conservation condition of the listed habitats: Mudflats and sandflats not covered by seawater at low tide, in Donegal Bay (Murvagh) SAC, defined by the list of attributes and targets in the NPWS (2012) Conservation Objectives document; and

to restore the favourable conservation condition of listed habitats: Fixed coastal dunes with herbaceous vegetation (grey dunes); and Humid dune slacks, in Donegal Bay (Murvagh) SAC, defined by the list of attributes and targets in the NPWS (2012) Conservation Objectives document.

9.8 The features of interest for the SPA are:

Great Northern Diver
Light-bellied Brent Goose
Common Scoter
Sanderling, and
Wetland and Waterbirds

9.9 Conservation Objectives for the SPA could be summarised as:

to maintain the favourable conservation condition of the listed species: Great Northern Diver, Light-bellied Brent Goose, Common Scoter and Sanderling in Donegal Bay SPA, defined by the list of attributes and targets in the NPWS (2012) Conservation Objectives document; and

to maintain the favourable conservation condition of the wetland habitat in the SPA as a resource for the regularly occurring migratory waterbirds that utilise it, defined by the list of attributes and targets in the NPWS (2012) Conservation Objectives document.

9.10 An Appropriate Assessment Screening Report, prepared by Earthy Matters, Environmental Consultants accompanied the application. Possible impact on Donegal Bay SAC and Donegal Bay SPA, via the stream which drains the site, were considered. Potential impacts were identified as construction impacts from sediment loss of excavated materials or spillages from construction machinery and operational impacts from increased run-off and accidental discharges. The screening statement concludes that no direct or indirect impacts on the qualifying conservation interests of the SAC and SPA are foreseen and no cumulative impacts are envisaged. This report dated October

2014 predates the Storm Water Drainage report dated July 2015 and the Detailed Flood Risk Assessment and Justification Test dated 29/7/2015.

9.11 The proposed development is a waste recovery, recycling and transfer depot, consisting of a shed for sorting/loading waste, an office building, car parking, wastewater treatment system, a surface water attenuation system and other associated site works. The site is in an unserviced rural area adjoining a stream which drains to the SAC/SPA. The construction and operational standards of the development have been set out in the application details.

9.12 I consider that the proposed development would not impact on the water quality in the adjoining stream or the downstream protected sites and that it can be reasonably ruled out on the basis of objective scientific information, that the proposed development would be likely to have significant effects, either individually or in combination with other plans or projects, on the European site(s).

9.13 Industrial Use

9.14 The application details states that the activity of sorting waste is an industrial process as defined under article 5 of the Planning & Development Regulations 2001. The Board previously considered this issue in a number of referrals (e.g. RL2104, RL2137 and RL2537) and decided that the storage, sorting and bailing of segregated waste is not an industrial process as defined by the Planning and Development Regulations, 2001.

9.15 Principle of Development

9.16 The first party has put forward certain arguments that could be described as referring to the principle of the development. The first party refers to the site location being within the envelop of Donegal Town, its proximity to an industrial building and the previous permission for a Cattle Auction building on the site. Reference is also made to the criteria set out in the Development Plan in relation to evaluating proposals for economic development use. In the response to the planning authority's request for further

information the criteria set out in policy ED-P-16 are addressed item by item.

- 9.17 The settlement framework is a much looser guidance to development than zoning. There is no estimate of the amount of land required for the period of the plan, or a methodology for its sequential development. Although the CDP core strategy policies include (CS-P-4) to guide development of towns in a sequential manner, outwards from the core area in order to maximise the utility of existing and future infrastructure provision, promote the achievement of sustainability, avoid 'leap-frogging' to more remote areas and to make better use of under-utilised land. The subject site is at the edge of the framework plan and separated from the town centre by significant areas of undeveloped land.
- 9.18 Policy ED-P-3 states as Council policy 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. As previously stated the proposed development is not an industrial building or process.
- 9.19 Any proposal for economic development use, will in addition to other policy provisions of this Plan, be required to meet all the criteria in policy ED-P-16 among which are listed: compatibility with surrounding land uses; protection of amenities; availability of water infrastructure: water supply and/or effluent disposal; and in relation to proposals in the countryside, that there are satisfactory measures to assist integration into the landscape.
- 9.20 The proposed use is *sui generis* and is therefore more likely to adjoin different uses than similar uses. Many industrial uses would be compatible with the proposed use. However having regard to the fact that there is a large showroom attached to the adjoining factory for the display and sale of the produce of the factory, to visiting members of the public, in my opinion the proposed development is not a compatible use to the immediately land use.

- 9.21 In relation to the protection of amenities, the noise impact assessment and the odour impact assessment, provided during the course of the application process, indicate that there will be no adverse impact on sensitive receptors from the activity, and the submissions lay stress on the fact that all the activity will take place within the building. I am satisfied that there will be no significant increase in noise in the area arising from the proposed development. I am also satisfied that odours will not escape from the building to such an extent that they will cause a nuisance in the surrounding area. However I am not satisfied that the proposed development will not impact on the amenities of the immediately adjoining area arising from the vehicles serving the proposed development, particularly odour from such vehicles.
- 9.22 I note that wastewater infrastructure is not available at this site but I am satisfied that the proposed arrangements in relation to the on-site disposal of wastewater and proposals for the storage of soiled run-off/leachate and its disposal to an approved facility, are acceptable.
- 9.23 In relation to satisfactory measures to assist integration into the landscape, it is a matter of some concern that the revised proposal requires considerable excavation in order to create a level site for the repositioned building and associated areas for circulation and access. The Development Plan advises in relation to rural housing, that significant earth works, such as cutting into slopes or filling to create a level platform or mounding to achieve integration, are unacceptable.
- 9.24 It is worth noting that the site is located on a busy regional road which is part of the 'Wild Atlantic Way' and therefore a touring route. The Development Plan notes landscape as a key asset of the town together with its status as an historic town. I note the extensive landscaping proposed and that a condition is attached to the decision in this regard, but in my opinion this would not overcome the objection in principle to this development at this location and its incompatibility with the adjoining use. The principle of the development and impact on the amenities of the area is a reason to refuse.

9.25 Flood Risk

- 9.26 A Detailed Flood Risk Assessment and Justification Test, prepared by Tynan Environmental, has established that the site falls into flood zones 'A', 'B', and 'C'.
- 9.27 The proposed development, although revised such that the building and other elements of the proposal are located above the flood level, i.e. in flood zone 'C', includes a 55m section of access road within flood zone 'A'. This is stated to have low vulnerability to flooding. I am unable to accept that this aspect of development is of low vulnerability. It is an essential part of the overall development and therefore has the same flood vulnerability as the overall development. The proposed development is not water-compatible and as a development on a greenfield site would be unlikely to pass a justification test.
- 9.28 In relation the pedestrian route through flood zoned 'B' and 'C' to avoid the flood risk section of road, this proposal is indicated to the site boundary, beyond which is rough ground in other ownership and access/exit to/from the site is unresolved.
- 9.29 Development within flood zone 'A' has not been justified and this is a reason to refuse.

10 RECOMMENDATION

In accordance with the foregoing assessment, I recommend that planning permission be refused for the following reasons and considerations.

11 REASONS AND CONSIDERATIONS

1 The location of the proposed development on a scenic touring route and in proximity to a factory showroom would seriously detract from the amenities of the area and be contrary to the proper planning and sustainable development of the area.

2 The proposed development is in an area which is at risk of flooding.

Dolores McCague
Inspectorate

Date

Appendix	1	Map and Photographs
Appendix	2	Extracts from the Donegal Development Plan 2012 - 2018
Appendix	3	Extracts from the Development Plan Guidelines for Planning Authorities, DEHLG, June 2007
Appendix	4	Extracts from the Planning System and Flood Risk Management, Guidelines for Planning Authorities, DEHLG and OPW, November 2009
Appendix	5	Site synopsis for SAC site code 000133
Appendix	6	Site synopsis for SPA site code 004151