



An
Bord
Pleanála

Inspector's Report

ABP-310308-21

Development	Construction of an asphalt plant and associated site works. An NIS was submitted with the application.
Location	Gortnaskea, Burnfoot, Lifford PO, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2050159
Applicant(s)	Moyle Plant Limited.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	First and Third Party
Appellant(s)	Gearád and Geraldine O'Hagan and others
Observer(s)	Martin and Audrey Moyne and others.
Date of Site Inspection	25 th July 2022.
Inspector	Barry O'Donnell

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	6
3.3. Prescribed Bodies	9
3.4. Third Party Observations	10
4.0 Planning History.....	11
5.0 Policy Context.....	11
5.1. Donegal County Development Plan 2018-2024	11
5.4. Natural Heritage Designations	15
5.5. EIA Screening	15
6.0 The Appeals	17
6.1. Grounds of Appeal	17
6.4. Applicant Response	24
6.5. Planning Authority Response	24
6.6. Prescribed Bodies	26
6.7. Observations	27
6.8. Further Responses.....	32
7.0 Assessment.....	32
8.0 Recommendation.....	59
9.0 Reasons and Considerations.....	59

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.337ha and is located at Gortnaskea, Burnfoot, in north-east County Donegal. The site is approx. 3.75km east of Burnfoot, 4.5km west of Muff and 26km north of Letterkenny. It is adjacent to a former quarry that is currently in use as a concrete block making plant.
- 1.2. The site is undeveloped but has been used for the deposition of construction and demolition waste in the past. The extent of such dumping was not readily clear at the time of my inspection as the site is overgrown. At the time of my site visit there was also standing water in a number of areas on the site.
- 1.3. The Drumhaggart Stream, a tributary of the Burnfoot River, routes approx. 100m to the east of the site and runs parallel to the boundary of the applicant's landholding.
- 1.4. The site is accessible from the north, via the L7671, from the south via the R239 and from the east via the L1761. The approach roads in the area closest to the site are in a poor condition, in particular the road has deteriorated to the condition of a stone track in the area of both the former quarry site and the subject site and there is significant cracking on the approach from the south.
- 1.5. There is rural housing to the north, south, east and west of the site, with the closest residential property located approx. 120m north along the L7671.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of an asphalt plant including all other associated site development works.
- 2.2. The application is supported by the following technical reports: -
 - Natura Impact Statement, including addendum,
 - Noise Impact Assessment,
 - Environmental Management Plan and
 - Water Management Report.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority granted permission on 7th May 2021, subject to 12 No. conditions.

- Condition 1b) stated that permission is granted for a 20-year period.
- Condition 2 required that visibility splays of 3m x 70m shall be provided in both directions, to the nearside road edge.
- Condition 3a) required that mitigation measures contained within the Natura Impact Statement and subsequent addendum to be implemented.
- Condition 3d) required bulk fuels to be stored in a bunded area.
- Condition 3e) required appointment of an ecological clerk of works for the duration of operations involving cleaning of the plant using solvent based cleaning agents
- Condition 3f) required submission of proposals for removal of waste deemed by the Planning Authority to be offensive
- Condition 4b) required restoration of the site to agricultural land upon expiry of the permission.
- Condition 5 required that operating hours shall be restricted to 06.30-20.00 Monday to Friday and 06.30-16.00 on Saturdays and Sundays, with the bitmac plant allowed to be heated 1 hour prior.
- Condition 6 specified noise limits for the operational phase, with a limit of 55dB(A) Leq, 1h between 08.00-19.00 and 45Db(A) Leq, 15min at any other time.
- Condition 7 required submission and implementation of a detailed landscaping scheme, including tree planting elsewhere on the applicant's landholding.
- Condition 8 required that lorries entering and leaving the site shall pass through a wheelwash

- Condition 9 required that lighting shall be hooded and aligned so as to prevent spillage onto the public road/adjoining third party property/adjoining habitat.
- Condition 11 required payment of a special financial contribution of €81,000, under S48(2)(c) of the Act, in respect of the overlaying of a 900m length of a 6m width of the public road that serves the site.
- Condition 12 required payment of a contribution of €36,546.37 under the adopted S48 development contribution scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 27th March 2020, 3rd February 2021, 22nd March 2021 and 5th May 2021 have been provided. The first report states that the site appears to have been filled with waste and capped with soil and that there is no waste facility permit in place for the site. Further information is identified as being requested in relation to the issue. The report states that there is a house 130m from the site and that potential impacts are unknown, due to the absence of information regarding proposed operations. Insufficient details are also stated to have been provided regarding traffic movements and surface water drainage proposals. Regarding appropriate assessment, the report identifies the use of bitumen on the site as having the potential to lead to contamination and in view of this, appropriate assessment is stated to be required. The report recommends that additional information be sought as follows: -

- Applicant to undertake site investigations in the company of County Council officials and to submit on ground conditions thereafter.
- Applicant to submit details of proposed location and measures for storing aggregate and bitumen on the site.
- Applicant to submit a detailed assessment of the adequacy of treatment capacity of the existing surface water collection system to accommodate additional run-off from the development.
- Applicant to submit proposals for a traffic management plan.
- Applicant to submit proposals for mitigation of dust.

- Applicant to submit proposals for mitigation of noise.
- Applicant to specify proposed hours of operation.
- Applicant to submit details regarding materials to be used in asphalt production.
- Applicant to submit 10 copies of a Natura Impact Statement (including publication of revised public notices).

3.2.2. The second report followed receipt of the AI response and followed a period of further public consultation, following the submission of significant further information. The report expresses satisfaction regarding aspects of the AI response, but recommends that clarification of AI be sought as follows: -

- Applicant to clarify volumetric capacity of bitumen silos.
- Applicant to clarify storage of aggregate, including dust suppression mitigation.
- Applicant to submit specifications for the hydrocarbon interceptor.
- Applicant to submit details of the proposed attenuation structure.
- Applicant to clarify whether pumping is required to ensure all run-off from the site will flow to the attenuation pond.
- Applicant to clarify traffic management and traffic volume proposals.
- Applicant to clarify proposals for cleaning dust from aggregate, prior to importation.
- Applicant to identify on a map all residences within 750m of the site.
- Applicant to clarify whether suggested noise limits would affect the viability of the development.
- Applicant to clarify proposals for storage of chemicals/materials on site, including method of storage.
- Applicant to clarify what the composition of the asphalt end product.
- Applicant to provide an assessment of environmental risk arising from storage, use and transport of aggregate and asphalt compounds within, to and from the site.
- Applicant to undertake further water quality testing at specified locations.

- Applicant to provide further details regarding use/operation of the proposed silt fence.
- Applicant to clarify proposals for materials storage on the site and the ability of proposed mitigation to eliminate pollutants from the site entering the Burnfoot River.
- Applicant to submit specification details of the proposed hydrocarbon interceptor.
- Applicant to submit an NIS addendum which assesses:
 - the development in the context of a 1-in-100-year rainfall event and confirms the suitability of attenuation measures to accommodate all run-off.
 - Storage and transport of aggregate to and from the site.
 - Cumulative impacts of the proposal, an existing quarry and a permitted agricultural shed.
 - The implications of waste disposed of within the site and its vicinity.
 - Removal of waste from the site, as per the proposals provided at the AI stage following site investigations.
 - Maintenance of plant on the site.
 - Potential significant effects on Lough Foyle SPA arising from airborne pollutants.
- Applicant to clarify contradictions within the NIS.
- Applicant to submit an environmental management plan.

3.2.3. The third report followed receipt of the CAI response. It recommends that the applicant be required to publish further public notices, in the context of the submission of significant additional information.

3.2.4. The fourth report followed a period of further public consultation, following the submission of significant further information. It summarises and responds to the individual CAI responses and recommends that permission be granted subject to 12 no. conditions, which are generally consistent with the Planning Authority's decision.

3.2.5. A separate Appropriate Assessment screening report is attached to the fourth planning report, which determines that the development will not adversely affect the integrity of a European site.

3.2.6. Other Technical Reports

A **Building Control** report dated 13th March 2020 has been provided, which recommends conditions as part of a grant of permission.

Municipal District Engineer reports dated 19th March 2020, 21st September 2020 and 29th March 2021 have been provided. The first report requests additional information in relation to road cleaning/sweeping proposals. The second report recommends that site access proposals should be reconsidered and also requests that a special financial contribution related to road improvements be levied. The third report requests a condition be attached stipulating that the applicant is responsible for advisory signage.

Emailed correspondence from the **Waste Enforcement** department dated 10th March 2020 has been provided, which advises that there is no permitted waste facility at the site.

Reports from the **Senior Executive Scientist** dated 10th September 2020 and 24th March 2021 have been provided. The first report advises of the requirement for the development to obtain a discharge licence and an air pollution licence. The report also recommends that a baseline noise survey should be carried out and that recommended maximum noise levels should not be exceeded. The second report expresses concern that nearby sensitive receptors may experience noise nuisance and that dust generation along the R239 will be exacerbated. The report recommends conditions which are intended to mitigate potential noise and dust issues.

3.3. **Prescribed Bodies**

3.3.1. The Department of Culture, Heritage and the Gaeltacht made a submission on 25th September 2020, which expresses concern regarding a number of aspects of the development. The submission advises that (a) quantities and types of chemicals/materials to be stored on the site are not clarified by the application and the source of aggregate materials is unclear and (b) habitat loss arising from the

development should be quantified and then mitigated and compensated for. The submission expresses particular concern regarding the adequacy of the NIS, in particular stating that it contains insufficient evidence to underpin a determination that no significant effects are likely to arise. The submission also recommends that an EIA screening exercise should be undertaken

3.4. Third Party Observations

3.4.1. The application involved a number of separate public consultation stages and a large number of submissions were received at each public consultation stage. Issues raised within the submissions can be summarised as follows: -

- Site ownership
- Public consultation
- Transboundary effects
- Public health
- Farming practices
- Landscape and visual impact
- Heritage
- Ground stability
- Structural damage
- Noise, dust and odour
- Emissions and climate change
- Air borne pollutants
- Public notices
- Road safety and traffic
- Flood risk
- Groundwater/surface water contamination
- Operating hours

- Tourism
- Biodiversity
- Cumulative impacts of quarry activities in the area
- Property devaluation
- Unauthorised development (historic and ongoing)
- Environmental Impact Assessment and appropriate assessment
- A petition was provided

4.0 Planning History

19/50920 – Permission granted on 4th March 2020 for (1) alterations to existing office building to include additional new windows, repositioning of existing windows and a new front porch, (2) modifications to the existing concrete bunker to include a portal frame roof structure and the use as a new storage shed and (3) all other associated site development works.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

5.1.1. The site is in a rural, unzoned part of County Donegal.

5.1.2. According to Map 7.1.1 'Scenic Amenity' the site is located in an area of Moderate Scenic Amenity. In such areas policy NH-P-7 is relevant to the development stating: -

NH-P-7: Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.

5.1.3. Other relevant policies include: -

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-13) must

also comply with the criteria set out in Policy ED-P-14 and be consistent with the proper planning and sustainable development of the area.

ED-P-8: It is a policy of the Council to consider proposals for economic development uses in the countryside including An Gaeltacht which comply with the following provisions, subject to compliance with Policy ED-P-14 and the protection of areas designated as being of Especially High Scenic Amenity (EHSA):-

- Farm Diversification schemes – provisions set out in Policy ED-P-9.
- Expansion or redevelopment of an existing economic development use – provisions set out in Policy ED-P-10.
- Major industrial Development – provisions set out in Policy ED-P-11.
- Businesses in rural areas that could benefit the local economy/tourism offering and Home Based Working – provisions set out in Policy ED-P-13.

All other proposals for economic development in the countryside will only be permitted in exceptional circumstances where the proposal comprises a development of regional or national significance and no suitable site exists within a settlement in the locality which can accommodate the proposal (Policy ED-P-12 refers).

ED-P-11: It is a policy of the Council to consider proposals for a major industry/enterprise 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-14 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-14: 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 would not be detrimental to the character of any area designated as being of especially high scenic amenity (ehsa);
- (c) It does not harm the amenities of nearby residents;
- (d) 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;
- (e) 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;
- (f) Adequate access arrangements, parking, manoeuvring and servicing areas are provided in line with the development and technical standards set out in this plan or as otherwise agreed in writing with the planning authority;
- (g) It does not create a noise nuisance;
- (h) It is capable of dealing satisfactorily with any emission(s);
- (i) It does not adversely affect important features of the built heritage or natural heritage including natura 2000 sites;
- (j) It is not located in an area at flood risk and/or will not cause or exacerbate flooding;
- (k) The site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity;
- (l) Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;

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

(n) It does not compromise water quality nor conflict with the programme of measures contained within the current north western river basin (nwirbd) management plan.

EX-P-3: It is a policy of the Council not to permit development proposals for quarry and ancillary facilities unless it has been evidenced that the development shall not result in a significant threat of pollution to the environment including, siltation and sedimentation of receiving downstream surface waters, having regard to the vulnerabilities identified within the River Basin Management Plan, and any relevant Fresh Water Pearl Mussel Sub-basin Plan and to ensure that extractive industry proposals do not result in significant adverse impact upon the environment, including surface water and groundwater (aquifers) quality and quantity, river corridors, associated wetlands and River Basin Management Districts.

EX-P-6: It is a policy of the Council to require that development proposals for extractive industries are accompanied by evidence of the suitability of the road network in terms of width, alignment and carrying capacity and to require that any identified deficiencies can be addressed at the applicant's expense. Where mitigating works are required to upgrade or realign roads infrastructure, they must comply with Article 6 of the Habitats Directive and have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of a Natura 2000 site, and will comply with the objectives and practices set in any relevant Freshwater Pearl Mussel Subbasin Plan, and any relevant codes of practice, insofar as reasonably possible taking into consideration the safety of the future road users.

5.2. Donegal County Council Development Contribution Scheme 2016-2021

5.2.1. Section 3.2 'Contribution Rates' identifies the following contribution rates, per square metre of development: -

- Quarrying/mining/refuse of waste disposal €1,500 per 0.1ha of surface area, subject to a minimum charge of €10,000.

5.2.2. Section 4.2 states that all contributions shall be index linked from 1st March each year following the implementation of the scheme.

5.3. Ministerial Guidelines

Development Contributions Guidelines for Planning Authorities (2013)

5.3.1. The Guidelines provide guidance on the drawing up of development contributions. Under section 48 of the Act, planning authorities must draw up a development contribution scheme (a general development contribution scheme) in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme.

Development Management Guidelines (2007)

5.3.2. Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act), advising that Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance with those sections of the Act, or on the need for a special financial contribution.

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within or adjacent to any designated European site, the closest such site being Lough Swilly SPA (Site Code 004075) which is approx 4.3km south-west.
- 5.4.2. Lough Swilly including Big Isle, Blanket Nook and Inch Lake is also a proposed Natural Heritage Area (Site Code 000166) and its designated area reflects that of the SPA in the vicinity of the site.

5.5. EIA Screening

- 5.5.1. Schedule 5 of Part 2 of the Planning and Development Regulations 2001-2022 contains prescribed classes of development for the purposes of Part 10 of the Planning and Development Act, 2000, as amended (Environmental Impact Assessment).

- 5.5.2. Parts 1 and 2 of the schedule, which set out the classes and thresholds of development which trigger the requirement for mandatory EIA, do not contain any reference to asphalt plants. The proposed development is therefore not a prescribed project for the purposes of EIA.
- 5.5.3. The Department of Culture, Heritage and the Gaeltacht submissions on both the application and appeal requested that screening for EIA should be undertaken and I note that the submission dated 25th September 2020 made detailed reference to the issue, including with reference to the quantity and nature of chemicals and materials to be stored on the site and the composition of the asphalt end-product, which may involve the incorporation of mineral fibres and substances that are harmful to aquatic habitats and species.
- 5.5.4. I have given consideration to the detailed advice provided by the Department, in the context of EIA screening and I am aware that Class 5(e) of Part 2 of Schedule 5 relates to *'all installations for smelting mineral substances including the production of mineral fibres'* and Class 6(d) of Part 2 of Schedule 5 relates to *'Storage facilities for petrochemical and chemical products, where such facilities are storage to which the provisions of Articles 9, 11 and 13 of Council Directive 96/82/EC apply.'*
- 5.5.5. In terms to Class 5(e), limited information has been provided by the applicant in respect of the exact nature of the development and the final asphalt end-product but asphalt production does not involve smelting or the production of mineral fibres. I also note that the Greentrack Consultants Further Information Response document dated 5th March 2021 states there is no usage of mineral fibres in the asphalt manufacture process. I am thus satisfied that Class 5(e) does not apply in this instance.
- 5.5.6. In terms of Class 6(d), Directive 96/82/EC relates to the control of major accident hazards involving dangerous substances and it applies to establishments where dangerous substances are present in quantities that exceed thresholds specified within the directive. The proposed development involves the storage and use of petrochemicals but it is not in and of itself a storage facility for these products. In any case, the stated 300m³ cumulative capacity of the bitumen storage silos would not allow for a qualifying quantity of bitumen to be stored on the site. In this context I am satisfied that Class 6(d) does not apply.

- 5.5.7. Concerns have been expressed by observers that consideration should have been given to cumulative impacts associated with the adjacent former quarry site, in the context of EIA. The Board will note that the adjacent quarry is in separate ownership and has no functional connection to the proposed development. Aggregate is sourced from Church Hill, Co. Donegal and bitumen is sourced from Co. Galway. In view of the absence of a functional connection between the sites, I consider there is no basis for jointly screening the sites for the purposes of EIA.
- 5.5.8. Having regard to the foregoing, I am satisfied that the proposed development is not a prescribed project and there is thus no requirement to undertake EIA screening.

6.0 The Appeals

6.1. Grounds of Appeal

- 6.1.1. A first party appeal against conditions and six third party appeals have been received from Gearád and Geraldine O'Hagan, James Reilly and others, South Inishowen Against Asphalt Plant, Fearghal and Philomena O Boyle, Rosaleen and Oliver McKinney and Lorraine Coulter and others.

6.2. First party appeal

- The appeal concerns conditions 11 and 12 of the Planning Authority's decision.
- Condition 11
 - Following a traffic survey on 28th May 2021 it is contended that traffic associated with the development will account for max. 32% of traffic on the road, not 75% as indicated by the Roads Department.
 - The concrete batching plant and waste facility generate considerable traffic and it is unfair that the applicant funds all required road improvements.
 - The applicant would provide material for road widening in lieu of a financial contribution and requests that flexibility be applied to the condition, to allow for same.
- Condition 12

- The Planning Authority mis-calculated the charge, which should have been €10,000, on the basis of a minimum charge of €10,000 being payable for the site, which has an area of 0.337ha.

6.3. Third party appeals

Appeal by Lorraine Coulter and others

- Consultation
 - Given issues raised by the Department of Culture, Heritage and the Gaeltacht (DAU) in its initial submission on the application, the Planning Authority did not give adequate time for a follow-up submission, following the Clarification of AI response.
- Noise
 - The noise assessment submitted by the applicant is flawed and likely underestimates the noise impact of the development.
 - The method of establishing 'development noise' is questioned and it is argued that the worst-case scenario was not assessed. Other aspects such as vibration or noise dissemination through the valley were not assessed.
 - The Planning Authority's senior executive scientist appears to question the conclusions of the assessment and specifically references NSL3 and NSL4.
 - Regarding the effect of noise controlling conditions attached to the Planning Authority's decision, they are considered unreasonable. Regular noise monitoring should form part of site management.
- Traffic
 - The development will result in a traffic hazard as lorries must cross fast-moving traffic turning onto the L-7671. This road at this junction is unsafe.
 - The development proposes to transport aggregate and bitumen to the site, hauled over long distances. The proposal will add up to 124 additional lorry movements per day to the road, which is significant and should have warranted submission of a transport assessment.

- Traffic management mitigation proposals are not an appropriate basis to grant permission.
- Neighbouring amenity
 - No air dispersion modelling was undertaken as part of the development, to determine emission concentration levels, impacts on the local community and adequacy of the proposed dispersion method.
 - The complex topography of the area reduces the ability for pollutants to disperse up and away.
 - There is insufficient information available to determine that emissions will not result in unacceptable impacts for the local community.
- Climate change
 - Granting permission for a carbon intensive development goes against Government's climate action aims.
 - The applicant owns another asphalt plant within 48km of the site and it is questioned why both plants are needed in such close proximity.
 - It is questioned whether proposals to import aggregate from Churchill, Donegal and bitumen from Oranmore, Galway is good practice and in the interests of sustainable development.
- Duration of permission
 - Permission should have been granted for a 10-year period, after which the impact of the development could be assessed. The Board is requested to impose a 10-year limit in the event of a grant of permission.
- Natura Impact Statement
 - The NIS contains lacunae in that no winter bird survey was provided. Winter is the period relevant to species of conservation interest (SCI) within the SPA site and it should be established whether the site contains suitable ex-situ habitat for SCI.
- Should the Board grant permission, the following are requested: -

- Plant should not be operated on Sundays or public holidays, other than when directly required and surrounding residences are notified in advance.
- Regular noise monitoring should be required, with a programme to be agreed with the Planning Authority.
- A landscaping scheme
- Condition 10 of the Planning Authority's decision should be a pre-commencement condition.
- The amount of money required by condition 11 of the Planning Authority's decision is inadequate and responsibility for road sweeping/maintenance is unclear.

Appeal by Rosaleen and Oliver McKinney

- Concerns regarding noise and vibration, pollution and fumes and impact of same on local residents.
- Volume of fossil fuel required to operate the plant.
- The presence of lorries on the road will result in conflict with pedestrians, given the absence of footpaths.
- Extended working hours will impact on mental health of local residents.
- The Board is requested to refuse permission.

Appeal by Fearghal and Philomena O Boyle

- Proximity to neighbouring housing
 - It is inaccurate to say there are scattered houses in the area and 1 house within 750m of the site. The submitted site location map is outdated and there are a number of houses within 750 of the site.
 - Proposed tree planting will not address the visual impact of the development
 - This rural location is unsuitable for the development.
- The adjacent quarry is unstable and porous.
- The L7671 is a hazard and is in a poor state of repair. Proposals for traffic management along it are inadequate and do not address other traffic on the road.

- Th R239 is a busy road and the development will increase the risk of collision on it.
- The absence of footpaths from the local road network increases the hazard to pedestrians of lorries on the roads.
- Run-off from the site poses a threat to biodiversity, in particular at an adjacent nature reserve.
- Reports on historical quarrying in the area have indicated the discovery of items of heritage interest and suggest the presence of a bronze age cemetery. The site should be protected, in view of this.
- Land to the west of the site comprised an ancient woodland but this was cleared by the applicant, resulting in displacement of wildlife.
- The development has limited economic benefits but will harm tourism offering in the area including a planned north-west greenway project.
- Wind is likely to spread emissions over the border, into Derry, giving rise to transboundary effects. No notice issued to Derry and Strabane District Council regarding the development.
- Wastes arising from the development are not clarified by the applicant.
- Unsocial working hours will mean constant noise issues for nearby residents, which are additional to noise from the block manufacturing plant. Noise mitigation proposals will not be effective, given topographical differences for some nearby houses.
- Noise and vibration, pollution and fumes will impact on the health of local residents. The impact of emissions from the site on public health has not been considered. Asphalt plants release chemicals into the air during production, which pose a danger to public health.
- The proposed emissions stack is not sufficiently high, given the topography of the area.
- Powering the plant by kerosene goes against Government's climate action aims and will lead to emissions of CO₂, at a time when society is moving away from the use of fossil fuels.

- The development will require substantial truck journeys, transporting materials to the site. The development should be sited closer to the source of the raw materials.
- Increased lorry traffic on the local roads will increase pressure on them and will threaten the safety of other road users.
- Run-off from the site poses a threat to ground and surface waters and to biodiversity.
- The development will lead to devaluation of property in the area.

Appeal by South Inishowen Against Asphalt Plant

- The Planning Authority did not adequately screen the development for EIA, in particular the association with the adjacent quarry.
- The Planning Authority did not carry out an appropriate assessment under the Habitats Directive. An appropriate assessment cannot have lacunae and must contain conclusions that remove all reasonable scientific doubt as to potential effects on any European site.
 - No report was published which purports to be an appropriate assessment.
- Based on the information provided within the NIS, it is not possible to comply with legal requirements regarding the scientific basis of a determination.
- Statements within the NIS and addendum regarding the site locations for aggregate and bitumen and the adjacent quarry site are inadequate.
- The Board is required to: -
 - Assess the planning merits of the application in accordance with the Act,
 - Screen the development for EIA.
 - Undertake appropriate assessment.

Appeal by James Reilly and others

- The history of development in the area is questioned, in the context of permission having been granted for housing in proximity to a declining quarry and then grants of permission for quarrying and associated industrial development.

- Consultation
 - The applicant undertook minimal advertisement of the application.
 - Information provided as part of the application has also been drip-fed and opportunities for public submissions on the application were minimal.
- Transboundary effects
 - Due to the west-prevailing wind and the proximity to locations in Derry, notice should have been given to Derry and Strabane District Council and to the Derry public as part of the planning process.
- Traffic
 - Cumulative impacts of traffic associated with quarrying/associated developments will significantly impact local residents and road users.
 - Proposed use of the L7641 is unacceptable as it serves nearby houses.
 - The proposed traffic management system will lead to accidents, given the road layout in the area, and does not account for existing traffic accessing the block manufacturing plant.
 - Traffic impacts are intensified by the fact that raw material is to be transported to the site, for production.
 - The development is contrary to actions aimed at reducing emissions.
 - The Planning Authority did not adequately consider road safety issues.
- Public health and wellbeing
 - The process of asphalt production leads to the release of harmful gases into the atmosphere, which can impact human health. The topography of the area means that emissions can be trapped rather than dispersed.
 - The development may lead to contamination of groundwater and associated contamination of private drinking water supplies.
 - Operation of the plant will compound existing human health issues for local residents.
 - The Clean Air Act of 2018 decrees that people have a right to clean air and people in the vicinity of the site are deprived of this.

- Proposed working hours are anti-social and excessive.
- Noise
 - The noise assessment submitted with the application is inadequate and flawed.
 - Acceptable noise levels are shown to be breached by the development, with particular reference to lorry movements on local roads.
 - Trees proposed as mitigation are not appropriate.
- A visual appraisal of the development should have been undertaken.
- The inaccessible location of the site presents a risk to local residents in the event of a fire.
- The development will lead to devaluation of property.

Appeal by Gearád and Geraldine O'Hagan

- The Planning Authority ignored concerns regarding emissions, odour, pollution, traffic and damage to wildlife.
- The application site included an ancient woodland that contained a range of wildlife but which has been bulldozed.
- Previous owners of the site were convicted of dumping thousands of tonnes illegal waste on the site.
- The applicant undertook minimal consultation with the local community.

6.4. Applicant Response

6.4.1. None received.

6.5. Planning Authority Response

6.5.1. A submission was received on 22nd June 2021 the contents of which can be summarised as follows: -

- There was an error in calculation of the standard development contribution as applied at condition No. 12. The correct charge should have been €1,626.69 per 0.1ha or a minimum of €10,844.62.
- The contribution required under condition No. 11 is fair and reasonable.
- The decision to grant permission is subject to a condition (3(f)) that requires all noxious waste to be removed from the site.
- With reference to unauthorised development, there are ongoing investigations in relation to adjacent quarries but these developments are likely to remain a presence in the landscape into the future, save for minor remediation.
- The proposed development is not prescribed in Schedule 5 of the Regulations, so the need for EIA screening did not arise.
- Typographical errors in the appropriate assessment report dated 5th May 2021 are acknowledged. For the avoidance of any doubt, the report considers mitigation measures and is worded as an appropriate assessment conclusion and not a screening determination.
- It is acknowledged that the DAU was given an incorrect deadline to respond to the significant further information consultation. Attempts were made to expedite the reporting process but no submission was received by the consultation deadline.
- The Planning Authority otherwise relies on the reports and recommendations that form part of the application assessment. The Board is requested to uphold the decision to grant permission.

6.5.2. A further submission was received dated 30th September 2022, in relation to the financial contribution conditions, following the issuing of a S132 Notice. The contents of this further submission can be summarised as follows: -

- Condition No. 12
 - The required contribution of €36,546.37 was a miscalculation. The amount owing is €10,844.62, under the Development Contribution Scheme. A copy of the DCS and applicable rates is provided.
 - The Board is requested to amend condition, to the lower revised amount.

- Condition No. 11
- The area of road to be resurfaced is 8640m², with a materials cost of €374,408 (SMA = €15.73/m², 80mm base = €22.45/m²).
- A road surfaced to this degree should last 10/15 years, which is required for an asphalt plant and the HGV traffic associated with deliveries to and from the site.
- The development will increase traffic volumes by 35% and HGV volumes by 50%, so the developer should contribute in the region of €159,123, which equates to 42.5% of the total cost.
- Country roads such as the L7641 and L7671 should require double surface dressing every 10 years at a cost of c.€30,000, given low level domestic traffic using them. But in the context of the proposed asphalt plant, a double surface dressed road does not have the structural integrity to sustain large HGVs for more than 1 year.
- The Board is reminded that in this instance, material is imported into the site, as well as exported from it.
- If anything, the amount requested by the condition is below the true share of the cost that the developer should pay. The Board is requested to uphold condition No. 11.

6.6. Prescribed Bodies

- 6.6.1. Derry City and Strabane District Council made a submission dated 21st July 2021 outlining that the Council objects to the development. A further submission was received on 1st June 2022, requesting feedback in relation to consideration of transboundary pollution, with reference to the requirements of the ESPO Convention and Article 7 of the Environmental Impact Assessment Directive.
- 6.6.2. The Department of Culture, Heritage and the Gaeltacht (DAU) made a submission on 17th August 2021, the contents of which can be summarised as follows: -
- The DAU provided substantial observations to the Planning Authority and has ongoing concerns in relation to: -
 - The lack of screening for EIA

- Absence of ecological impact assessment to identify and provide mitigation for the loss of biodiversity of regional and national interest
- The adequacy of mitigation of impacts to Coastal lagoon habitat, a qualifying interest for Lough Swilly SAC and an important ecological wetland that supports species of conservation interest for Lough Swilly SPA.

6.6.3. The appeal was also circulated to An Taisce and The Heritage Council. No responding submissions were received.

6.7. Observations

6.7.1. Observations have been received from Martin and Audrey Moyne, Declan Roddy, Marie Lindsay, Toni Devine, Lorcan McBride and others, Gerard Moyne, David Simpson, Senan Burgess and others, John and Elaine Taylor and Mary Durkan and Ronan Moyne. Issues raised within the submissions are summarised separately below.

Submission by Martin and Audrey Moyne

- The history of planning decisions/unauthorised development that has preceded this application is questioned.
- The area has historical value, a bronze age settlement was discovered nearby and artefacts from it are on display in a museum.
- Unauthorised dumping took place at the site and quarry over many years, including toxic waste. Its removal or disturbance as part of this development poses a risk to Inch Wildfowl Reserve which is hydrologically connected to the site.
- References by the Planning Authority to proposed landscaping needing to be pollution tolerant are concerning and indicate a risk to human health.
- There is no active quarrying and the concrete block batching plant does not have planning permission, so these cannot be relied upon in support of the development.
- Burning of oil on the proposed scale is against actions aimed at decarbonising society.

- The development and associated lorry traffic will have significant impacts on the local community, with reference to noise, odours, pollution and traffic.
- The area is unsuited to this development as it contains farmland and housing. If the site was greenfield, it would not be considered.

Submission by Declan Roddy

- The principle of development is not acceptable in this location as there is no policy support for locating an asphalt plant on rural lands.
- The development does not comply with policy ED-P-14 of the development plan.

Submission by Marie Lindsay

- The Planning Authority should have considered the cumulative impact of the proposal and adjacent quarry when screening for EIA.
- Donegal County Council did not consult with Derry City and Strabane District Council in respect of transboundary impacts.
- Biodiversity will be affected by dust and alteration of groundwater/surface water supplies.
- The Planning Authority did not undertake Strategic Environmental Assessment and has not adequately undertaken appropriate assessment. Advice was sought from the Department of Culture, Heritage and Local Government but that advice received was not acted on.
- The Planning Authority has not clarified how emissions to air will be monitored and has not clarified if it is consistent with its climate change adaptation strategy.
- The Planning Authority did not outline its assessment of compliance with criteria outlined by the development plan as relevant to any proposal for economic development.
- Calculations and assumptions underpinning surface water drainage proposals are not adequate.

Submission by Toni Devine

- The local road network is unsuited to the volume of traffic it accommodates.
- Efforts at public consultation were inadequate.

- Planning for storm water drainage on the basis of the 1-in-100 year rainfall event is inadequate in view of climate change experiences.
- There are adequate asphalt plants elsewhere in the country and there are also alternative technologies available.

Submission by Lorcan McBride and others

- Airborne particles and pollutants are likely to be blown by the prevailing wind toward the village of Muff.
- The air quality assessment within the NIS relates to a site at Church Hill and available data in the area of the site has not been used. Its reliability is questioned.
- Long-term impacts from pollutants such as bitumen are unknown and were not adequately considered by the Planning Authority.
- The local road network is unsuited to the existing and proposed scales of traffic and there is a history of collisions.
- The area is of heritage importance and it should be preserved. Owners of the site have a history of unauthorised and illegal development.

Submission by Gerard Moyne

- The development is contrary to the provisions of the county development plan.
- The site has a history of unauthorised development, including recent unauthorised destruction of an ancient woodland. It contains construction and demolition waste as well as other toxic materials dumped over a period of three decades.
 - The cumulative impact of this development and quarrying development will have long-term effects for the environment.
 - None of the other industrial activities in the area has planning permission.
- The Natura Impact Statement is inadequate.
- The site is hydrologically connected to a nature reserve (Inch Wildlife Reserve), which is of significance to migratory birds.

- Emissions will impact on species of conservation interest within Lough Swilly SPA, which fly at low level in this area.
- Leachate currently flows into Burnfoot River and then into Inch Wildlife Reserve
- Traffic will have local and regional impacts, due to importation of aggregate from Church Hill.
- The proposal to import material is contrary to actions aimed at reducing greenhouse gas emissions.
- An EIA of the quarry at Church Hill which will provide aggregate to serve this development did not consider the intensification of use that the proposal requires. The Church Hill quarry has already had a serious ecological incident.
- No consideration has been given to cumulative impacts on Inch Wildlife Reserve, which include a biogas plant and farmland.
- Consideration of the 1-in-100 year rainfall event is inadequate, in view of experiences with flooding in the area.
- The applicant did not consult with the local community.
- The Planning Authority did not adequately undertake appropriate assessment of the development and did not adequately discharge its responsibilities regarding EIA, in view of likely transboundary effects.
- The proposed stack is below the level of the lowest house in the area.
- Enforcement of required production standards is questioned.

Submission by David Simpson

- The development will impact on habitats and residential amenity, with reference to the requirements of Chapter 8 of the county development plan.
- The subject site is in area identified by the development plan as being under strong urban influence.
- The proposal can be viewed as a split application as it is associated with an aggregate site at Church Hill.

Submission by Senan Burgess and others

- The Planning Authority did not adequately assess the traffic and transport implications of the development.
 - The layout of the road network in the area and proposed means of access/egress does not facilitate HGV movement in a safe and reliable manner.
 - The junction of R239 and L7671 is prone to flooding.
 - Visibility along the R239 is hindered by the topography of the area.
 - Transporting aggregate/material to the site from Church Hill will increase pressure on the road network.
 - A road safety audit should have been submitted.
 - Road Safety Authority mapping identifies 10 separate road collisions between 2005-2016 on this stretch of the R239
- The Planning Authority has a conflict of interest in this proposal, given it is a beneficiary of the development.

Submission by John and Elaine Taylor

- The applicant did not consult the local community and opportunities for public engagement with the development were limited.
- The road network leading to the site cannot accommodate this scale of development
- Proposed hours of operation are anti-social and unacceptable.
- Noise will be overpowering in the surrounding area.
- The site has a history of unauthorised development.
- The development will impact on bats, which the local area is of importance to.
- The development will result in the emission of toxic substances and pollutants into the atmosphere, which will impact on human health and wellbeing.
- The Burnfoot River is at risk of contamination from the development.
- The development contributes to industrialisation of the area.
- The development will devalue property in the area.

Submission by Mary Durkan and Ronan Moyne

- No consideration has been given to cross-border implications of the development, with reference to the Espoo Convention.
 - Derry City and Strabane District Council has a climate action pledge to reduce carbon emissions.
 - Derry City has existing air quality issues.
- Burning of oil will lead to emissions, with the prevailing wind carrying emissions to Derry and beyond. There are links between poor air quality and poor health.
- The State has an obligation to undertake EIA for development with likely significant environmental impacts.
- Lorries transporting asphalt into Northern Ireland will add to existing congestion.
- The Board is requested to refuse permission.

6.8. Further Responses

6.8.1. None received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeals, I consider the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- Site conditions;
- Public health;
- Noise;
- Biodiversity;
- Drainage;
- Access and road safety;
- Financial contributions;

- Other issues; and
- Appropriate assessment.

7.2. Principle of Development

- 7.2.1. Chapter 4 of the Donegal County Development Plan 2018-2024 contains the Economic Development Strategy and policy ED-P-2 states that economic development proposals meeting locational policies (policies ED-P-3 to ED-P-13 inclusive) must also comply with criteria set out in policy ED-P-14 and be consistent with the proper planning and sustainable development of the area.
- 7.2.2. The site is in a rural location and policies ED-P-8 and ED-P-11 apply. Together, they state that proposals for major industrial development in countryside locations will be considered where it is demonstrated that a countryside location is required. Applications are also required to 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.
- 7.2.3. The applicant states that the proposed asphalt plant would produce up to 2,500 tonnes of asphalt per week, in the peak period of April-November each year, and that the end product will be used for surfacing projects.
- 7.2.4. Whilst the annual output from the development may be substantial in scale, I do not consider the applicant has adequately demonstrated a requirement to locate the development on this site or that there are no other suitable sites to accommodate the development. The Board will note, in this respect, that aggregate is sourced from a separate quarry owned by the applicant at Church Hill, Co. Donegal and bitumen is sourced from Co. Galway, so there is no functional connection to any quarry in the vicinity of the site.
- 7.2.5. Moreover, as is outlined elsewhere in my report, I have concerns regarding the suitability of the site for this development and I am not satisfied that compliance with the overarching requirements of policy ED-P-14 has been demonstrated. For example, the supporting information provided with the application indicates that the proposal is likely to contribute to a noise nuisance at nearby housing and the long-term impacts of historic dumping at the site has the potential to impact on

groundwater quality in the area, including within the Lough Swilly SAC and SPA complex.

7.3. Site Conditions

- 7.3.1. The issue of site conditions was raised by the Planning Authority in the planning report dated 27th March 2020 and subsequent request for additional information, whereby the applicant was requested to open a number of trial holes on the site under the supervision of a Council Waste Enforcement Officer and to submit a detailed report on ground conditions encountered.
- 7.3.2. In response to the request, the applicant provided an Intrusive Site Investigation Report, prepared by Greentrack Environmental Consultants. The report outlines that 5 No. trial pits were excavated down to original ground level where possible (excavated depths are stated as ranging between 3.2-4m) and *“three out of the five pits contained significant contamination...the contamination ranged from light to heavy in the three trial pits”* (Page 15 of the Report). The Report estimates that approx. 40% of the site surface is underlain by a seam of C&D waste and that the average thickness of the seam is 1.1m, equating to a total volume of 1,947 tonnes.
- 7.3.3. Following consideration of the Report, the Planning Authority attached condition 3(f) to its decision, which required the applicant to engage with the Waste Enforcement Officer in relation to the removal of waste from the site that is deemed by the Planning Authority to be offensive.
- 7.3.4. A number of the third-party appellants and observers have commented on the history of dumping on the site and the adjacent former quarry site and I note that one observer claims that asbestos has been dumped on the site.
- 7.3.5. It is accepted that the site has been used for dumping in the past and I note that internal consultation as part of the Planning Authority’s assessment confirms that no waste permit was ever issued in respect of such dumping. There is no evidence of any planning consent for the dumping of waste on the site either so it appears to be unauthorised.
- 7.3.6. Having given consideration to the issue and the information provided with the application and appeal, I am concerned that there is insufficient information available on which to determine that only inert material has been dumped on the site. Site

investigations were confined to the application site only but historic Google Earth historic aerial photograph imagery indicates that the extent of the applicant's landholding that is affected by dumping extends beyond the subject site and to within c.10-12m of the Drumhaggart Stream at its closest point. The remainder of the landholding was not investigated for its dumped content.

- 7.3.7. It also appeared at the time of my inspection that dumping may have altered the site's drainage characteristics. My visit to the site was in mid-Summer (25th July 2022) and there was standing water in a number of areas on the site (the extent of such standing water was unclear as the site has become overgrown).
- 7.3.8. Given the extent of the dumping that has taken place on the site, and potential risks of pollutants being discharged to the adjacent Drumhaggart Stream, it is my view that a comprehensive remediation strategy should have been submitted with the application, to establish the nature and extent of dumped material on the site, to provide proposals for its safe removal and the restoration of the site to its pre-existing condition as part of the development. The Planning Authority sought to deal with the issue via planning condition but I do not consider this is appropriate in this instance as its removal gives rise to issues in respect of appropriate assessment, as is discussed elsewhere in my report.

7.4. Public Health

- 7.4.1. A number of third-party observers and appellants have expressed concern regarding potential impacts on public health, arising from emissions to air from the development.
- 7.4.2. The applicant did not provide an assessment of the nature or extent of emissions arising from the development, as part of the application.
- 7.4.3. Section 2.1 of Environmental Protection Agency guidance document *Environmental Management in the Extractive Industry (Non-Scheduled Materials)* (2006) outlines that a licence under the Air Pollution Act 1987 is required for a proposed asphalt plant that involves specific point emissions. Such licences are granted by the relevant planning authority and, in this context, I note that Section 3.4.2 of the guidance contains recommended emission limit values (ELV) for Sulphur Dioxide, Nitrogen Oxide and Dust. Section 3.4 of the guidance also states that the Air Quality Standards Regulations 2002 sets statutory limit values for sulphur dioxide, nitrogen

oxide, particulate matter and lead in ambient air and that these regulations apply to ambient air quality in the local vicinity of asphalt manufacturing facilities.

7.4.4. In view of the level of regulation of emissions to air from a proposed asphalt plant, which entails a separate emissions licence and statutory ambient air limit values in the vicinity, I am satisfied there is adequate control over emissions to air from the development to ensure that no impacts to public health in the vicinity are likely to arise. I therefore consider it would be unjustified to refuse permission on this basis.

7.4.5. Submissions from multiple parties, including Derry City and Strabane District Council, have also contended that under the Espoo convention formal cross-boundary consultation is required, in view of the nature of the development and the potential for significant effects. Under Article 3 of the UN *Convention on Environmental Impact Assessment in a Transboundary Context* (2001) (the Espoo Convention), there is a requirement to notify affected parties of specified activities that are likely to cause a significant adverse transboundary impact. The proposed development is not a specified activity (Appendix 1 of the convention lists such activities) for the purposes of the convention, so there is no requirement for formal consultation. The Board will note that, in any case, Derry City and Strabane District Council has made a submission on the appeal.

7.4.6. Concerns have also been expressed regarding the impact of emissions on climate change. As no assessment of the nature or extent of emissions arising from the development has been provided, I have not been able to interrogate this aspect of the development. The matter was not raised by the Planning Authority in its assessment of the application.

7.5. **Noise**

7.5.1. Appellants and observers have expressed concern regarding noise levels, associated with both the operation of the plant and truck movements to and from the site, which involve passing nearby housing. A number of appellants and observers also questioned the methodology adopted by the applicant for the Noise Impact Assessment.

7.5.2. There is housing to the north, south, east and west of the site. The closest residential property to the site is approx. 120m north, a detached house (NSL 1). Other housing in the area is a minimum of approx. 300m from the site.

7.5.3. A Noise Impact Assessment was submitted as part of the additional information response, prepared by Environmental Efficiency. The Assessment, stated to have been prepared in accordance with BS 5228:2014¹, utilises survey data from an asphalt plant at Church Hill, County Donegal and background noise data from 4 no. noise sensitive locations (NSL) in the vicinity of the site. Background and predicted noise levels within the Assessment are set out in Table 1 below

	Background Noise (LAeq [dB(A)])	With Development
NSL1		
Morning	46.4	53.1
Midday	47.1	53.3
Evening	42.7	52.6
NSL2		
Morning	46	51.1
Midday	48.4	52
Evening	45.3	50.9
NSL3		
Morning	47	47.8
Midday	58.4	58.5
Evening	45.2	46.3
NSL4		
Morning	56.1	56.1
Midday	55.2	55.3
Evening	47.5	47.8

Table 1: Background and predicted noise levels at sensitive noise locations.

7.5.4. The Assessment states that in a number of instances the 55dbA noise limit recommended by EPA Guidance is exceeded, at NSL 3 and 4, but that this is attributable to high background noise levels and that the proposed development is not a significant noise source at these locations. Lower background noise levels at NSL 1 and 2 are stated to be attributable to their greater distance from the R239 and the Assessment states that the proposed development does not result in the recommended noise limit being exceeded. In this context, the Assessment concludes that noise mitigation is unnecessary.

7.5.5. Regarding the methodology adopted, whilst I note appellant and observer concerns, in my view the adopted methodology provides a practical method of predicting likely noise levels in the vicinity of the site, based on an existing facility rather than a

¹ BS 5228:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites (Part 1)

modelled scenario. I see no reason to object to this approach. I am also satisfied that the NSL are representative of the surrounding context and are adequate to allow assessment and examination of predicted noise impacts.

- 7.5.6. EPA guidance document *Environmental Management in the Extractive Industry (Non-Scheduled Minerals)* (2006) provides guidance in relation to noise from quarrying and associated activities, including asphalt plants. It recommends a maximum daytime noise level of 55dB_{LAeq1hr} and a maximum night-time noise level of 45dB_{LAeq1hr} and states that no noise level shall exceed these limit values by more than 2dBA.
- 7.5.7. As can be seen from Table 1 above, noise levels are predicted to increase by 6.2-9.9dB(A) at NSL1 and by 3.6-5.6dB(A) at NSL2. Whilst the predicted noise levels are below the maximum recommended daytime and night-time levels, a material increase in noise levels at both locations is clearly predicted to arise. Table 7.12 of the IEMA *Guidelines for Environmental Noise Impact Assessment* (2014) identifies that a noise level change of between 5.0-9.9dB_{LAeq} is a 'substantial' change in noise level at a noise-sensitive receptor location and, in this context, I consider the increase in noise levels is significant. However, and notwithstanding this, as the predicted noise levels would remain below the recommended maximum daily level, I do not consider it would be justified to refuse permission on this basis.
- 7.5.8. Section 3.4.2 of the 2006 EPA guidance outlines practical measures that can be implemented in order to reduce noise levels, which include building design and process solutions as well as screening measures. Should the Board decide to grant permission I recommend a condition be attached requiring the applicant to prepare and submit a further noise assessment that models the proposed development in context and demonstrates that all practical mitigation measures have been implemented to minimise noise level increases at NSL 1 and 2.
- 7.5.9. Noise levels at NSL 3 and 4 are predicted to rise marginally, by between 0.1-1.1dB(A). At both locations noise levels are shown to exceed the maximum recommended daytime level. I acknowledge that the Assessment shows that this is attributable to existing activity in the area, but nevertheless I am concerned that the proposal is shown to increase the already high background noise levels at these locations. NSL 4 particular is shown to currently exceed the recommended maximum

noise level throughout the day and daytime noise levels at NSL 3 are shown to exceed the recommended maximum by more than 2dBA, which the EPA guidance states should not arise. The Planning Authority's Senior Executive Scientist expressed similar concerns regarding the noise impact at these locations, stating that there is a high likelihood of a noise nuisance at these locations in the absence of mitigation. Such nuisance will be for a substantial portion of the day as the site is proposed to operate between 06.30-20.00.

7.5.10. I note that the Planning Authority attached condition 6 to its decision, which imposes a limit on noise emanating from within the boundaries of the subject site, but this does not control noise associated with trucks along the haul route and, moreover, I do not see any practical way of mitigating noise at the affected locations. I accept that there are already high background noise levels at these locations and that the development involves marginal increases in noise levels but, notwithstanding, the noise assessment has established that these locations experience noise levels above the maximum daytime noise level recommended by the EPA and the development would further increase daytime noise.

7.5.11. I would also highlight to the Board that whilst the assessment states that it has been undertaken on a worst-case scenario basis, this does not appear to be the case. The assessment assumes maximum truck movements of 25 per day whereas it is indicated elsewhere within the application that peak traffic flows in the period of April-November are substantially higher, involving 124 daily truck movements (based on two-way movements). And whilst I accept that truck movements are an intermittent noise source, the significantly greater number of movements than is considered by the Assessment is likely to magnify the noise impact along the haul route.

7.5.12. I have previously expressed concerns regarding the suitability of the site for this development. From the above assessment, I conclude that the development would contribute to unacceptable noise levels in the vicinity of the site, which exceed the maximum noise levels recommended by EPA guidance. A refusal of permission is thus recommended on this basis.

7.6. **Biodiversity**

- 7.6.1. Concerns have been expressed by observers and appellants regarding the impact of the development on biodiversity, with particular reference to Inch Wildfowl Reserve which is east of the site.
- 7.6.2. The Department of Culture, Heritage and the Gaeltacht submissions on both the application and appeal also expressed concerns in this regard and identified the possibility of suitable habitat within the site for Sand Martin as an issue to be addressed. The Department also advised that an ecological assessment should have been provided with the application, as a minimum.
- 7.6.3. With reference to the potential for Sand Martin to be present on the site, the Planning Authority did not request the applicant to provide an ecological assessment and the Board will note that the planning report dated 3rd February 2021 states that it was prohibited from doing so as no such request was made as part of the initial request for additional information. Notwithstanding this, species data provided by Birdwatch Ireland indicates that Sand Martin nest in tunnels that are excavated within vertical riverbanks or quarries and from my observations on site, such conditions are not present on the site. In view of the specific nature of the Department's concerns, the Board may wish to request the submission of an ecological assessment, to assist its assessment.
- 7.6.4. With reference to the site's suitability for bats, the site does not contain tree stands that could provide roosting potential or hedgerow that could be used for commuting, but there is a disused building in the area of the proposed access that could provide roosting potential. The Board will note that this building is outside the application site and is shown on the site layout drawing as being retained.
- 7.6.5. Inch Wildfowl Reserve is located within the Lough Swilly SPA and SAC designations and is connected to the subject site via the Drumhaggart Stream and the Burnfoot River. Potential impacts on the SPA and SAC sites are assessed in the Appropriate Assessment section of my report.
- 7.6.6. It has also been alleged that woodland in the area to the north of the site was cleared following purchase of the site. Available Google Earth Imagery indicates that clearance took place to the north of the site at some point between the July 2018 and February 2019 aerial photographs but this is outside of the application site. In

any case, enforcement is a matter for the Planning Authority and is not a matter to be considered by the Board as part of this appeal.

7.7. Drainage

- 7.7.1. Concerns have been expressed by observers and appellants regarding the proposed surface water drainage system.
- 7.7.2. A water management plan was provided as part of the additional information response (contained within the Natura Impact Statement). It states that existing ground conditions are likely to allow for infiltration in all but extreme events, where surface water is likely to flow south-easterly towards the Drumhaggart Stream.
- 7.7.3. The proposed surface water drainage system entails treatment of all run-off from within the site within an attenuation tank, with attenuated discharges routed through an interceptor prior to discharge to a drain off site. The size of the unit was revised at the clarification of additional information stage, following a request from the Planning Authority. It is stated to be designed to account for a 1-in-100 year rainfall event, with calculations of predicted and rainfall and attenuation capacity provided.
- 7.7.4. Site layout drawing No. 02b, submitted with the CAI response, indicates that the entire site would be underlain by concrete, with a wheelwash located inside the gated site access. Run-off from building roofs within the site will be harvested, for re-use within the site.
- 7.7.5. The Planning Authority's Senior Executive Scientist advised in his report dated 10th September 2020 that a discharge licence would be required, under Section 4 of the Water Pollution Act 1977 and that conditions to control discharges would be imposed as part of the licence.
- 7.7.6. Given the nature of the proposed activity on the site, I consider it is reasonable that all run-off generated within the site should be attenuated within the site and passed through an interceptor, prior to discharge. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the size and specifications of the attenuation tank and interceptor with the Planning Authority prior to the commencement of development.

7.8. Access and Road Safety

- 7.8.1. As part of the additional information response the applicant initially proposed that a one-way access system would be operated, with traffic entering the site from the R239/L7671, to the south, and exiting via the L7641 to the north. This proposed system was revised as part of the clarification of additional information response, whereby traffic would continue to access the site from the R239/L7671 to the south but would exit the site via L7641, to the south-east. The amendment followed a request for same from the Planning Authority, as part of the clarification of further information request.
- 7.8.2. Appellants and observers have concerns regarding the condition of the local road network and also the safety of the junction of the R239 and the L7671. Concerns have also been expressed regarding noise associated with trucks moving along the haul route.
- 7.8.3. I noted on my visit to the site that the haul route to/from the R239 has been upgraded, particularly along the southern section of the L7641 where the surface has been relaid and the road appears to have been widened in parts, to create passing bays. In the area of the site and the adjacent concrete block plant I observed that the road is in an extremely poor condition and has deteriorated to the condition of a stone track. The approach roads from the south and east also displayed significant cracking.
- 7.8.4. As part of the clarification of information response the applicant clarified vehicular movements associated with the development, outlining that peak traffic flows in the period of April-November will involve 124 daily truck movements (based on two-way movements) and that this reduces to an average of 38 daily movements outside of the peak period. In addition, heating oil will be delivered twice monthly and staff travel will entail 6/8 daily movements.
- 7.8.5. Having visited the site, I concur with the Planning Authority that it would be inappropriate to use the L7641 northward to exit the site. This section of road is narrow and cannot accommodate two-way traffic flows. As I have stated, the proposed haul route to/from the R239 has been upgraded, particularly along the southern section of the L7641 where the surface has been relaid and the road appears to have been widened in parts, to create passing bays. Subject to upgrade of the road in the immediate area of the site, the local road network is in my view

capable of accommodating the development. I note in this regard that the Planning Authority's Roads Department did not object to the development and that its decision to grant permission required the applicant, under condition No. 11, to make a financial contribution in respect of the overlaying of a 900m x 6m section of the road that serves the site.

- 7.8.6. The issue of a financial contribution towards the upgrade of the road in the area of the site is considered in the following section.
- 7.8.7. Regarding the safety of the junction of the R239 and the L7671, I note an observer submission that RSA mapping identifies 10 separate road collisions between 2005-2016 on this stretch of the R239. At the time of my report there is no access to RSA collision data, so I have not been able to verify this submission. The Board may wish to give further consideration to this issue.
- 7.8.8. I observed on my site visit that the junction in question is set on a dip in the R239 alignment, whereby there is reduced visibility to the west. I estimate that motorists can see approx. 80-85m westward from the junction. This is slightly below the 90m visibility distance that would be required for a new junction on a road with an 80km/h speed limit, but I do not consider that the road alignment constitutes a traffic hazard. I also note that the Planning Authority's Roads Department did not express any concern regarding the layout of this junction.
- 7.8.9. Regarding concerns that the presence of trucks on the road network presents a hazard for pedestrians, I would advise the Board that this is a rural area, where there are no footpaths on the local roads. I have previously outlined that the proposed haul route has been upgraded and is, in my view, capable of accommodating development traffic. I do not consider that it would be reasonable to require the applicant to fund footpath installations in the area and it would not be justified to refuse permission for the development on this basis.

7.9. Financial Contributions

- 7.9.1. The appellant has appealed conditions 11 and 12 of the Planning Authority's decision.

- 7.9.2. Condition 11 required payment of a special financial contribution of €81,000, under S48(2)(c) of the Act, in respect of the overlaying of a 900m length of a 6m width of the public road that serves the site.
- 7.9.3. Condition 12 required payment of a contribution of €36,546.37 under the adopted S48 development contribution scheme.
- 7.9.4. The Board will note that the Planning Authority made a further submission in relation to these conditions, pursuant to a S132 Notice.

Condition 11

- 7.9.5. The Planning Authority contends that the development will increase all traffic levels by 35% and HGV traffic by 50% and that, in this context, the requirements of the condition are below the true share of the cost that the developer should pay. I note in this respect that calculations for the upgrading of 8,640m² of road were provided as part of the Planning Authority's further submission.
- 7.9.6. The applicant contends that development traffic will account for a max of 32% of traffic on the road and that it is unfair that they should be required to fund all required road improvements. It is also suggested that a flexible approach could be taken, whereby the applicant would provide material for the required road improvements.
- 7.9.7. Under Section 48 of the Act, planning authorities have 2 mechanisms by which to require the payment of a contribution in respect of existing and/or proposed public infrastructure and facilities benefiting development:
- (1) In accordance with a development contribution scheme made under Section 48, and/or,
 - (2) Where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.
- 7.9.8. Regarding the facility to require a contribution towards specific exceptional costs, Section 48(2)(c) of the Act is clear that specific exceptional costs should arise in order to justify any request for a special contribution.
- 7.9.9. Section 48(12) states that a condition requiring payment of a special contribution under Section 48(2)(c) 'shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates'. Section 7.12

of the Development Management Guidelines also outlines that for such a condition to be attached by a planning authority, it is essential that the basis for the calculation of a contribution should be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.

- 7.9.10. I consider the condition, as worded, fails to accord with guidance within the *Development Management Guidelines*, as the reference to a '900 metre length of a 6 metre width of the local public road that serves the site' is insufficiently precise in its detail of the exact nature of the works involved. The Planning Authority's further submission on the appeal also appears to contradict the condition, by referring to an area of 8,640m² requiring to be resurfaced. No map was provided with the submission to confirm the exact extent of road affected.
- 7.9.11. Notwithstanding the above, I am satisfied that, based on the nature of the proposed development, the predicted volume of traffic and the condition of the local road network that I encountered on my site visit, that road upgrades are required and that the applicant should be required to make a financial contribution toward same. I have previously outlined within my report that the public road in the vicinity of the site is in a very poor condition, particularly in the area adjacent to the site access, where it has deteriorated to the condition of a stone track. As the competent authority for this appeal, it is within the Board's remit to attach a condition requiring a financial contribution as a special contribution under section 48(2) (c) of the Act.
- 7.9.12. In respect of the amount to be paid, I note that the Planning Authority provided up to date tender rates for surface materials required for the road upgrade. Using these per m² costs, I estimate that upgrading the 900m x 6m (5,400m²) of road referenced by condition No. 12 would cost c.€235,000. It is agreed between the parties that HGV traffic associated with the asphalt plant will increase traffic levels in the area by 32-35% and I note that the €81,000 required by the condition equates to 35% of the estimated cost. In view of the above, I consider the contribution of €81,000 required by condition No. 12 is reasonable and I recommend that, should the Board decide to grant permission, the condition be retained.

Condition 12

- 7.9.13. The applicant contends that the Planning Authority miscalculated the financial contribution payable, which should have been €10,000, on the basis of the minimum charge for a site with an area of 0.337ha.
- 7.9.14. The Planning Authority's submission on the application acknowledges that there was an error in calculation of the standard development contribution as applied at condition No. 12 and that the correct charge should have been €1,626.69 per 0.1ha or a minimum of €10,844.62, which is the current index linked rate.
- 7.9.15. The development is of a class which gives rise to a financial contribution, under the adopted Development Contribution Scheme. I note that the Planning Authority confirmed the current index-linked rate as part of its submission on the appeal, which equates to the minimum index linked charge of €10,844.62. Should the Board decide to grant permission, I recommend a condition be attached requiring payment of a financial contribution of €10,844.62, in accordance with the terms of the DCS.

7.10. **Other Issues**

- 7.10.1. Observers and appellants have highlighted that the area is of historical importance and that there are a number of recorded monuments on the site. I have reviewed the National Monuments Service GIS maps and note that there are a number of recorded monuments in the immediate vicinity of the site, to the north, west and south. The archaeological potential of the site was not assessed as part of the application. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to submit and agree proposals for a programme of archaeological monitoring through the construction phase.
- 7.10.2. Regarding concerns over the risk of fire, whilst there is undoubtedly a risk of fire at an asphalt plant, I do not see that there is a fire risk for adjacent property in this instance. The nearest house is approx. 120m north, a detached house, and I am satisfied that it is adequately set away from the site.
- 7.10.3. It has also been contended that a visual appraisal of the development should have been undertaken and that a landscaping scheme is required. The development will be visible from the south but it will be set in the context of built elements associated with the adjacent block making plant and will not, in my view, have any material impact on views of the site. I concur that landscaping should be incorporated and, to this end I recommend a condition be attached, should the Board decide to grant

permission, requiring the applicant to agree landscaping proposals with the Planning Authority.

7.11. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

7.11.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

7.11.2. The applicant submitted a Natura Impact Statement as part of the application, together with a subsequent addendum, prepared by Greentrack Environmental Consultants. It provides a description of the proposed development, identifies European sites within a 15km potential zone of influence and identifies potential impacts in relation to Lough Swilly SAC and SPA.

7.11.3. Having reviewed the appeal documents provided and submissions, I am satisfied that there is adequate information in relation to the European sites to allow for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Screening for Appropriate Assessment- Test of likely significant effects

7.11.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.11.5. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

7.11.6. The development is described at Section 2 of this Report. In summary, permission is sought for the construction of an asphalt plant including all other associated site

development works. The subject site has a stated area of 0.337ha and is located at Gortnaskea, Burnfoot, in north-east County Donegal. The site layout drawing identifies that the site would be provided with a concrete base and that a series of storage bins, silos and burner/mixer tower would be provided. Aggregate is sourced from a separate quarry at Church Hill, Co. Donegal and will be stored under cover to protect from wind blow and rainfall. Bitumen is sourced from Co. Galway. The final asphalt end-product is not stated by the applicant. Surface water is proposed to drain to an attenuation system at the north-west corner of the site, prior to discharge off-site.

7.11.7. Taking account of the characteristics of the proposed development, in terms of its location and the scale of works, I consider the following aspects of the development require examination:

Construction Phase

- The impact of potential surface water discharges from the site on water quality within a European site.

Operational Phase

- Impact on water quality within a European site arising from surface water discharges from the site containing suspended solids and/or pollutants.
- Impacts on qualifying interests within a European site arising from asphalt plant emissions to air.

Submissions and Observations

7.11.8. The submissions from the appellants, applicant, observers, prescribed bodies and Planning Authority are summarised as Section 6 of my Report.

7.11.9. The Planning Authority's report also contains a separate appropriate assessment report.

European Sites

7.11.10. The subject site is not located within a designated European site. The NIS identifies the following European sites falling within a 15km search zone: -

- Lough Swilly Special Protection Area (Site Code 004075), 4.3km west,

- Lough Foyle Special Protection Area (Site Code 004087), 5.6km east,
- Lough Swilly Special Area of Conservation (Site Code 002287), 6km west,
- River Finn Special Area of Conservation (Site Code 002301), 14.6km south,
- Magheradrumman Bog Special Area of Conservation (Site Code 000168), 15km north-east.

7.11.11. In addition to those identified by the NIS, there are also a number of SAC and SPA sites within Northern Ireland, within the 15km search zone, as follows: -

- River Faughan and Tributaries SAC (Site Code UK0030361) 7.9km south-east,
- River Foyle and Tributaries SAC (Site Code UK0030320) 14.6km south.

7.11.12. The NIS states that there are no direct hydrological links to River Finn SAC and Magheradrumman Bog SAC and the potential for significant effects can be excluded on this basis. It identifies that the Drumhaggart Stream routes adjacent to the east site boundary, flowing into the Burnfoot River south of the site and onward into Lough Swilly and thus providing a hydrological connection from the site to Lough Swilly SAC and SPA. Lough Foyle SPA was excluded by the Screening assessment but was assessed as part of the NIS Addendum, following a request by the Planning Authority.

7.11.13. I agree with the NIS that, in view of the absence of a direct hydrological connection to River Finn SAC and Magheradrumman Bog SAC and the separation distance between the subject site and each of these European sites, there is no real likelihood of significant effects arising from the proposed development. I have therefore not considered them further in my assessment. Lough Foyle SPA is not hydrologically connected to the site but has the potential to be affected by airborne pollutants and thus requires consideration.

7.11.14. With reference to River Faughan and Tributaries SAC and River Foyle and Tributaries SAC, there is similarly no hydrological connection to the subject site. Taken together with the separation distance between these sites and the subject site, there is no real likelihood of significant effects arising from the proposed development. I have therefore not considered them further in my assessment.

7.11.15. Summaries of Lough Swilly SPA and SAC and Lough Foyle SPA are presented in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)
<u>SAC</u>		
Lough Swilly SAC (Site Code 002287)	Estuaries, Coastal lagoons, Atlantic salt meadows, Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Old sessile oak woods with Ilex and Blechnum in the British Isles, Otter	6km
<u>SPA</u>		
Lough Swilly SPA (Site Code 004075)	Great Crested Grebe, Grey Heron, Whooper Swan, Greylag Goose, Shelduck, Wigeon, Teal, Mallard, Shoveler, Scaup, Goldeneye, Red-breasted Merganser, Coot, Oystercatcher, Knot, Dunlin, Curlew, Redshank, Greenshank, Black-headed Gull, Common Gull, Sandwich Tern, Common Tern, Greenland White-fronted Goose, Wetland and Waterbirds	4.3km
Lough Foyle SPA (Site Code 004087)	Red-throated Diver, Great Crested Grebe, Bewick's Swan, Whooper Swan, Greylag Goose, Light-bellied Brent Goose, Shelduck, Wigeon, Teal, Mallard, Eider, Red-breasted Merganser, Oystercatcher, Golden Plover, Lapwing, Knot, Dunlin, Bar-tailed Godwit, Curlew, Redshank, Black-headed Gull, Common Gull, Herring Gull and Wetland and Waterbirds	5.6km

7.11.16. In respect of Screening, the NIS contains a Screening Matrix, which summarises potential threats to qualifying interests within the SAC and SPA sites, Tables 4.1 and 4.2.

7.11.17. In respect of Lough Swilly SAC, the assessment identifies potential for significant effects on the following qualifying interests: Coastal Lagoons, Molinia meadows on calcareous, peaty or clayey-silt-laden soils and Otter. The assessment concludes that each issue should be '*screened in for further studies.*'

7.11.18. In respect of Lough Swilly SPA, the assessment identifies potential for significant effects on the following qualifying interests: Shoveler, Teal, Mallard, Grey Heron, Scaup, Goldeneye, Dunlin, Knot, Common Coot, Oystercatcher, Black Headed Gull, Red Breasted Gull, Red Breasted Merganser, Curlew, Great Crested Grebe, Common Tern, Sandwich Tern, Shelduck, Greenshank and Redshank. In each instance the assessment states that inclusion arises from application of the precautionary principle.

Construction phase impacts

7.11.19. As has been outlined previously, I consider the potential impact of surface water discharges from the site on water quality within Lough Swilly SAC and SPA requires consideration.

7.11.20. The Site Investigation Report provided at the AI stage estimates that approx. 40% of the site surface is underlain by a seam of C&D waste and that the average thickness of the seam is 1.1m, equating to a total volume of 1,947 tonnes. The Report states that material uncovered was inert and that there was no leachate or soil contamination. The NIS addendum states that it is proposed to remove all deposited waste from the site during site clearance.

7.11.21. The amount of material to be removed from the site is substantial and such works may give rise to suspended solids or contaminants being discharged, via surface waters, to the Drumhaggart Stream and therefore entering the SAC and SPA sites. I therefore consider the risk of impacts on water quality within the SAC and SPA sites cannot be ruled out at this stage.

Operational Phase Impacts

7.11.22. As has been outlined previously, I consider the potential impact on water quality within Lough Swilly SAC and SPA arising from surface water discharges from the site containing suspended solids and/or pollutants and potential air quality impacts at a European site arising from asphalt plant air emissions require consideration.

7.11.23. Regarding the potential for surface water discharges from the site containing suspended solids and/or pollutants, the proposed site layout drawing indicates that the entire site would be underlain by concrete and the surface water drainage

system involves treatment of all run-off from within the site within an attenuation tank, with discharges passing through an interceptor prior to discharge.

- 7.11.24. The attenuation tank is stated to be designed to account for a 1-in-100 year rainfall event and is also stated to be adequately sized to accommodate run-off associated with dust mitigation and wheel cleaning. Specifications of the proposed interceptor were provided to the Planning Authority.
- 7.11.25. Notwithstanding this, there is a risk of overflow of the attenuation tank in the event a major leakage from the bitumen storage silos or oil storage tank. The application drawings do not identify the use of bunding to surround these structures, which have a greater cumulative storage volume than the attenuation tank and thus have the ability to inundate the system. I therefore consider the potential for significant effects arising from surface water discharges from the site containing suspended solids and/or pollutants cannot be ruled out at this stage.
- 7.11.26. Regarding potential air quality impacts arising from asphalt plant air emissions, the NIS Addendum identifies that SO₂ and NO₂ are typically emitted from asphalt plants and that acidification arising from such emissions affects species diversity and species richness in freshwater communities. The Addendum also states that birds may be particularly vulnerable to health-damaging air pollutants, with the intensity of impact directly related to the level of pollution.
- 7.11.27. The NIS Addendum directly considers the potential for significant effects at one European site arising from air emissions and it states that in-built design factors such as the stack height and bag filter abatement system, together with environmental factors and the separation distance to the European site mean the potential for significant effects is negligible. Similar effects at the other 2 European sites within the potential zone of influence are not considered by the NIS but, in my view, have the potential to arise. In view of the foregoing, I consider the risk of impacts to water quality within a European site cannot be ruled out at this stage.
- 7.11.28. The proposed development may have significant effects on Lough Swilly SAC and SPA and Lough Foyle SPA, and therefore, the carrying out of an Appropriate Assessment of the proposed development is necessary.

In-combination impacts

- 7.11.29. There is a former quarry site on the opposite side of the L7641, which is stated by the NIS to be operated currently as a ready mix and concrete block making plant and which has the potential to contribute to in-combination effects arising from surface water discharges.
- 7.11.30. The NIS Addendum states that due to the topography of the area, run-off will flow toward the Burnfoot River but that in-combination effects will not arise in view of water management proposals that form part of the proposed development.
- 7.11.31. Available EPA River Water Quality mapping indicates that the Burnfoot River currently has an unpolluted water quality status in the area immediately south of the subject site and further downstream to the east, which indicates the existing surface water drainage patterns have no polluting effect on the river.
- 7.11.32. In addition, the NIS and NIS Addendum contain the results of water sampling at 5 no. locations along both the Drumhaggart Stream and the Burnfoot River, both adjacent to the subject site and downstream, the results of which indicate there is little change in the chemical composition of the river over the area sampled.
- 7.11.33. From the information provided, I consider it is reasonable to conclude that surface water discharges from the former quarry site have not had a polluting effect on the Burnfoot River and thus have not had any significant effect on Lough Swilly SAC and SPA. The issue of in-combination effects can therefore be excluded.

Screening Determination

- 7.11.34. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites.

- Lough Swilly Special Area of Conservation (Site Code 002287),
- Lough Swilly Special Protection Area (Site Code 004075), and
- Lough Foyle Special Protection Area (Site Code 004087).

Stage 2 Appropriate Assessment

7.11.35. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed.

7.11.36. The NIS and subsequent Addendum examine and assess potential adverse effects of the proposed development on Lough Swilly SAC and SPA and Lough Foyle SPA. It is stated to have been carried out in accordance with relevant guidance and involved desk-based assessment, site surveys and sampling.

7.11.37. The NIS concludes that: -

“This NIS has established that the proposed project will have no significant negative effect on any qualifying interests of the Lough Swilly SAC site code 002287 and the Lough Swilly SPA site code 004075 provided that all mitigation measures suggested along with best practice is implemented.”

Appropriate Assessment of Implications of Proposed Development

7.11.38. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

European Sites

7.11.39. The relevant European sites for Stage 2 Appropriate Assessment are Lough Swilly Special Area of Conservation (Site Code 002287), Lough Swilly Special Protection Area (Site Code 004075) and Lough Foyle Special Protection Area (Site Code 004087).

7.11.40. This Stage 2 assessment will consider whether or not the project would adversely affect the integrity of this European site, either individually or in combination with other plans and projects in view of the site’s conservation objectives.

7.11.41. The main aspects of the development that could adversely affect the conservation objectives of European sites relate to: -

- The impact of potential surface water discharges from the site on water quality within a European site, during the construction and operational phases.
- Impacts on qualifying interests within a European site arising from asphalt plant emissions to air, during the operational phase.

Evaluation of Effects

- 7.11.42. Surface water discharges during the construction and operational phases have the potential to cause the release of suspended solids and pollutants into the Drumhaggart Stream and onward into Lough Swilly SAC and SPA.
- 7.11.43. Surface water discharges containing suspended solids or pollutants have the potential to impact on water quality within the European sites, also potentially affecting the distribution and availability of pre for species of conservation interest.
- 7.11.44. Regarding the construction phase, the NIS addendum states that it is proposed to remove all deposited waste from the site during site clearance and references proposals within the Site Investigation Report that was provided at the AI stage. The nature of the material dumped on the site is stated to be construction and demolition waste, inert material, and this assertion is based on observations from the trial holes excavated as part of the Site Investigation Report.
- 7.11.45. Mitigation is proposed, particularly in the form of a silt fence along the east and south site boundaries and a settlement pond in the north-east corner of the site, which will capture run-off from within the site.
- 7.11.46. Available EPA River Water Quality mapping indicates that the Burnfoot River currently has a 'High' water quality status in the area immediately south of the subject site. As part of the application, the applicant has undertaken water sampling at 5 no. locations along both the Drumhaggart Stream and the Burnfoot River, both adjacent to the site and downstream, the results of which indicate there is little change in the chemical composition of the river over the area sampled. This suggests that run-off from the site currently does not contain suspended solids or pollutants in significant quantities.
- 7.11.47. The removal of dumped material from the site as part of site clearance has the potential to cause the release of suspended solids or pollutants to the Drumhaggart Stream. The applicant estimates that there are 1,947 tonnes of

dumped material to be removed, which is a substantial amount of material. The Board will note that this estimate relates to the application site only. Available Google Earth aerial photograph records indicate that a greater area of the applicant's landholding contains dumped material and that this encroaches to within c.10-20m of the Drumhaggart Stream.

7.11.48. In addition, the assertion that all material dumped on the site is inert is based on observations of the trial holes excavated as part of the Site Investigation Report, which represents a small proportion of the overall area affected by the dumping. I note in this regard that observers and appellants have highlighted the history of illegal dumping on this site and the adjacent former quarry site and one observer claims that asbestos was dumped on the site.

7.11.49. In my view it cannot be stated with any confidence that the dumped material is inert in its entirety without excavating and investigating a greater representative area of the landholding, which encompasses all of the affected areas. If there is hazardous material on the site, site clearance works has the potential to disturb same and there is potential for pollutants or leachate to be discharged to the Stream. In this context and having particular regard to the close proximity of dumped material to the Drumhaggart Stream, I consider it appropriate that a precautionary approach should be taken to the removal of dumped material from the site.

7.11.50. In conclusion, I consider there is inadequate information in relation to the nature and extent of dumped material to be removed from the site and I am thus unable to ascertain whether the development would adversely affect water quality within the European sites and/or the integrity of the sites, in view of their Conservation Objectives.

7.11.51. Regarding the operational phase, as I have previously stated, the surface water drainage system involves treatment of all run-off from within the site within an attenuation tank, with discharges passing through an interceptor prior to discharge. I have identified a risk of overflow of the attenuation tank in the event a major leakage from the bitumen storage silos or oil storage tank, which have a greater cumulative storage capacity than the attenuation tank.

7.11.52. The NIS proposes mitigation to deal small-scale spillages and the storage of plant and machinery but does not expressly propose bunding around the large-scale

storage tanks. These tanks should be bunded, ensuring that the bunded area can accommodate 110% of the cumulative storage volume, in order to ensure a large-scale spillage is contained. This can be controlled by condition, should the Board decide to grant permission. I note that the Planning Authority's Senior Executive Scientist confirmed that a discharge licence would be required for the development and that conditions imposed as part of the licence would require these pollutant storage areas to be bunded, so the requirement to incorporate bunding would have arisen in any case.

- 7.11.53. Regarding emissions to air from the development, the NIS Addendum identifies that SO₂ and NO₂ are typically emitted from asphalt plants and that acidification arising from such emissions affects species diversity and species richness in freshwater communities. The Addendum also states that birds may be particularly vulnerable to health-damaging air pollutants, with the intensity of impact directly related to the level of pollution.
- 7.11.54. The Natura 2000 form for Lough Swilly SAC states that the lagoon habitat is one of the largest and best examples of a shallow, low salinity lagoon in the country and that it supports what is probably the largest population in the country of *Chara canescens*, a Red Data Book species.
- 7.11.55. The Natura 2000 form for Lough Foyle SPA identifies that is at high risk of changes in abiotic and biotic conditions, including pH changes and decline or extinction of species.
- 7.11.56. The NIS Addendum contains an air dispersion model which is stated to model predicted concentrations at Lough Foyle SPA but which appears to relate to Lough Swilly SPA (input details provided to the model relate to Lough Swilly SPA). The model predicts that insignificant concentrations will arise at the SPA.
- 7.11.57. Potential impacts of air emissions on Lough Foyle SPA and Lough Swilly SAC have not been considered by the NIS. The grid reference details provided within the model identify a location that is at the eastern edge of the SPA and is c.2.5km from the eastern edge of the SAC, so it cannot be used to assess potential impacts on Lough Swilly.
- 7.11.58. In view of the above, I consider there is inadequate information on which to fully assess the potential for significant effects and I am thus unable to ascertain

whether emissions to air from the development would adversely affect qualifying interests within Lough Swilly.

Appropriate Assessment Conclusion

7.11.59. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.

7.11.60. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Lough Swilly SAC (Site Code 002287), Lough Swilly SPA (Site Code 004075) and Lough Foyle SPA (Site Code 004087). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites, in light of their conservation objectives.

7.11.61. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site Nos 002287, 04075 and/or 004087, in view of the sites' Conservation Objectives. This conclusion is based on:

- A lack of information on the extent and composition of material dumped on the applicant's lands, where the removal of dumped material as part of the proposed development has the potential to disturb other dumped materials and may give rise to the discharge of pollutants or leachate to the Stream.
- A lack of information in relation to the potential impact of emissions to air on Lough Swilly SAC and Lough Foyle SPA. Such potential impacts on these sites were not examined by the NIS or NIS Addendum submitted with the application.

Appropriate assessment identified that proposed site clearance has the potential for significant effects on these European sites, arising from discharge of suspended solids and/or pollutants to the Drumhaggart Stream and, in the absence of additional detail regarding the nature and extent of material to be cleared from the site, the likelihood and/or extent of such effects cannot be determined.

Potential impacts of emissions to air on Lough Swilly SAC and Lough Foyle SPA were not examined by the NIS or NIS addendum. This is considered a gap in the

overall assessment and therefore in the absence of such information, adverse effects on integrity of the European sites cannot be excluded.

8.0 Recommendation

- 8.1. I recommend that planning permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. The proposed development has not been demonstrated to require location at this countryside site, contrary to policies ED-P-8 and ED-P-11 of the Donegal County Development Plan 2018-2024 and, further, is predicted by the Noise Impact Assessment submitted with the application to contribute to and extend a pattern of excessive noise levels at nearby residential property, where existing noise levels at surveyed noise sensitive locations are shown to exceed noise limits recommended by Environmental Protection Agency guidance document *Environmental Management in the Extractive Industry (Non-Scheduled Minerals)* (2006) including the maximum noise limit which the guidance states should not be exceeded. The development has been shown to be incompatible with surrounding land uses and would be seriously injurious to the amenity of adjoining residential property, contrary to the provisions of development plan policies ED-P-8, ED-P-11 and ED-P-14 and would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development includes removal of dumped material, identified as construction and demolition waste, during the site clearance/construction phase and emissions to air during the operational phase. Insufficient information has been provided as part of the application in relation to the extent and composition of dumped material dumped on the applicant's landholding and potential impacts on Lough Swilly Special Area of Conservation (Site Code 002287) and Lough Swilly Special Protection Area (Site Code 004075) arising from its removal. Further, the potential impact of emissions to air on Lough Swilly SAC and Lough Foyle Special Protection Area (Site Code 004087) are not identified or assessed within the submitted Natura Impact Statement/Addendum. The Board is therefore

not satisfied, on the basis of the information provided with the application, including the Natura Impact Statement/Addendum, that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site(s) including Lough Swilly Special Area of Conservation (Site Code 002287), Lough Swilly Special Protection Area (Site Code 004075) and Lough Foyle Special Protection Area (Site Code 004087). In such circumstances the Board is precluded from granting approval/permission.

Barry O'Donnell
Planning Inspector

24th October 2022.