



An  
Bord  
Pleanála

## Inspector's Report ABP-318513-23

<b>Development</b>	Alteration of the operating/opening hours of an asphalt plant, up to a maximum of 30 days annually.
<b>Location</b>	Keeloges, Churchill, Letterkenny, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2351392
<b>Applicant(s)</b>	Moyle Plant Hire.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Churchill & Derrora Residents Group.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> of October 2024.
<b>Inspector</b>	Stephanie Farrington

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## **1.0 Site Location and Description**

- 1.1. The appeal site, which has a stated area of 0.7ha, comprises an existing operating asphalt plant within Churchill Quarry located c. 700m south of Churchill. Access to the quarry is provided via the R251. The asphalt batching plant, which has a stated gfa of 550 sq.m. forms part of the overall quarry site.
- 1.2. The entire operating quarry extends to c. 25ha and comprises 4 distinct areas as follows:
- Area 1: North-eastern portion of the quarry at the main entrance which includes the entrance from the R251, site offices, car parking area, weighbridge, wheel wash areas, circulation areas, fuel and oil storage facilities.
  - Area 2: South-eastern portion of the quarry, abutting Leafrin hill, accessed by 2 separate quarry access roads and where extensive excavation and quarry operations have taken place.
  - Area 3: North-western area of the quarry where the concrete block batching plant, concrete slab and bitmac facilities and block drying shed are located and where batching/drying operations take place.
  - Area 4: The central area and southern portion of the quarry where crushing/screening equipment is located and where crushing/screening equipment is located and where crushing, screening and washing activities are ongoing.
- 1.3. Existing residential properties within the vicinity of the quarry include 2 no. dwellings to the northeast and a further 3 no. dwellings to the south of the quarry.

## **2.0 Proposed Development**

- 2.1. The proposed development seeks permission for the alteration of the operating/opening hours of an asphalt plant, up to a maximum of 30 days annually. The plant currently operates within the hours of operation permitted under PA Ref: 21/52254 as detailed below:

- (a) Initialisation / heating of the bitmac batching plant is herein permitted to commence at 05.30 hours Monday to Saturday. The bitmac batching plant shall not commence any operations prior to 05.30 hours or on Sundays / Public Holidays
- (b) Removal / loading of heated material from the bitmac batching plant into awaiting lorries (parked the night before in the quarry) is herein permitted to commence at 06.30 hours Monday to Saturday.
- (c) No lorries laden or un-laden shall enter / access the quarry prior to 06.30 hours Monday to Saturday.
- (d) All bitmac batching plant operations / associated activities including filling associated loading bins, shall cease at 20.00 Monday to Friday and shall cease at 16.00 on Saturday.
- (e) The hours of operation to facilitate the sole use of the existing batching plant, shall be not construed as permitting any other access to the quarry / loading of processed materials for delivery, extraction, processing, crushing, screening or grading of material outside the normal permitted hours of quarry operations which remain restricted to between 07:00 hours and 19:00, Monday to Friday and between 08:00 and 16:00 hours on Saturday. The facility shall not operate outside these hours or on Sundays or Public Holidays.

2.2. The application seeks permission for the plant to operate on an extended 24-hour basis for a maximum of 30 days/nights over the course of a year. The application documentation that any extended operation of asphalt plant will be agreed in writing initially with the planning authority.

*Rationale for Extended Operating Hours of Asphalt Plant*

2.3. A rationale for the extended operating hours is set out within the application documentation on the basis of the following:

- Road works in and around Letterkenny require the batching plant to operate at a time where traffic volumes are low (evening and night-time).
- The operator has already carried out works outside of agreed hours with a 7-day notification system in place to notify the Local Authority.

- The applicant anticipates that the extended operation of the plant for 30 days is unlikely, and this would be the maximum.
- Last year, the notified and agreed times and dates amounted to 8 occurrences only (July 2022 – July 2023).

#### Application Documentation

2.4. The application is accompanied by the following documentation:

- Application Cover Letter
- Completed Application Form and Public Notices
- Site Location Plan and Site Layout Plan
- Correspondence from Roads Department, Donegal County Council
- Environmental Noise Impact Assessment

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Donegal County Council (DCC) issued a notification of decision to grant permission for the development in accordance with the following reasons and considerations:

*“Having regard to the location of the subject site within a Rural Area, outside of and removed from any sensitive designations, to the nature and scale of the development and the policies of the current development plan, it is considered that subject to compliance with the conditions below, the proposed development would not injure the amenities of the area, would not be prejudicial to public health and would not endanger public safety by reason of a traffic hazard. Accordingly, it is considered that the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area”.*

The decision of the Council was subject to 3 no. conditions which are briefly summarised below:

- Condition no. 1: Limits the duration of the permission to 25 years from the date of notification of final grant of parent permission under PA Ref: 18/50967.

- Condition no. 2: Relates to restrictions on the hours of operation of the plant and associated activities.
- Condition no. 3: (a) relates to notification and obtaining written agreement from DCC for any activity within the asphalt plant between 8pm and 5.30 am at least 7 days in advance of the planned works (b) relates to notification of residents within 750m of the site in writing at of any planned works at the plant between 8pm and 5.30am at least 7 days in advance of such works.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planner's report recommends a grant of permission in accordance with the Planning Authority's (PA) decision. The following provides a summary of the key points raised:

- The report refers to the extensive planning history pertaining to the site. The opening hours of the asphalt facility were conditioned under PA Ref: 19/50992 wherein permission was granted for a 3-year temporary period (2019 to September 2022) for initialisation/heating of the bitmac batching plant to commence at 5.30am Monday to Saturday. Permanent permission was granted for permanent permission for these hours under PA Ref: 21/52254.
- The planner's report outlines that the subject application seeks to operate the plant outside of the previously permitted hours for a maximum of 30 days per year. The extended operating hours seek to facilitate exceptional night-time works to the asphalt plant based on the need for emergency works and unplanned infrastructural works mainly in and around the Letterkenny area where fresh asphalt is required.
- The principle of the proposal is considered acceptable in the context of the permitted development on site. The report refers to monitoring undertaken at the facility which has given the Planning Authority an opportunity to assess the implications of the development on residential amenity, traffic and the environment.

- The planner's report outlines that in the context of the scale of the wider operation of the development and in light of the planning history, the operation of one aspect of the facility (i.e asphalt facility only) for up to 30 isolated incidences per year is not envisaged to cause significant adverse impacts. The planner's report outlines that the extended operation of the facility is considered essential for the infrastructural requirements of Letterkenny, the County and the region.
- The report refers to the concerns raised within the observation on the planning application. The report outlines that any breach of planning condition relating to the parent permission requires a separate investigation by the Planning Enforcement Team. Noise levels relative to the quarry/batching plant are monitored and controlled via. relevant conditions as attached to the parent permission and shall continue to be applied.
- In terms of noise impact associated with the additional operating hours the report outlines that the conditions on the parent permission seek to safeguard against noise impact by ensuring that no noise exceeds 45dB at night. This falls within EPA night-time noise limit values. This shall continue to be applied as per the conditions on the parent permission.
- The report cross refers to the Noise Report submitted in support of the application which concludes that the proposal will not give rise to any significant noise impacts at nearest noise sensitive receptors.
- The PA is satisfied that the proposal will not give rise to any significant adverse impacts on residential amenity by way of noise or nuisance considering the operation for which permission is sought will be no more than 30 separate occurrences in a 365- day period.
- Under the heading of Environmental Impact Assessment, the report outlines that having regard to the limited scale of the proposed works, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for a revised or updated environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. The report outlines that regard has been given to the incremental impact of previous applications.

- In terms of Appropriate Assessment, the planner's report outlines that an AA Screening was not required under the previous applications on the site for extended operating hours including PA Ref: 21/52254. The PA was of the view that AA screening was not required in this instance, given that the bitmac/asphalt plant lies within the existing approved operational quarry and the processes involved are aligned to the workings of said permitted quarry. The report outlines that AA screening is not required in this instance as it can be concluded that the proposed development would not be likely to have any significant effect, individually or in combination with any other plan or project.

#### 3.2.2. Other Technical Reports

##### Waste Management (02/10/23)

No objection.

#### 3.3. **Prescribed Bodies**

##### Environmental Health Officer (10<sup>th</sup> October 2023)

- No comment. The file should be referred to the DCC Enforcement Section in respect of increased potential for nocturnal noise nuisance in the locality.

#### 3.4. **Third Party Observations**

An observation on the application was submitted by Sean Geary on behalf of Churchill and Derrora Residents Group. The issues raised reflect those raised within the grounds of appeal and include:

- Lack of consultation and communication with residents.
- Non-compliance with opening hours set out within PA Ref: 21/52254.
- Breach of air pollution licence and emission monitoring.
- The observation raises concerns in relation to noise pollution.
- The quarry is ancillary to the asphalt plant.



- The observation cross refers to an ABP decision to refuse permission for an asphalt plant in Burnfoot (ABP Ref: 310308-21). It is stated that similar considerations apply to the subject application.
- The observation outlines that the Environmental Report submitted in support of the application is out-dated.
- The observation refers to the correspondence from the Roads Department in DCC submitted in support of the application and outlines that the Planning Authority has a conflict in interest.

## 4.0 Planning History

- 4.1. The appeal site and larger quarry landholding has a detailed planning history. Details of relevant decisions are summarised below:

PA Ref: 09/40322

- 4.2. Permission granted in December 2010 for construction of bitmac batching plant with associated site work within existing quarry. Condition no. 1 of the permission outlined that permission is for a limited period and shall expire on the 31<sup>st</sup> of March 2019 (unless an additional limited permission has been granted).
- 4.3. Condition 12 of the permission is of relevance as follows:
- a. Noise levels at the site boundaries shall not exceed 55dB LAeq (1 hour) (daytime) and 40 dB LAeq (15 minutes) (nighttime). There should be no audible tonal component or impulsive component from the proposed activity at any noise sensitive location.
  - b. Noise monitoring shall be carried out and the results of same shall be submitted in writing to the Planning Authority and the Environment Section of Donegal County Council.
- 4.4. Condition no. 13 of the permission restricted the opening hours of the plant as follows:
- The operation of the bitmac batching plant shall be confined to the hours of 08.00 hours to 20.00 hours, Monday to Saturday.

PA Ref: 18/50927

- 4.5. Permission refused by DCC in August 2018 for construction of bitmac batching plant with all associated site works within existing quarry. Permission was refused in accordance with the following reasons and considerations:

1. *The parent planning permission in this case, Plan.Reg.No. 09/40322, authorised, inter alia, the construction of bitmac batching plant with associated site works within the existing quarry. The terms of this permission authorised the development for a limited period consistent with the duration of the permitted quarry after which time the development was to cease. The terms of this permission meant that the applicant (i) had 5 years within which to take the benefit of the permission, but notwithstanding this, (ii) the permission was a temporary one only and will expire on the 31/03/2019 consistent with the duration of the parent quarry operation. Section 42 of the Planning & Development Act, 2000 (as amended) exists to allow for the consideration of the extension of the appropriate period, to allow for the completion of a development, which had commenced pursuant to a permission. It does not exist as a mechanism by which to extend the duration of a permission which is a temporary permission or a temporary use which is to be discontinued, beyond the date of its expiration. In the circumstances of this case the parent permission is due to expire on the 31/03/2019, thereafter all operations are to cease pursuant to Condition No.1 of that permission and therefore it is not appropriate to seek to extend this temporary permission. Accordingly, it is considered that to 'extend the appropriate period' would be contrary to Section 42 of the Planning and Development Act, 2000 (as amended) and would thereby be contrary to the proper planning and sustainable development of the area.*

PA Ref: 19/50992:

- 4.6. Planning permission granted in September 2019 for the Existing Bitmac Plant (previously granted under Planning Ref. 09/40322) and permission for the continuation of use of the existing bitmac batching plant with all associated site development works, which is ancillary to the existing quarry permitted under PA ref: 18/50967.

4.7. The application documentation refers to the retention and continuation of use of the existing bitmac plant and extended processing hours outside of the permitted quarry hours of operation.

4.8. Condition no. 2 of this permission is of relevance, as follows:

- (a) The extended hours of operation herein permitted in accordance with Conditions 2 (b – e) below shall be permitted for a temporary period of 3 years, from the date of the final grant of planning permission after which time the extended hours of operation for the bitmac batching plant shall revert to the hours of operation for the overall quarry being restricted to between 08:00 and 16:00 hours on Saturday.
- (b) Initialisation / heating of the bitmac batching plant is herein permitted to commence at 05.30 hours Monday to Saturday. The bitmac batching plant shall not commence any operations prior to 05.30 hours or on Sundays / Public Holidays
- (c) Removal / loading of heated material from the bitmac batching plant into awaiting lorries (parked the night before in the quarry) is herein permitted to commence at 06.30 hours Monday to Saturday.
- (d) No lorries laden or un-laden shall enter / access the quarry prior to 06.30 hours Monday to Saturday.
- (e) All bitmac batching plant operations / associated activities including filling associated loading bins, shall cease at 20.00 Monday to Friday and shall cease at 16.00 on Saturday.
- (f) The hours of operation to facilitate the sole use of the existing batching plant, shall be not construed as permitting any other access to the quarry / loading of processed materials for delivery, extraction, processing, crushing, screening or grading of material outside the normal permitted hours of quarry operations which remain restricted to between 07:00 hours and 19:00, Monday to Friday and between 08:00 and 16:00 hours on Saturday. The facility shall not operate outside these hours or on Sundays or Public Holidays.

4.9. Condition no. 3 of the permission relation to noise monitoring and outlined the following:

- (a) Within a period of three (3) months of the date of the final grant of planning permission the developer shall agree with the Planning Authority at least four noise sensitive locations in the vicinity of the overall quarry site boundaries for the measurement of noise and shall submit to the Planning Authority baseline/ambient data.
- (b) During the extended operational hours the bitmac batching plant, 05.30 - 7.00 hours and 19.00 – 20.00 Monday to Friday and 05.30 – 08.00 Saturday the noise level from within the boundaries of the site measured at the agreed noise sensitive locations in the vicinity, shall not exceed an Leq, 15 min value of 45dB (A).

PA Ref: 20/51848:

4.10. Planning permission granted in May 2021 for modification and upgrading of existing asphalt concrete batching plant.

PA Ref: 21/52254:

4.11. Planning permission granted in March 2022 for amendments to the opening hours of the existing asphalt plant facility. The application related to permanent permission for the extended processing hours outside of the permitted quarry hours of operation which was previously subject to a grant of permission under PA Ref: 19/50992.

PA Ref: 24/60973:

4.12. A planning application was submitted by Churchill Stone Ltd. to Donegal County Council in June 2024 for extension of extraction/quarry area by 8.35 ha. The application is accompanied by an Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS). DCC issued a request for further information in respect of the application in August 2024.

*Overall Quarry Site*

PA Ref: 18/50967: (Overall Quarry)

4.13. Permission granted in April 2019 within the quarry for *“Quarrying of 19.9 Hectares which will be subject to extraction and processing of rock by drilling, blasting,*

*crushing and screening; construction of a settlement/clarifier tank and associated ancillary facilities; landscaping of the Quarry during the operational phase and restoration of the quarry on completion of extraction; all associated ancillary facilities / works. Permission is required for a 25-year period".*

- 4.14. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) were submitted in support of this application.
- 4.15. The asphalt plant was located outside of the application red line boundary on the drawings submitted in support of this application.
- 4.16. The following conditions attached to the permission are of relevance:
- Condition no. 1 of the permission outlines that permission is granted for a limited period of 25 years from the date of the final grant of planning permission.
  - Condition no. 5 relates to the hours of operation of the facility and outlines that the quarry and all associated activities shall be restricted to between 7:00 and 19:00 Monday to Friday and between 08:00 and 16:00 hours on Saturday. The facility shall not operate outside of these hours or on Sundays and Public Holidays.
  - Condition no. 9 relates to noise monitoring and limits for the facility. Condition 9 (a) outlines that prior to the commencement of development the developer shall agree 4 no. noise sensitive locations for the measurement of noise baseline/ambient data. Condition 9 (b) outlines that during the operational phase of the development, that noise levels from within the boundary of the site as measured at the agreed noise sensitive locations shall not exceed the following:
    - An Leq 1 h value of 55 dB(a) during 08.00 to 18:00
    - An Leq 15 min value of 45 d B(a) at any other time. Nighttime emissions shall have no tonal component.

PA Ref: 20/50068:

- 4.17. Planning permission granted in March 2021 for construction of a soil berm to the northeast and southeast of the existing quarry and all associated site works.

PA Ref: 21/51655:

- 4.18. Planning permission granted in October 2021 for alteration to blasting routine at the quarry facility previously granted under PA Ref: 18/50967.

## **5.0 Policy Context**

### **5.1. Development Plan**

#### County Donegal Development Plan 2024-2023

- 5.1.1. At the time of the assessment of the application, the County Donegal Development Plan 2018-2024 (as amended) was the operative development plan for the area. The application was assessed by Donegal County Council in accordance with the policies and objectives of this plan.
- 5.1.2. The County Donegal Development Plan 2024-2030 was adopted on the 16<sup>th</sup> of May 2024. On the 26<sup>th</sup> of June 2024 the Minister of Housing, Local Government and Heritage issued a Draft Ministerial Direction under Section 31 of the Planning and Development Act 2000 (As Amended) concerning certain objectives, policies, and land use zonings within the Development Plan (including within the Buncrana and Ballybofey/Stranorlar Area Plans). On the 26<sup>th</sup> of June 2024 the County Development Plan 2024-2030 came into effect except those parts of the plan affected by the Draft Ministerial Direction. The Ministerial Direction does not relate to the appeal site or impact on the provisions of the plan as they relate to the proposed development.
- 5.1.3. I have assessed the proposal in accordance with the provisions of the operative development plan namely the County Donegal County Development Plan 2024-2030.

#### *Settlement Strategy*

- 5.1.4. The appeal site is located in an unzoned rural area outside of any designated settlement within the County settlement hierarchy. Map 6.3.1 of the Plan relates to Rural Area Types. The appeal site is located in within a “Structurally Weak Rural Area”.

#### *Landscape Character*

- 5.1.5. Map 11.1 relates identifies Scenic Amenity Areas within the County. 3 Separate Landscape Classifications are identified for the County namely: Areas of Especially High Scenic Amenity (EHSA), Areas of High Scenic Amenity (HSA) and Areas of Moderate Scenic Amenity (MSA). The appeal site is located within an “Area of High Scenic Amenity”. Section 11.2.2 of the Plan provides the following description of these areas:

*“Areas of High Scenic Amenity (HSA): These are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and form a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan”.*

- 5.1.6. Policy L-P-2 seeks: To protect areas identified as ‘High Scenic Amenity’ and ‘Moderate Scenic Amenity’ on Map 11.1 ‘Scenic Amenity’. Within these areas, only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may be considered, subject to compliance with other relevant policies of the Plan.

- 5.1.7. There are no Scenic Views/ Prospects designated within the vicinity of the site.

#### *Chapter 9 – Natural Resource Development*

- 5.1.8. Section 9.2 of the Development Plan relates to the Extractive Industry and Geology. The Plan outlines that aggregates are a significant and necessary natural resource for the continued economic development of Donegal including job creation and are essential materials for construction industry. The Plan relates to the need to make provision for the sustainable and appropriate extraction of aggregates including clays, gravels, sands, stone, and aggregates subject to compliance with pertaining legislation and guidelines. Specifically, factors that must be considered in order to minimise the impact of any extractions include, but are not limited to noise, vibration, dust, water quality, the North-west River Basin Management Plan, natural and cultural heritage, landscape, and waste materials.
- 5.1.9. Objective EX-O-1 and Policies EX-P-1 & 2, as detailed below, guide development relating to new and existing and extractive industries

- Objective EX-O-1: *To facilitate extractive industries subject to the protection of residential and natural amenities, the prevention of pollution, and the safeguarding of aquifers and groundwater.*
- Policy EX-P-1: *It is a policy of the Council that the principle of proposed new extractive industries, shall generally be accepted where such deposits exist save:*
  - a. for the following areas/designations where such development shall not be supported:*
    - i. Areas designated as Especially High Scenic Amenity;*
    - ii. Designated Natura 2000 sites, Natural Heritage Areas, Nature Reserves or other areas of importance for the conservation of flora and fauna; or*
    - iii. Areas of significant archaeological potential.*
  - b. In the following scenarios, unless it can be clearly demonstrated that the development would not have significant adverse impacts on the amenities or the environment; i. identified Views and Prospects, Greenways, Blueways and tourist routes.*
- Policy EX-P-2: *It is a policy of the Council to only support development proposals for extractive industry developments where such proposals identify relevant robust and effective mitigation measures in respect of the anticipated environmental impacts of such development in accordance with the DEHLG Quarries and Ancillary Activities Guidelines for Planning Authorities 2004 and the EPA Environmental Management in the Extractive Industry (non-scheduled minerals) Guidelines, 2006. Such impacts to be considered shall include: noise and vibration; dust deposition/air quality; water supplies and groundwater; natural heritage; landscape; traffic and roads impact; cultural heritage; waste management; environmental management systems; and site restoration plan.*

## 5.2. National Planning Framework

‘National Policy Objective 23’ seeks to: *“Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural*



*and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism”.*

**5.3. Quarries and Ancillary Activities Guidelines for Planning Authorities (2004), DOEHLG**

- 5.3.1. These guidelines note the economic importance of quarries and the demand for aggregates arising from the needs of the construction industry with particular reference to house building and infrastructure provision. It is further noted that aggregates can only be worked where they occur and that many pits and quarries tend to be located within 25km of urban areas where most construction takes place.
- 5.3.2. Section 1.5 of the Guidelines relates to the potential impact of the operation of quarries on the lives of adjoining communities and potential environmental concerns. The Guidelines promote community consultation and adoption of a formal “good neighbour” policy by quarry owners and operators.
- 5.3.3. Section 3.2 of the guidelines relates to noise and vibration and outlines that extractive industries are associated with many noise-generating activities. The guidelines outline that residential properties, schools, hospitals, nursing homes, churches, etc. are also noise-sensitive receptors. The Guidelines outline that *“the nearer a site to noise-sensitive properties or areas, the more stringent should be the controls on noise emissions”*.
- 5.3.4. Section 4.7 of the Guidelines relates to possible planning conditions. The following guidance is of relevance:

*(b) Times of operation: The duration of quarrying operations (other than blasting, which needs separate controls – see (d) below may require to be controlled in order to protect the amenities of residential properties in the area. It is recommended that normal operations should be confined to the hours between 07.00 and 18.00, Monday to Friday inclusive (excluding Bank Holidays) or as may be agreed with the planning authority, and between 07.00 and 14.00 on Saturdays, with no quarrying, processing or associated activities being permitted on Sundays or public holidays. Where market conditions or the nature of particular ancillary processes (such as concrete batch*

*manufacture) would require greater flexibility of working hours, it is imperative that such flexibility be discussed with the planning authority at the pre-application stage, and addressed in the planning application.*

*(c) Control of noise: Noise-sensitive uses in the vicinity of a quarry, such as dwellings, schools, hospitals, places of worship or areas of high amenity, require that the amount of noise be minimised. The sensitivity to noise is usually greater at night-time (20.00 to 08.00) than during the day, by about 10 dB(A). Many quarries are situated in areas of low background noise and it is appropriate to consider this when setting noise limits. In general, it can be expected that complaints will result where the noise from quarrying and associated activities are between 5 to 10 dB above the background noise levels. In areas of higher background noise levels, the EPA recommends that ideally, if the total noise level from all sources is taken into account, the noise level at sensitive locations should not exceed a Laeq (1 hour) of 55 dB(A) by daytime and a Laeq (15 minutes) of 45 dB(A) by nighttime. Audible tonal or impulsive components in noise emissions (e.g. the reversing siren on a lorry, required for safety reasons) can be particularly intrusive, and such components should be minimised at any noise-sensitive location.*

*The developer may be required to carry out noise surveys to measure noise levels at the site boundary near sensitive locations, as agreed in advance with the planning authority. Surveys should be carried out in accordance with the EPA's "Environmental Noise Survey – Guidance Document" (2003). Noise monitoring should be carried out on a quarterly basis (or as otherwise agreed), and commenced prior to the commencement of development. The results should be reported to the planning authority within 3 weeks (or as agreed). 95% of all noise measured shall comply with the specified limit values. No individual noise measurement should exceed the limit values by more than 2 dB(A).*

#### **5.4. Environmental Management in the Extractive Industry, Environmental Protection Agency, 2006**

- 5.4.1. The guidelines provide a summary of environmental management practices for quarries and ancillary facilities. They provide a summary of environmental

management practices for quarries and ancillary facilities (including manufacturing of concrete and bituminous mixes/asphalt products, and processing of dimension stone).

- 5.4.2. Section 3.4 of the Guidelines relate to Air Quality and outlines that the Air Quality Standards Regulations (2002 SI No. 271 of 2002) sets limit values for sulphur dioxide, nitrogen oxide, particulate matter and lead in ambient air. These regulations apply to ambient air quality in the local vicinity of land-use/development types including quarries and concrete/asphalt manufacturing facilities.
- 5.4.3. The Guidelines outline that new fixed or mobile asphalt plants constructed on or after 1 November 1988, require a licence under the Air Pollution Act, 1987, (Licensing of Industrial Plant) Regulations, 1988. This licence is issued by the relevant local authority and enables specific conditions in relation to air emissions to be applied to asphalt plants.
- 5.4.4. Section 3.5 of the Guidelines relates to noise and cross refers to the EPA's Guidance Note for Noise in Relation to Scheduled Activities (EPA, 1996). In relation to quarry developments and ancillary activities, it is recommended that noise from the activities on site shall not exceed the following noise ELVs at the nearest noise-sensitive receptor: Daytime: 08:00–20:00 h LAeq (1 h) = 55 dBA Night-time: 20:00–08:00 h LAeq (1 h) = 45 dBA. (Note: 95% of all noise levels shall comply with the specified limit value(s). No noise level shall exceed the limit value by more than 2 dBA.)
- 5.4.5. The Guidelines outline that on-site activities should be permitted during night-time hours where they comply with the noise ELVs (e.g. heating up of asphalt plants, loading of materials). The Guidelines furthermore outline that audible tones or impulsive noise should be avoided at night.

## **5.5. Natural Heritage Designations**

- 5.5.1. The site is not located within or adjacent to any designated European site. The nearest designated European sites to the appeal site, including SAC's and Special Protection Areas (SPA's) include the following:
- Leannan River SAC (Site Code 002176) – 1.2km
  - Derryveagh and Glendowan Mountains SPA (004039) – 2.1km

- Lough Akibbon and Gartan Lough pNHA (000158) – 2.1 km
- Cloghernagore Bog and Glenveagh National Park SAC (002047) – 3.3km
- Leannan Valley Woods pNHA (001155) – 1.4km
- River Swilly Valley Woods pNHA (002011) – 4.7km
- Meentygrannagh Bog pNHA (000173) – 7.8km
- Meentygrannagh Bog SAC (000173) – 7.8km
- River Finn SAC (002301) – 10.8km

## 5.6. EIA Screening

- 5.6.1. The proposal relates to amendments to the operating hours of an existing operational asphalt plant. The proposed development does not come within the definition of a ‘project’ for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of report.
- 5.6.2. 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). Parts 1 and 2 of the schedules, which set out the classes and thresholds of development which trigger the requirement for mandatory EIA, do not contain any reference to asphalt plants.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A 3<sup>rd</sup> party appeal was submitted in respect of Donegal County Council’s notification of decision to grant permission for the development. The following provides a summary of the grounds of appeal.

#### Natura Impact Statement

- The issue of Air Emissions was not considered within the NIS submitted under PA Ref: 18/50967. The appeal refers to correspondence from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media dated 05/03/2021 in

respect of PA Ref: 20/51848 which outlines that the submitted NIS was for a different project and a completed assessment of the development is required. It is not clear if this was addressed.

- The appeal refers to the decision of An Bord Pleanála under ABP 310308-21 at Burnfoot wherein permission was refused for an asphalt plant on grounds including insufficient information within the submitted NIS. The appeal outlines that similar considerations are of relevance to the subject appeal in respect of air quality impacts on Cloghernagore Bog and Glenveagh National Park SAC or Derryveagh and Glendowan Mountains SPA.
- No report on air quality appears to have been submitted since the operation of the plant.

#### Lack of Consultation

- The appeal raises concern in relation to the lack of communication and consultation with Churchill Residents/ Community. The appeal outlines that the residents are not aware of any consultation/communication warning residents about the operation of the plant during the night. The appeal includes a copy of email correspondence from the Planning Department to the applicant which consents to the nighttime operation in exceptional circumstances and for a limited period and requesting the applicant to notify residential properties in the immediate vicinity in advance.
- The appeal refers to complaint notice UD 23154 received by DCC on the 11<sup>th</sup> of October 2023. The appeal cites extracts from the Guidelines for Planning Authorities in relation to quarries and ancillary activities and the guidance set out within Section 1.5 in relation to Community Consultation.

#### Night-Time operations

- The appeal outlines that there is no mention of nighttime opening hours under PA Ref: 21/52254. The permission outlines that bitmac activity shall cease at 20.00 Monday to Friday and 16.00 on Saturday. The appeal details specific dates on which the operating hours of the facility were breached.

#### Breach of Planning Conditions

- The appeal outlines that the development is not in accordance with Condition no. 10 of PA Ref: 18/50967 and includes correspondence from DCC in this regard (Figure 9 & reference to enforcement case UD 20125).
- The appeal outlines that this breach is contrary to the assertion of the operator that the plant is operating as per the conditions set out within the parent permission.

#### Breach of Air Pollution Licence/ Emissions Monitoring

- Figure 12 of the appeal includes details of breaches of air pollution licence.

#### Noise Pollution

- The appeal raises concern in relation to noise pollution associated with the development. The appeal refers to the reason for refusal issued under ABP Ref: 310308-21 which related to excessive noise at nearby residential properties. The appeal outlines that the Noise Impact Survey for Burnfoot was largely based on data gathered from the Moyle Plant at Churchill.
- The appeal raises concern in relation to noise impact associated with truck movement late at night and in the early morning (5 to 10 lorries passing residential properties). The applicant also outlines that there are 25 lorries based in the quarry at Churchill.
- The appeal outlines that noise levels are increasing since the facility opened in 2009. Nighttime noise levels were limited to 40 dB at nighttime under PA Ref: 09/40322. This limit was increased to 45 dB under PA Ref: 19/50992 on 01/07/2020. This is now proposed to be increased to 30 nights a year.

#### Attachments

- The appeal is accompanied of photos of the site from the surrounding area.

## **6.2. Applicant Response**

A response to the 3<sup>rd</sup> party appeal was submitted on behalf of the applicant. The following provides a summary of the key points raised:

- The appeal response sets out the rationale for the application namely to permit an existing asphalt plant to operate outside of the existing permitted operating hours consistent with the operation of other asphalt plants.

#### *Air Emissions from the Plant*

- The appeal response outlines that the asphalt plant has a valid air emissions licence which has been granted for by Donegal County Council. A copy of the licence is attached to the appeal response. The plant is also monitored, and a report is submitted to the planning authority on an annual basis. The appeal outlines that this process verifies that emissions are within the permitted parameters as per the granted licence.
- The appeal response outlines that the following air quality monitoring is ongoing at the plant:
  - Dust deposition monitoring
  - Passive monitoring for benzene, toluene, xylenes and naphthalene
  - Continuous particles from the exhaust stack
  - Periodic monitoring of airflow, temperature, SO<sup>2</sup> and NO<sup>2</sup>
  - Annual Stack emission testing report
  - Quarterly periodic monitoring report
- Monitoring locations and testing/monitoring reports are attached as an Appendix to the appeal response.

#### *Basis of the Application*

- The appeal response outlines that the plant currently operates in accordance with the conditions attached to PA Ref; 20/51848 and the hours of operation detailed under Condition no.3.
- The appeal response refers to an agreement with the planning authority in relation to the procedure for operating the plant outside of the hours specified in the condition on an intermittent basis.
- The appeal response outlines that the application seeks to allow the facility to be in a position to cater for the needs of the planning authority who on

occasion require works including road surfacing to be carried out at off peak times in Letterkenny and on the offshore islands.

- The appeal response outlines that if the tar laying team is working outside of normal operating hours, they ordinarily will not be working during the daytime hours so the actual output from the facility over the 24 hour period would not increase.
- The appeal response refers to the conditions attached to DCC's notification of decision to grant permission for the development and in particular Condition no. 3 which relates to notification of the planning authority and residents in the area in advance of operation of the plant outside the normal hours of operation. This condition would address the concerns raised within the appeal in respect of consultation.

#### *Photos submitted in conjunction with the appeal*

- The appeal response refers to the photographs submitted in conjunction with the appeal illustrating white smoke emanating from the plant. The appeal outlines that these photos were taken on a crisp morning and the white smoke is as a result of moisture being burned off during the heating process of the plant.

#### *Notification to Residents*

- The appeal response refers to the requirements of Condition no. 3 of DCC's notification of decision to grant permission for the development which relates to consultation with adjoining residents. The operator will adhere to notification of residents as per conditions attached to the planning authority's decision.
- The appeal response outlines that the applicant has a proven track record in terms of consulting with residents i.e. during blasting operations in the quarry.
- The appeal response outlines that out of hours operations were previously agreed with the planning authority.

#### *Need for Permission*

- The use of the asphalt plant is already permitted.



- The application seeks to extend the operating hours of the plant to cater for the needs of the Roads Section in the Local Authority and facilitate works at off peak times.
- The principle of operating outside of normal operating hours has been established under an application by Roadstone for their facility at Ballynacarrick, Ballintra under PA Ref: 19/50002.
- All businesses should be afforded the same opportunity to supply materials to the Local Authority outside of the normal operating hours.

### Conclusion

- The conclusion restates the rationale for the application to enable the operator to supply materials for jobs which require roads to be resurfaced outside of normal operating hours.
- The application seeks permission for extended operating hours for a maximum of 30 times per year. It is likely that that the extended operating hours will be utilised less than 30 times per annum.
- The plant is monitored, and results of the monitoring are collated and supplied to the Council on a quarterly and annual basis. The noise emanating from the plant is minimal.
- The appeal response refers to the condition attached to DCC's notification of decision to grant permission for the extended operating hours which relates to consultation with residents within 750m of the facility. This will be complied with in the instance that permission is granted for the development.

### Attachments

The following attachments are included with the appeal response:

- Correspondence with Donegal County Council in relation to extended operating hours.
- Stack Emission Monitoring Report 2023 – Moyle Plant.
- Periodic Stack Emission Monitoring – Moyle Plant, October 2023.
- Periodic Stack Emission Monitoring – Moyle Plant, December 2023.

- Stack Emission Monitoring Report – March 2023.

### **6.3. Planning Authority Response**

- 6.3.1. Donegal County Council provided a response to the grounds of appeal. This outlines that the Planning Authority consider that all matters raised in the appeal have been addressed in the planner's report dated 27/10/2023 and the Council wishes to rely on the contents of same in response to the appeal. The Planning Authority requests the Board to uphold the decision of DCC in this case.

## **7.0 Assessment**

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues to be considered are as follows:

- Principle of Development
- Impact on Residential Amenity
- Other issues

### **7.2. Principle of Development**

- 7.2.1. The application seeks extended operating hours for an existing asphalt plant within the operational quarry at Keeloges, Churchill, Letterkenny. The plant currently operates within the hours of operation permitted under PA Ref: 21/52254 as detailed below:
- (a) Initialisation / heating of the bitmac batching plant is herein permitted to commence at 05.30 hours Monday to Saturday. The bitmac batching plant shall not commence any operations prior to 05.30 hours or on Sundays / Public Holidays
  - (b) Removal / loading of heated material from the bitmac batching plant into awaiting lorries (parked the night before in the quarry) is herein permitted to commence at 06.30 hours Monday to Saturday.

- (c) No lorries laden or un-laden shall enter / access the quarry prior to 06.30 hours Monday to Saturday.
- (d) All bitmac batching plant operations / associated activities including filling associated loading bins, shall cease at 20.00 Monday to Friday and shall cease at 16.00 on Saturday.
- (e) The hours of operation to facilitate the sole use of the existing batching plant, shall be not construed as permitting any other access to the quarry / loading of processed materials for delivery, extraction, processing, crushing, screening or grading of material outside the normal permitted hours of quarry operations which remain restricted to between 07:00 hours and 19:00, Monday to Friday and between 08:00 and 16:00 hours on Saturday. The facility shall not operate outside these hours or on Sundays or Public Holidays.

7.2.2. The application seeks permission for the plant to operate on an extended 24-hour basis for a maximum of 30 days/nights over the course of a year. The application documentation and appeal response set out a justification for the extended operating hours on the basis of the following considerations:

- Road works in and around Letterkenny require the batching plant to operate at a time where traffic volumes are low (evening and night-time).
- The operator has already carried out works outside of agreed hours with a 7-day notification system in place to notify the Local Authority.
- The applicant anticipate that 30 days is unlikely, and this would be the maximum.
- Last year, the notified and agreed times and dates amounted to 8 occurrences only (July 2022 – July 2023).
- The application is accompanied by a noise impact assessment which concludes that noise associated with the asphalt plant is low and has never reached the maximum permitted noise levels.

7.2.3. The policies and objectives of the Donegal County Development Plan 2024-2030 including Objective EX-O-1 and Policy EX-P-2 support development proposals for the extractive industry subject to protection of residential and natural amenities, the

prevention of pollution and the safeguarding of aquifers and groundwater. Policy EX-P-2 outlines that any application should include robust and effective mitigation measures in accordance with the guidance set out within the DEHLG Quarries and Ancillary Activities Guidelines for Planning Authorities 2004 and the EPA Environmental Management in the Extractive Industry (non-scheduled minerals) Guidelines, 2006.

- 7.2.4. The EPA Environmental Management in the Extractive Industry (non-scheduled minerals) Guidelines, 2006 outline that on-site activities should be permitted during night-time hours where they comply with the noise ELVs (e.g. heating up of asphalt plants, loading of materials). I consider that extended operating hours of the existing operational asphalt plant within an operational quarry is acceptable in principle subject to consideration of potential residential amenity and environmental impacts as considered further in this assessment.

### 7.3. Impact on Residential Amenity

- 7.3.1. The third-party appeal raises concern in relation to the impact of the extended operating hours of the asphalt plant on the residential amenity of existing residential properties in the area. The main concerns raised in this context relate to the noise impact associated with the extended operation of the facility.

#### *Planning History*

- 7.3.2. The appeal raises concern in relation to the incremental increase in operation hours and noise standards applicable to the operation of the facility. I refer to the planning history for the site as detailed in Section 4 of this report. Table 1 below provides a summary of relevant permissions together with details of applicable noise conditions and conditions in relation to the hours of operation of the facility.

<b>Table 1: Summary of Planning History of Asphalt Plant</b>	
PA Ref:	09/40322
Development Description	Temporary permission was granted for a bitmac batching plant on site until the 31st of March 2019
Condition relating to hours of operation	Condition 13:

	The operation of the bitmac batching plant shall be confined to the hours of 08.00 hours to 20.00 hours, Monday to Saturday.
Condition relating to noise standards	<p>Condition 12 (a):</p> <p>Noise levels at the site boundaries shall not exceed 55dB LAeq (1 hour) (daytime) and 40 dB LAeq (15 minutes) (nighttime). There should be no audible tonal component or impulsive component from the proposed activity at any noise sensitive location.</p>
Noise Monitoring Condition	<p><u>Condition 12 (b)</u></p> <p>Noise monitoring shall be carried out and submitted in writing to the planning authority.</p>
PA Ref:	19/50992
Development Description	Permission granted for existing Bitmac Plant and the continuation of use of the existing bitmac batching plant with all associated site development works.
Condition relating to hours of operation	<p>Condition 2</p> <p>(a) Extended operating hours, cited below, permitted for a temporary period of 3 years.</p> <p>(b) Initialisation / heating of the bitmac batching plant - permitted to commence at 05.30 hours Monday to Saturday.</p> <p>(c) Removal / loading of heated material from the bitmac batching plant into awaiting lorries (parked the night before in the quarry) permitted to commence at 06.30 hours Monday to Saturday.</p> <p>(d) No lorries laden or un-laden shall enter / access the quarry prior to 06.30 hours Monday to Saturday</p> <p>(e) All bitmac batching plant operations / associated activities including filling associated loading bins, shall</p>

	<p>cease at 20.00 Monday to Friday and shall cease at 16.00 on Saturday</p> <p>(f) The hours of operation to facilitate the sole use of the existing batching plant, shall be not construed as permitting any other access to the quarry or works.</p>
Condition relating to noise standards	<p>Condition 3 (b)</p> <p>During the extended operational hours, the bitmac batching plant, 05.30 - 7.00 hours and 19.00 – 20.00 Monday to Friday and 05.30 – 08.00 Saturday the noise level from within the boundaries of the site measured at the agreed noise sensitive locations in the vicinity, shall not exceed an Leq, 15 min value of 45dB (A).</p>
Noise Monitoring Condition	<p>Condition 3 (a)</p> <p>Relates to identification of 4 noise sensitive receptors in the vicinity of the overall quarry site boundaries and submission of baseline /ambient data to the planning authority.</p>
PA Ref:	21/52254
Development Description	<p>Permission was granted for the permanent amendments to the opening hours of the existing asphalt plant facility as permitted on a temporary basis under PA Ref: 19/50992.</p>
Condition relating to hours of operation	<p>Operating hours as permitted under PA Ref: 19/50992.</p>

7.3.19. The appeal raises concern in relation to the principle of the extended operating hours of the asphalt plant and outlines that noise levels are increasing since the facility opened in 2009. The appeal outlines that nighttime noise levels were limited to 40 dB(A) under PA Ref: 09/40322. This limit was increased to 45 dB(A) under PA Ref: 19/50992. This is now proposed to be increased to 30 nights a year. At the outset, I refer to the reference within the appeal to night-time noise levels of 45 dB(A). I note that the 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 (08:00 to 20:00) noise level of 55dBAL<sub>Aeq</sub>(1hr) and a maximum night-time (22:00 to 08:00) noise level of 45dBAL<sub>Aeq</sub>(1hr) and states that no noise level shall exceed these limit values by more than 2dBA. I consider that the application of a nighttime noise standard of 45 dB(A) for the facility as permitted under PA Ref: 19/50992 is acceptable and accordance with relevant EPA guidance.

#### *Relevant Decisions*

- 7.3.20. The appeal refers to a decision of An Bord Pleanála to refuse permission for an asphalt plant at Burnfoot, Lifford, Co. Donegal issued under ABP Ref: 310308-21 for 3 no. reasons including noise impact on nearby residential properties. Under ABP Ref: 310308-21 planning permission was refused for the proposal for 3 no. reasons including the following:

*“On the basis of the information submitted with the planning application and the appeal, including the Noise Impact Assessment submitted by the applicant, the Board is not satisfied that the proposed development would not contribute to and extend the 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 the 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. In the absence of clear, usable noise mitigation and management measures, the proposed development would seriously injure the amenities of the area, including residential property in the vicinity, and would, therefore, be contrary to the proper planning and sustainable development of the area”.*

- 7.3.21. The appeal outlines that the Noise Impact Survey for Burnfoot was largely based on data gathered from Moyle Plant at Churchill. I have reviewed the decision issued under ABP Ref: 310308-21 and the noise report submitted in response to Donegal County Council's request for further information (available on Donegal County Council's website - PA Ref: 2050159). The noise report outlines that ambient noise monitoring took place at the existing asphalt plant at Churchill to determine the

sound pressure levels associated with the development (asphalt plant- 76.5dB(A) at 5m, truck manoeuvres - 71dB(A) at 10m).

- 7.3.22. I note that noise levels associated with the Churchill plant were applied to the particular site circumstances at Burnfoot. The closest noise sensitive receptor (NSL) at Burnfoot was within 120m of the proposed facility and other NSL's were within 300m of the site. The noise report identified an exceedance of the EPA guidance at some NSL's associated with the operation of the facility. Permission was refused for the development on this basis.
- 7.3.23. In considering the grounds of appeal, I note that while the noise sources are consistent with those identified in the Burnfoot case (ABP Ref: 310208-21) as cited by the appellant, the surrounding site context differs. In this regard the reasons for refusal attached to this decision are not directly applicable. The subject application is considered on its individual merits and having regard to the existing characteristics of the site and surrounding area.

#### *Noise Impact Assessment*

- 7.3.24. The appeal raises concern in relation to the noise impact of the extended operating hours of the facility on existing residential properties within the vicinity of the site. Existing residential properties are located to the north, south, east and west of the site. The closest residential property to the site is approx. 462m to the west (NSL 2). Other housing in the area is a minimum of approx. 500m from the site.
- 7.3.25. An Environmental Noise Impact Assessment prepared by Magnus Environmental and Safety Consultants was submitted in support of the application. The report outlines that potential noise sources include activity associated with the operation of the Asphalt Plant and movement of trucks.
- 7.3.26. Noise monitoring was carried out on the 28<sup>th</sup> of August at 4 no. noise sensitive locations (existing residential units to the north, south, east and west (identified as NSL's 1 to 4 within the noise report). Table 2 details background noise levels at NSL as ranging from 35.4dB(A)- NSL 1 to 41.2dB(A)- NSL 2. Section 6.2 of the report outlines that noise monitoring took place in-situ at the asphalt plant when in full operation. The sound level of the asphalt plant at 5m is detailed as 76.4dB(A). Noise monitoring at trucks pulling up and pulling off at a distance of 10m is detailed as 71.0dB(A).



- 7.3.27. Table 3 of the report presents the predicted noise impact associated with the operation of the facility at nearest noise sensitive locations. These range from 38.2 dB(A) at NSL 3 to 43.1 dB(A) at NSL 2. I note that there is a minor typological error in Table 3 of the report in relation to the background noise levels recorded at NSL 3 and NSL4 (incorrect values baseline values stated for NSL's compared to those identified in Table 2). However, I am satisfied that this would not have a significant bearing on the overall noise levels.
- 7.3.28. The report outlines that predicted combined ambient noise levels at all NSL's are within EPA night-time noise limit value of 45dBA and the conditions attached to previous permissions (I note reference in the report to conditions attached to the facility under PA Ref: 17/50513 however the correct reference is PA Ref:19/50992). The report outlines that the results are representative of worst-case scenario results as the noise prediction assumes that the asphalt plant and trucks are running continuously. The report concludes that the nighttime operation of the plant will have a negligible impact on the overall noise characteristics of the local area.
- 7.3.29. The third-party appeal raises concern in relation to the content and scope of the noise report and refers to breaches in relevant noise standards at the facility. The appeal raises concern in relation to noise impact associated with truck movement on the adjoining road network late at night and in the early morning (5 to 10 lorries passing residential properties). While I consider that noise impact from traffic on the surrounding road network would not significantly alter from the existing baseline traffic levels, I do have concerns in relation to other elements of the study. In particular, I note that the noise report outlines that potential noise sources include activity associated with the operation of the Asphalt Plant and movement of trucks. I am not clear if all potential noise sources associated with the operation of the plant have been identified and assessed. In particular, I am not clear if noise associated with the loading of the storage bins to the facility has been assessed.
- 7.3.30. I refer to the requirements of Condition 2 PA Ref: 21/ 52254 which facilitates a phased operation of the plant and associated facilities i.e. the heating of the plant is permitted from 5.30am and the removal / loading of heated material from 6.30am and plant operations / associated activities including filling associated loading bins is permitted from 8.00am. I note that the less noise intensive activities are permitted

from 5.30am while activities including filling of storage bins is restricted until 8am under this condition.

- 7.3.31. I refer to the planning history of the site. The documentation submitted in respect of the facility under PA Ref 09/40322 and 20/51848 outlines that noise activity of a bitmac plant includes the movement of aggregate to bins on site, mixing of material inside plant and transfer of finished product from plant by conveyor to trucks. Within these previous applications noise levels from the plant are envisaged at 73 dBA at 10m, which is over and above that detailed within the noise assessment submitted in conjunction with the current application (76.4 dBA at 5 m, resulting in 70.39 dBA at 10m). However, notwithstanding the above, on the basis of the application of the higher noise levels, I consider that noise levels at noise sensitive receptors would remain within the 45dBA nighttime limit having regard to the distance of the facility from noise sensitive receptors.
- 7.3.32. I furthermore note that the applicant has outlined that they can operate within the 45dBA nighttime limit. The plant has been operational at night-time hours in limited instances (subject to agreement with DCC). Donegal County Council has raised no objection to the principle of the continuation of this practice. I note that noise monitoring has been undertaken at the facility and, in the instance that the Board is minded to grant permission for the development, I recommend that monitoring is undertaken in instances of the extended operation of the facility.
- 7.3.33. The 3rd party appeal relates to breaches of noise limits at the facility. I note that noise monitoring has been carried out at the facility in accordance the requirements of permissions pertaining to the facility. I have reviewed the details of this monitoring as available on Donegal County Council's website. Under PA Ref: 19/50992 an Environmental Noise Report was submitted to Donegal County Council as unsolicited further information in support of this application. This provides the result of a survey carried out at Church Hill Stone between the 1st to the 5th of July 2019 at 2 no. noise sensitive locations, namely existing residential dwellings to the west (NSL 1) and south (NSL 2) of the plant. Section 2 of the report sets out details of start-up times of the facility during the survey period (6.20 am (01.07.19 & 02.07.19) and 6.25 am (03.07.19), 7.00am (04.07.19) and 06.05am (05.07.19). 24-hour surveys were undertaken at the facility and the noise report presents noise levels at the facility between 5am and 8.30 am on each morning.

- 7.3.34. The results illustrate that there are no recorded values above 45 dBA between the hours of 5am and 8am at NSL 1. The report outlines that while one occurrence of a value of 47.16 dB(A) was recorded at 6am at NSL 2 on the 01.07.19 this was due to another source as the facility was not operational at this time. At all other recorded times the recorded noise level is below 45dB(A).
- 7.3.35. The EPA 2006 Guidelines on Environmental Management in the Extractive Industry outline that on-site activities should be permitted during night-time hours where they comply with the noise ELVs (e.g. heating up of asphalt plants, loading of materials). On the basis of the information submitted in conjunction with the application and appeal response I recommend that the extended operation of the facility should be facilitated on a temporary basis for 2 years. I recommend that noise monitoring is undertaken at the facility during any extended operation of the plant and the results of such monitoring should be submitted to the planning authority to ensure compliance with the night-time noise limits. I am satisfied that this can be addressed by means of condition in the instance that the Board is minded to grant permission for the extended operation of the facility.
- 7.3.36. The 2006 Guidelines furthermore outline that audible tones or impulsive noise should be avoided at night. I refer to Section 9 of the applicant's Noise Impact Assessment which outlines that reversing of trucks with hazard audible sirens be minimised where possible. In this regard I recommend the non-use of a reversing siren during the nighttime operations of the facility.

### *Conclusion*

- 7.3.37. In conclusion, having regard to the location of the site and nature of development proposed I am satisfied that the principle of the development is acceptable and in compliance with the provisions of the County Donegal Development Plan 2024-2030 (including EX-0-1 and EX-P-2). I recommend that permission is granted for the extended operation of the facility on a temporary basis for 2 years. This would facilitate monitoring of the noise levels during the period of the extended operation of the facility at noise sensitive receptors to ensure compliance with the nighttime noise limits.

#### 7.4. Other Issues

##### Air Emissions

- 7.4.1. The appeal raises concern in relation to air emissions associated with the development. The applicant's appeal response outlines that emissions in the plant will be in accordance with the relevant EPA licence and includes details of monitoring undertaken at the plant.
- 7.4.2. I refer to the EPA guidance in respect of Environmental Management in the Extractive Industry, 2006 which outlines that new fixed or mobile asphalt plants constructed on or after 1 November 1988, require a licence under the Air Pollution Act, 1987, (Licensing of Industrial Plant) Regulations, 1988. This licence is issued by the relevant local authority and enables specific conditions in relation to air emissions to be applied to asphalt plants. I refer to the air quality monitoring documentation submitted in conjunction with the appeal response in this regard.
- 7.4.3. The application documentation furthermore outlines that the actual output from the facility over the 24-hour period would not increase as in instances where employees are working overnight, they would not be working during daytime hours. I consider that such an arrangement would be difficult to enforce and for the purposes of this assessment I do consider that the extended operating hours will result in an intensification of the use of the facility. However, on the basis of the information submitted in conjunction the application and appeal I am satisfied that monitoring and licensing of the facility will be ongoing to ensure compliance with the relevant air quality standards.

##### Lack of Consultation

- 7.4.4. The appeal raises concern in relation to lack of consultation with nearby residential properties in relation to the extended operational hours of the plant and non-compliance with the recommendations set out within the DOEHLG Quarries and Ancillary Activities Guidelines for Planning Authorities (2004) in this regard.
- 7.4.5. The applicant's appeal response refers to the requirement of Condition no. 3 of Donegal County Council's notification of decision to grant permission for the development which relates to procedures for consultation with the planning authority and residences within 750m of the facility. The applicant outlines that they will

comply with the requirements of this condition. I recommend the inclusion of this condition in the instance that the Board is minded to grant permission for the development.

## 8.0 AA Screening

### *Compliance with Article 6(3) of the Habitats Directive*

- 8.1. 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.
- 8.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

### *Screening for Appropriate Assessment- Test of likely significant effects*

- 8.3. 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).
- 8.4. 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.

### *Proposed Development*

- 8.5. The development is described at Section 2 of this Report. In summary, the subject application seeks amendments to the operating hours of the existing asphalt plant in limited circumstances for a maximum of 30 days per year.
- 8.6. Taking account of the characteristics of the proposed development I consider that air emissions represent the main potential impact.

### *Submissions and Observations*

- 8.7. The third-party appeal raises concerns in relation to the increase in air emissions from the asphalt plant and its potential impacts on designated Natura 2000 sites. The appeal furthermore outlines that an AA report was never submitted in respect of the existing facility.

### *European Sites*

- 8.8. The subject site is not located within a designated European site. The closest European Site, part of the Natura 2000 Network, is the Leannan River SAC (Site Code 002176) located approximately 1.2 kms from the existing asphalt plant. Other designated sites within the vicinity include the Derryveagh and Glendowan Mountains SPA (004039) – 2.1km and the Cloghernagore Bog and Glenveagh National Park SAC (002047) – 3.3km.
- 8.9. There are no linkages between the site and the Derryveagh and Glendowan Mountains SPA (004039) – 2.1km and the Cloghernagore Bog and Glenveagh National Park SAC (002047) – 3.3km. In view of the absence of a direct hydrological connection to these sites 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.
- 8.10. The appeal site is an existing asphalt plant located within an existing operational quarry. There is a single watercourse namely Mountpleasure Stream abutting and running along the north-western boundary of the overall quarry (in a general north – south direction) which hydrologically links the site with the Leannan River SAC (Site Code 002176).
- 8.11. The Leannan SAC (Site Code 002176) has the following qualifying interests:
- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]
  - Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Nanojuncetea* [3130]
  - *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]
  - *Salmo salar* (Salmon) [1106]
  - *Lutra lutra* (Otter) [1355]
  - *Najas flexilis* (Slender Naiad) [1833]

### *Operational Phase Impact*

- 8.12. The subject application seeks amendments to the operating hours of the existing asphalt plant in limited circumstances for a maximum of 30 days per year. No works are proposed within the application.
- 8.13. Taking account of the characteristics of the proposed development I consider that air emissions represent the main potential impact. Surface and groundwater from the facility are aligned with those within the overall operational quarry and are subject to ongoing monitoring.
- 8.14. Having reviewed the information submitted in conjunction with the application and appeal, I am satisfied that air emissions associated with the increased use of the plant will be limited and monitoring and licensing of the facility will be ongoing to ensure compliance with the relevant air quality standards.

### *Planning Authority Screening Determination*

- 8.15. Donegal County Council's AA Screening Determination concludes the following:

*“An AA Screening was not required under the previous applications on the site for extended operating hours including PA Ref: 21/52254. The PA was of the view that AA screening was not required in this instance, given that the bitmac/asphalt plant lies within the existing approved operational quarry and the processes involved are aligned to the workings of said permitted quarry. The report outlines that AA screening is not required in this instance as it can be concluded that the proposed development would not be likely to have any significant effect, individually or in combination with any other plan or project”.*

### *Screening Determination*

- 8.16. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to the Leannan River SAC (Site Code 002176) or any other European Site. The reason for this conclusion is as follows:
- The nature and scale of the proposal which relates to extended operational hours of an existing operational asphalt plant.
  - The lack of proximity between the appeal site and any Natura 2000 site.

- 8.17. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.18. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## **9.0 Recommendation**

I recommend that permission is granted for the proposed development in accordance with the following reasons and considerations.

## **10.0 Reasons and Considerations**

Having regard to the provisions of the County Donegal Development Plan 2024-2030, the planning history pertaining to the site, the location of the site within the established quarry, the scale and nature of development, it is considered that subject to compliance with the conditions set out below, the proposed development would not affect the residential amenities of the area, would not be prejudicial to public health, would not have unacceptable impacts upon the environment including designated European Sites. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## **11.0 Conditions**

1. The extended hours of operation of the asphalt/bitmac plant shall be permitted for a temporary period of 2 years, from the date of this decision after which time the hours of operation of the plant shall revert to the hours of operation as permitted under PA Ref: 21/52254 unless, prior to the end of the period, planning permission shall have been granted for extended operating hours for a further period.

Reason: To enable the impact of the extended operating hours to be monitored and reassessed in the interest of residential amenity.



2. (a) Initialisation / heating of the asphalt/bitmac batching plant is herein permitted to commence at 05.30 hours Monday to Saturday (unless under exceptional circumstances and up to a maximum of 30 recorded & notified occurrences per annum). The plant shall not commence any operations prior to 05.30 hours or on Sundays / Public Holidays (unless under exceptional circumstances of up to a maximum of 30 recorded & notified occurrences per annum).
- (b) Removal / loading of heated material from the asphalt/bitmac batching plant into awaiting lorries (parked the night before in the quarry) is herein permitted to commence at 06.30 hours Monday to Saturday (unless under exceptional circumstances of up to a maximum of 30 recorded & notified occurrences per annum).
- (c) No lorries laden or un-laden shall enter / access the quarry prior to 06.30 hours Monday to Saturday (unless under exceptional circumstances of up to a maximum of 30 recorded & notified occurrences per annum).
- (d) All asphalt/bitmac batching plant operations / associated activities including filling associated loading bins, shall cease at 20.00 Monday to Friday and shall cease at 16.00 on Saturday (unless under exceptional circumstances of up to a maximum of 30 recorded & notified occurrences per annum).
- (e) The hours of operation to facilitate the sole use of the existing asphalt batching plant, shall be not construed as permitting any other access to the quarry / loading of processed materials for delivery, extraction, processing, crushing, screening or grading of material outside the normal permitted hours of quarry operations which remain restricted to between 07:00 hours and 19:00, Monday to Friday and between 08:00 and 16:00 hours on Saturday. The facility shall not operate outside these hours or on Sundays or Public Holidays.

Reason: In the interest of orderly development.

3. Noise levels from within the boundary of the site as measured at the agreed noise sensitive locations shall not exceed the following:
- An Leq 1 h value of 55 dB(a) during 08.00 to 18:00

- An Leq 15 min value of 45 d B(a) at any other time.

Nighttime emissions shall have no tonal component. Hazard sirens associated with reversing trucks shall be silenced during nighttime operation of the facility.

During the extended operation of the plant, the developer shall undertake noise monitoring at the identified noise sensitive locations. Noise monitoring results shall be submitted to the planning authority on a quarterly basis.

Reason: To enable the impact of the extended operating hours to be monitored and to protect the residential amenities of property in the vicinity.

4. (a) Prior to the any activity taking place on the asphalt plant between 8pm and 5.30am, the developer shall notify the Planning Authority in writing and obtain written agreement at least 7 days in advance of the planned works.

(b) Prior to the any activity taking place on the asphalt plant between 8pm and 5.30am, the developer shall notify all residents (within a 750m distance from the subject site) in writing (via letter/email/text alert notification system) at least 7 days in advance of the planned works (and shall cumulatively amount to no more than 30 occurrences per annum as per the requirements of Condition no. 2 above).

Reason: In the interest of the protection of residential amenity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

---

Stephanie Farrington  
Senior Planning Inspector

28<sup>th</sup> of November 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	318513-23			
<b>Proposed Development Summary</b>	Alteration of operating/opening hours to an existing asphalt plant up to a maximum of 30 days annually.			
<b>Development Address</b>	Keeloges, Churchill, Letterkenny, Co. Donegal			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>		
		<b>No</b> <b>X</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>		Class.....	EIA Mandatory EIAR required	
<b>No</b>			Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....		Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_