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AN COIMISIUN PLEANALA	
LDG-	086073-26
ACP-	
05 JAN 2026	
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Time:	9.15 By: Post

30th December 2025

Re: Section 5 Determination under the provisions of Section 5(3)(a) as to whether works within lands at Bauville and Keelogs, Clonglash, Bunrana are exempt development

Dear Sir Madam,

On behalf of Ronan Woods, Genesis Planning Consultants, we are writing to the Coimisiun to obtain a declaration pursuant to Section 5(3)(a) of the Planning and Development Act. This referral relates to a Section 5 declaration issued by Donegal Co Council on 11th December 2025 in respect of 'the installation of plant/machinery for the segregation of coal' on lands at Bauville and Keelogs, Clonglash, Bunrana, Co Donegal.'

Enclosed is the prescribed fee of €220 along with a copy of the declaration issued by Donegal County Council.

This referral sets out the rationale for the proposal being deemed as not exempt development.

We would request that An Coimisiun Pleanala review the Section 5 declaration as issued by the Planning Authority and to issue a declaration that the works constitute development and are not deemed as exempt development.

1. The question

Whether the installation of plant/machinery for the segregation of coal on lands at Bauville and Keelogs, Clonglash, Bunrana, Co Donegal constitutes exempted development within the meaning of the Planning and Development Acts (as amended).

3 Declaration of the Planning Authority

3.1 On 1st October 2025 the applicant applied for a Section 5 Declaration of Exempt Development.

3.2 The Planning Authority duly made a determination on the Section 5 determination request on 11th December 2025 which states, in summary, that:

'It is hereby declared that the subject matter of the request as above is development, is exempted development within the meaning of the above act

The Planning Authority in considering this referral had regard particularly to

- Section 2(i), 3(i), 177U(9) of the Planning and Development Act 2000 (as amended) and
- Articles 6(3), 9(1) and Class 21(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

3.3 As part of the Section 5 application to the Planning Authority a project overview was provided by this practice.

3.4 On review of the planner's report we highlight the following extracts for reference by the Coimisiun.

4.0 ASSESSMENT

4.1 Floorplans and elevations of the proposed coal segregation plant have been submitted, (see below). The coal segregation plant is considered development however the plant does not materially alter the site and is below the conditioned 15m in height being at 10.75m. The applicant has referenced a decision made under ABP 248403 highlighting condition no 8 regarding the erection of a berm along the southern eastern boundary and the storage and stacking of materials not exceeding a height of 2.4m. The storage and height of the stacking of loose or bagged coal or pallets is not relevant to the submitted section 5 application as there is no provision within class 21(a) of Part 1 of Schedule 2 for the storage of same. The section 5 relates to the plant/ machinery which is within the conditions and limitations and is therefore exempted development.

4.2 Having regard to the exemptions for development for industrial purposes under Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended), the coal segregation plant is covered by exempted development rights.

4.4 Consideration has also been given to the proximity to the site to any Natura 2000 sites, the closest being the Lough Swilly SAC/SPA located approx. 3.5km away. Having regard to the scale and nature of the proposed development, within an established residential development, alongside the physical distances from the nearest Natura 2000 site, and no known direct hydrological links, it is not considered that the proposed development would be likely to have any significant effect, individually or in combination with any other plan or project, and it is considered that Screening for Appropriate Assessment is not required in this instance.

4 Justification for the Development to be not Exempt Development

4.1 This section sets out the legislative provisions that provide for the proposal to be regarded as development and not exempt development.

4.2 Having reviewed the particulars of the Section 5 determination by the Planning Authority under **S52584 we say the development is not to be regarded as exempt development.**

4.3 The grounds are five-fold which we set out below.

- **Ground 1: Article 9(1)(a)(i) of the Planning and Development Regulations applies to the lands under ABP Decision 248403. Specifically condition 8 of ABP's decision restricts any materials or equipment on the site to not exceed 2.4 metres above ground level. Condition 8 states:**

8 Within six months of the date of this order, a berm shall be erected along the southern and eastern boundary of the site which shall be at least three metres high, measured from the ground level within the site. The berm shall be landscaped and planted in accordance with a planting scheme which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order . The agreed scheme shall include details of all other planting and boundary treatments on the site. The storage or stacking of loose or bagged coal or pallets, or of any other materials or equipment, on the site shall not exceed a height of 2.4 metres above ground level on the site.

Reason: To protect the visual character of the area.

4.4 We highlight condition 8 of ABP's decision 248403 thereby removes the exempt development provisions which have been the basis for S52584 as relied on by the Planning Authority in their Section 5 determination.

4.5 Indeed with the subject development having a height of 10.75 metres it is clear that condition 8 of ABP's condition is breached.

4.6 We also note the Planning Authority under their consideration of S52584 has failed to have due regard to the clear restrictions imposed by this condition which states:

'The storage or stacking of loose or bagged coal or pallets, or of any other materials or equipment on the site shall not exceed a height of 2.4 metres above ground level on the site.'

4.7 For reference we enclose a copy of ABP decision 248403 in Appendix 3. Also the extent of the site area to which ABP decision relates is shown below.

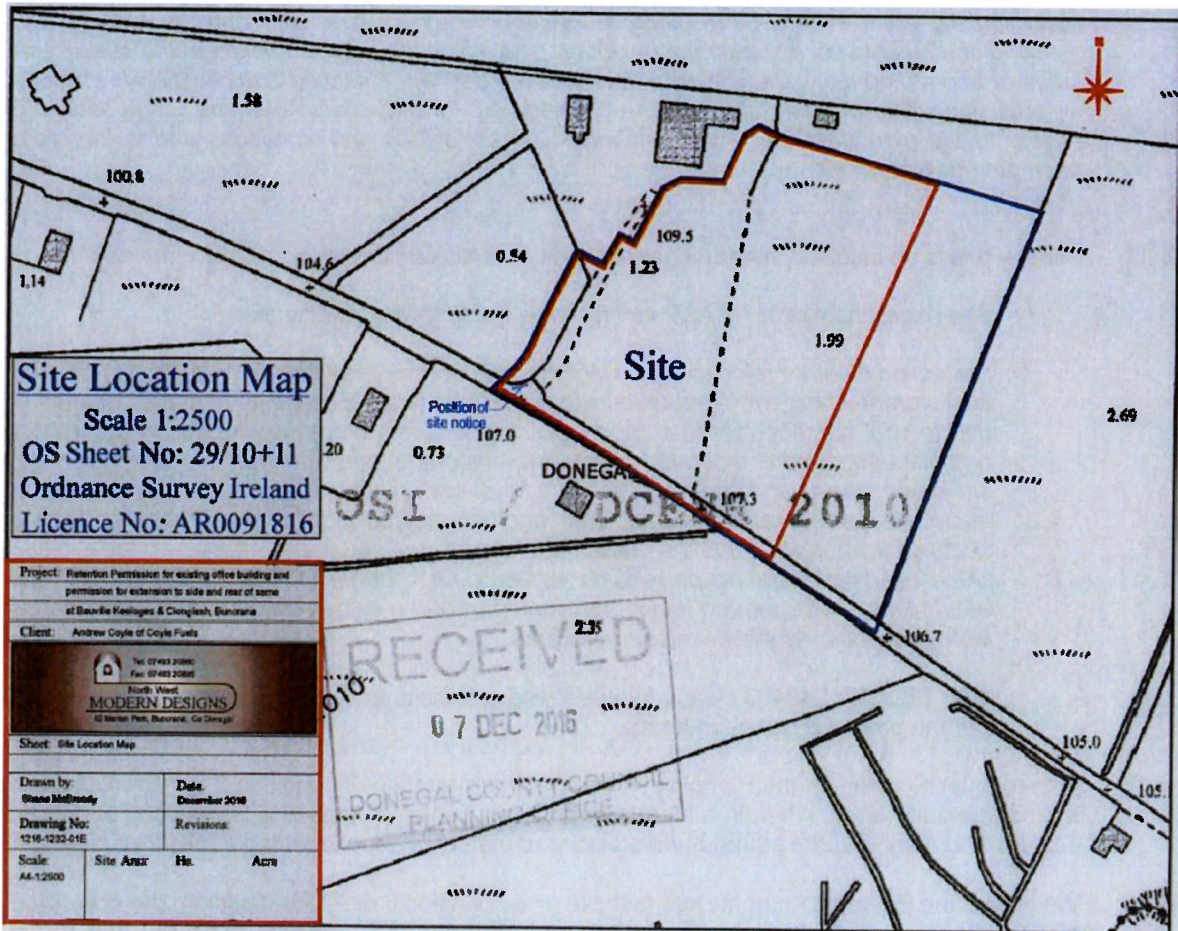


Figure 3 Site area as per ABP decision 248403

- 4.8 On these grounds the determination under S52584 that the subject development is exempt development is wholly incorrect
- 4.9 For reference we refer to Article 9(1)(a)(i) of the Planning and Development Regulations which states:

'9.(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

*(i) **contravene a condition attached to a permission under the Act** or be inconsistent with any use specified in a permission under the Act.'*

- 4.10 We have also reviewed the planner's report on this matter and we note they have incorrectly interpreted condition 8 of ABP Decision 248403. The planner's report states at section 4.1:

'The applicant has referenced a decision made under ABP 248403 highlighting condition no.8 regarding the erection of a berm along the southern eastern boundary and the storage and stacking of materials not exceeding a height of 2.4m. The storage and height of the stacking of loose or bagged coal or pallets is not relevant to the submitted section 5 application as there is no provision within class 21(a) of Part 1 of Schedule 2 for the storage of same. The section 5 relates to the plant/machinery which is within the conditions and limitations and is therefore exempted development.'

- 4.11 We say this is an incorrect assessment of condition 8 of ABP Decision 248403. To clarify:

- The decision 248403 by ABP incorporates the following particulars:

'Retention of minor relocation and increased floor area (100 square metres) of permitted coal storage shed, two number lean-to extensions to the storage shed and its change of use to coal bagging facility complete with associated internal and external machinery and plant/equipment, extended concrete coal storage yard with concrete boundary wall, soil embankment and chain link security fence with planted hedgerow along part of the eastern and southern boundaries, detached bagged coal storage shed, diesel and home heating oil pumps to serve the public, mechanical coal sorter and signage on the existing office building. Planning permission is also being sought for the continuation of soil embankment with planted hedgerow along part of the eastern and southern boundaries with all associated site development works.'

- ABP Decision 248403 clearly relates to the entire site and clearly incorporates works as per the project description above.

- 4.12 Accordingly the basis for the Planning Authority's interpretation of condition 8 of ABP's decision is fundamentally flawed wherein it infers that condition 8 solely relates to *'a berm along the south-eastern boundary and the storage and stacking of materials not exceeding a height of 2.4m.'*

- 4.13 We submit the Planning Authority has failed to give condition 8 of ABP's decision; **the condition clearly places a restriction on the height of materials and equipment on the site to 2.4 metres:**

8. Within six months of the date of this order, a berm shall be erected along the southern and eastern boundary of the site which shall be at least three metres high, measured from the ground level within the site. The berm shall be landscaped and planted in accordance with a planting scheme which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order. The agreed scheme shall include details of all other planting and boundary treatments on the site. The storage or stacking of loose or bagged coal or pallets, or of any other materials or equipment, on the site shall not exceed a height of 2.4 metres above ground level on the site.

Reason: To protect the visual character of the area.

• **Ground 2: The structure materially alters the external appearance of the premises or the undertaking.**

4.14 By way of background we refer to previous assessments by both the Planning Authority and An Bord Pleanála under planning decisions relating to the lands wherein it was deemed necessary to restrict heights of activities within the site so as to not materially alter the external appearance of the site relative to the surrounding environs.

4.15 **Application 1950152:** This application sought permission for 'increase of storage/stacking height of loose or bagged coal or pallets'. Under assessment by the Planning Authority section 9.2 of the planner's report states:

Principle of retention of coal storage at heights exceeding 2.4m is established as unacceptable via condition 8 of An Bord Pleanála grant of permission (ref. PL 05E.248403 re. DCC 16/51749) which required that
“...The storage or stacking of loose or bagged coal or pallets, or of any other materials or equipment, on the site shall not exceed a height of 2.4 metres above ground level on the site”.

Therefore, the principle of development is not acceptable. This analysis is also informed by recent and concurrent applications 19/50575 and 19/50576, 19/50575, 19/50606 which cumulatively aim to erode measures introduced by condition 8 of An Bord Pleanála which were intended to render the overall development acceptable. Specifically in relation to visual amenity the An Bord Pleanála inspector confirmed that “The facility upon it (the site) could be satisfactorily screened and integrated into the landscape if the existing berm was extended along the southern and eastern site boundary, and the height to which the loose and bagged coal is stacked was limited to less than the height of the berm” Based on this determination, approval for storage in excess of the height of the berm cannot be forthcoming.

4.16 We highlight under 1950152 the application was seeking consent to store loose or bagged coal to a height of 4.8 metres.

4.17 In summary application 1950152 was refused permission by the Planning Authority on the basis that storage of coal to a height of 4.8 metres was unacceptable as it would unacceptably impact the receiving environment.

4.18 With there being no change in site features since application 1950152 was assessed it is clear that the plant and machinery having a height of 10.75 metres would indeed materially alter the external appearance of the premises or the undertaking.

4.19 Furthermore having reviewed the basis for S52584 as submitted by supporting information provided by Harley Planning Consultants we highlight therein it explicitly notes the subject development is visible from the environs surrounding the site.

4.20 However on review of the Planner's report we note it is silent on consideration on this restriction on exempt development.

4.21 **Accordingly we say the Conditions and Limitations under Class 21(a), Column 2 are applicable in this instance as the proposal materially alters the external appearance of the premises or undertaking; highlighted opposite.**

Column 1 Description of Development <i>Development for industrial purposes</i>	Column 2 Conditions and Limitations
<p>Class 21 (a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—</p> <p>(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,</p> <p>(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,</p> <p>(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.</p>	<p>1. Any such development shall not materially alter the external appearance of the premises of the undertaking.</p> <p>2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.</p>

- **Ground 3: Article 9(1)(a)(vi) of the Planning Development Regulation applies to the lands.**

4.22 Article 9(1)(a)(vi) provides a restriction on exempt development where a development would:

'interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed.'

4.23 As set out under the Donegal County Development Plan 2024-2030 the site is located within an area of 'Moderate Scenic Amenity.' Policy objective L-P-2 of the CDP is applicable and states:

L-P-2 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.

4.24 Having reviewed the basis for S52584 as submitted by Harley Planning Consultants (in their response to the Planning Authority) we note it identifies View Points 5, 6 and 7 from which the plant/machinery is clearly visible.

4.25 **Notwithstanding the visual impact emanating from the subject development and impacting on the landscape (and being contrary to policy objective L-P-2 of the Donegal CDP) we highlight for the Coimisiun the assessment in the planner's report fails to consider Article 9(1)(a)(vi) of the Planning and Development Regulations.**

4.26 Indeed the failure to apply Article 9(1)(a)(vi) in assessment of S52535 is a legal and planning error and contrary to the legal principles laid down in Attorney General (McGarry) v. Sligo County Council [1991] 1 I.R. 99. The importance of this legal principle was recently highlighted in GOCE Limited v. An Bord Pleanála & Ors [2024] IEHC 554:

"91. In Attorney General (McGarry) v. Sligo County Council [1991] 1 I.R. 99, this Court, per McCarthy J., described the development plan as follows (at 113):

'The plan is a statement of objectives; it informs the community, in its draft form, of the intended objectives and affords the community the opportunity of inspection, criticism, and, if thought proper, objections. When adopted it forms an environmental contract between the planning authority, the Council, and the community, embodying a promise by the Council that it will regulate private development in a manner consistent with the objectives stated in the plan and, further, that the Council itself shall not effect any development which contravenes the plan materially. The private citizen, refused permission for development on such grounds based upon such objectives, may console himself that it will be the same for others during the currency of the plan, and that the Council will not shirk from enforcing these objectives on itself.'

(Emphasis added in underlined section)

4.27 **Accordingly we say the restrictions on exempt development under Article 9(1)(a)(vi) are applicable.**

4.28 **The assessment of S52584 as not offending Article 9(1)(a)(vi) is a misinterpretation and misapplication of planning policy and development plan objectives.**

- **Ground 4: The use for the plant is inconsistent with the use pertaining to the lands.**

4.29 Having reviewed the basis for a previous Section 5 determination under reference S52535 as submitted by Harley Planning Consultants on behalf of the land-owner we note it states the basis for the subject development is described as:

'a coal segregation plant was installed on to the Buncrana site, which segregates poor and good quality coal.'

4.30 Having reviewed the planning register we note the yard area does not have planning permission for an external segregation plant, and this is to be regarded as a new use on the lands.

4.31 For reference we summarise the planning history in the table below.

04/5177	Permission sought for the erection of fuel depot with distribution pumps and associated site works. This application was withdrawn prior to determination. WITHDRAWN
05/70314	Permission granted for retention and completion of commercial fuel depot including the retention of portacabin, diesel storage tanks together with oil tanker refuelling shed, coal processing shed and for retention and completion of embankment and permission for septic tank and oil interceptor and ancillary site works. GRANTED
07/71243	Permission granted for removal of existing prefabricated building and erection of 3 bay office unit and storage units ancillary to planning permission ref. 05/70314. GRANTED
10/70181	Erection of a storage unit together with associated works to serve existing business. GRANTED
13/50308	Permission granted for (a) part removal of existing earthen embankment to eastern boundary and extension of existing coal storage yard and (b) 2.4m high chain-link security fence along southern boundary and partly along eastern boundary. GRANTED
14/50841	Permission granted for retention of extended concreted coal storage yard, 3.6m high concrete retaining wall to northern boundary and 1.8m moveable concrete enclosing wall to eastern boundary GRANTED
15/50767	Permission sought for construction of an extension to existing two storey office building with two storey extension to side and single storey extension to the rear at existing coal yard. This application was withdrawn prior to determination. WITHDRAWN
15/51584	Permission granted for retention of an existing two storey office building at existing coal yard and erection of two storey extension to side and single storey extension to rear of existing two storey office building at existing coal yard GRANTED
16/50427	Permission sought for the retention of lean-to extensions to existing coal baggage shed and for retention of a separate and unauthorised stand-alone coal baggage shed however this was refused on the grounds that existing coal baggage shed as described in the public notices did not have the benefit of planning permission and the submitted application did not propose to regularise same REFUSED
16/51749	Permission granted by An Bord Pleanála (PL 05E.248403) relocation and increased floor area (100 sq m) of permitted coal storage shed, 2 no. lean- to extensions to the storage shed and its change of use to coal bagging facility, soil embankment and chain link security fence with planted hedgerow along part of the eastern and southern boundaries; detached bagged coal storage shed; diesel and home heating oil pumps to serve the public; mechanical coal sorter and signage on the existing office building and continuation of soil embankment with planted hedgerow along part of the eastern and southern boundaries with all associated site development works GRANTED
18/51676	Planning permission granted for Erection Of A Pallet Store Within Established Fuel Depot With All Associated Site Development Works GRANTED

19/50214	Planning application for "Surplus Bagged Coal Storage Area To Include New Boundary Wall And All Associated Site Development Works On Existing Established Fuel Depot" currently on request for further information. REFUSED
19/50574	2 No. diesel fuel dispensing pumps for use solely by Coyle Fuels vehicles at existing established fuel depot. REFUSED
19/51052	Increase of storage/stacking height of loose or bagged coal within the site from 2.4m as permitted to 4.8m above ground level. REFUSED
19/50606	An amendment of condition No. 2 of permission Refr: 05/70314 and of Condition 2 of permission Ref: 16/51 749 (PL05E.248403) in order to allow for vehicle/truck/hgv access and egress by depot staff to the depot between 06.00 hours and 20.00 hours Monday to Friday and between 06.00 hours and 16.00 hours on Saturday at existing established fuel depot. REFUSED
19/50576	1 No. kerosene fuel dispensing pump for use solely by Coyle Fuels at existing established fuel depot. REFUSED
19/50575	2 No. diesel fuel dispensing pumps complete with overground fuel storage for use solely by Coyle Fuels vehicles at existing established fuel depot (to the side) GRANTED
23/51466	RETENTION PERMISSION for 2 NO. DIESEL FUEL DISPENSING PUMPS FOR USE SOLELY BY COYLE FUELS VEHICLES AT EXISTING ESTABLISHED FUEL DEPOT-Invalid no site notice
23/51670	RETENTION PERMISSION for 2 NO. DIESEL FUEL DISPENSING PUMPS FOR USE SOLELY BY COYLE FUELS VEHICLES AT EXISTING ESTABLISHED FUEL DEPOT- withdrawn

4.32 As scheduled above and shown on the last approved site plan under 1651749 the location where the plant is now located was approved solely as 'Loose Coal Storage', with no reference to plant, machinery or operations/use to 'segregate poor and good quality coal.'

4.33 In this context we say there has been a material change in the use of the lands. We highlight Case Law on what defines a material change in the use of lands under 'Roadstone Provinces Ltd V An Bord Pleanala (2008) IEHC. This judgement sets out the following two questions must be addressed, in the following sequence, when assessing whether or not there has been a material change in the use of the land:

'(a) Has there been a change in the use of the land?

(b) If yes, was that change "material" for planning purposes?

If these questions are answered affirmatively, it will be clear that "development" has occurred. It must then be asked whether or not the development in question is "unauthorised" within the meaning of the Act of 2000, section 2(1) of which defines an "unauthorised development" as:-

"In relation to land, the carrying out of any unauthorised works (including the construction, erection, or making of any unauthorised structure) or the making of any unauthorised use."

*The terms "unauthorised structure", "unauthorised use" and "unauthorised works" are further defined in section 2(1). In essence, a structure is unauthorised unless it was in existence on 1st October, 1964 or has been the subject of a permission for development. **The use of land is unauthorised where it commenced on or after 1st October, 1964, and relates to a development other than an exempted development or a development which is the subject of a permission.***

- 4.34 On reviewing the particulars provided by Harley Planning Consultants for exempt development application S52535 we note it states:

'1.3 As part of the company's restructuring, a coal segregation plant was installed on to the Buncrana site, which segregates poor and good quality coal. No liquid waste or water is discharged from this process.

1.4 The plant accepts multi-grade raw coals, which have already been washed of dust at the company's base in Maydown, Derry. Raw coal is fed into a reception hopper and delivered by belt conveyor up to a pre-wash screen for removal of super fines, which are compacted, then discharged into containers in a ground storage bay. The super fines, which have a very low moisture content (-22%), are then transferred to the Maydown base, for processing into briquettes.

1.5 The remaining pre-rinsed coal (typically 6mm x 100mm) is fed into a dense medium washer drum, where the quality coal is separated from the poorer coal (sinks products) by a dense medium magnetite media process. This magnetite media is totally contained within the system and recirculated for maximum efficiency.

1.6 The clean quality coal is then discharged via a draining and rinsing screen to a ground storage bay. The poor quality coal is discharged out onto a separate side of the drain and rinse screen and discharged to a ground storage bay. The diluted magnetite media solution is collected and pumped to a wet drum magnet, which recovers the magnetite concentrate for re-use within the dense medium washer system.'

5.3 The coal segregation plant processes 30 tonnes per hour. Accordingly, assuming an eight hour working day, the plant will only operate for 100hrs p.a., or 13 days p.a., to process the 3,000 tonnes.'

- 4.35 **We say this evidence as provided for exempt development S52535 clearly describes a new use and activity within the site, as this process and use did not exist before the plant was installed.**

- 4.36 Indeed we would refer to our previous objections against this use, which are on record in the Planning Authority's enforcement file in relation to an increase in noise, dust and general emissions.

- 4.37 We say this is clearly a new distinct operation and use that is not provided for under any planning permission relating to the lands, as evident from the supporting information we cite above from S52535.

- 4.38 In this regard the principles under Galway County Council V Lackagh Rock Ltd(1985) are further highlighted:

"To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use."

- 4.39 **Accordingly we submit the plant, machinery and use operations now installed and operational on the lands are indeed a change in use. The provisions of Article 9(1)(a)(i) are applicable given the use is inconsistent with any previous permissions which relate to the lands:**

' 9.(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.'

4.40 We also highlight for the Coimisiun that the planner's report is silent on consideration on whether there is a new use on the lands.

- **Ground 5: Appropriate Assessment**

4.41 We highlight for a valid Appropriate Assessment to be carried out we refer to the leading Judgements of the CJEU such as Waddenzee, Commission v Spain and Sweetman v An Bord Pleanála and, in this jurisdiction, in Kelly v An Bord Pleanála.

4.42 It is commonly accepted in order for an AA to reach a valid conclusion that there will be no adverse effect on the integrity of a Natura 2000 site the assessment must identify and describe all aspects of the development which may affect a Natura 2000 site, it must contain complete, precise and definitive scientific findings and conclusions and not have any gaps or lacunae. Those scientific findings must be capable of supporting the conclusion that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of the sites.

4.43 In terms of the site context we note discharge from the yard is via a drain to the west of the site which then connects to the Mill River and thereafter discharges into Lough Swilly SAC. We refer to an extract from the EPA Watercourse Map Data set below denoting the site relative to the local watercourses.

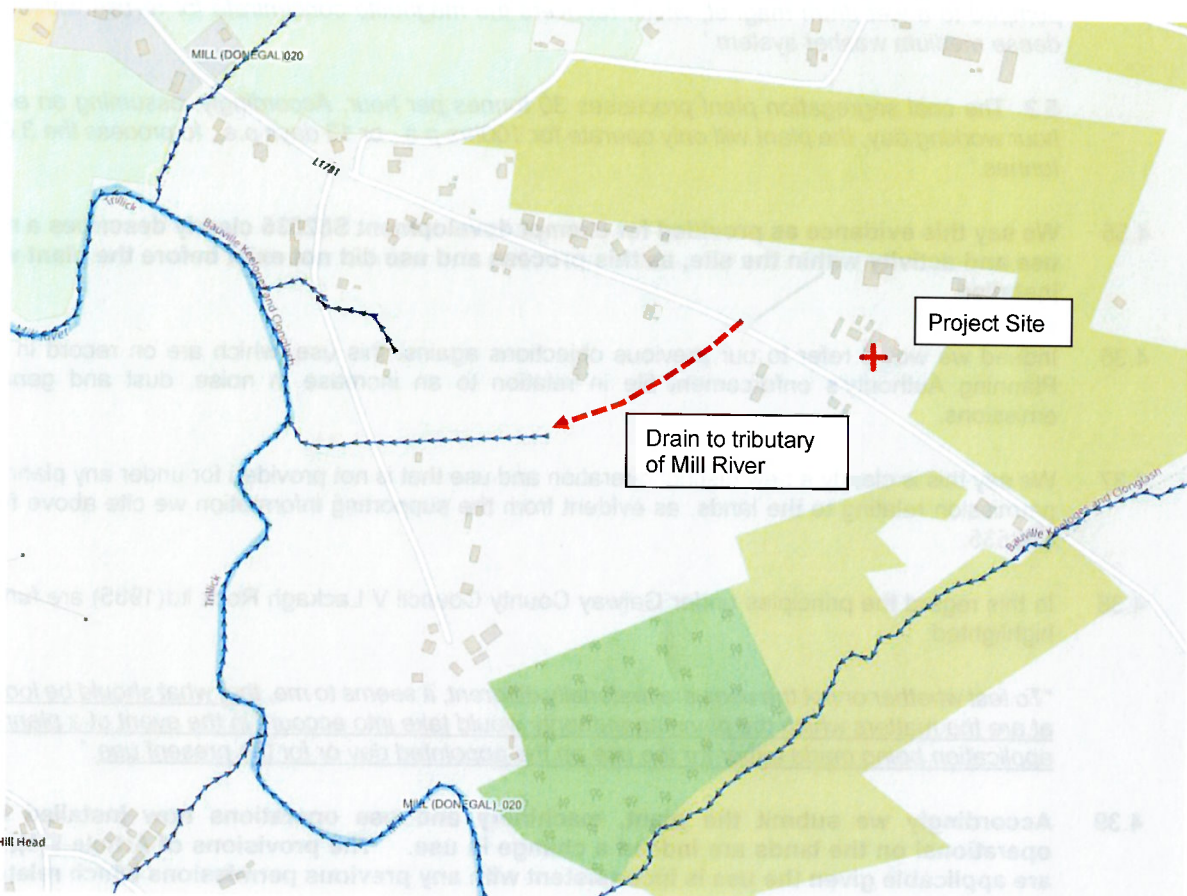
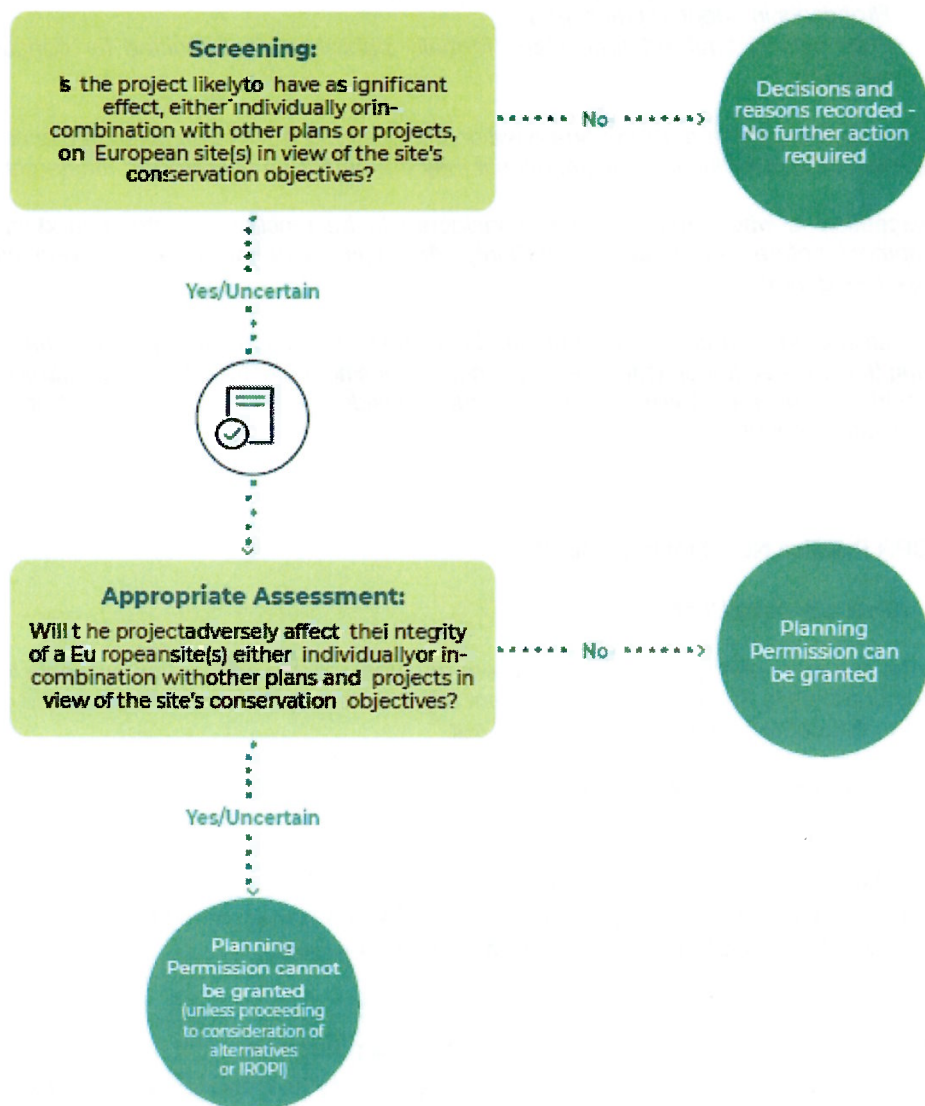


Figure 4 Project site in the context of the local watercourses (overlay onto EPA Watercourse Map Set)

4.44 We highlight this is a clear pathway connector from the site to the wider watercourse network, which ultimately discharges into Lough Swilly SAC.

4.45 For conciseness in terms of the Appropriate Assessment process we refer to the OPR Practice Note PN01 which sets out the main steps for the AA process.

Overview of Screening and Appropriate Assessment



4.46 Also relevant is the 'In Combination Effects' wherein the OPR Practice Note sets out:

'Some projects are unlikely to have significant effects on their own. However, the effects in combination with other plans or projects could be significant. The in-combination assessment should concentrate on projects/plans that could in fact act in-combination with the current project to affect site conservation objectives. For example, in a site where Fresh Water Pearl Mussel is a Qualifying Interest, a key question is what other plans/projects may involve discharges to the relevant river. This allows the assessment of in-combination impacts to be focused on the relevant impacts.'

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In the case of projects, in-combination impacts of both plans and projects must be considered (i.e. not solely other projects). It should also be noted that plans/projects extend beyond those covered by the 2000 Act.

In-combination effects must examine plans or projects that are:

- *Projects completed,*
- *Projects approved but not started or uncompleted,*
- *Projects proposed, i.e. for which an application for approval or consent has been made, including refusals subject to appeal and not yet determined,*
- *Proposals in adopted plans, and*
- *Proposals in finalised draft plans formally published or submitted for consultation or adoption.*

Plans and projects that are not yet proposed do not generally have to be taken into account in the assessment of in-combination effects, even if they are part of an overarching masterplan.

The exception is where the project is considered to be functionally interdependent with the development before the competent authority. An example of this is a grid connection for a proposed wind farm.

The consideration of in-combination effects is not restricted to similar types of plans or projects covering the same sector of activity (e.g. a series of housing projects). All types of plans or projects that could, in-combination with the project under consideration, have a significant effect, should be taken into account.'

4.47 The OPR Practice Note further highlights:

(I) Precautionary Principle:

'The precautionary principle means that where the most reliable information available leaves obvious doubt as to the absence of significant effects, the project cannot be screened out and an appropriate assessment must be carried out.'

(II) Source Pathway Receptor Model



Pathway

Identify the existence and characteristics of the pathways that could link European sites and their Qualifying Interests to the proposed development.

Examples

Direct pathways:

- Proximity (i.e. location within the European site).
- Water bodies (rivers/streams, marine, lakes, groundwater).
- Air (for both air emissions and noise impacts).

Indirect pathways:

- Disruption to migratory paths, e.g. bird species, aquatic species, bats.
- 'Sightlines' where noisy or intrusive activities may result in disturbance to shy species.

4.48 Having reviewed the Planner's report for S52584 we note the Appropriate Assessment is confined to paragraph 4.4 which states:

4.4 Consideration has also been given to the proximity to the site to any Natura 2000 sites, the closest being the Lough Swilly SAC/SPA located approx. 3.5km away. Having regard to the scale and nature of the proposed development, within an established residential development, alongside the physical distances from the nearest Natura 2000 site, and no known direct hydrological links, it is not considered that the proposed development would be likely to have any significant effect, individually or in combination with any other plan or project, and it is considered that Screening for Appropriate Assessment is not required in this instance.

4.49 We say this approach by the Planning Authority is a fundamental legal and planning error and contrary to the requirements of the Habitats Directive. Having considered the Appropriate Assessment obligations on decision makers we highlight for the Coimisiun Article 6(3) of the Habitats Directive:

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

4.50 The Judgement 'Eco Advocacy V An Bord Pleanala Case C 721-21 is applicable in that the European Court clarified under Judgement ECLI:EU:C:2023:477 (An Bord Pleanala, Keegan Land Holdings and An Taisce) clarifies what is required. We cite the following extracts:

Para 31

"By its fifth question, which it is appropriate to examine before the fourth question, the referring court asked, in essence, whether Article 6(3) of Directive 92/43 must be interpreted as meaning that, where a competent authority of a Member State decides that an appropriate assessment is not necessary, it is obliged to state, in an explicit and detailed manner, the reasons on which it bases its decision, so as to dispel all reasonable scientific doubt concerning the effect of the proposed plan or project for the site concerned and to remove expressly and individually each of the doubts raised in that regard during the public participation process."

Para 40

"Such a requirement entails that the competent authority should be in a position, following an appropriate assessment, to state to the requisite legal standard the reasons why it was able, prior to the granting of the authorisation at issue, to achieve certainty, notwithstanding any opinions to the contrary expressed, that there was no reasonable scientific doubt with respect to the environmental impact of the work envisaged on the site concerned (see to that effect, judgment of 7 November 2018, Holohan & Ors., C0461/17 paragraph 51)

Para 42

'It follows that, although, where a competent authority decides to authorise such a project without requiring an appropriate assessment within the meaning of that provision, EU law does not require that authority to respond, in the statement of reasons for such a decision, one by one, to all the points of law and of fact raised by the interested parties during the administrative procedure, the said authority must nevertheless state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.'

Para 43

'In the light of the foregoing considerations, the answer to the fifth question is that Article 6(3) of Directive 92/43 must be interpreted as meaning that although, where a competent authority decides to authorise a plan or project likely to have a significant effect on a site protected under that directive without requiring an appropriate assessment within the meaning of that provision, that authority is not required to respond, in the statement of reasons for its decision, to all the points of law and of fact raised during the administrative procedure, it must nevertheless state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.'

4.51 Indeed with no Appropriate Assessment screening having been carried out then the decision by the Planning Authority is legally flawed, both under the provisions of Section 177U(1) of the Planning and Development Act and Article 9(1)(a)(vi) of the Planning and Development Regulations.

4.52 We refer the Coimisiun to Article 9(1)(viiB) of the Planning and Development Regulations which sets out a restriction on exempt development:

'comprise development in relation to which a Planning Authority or An Bord Pleanala is the competent authority in relation to Appropriate Assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site'.

4.53 **As the Coimisiun will note the Appropriate Assessment process is to be carried out by the decision maker. We highlight:**

**-the in combination effects from operations within the yard;
-the receiving watercourse (Mill River) and the potential for the project to further deteriorate water quality in the Mill River which ultimately discharges into Lough Swilly SAC;
-with no evidence base to 'screen out' the project in terms of Appropriate Assessment then there is no basis for the project to be exempt development given the precautionary principle and pathway connector to an SAC downstream.**

5 Concluding Statement & Summary

5.1 To summarise how the proposal is to be deemed as not exempt development the tables below set out the responses on both how restrictions to exempt development under Article 9 (1)(a)(iii) apply and how the provisions of Class 21 are not met.

Article 9	Article Description	Responses
9(1)(a)(i)	Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act	The proposal will contravene condition 8 of ABPs decision 248403.
9(1)(a)(ii)	Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.	The proposal will not consist of any of these works.
9(1)(a)(iii)	Endanger public safety by reason of traffic hazard or obstruction of road users.	Not applicable.
9(1)(a)(iv)	Except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.	Not applicable
9(1)(a)(v)	Consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,	Not applicable.
9(1)(a)(vi)	Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.	Applicable. Having reviewed the basis for S52584 as submitted by Harley Planning Consultants (in their response to the Planning Authority) we note it identifies View Points 5, 6 and 7 from which the plant/machinery is clearly visible.

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9(1)(a)(vii)	Consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan.	Not applicable
9(1)(a)(viiA)	Consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.	Not applicable
9(1)(a)(viiB)	Comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.	With no Appropriate Assessment screening having been carried out then the decision by the Planning Authority is legally flawed, both under the provisions of Section 177U(1) of the Planning and Development Act and Article 9(1)(a)(vi) of the Planning and Development Regulations. With no evidence base to 'screen out' the project in terms of Appropriate Assessment then there is no basis for the project to be exempt development given the precautionary principle and pathway connector to an SAC downstream.
9(1)(a)(viiC)	Consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.	Not applicable

Table 1 Restrictions on Exemption Criteria (as relevant) & Responses

Class 21 Development for Industrial Purposes	Article Description	Restrictions	Responses
	<p>(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—</p> <p>(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,</p> <p>(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,</p> <p>(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.</p>	<p>1. Any such development shall not materially alter the external appearance of the premises of the undertaking.</p> <p>2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.</p>	<p>It is clear that the plant and machinery having a height of 10.75 metres would indeed materially alter the external appearance of the premises or the undertaking.</p>

Table 2 Class 21 provisions and responses

In this context we submit it is appropriate for the Coimisiun to determine the works and use as not being exempt development under the provisions of Class 21(a)(iii) of the Planning and Development Regulations (as amended).

Yours sincerely



Ronan Woods

Applicant Particulars

Applicant

Ronan Woods, Director Genesis Planning Consultants

Company Address

Genesis Planning Consultants
 Dean Swift Building
 Armagh Business Park
 Hamiltonsbawn Road, Armagh, BT60 1HW

Enclosures

- €220 application fee
- Appendix 1 Copy of Planning Authority decision under S525/84
- Appendix 2 Project drawings comprising
 - Site Location Map
 - Site Layout Plan
 - Plans, Section and Elevations

- Appendix 3 ABP decision 248403
- Appendix 4 Copy of EU Judgement 2023/477

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- **Appendix 1 Copy of Planning Authority decision under S525/84**



**Co mha irle Contae
Dhún na nGall**
Donegal County Council

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Contae Dhún na nGall, F93 Y622

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Planning Services
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Issued by E-mail ronan@genesisplanning.co.uk

Our Ref: S525/84

2nd October, 2025

Ronan Woods

Re: Section 5 - Application for the installation of plant/machinery for the segregation of coal and associated use of lands.

A Chara,

I wish to acknowledge receipt of your application received on 1st October, 2025 in relation to the above.

Yours sincerely,

Donegal County Council
Planning Services

Our Reference S524/107

Andrew Coyle
C/o. Harley Planning Consultants
1 Melmount Park
Strabane
Co. Tyrone
BT82 9SU

24 October 2025

Re: A Declaration under Section 5 of the Planning & Development Act 2000 (as amended) sought on the carrying out of development on lands at Bauville and Keelogs, Clonglash, Buncrana Co. Donegal F93 WR65. The development works are described as: The installation of plant/machinery for the segregation of coal and associated use of lands.

Dear Sir,

I am writing to you in relation to a Section 5 Declaration which has been sought on works carried out by Andrew Coyle Coal Ltd referenced above and whether these works constitute development or exempted development under the Planning codes. Under Section 5(2)(c) Planning & Development Act 2000 (as amended) the planning authority may request persons in addition to those who requested the declaration to submit information to enable the authority to issue the declaration on the question. As it is understood that the works in question have been carried out by Andrew Coyle Coal Ltd, (and have been the subject of a recent Section 5 determination by the planning authority S5 25/35) you are being afforded the opportunity to comment on the nature and extent of the aforementioned works providing a rationale on why the works are considered either exempted development or provided for by a previous planning permission.

You are further advised that all information considered relevant to assist the planning authority in making a declaration on the matter shall be submitted within 4 weeks from the date of this letter, following which time the planning authority will proceed to make the declaration within the subsequent 3 weeks. Furthermore, all documentation the subject of the Section 5 declaration is available for public inspection at the Planning Office, County House, Lifford during the opening hours of 09.00 – 16.30.

If you have any queries on the above you are advised to contact Glenn Doherty on 074 91 53900 and to submit the relevant information by email to planningmailbox@donegalcoco.ie

Yours sincerely,


Executive Planner
Development Applications Unit
24/10/2025

FS

Frank Sweeney
Senior Executive Planner
Community Development & Planning Services
24/10/2025



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Planning Section

Donegal County Council

County House

Lifford

Co. Donegal

21st November 2025



Our Ref: Andrew Coyle Coal Ltd.
Your Ref: 25/84

RE : Declaration sought by Genesis Planning Consultants, under Section 5 of the Planning & Development Act 2000 (as amended) on the carrying out of development on lands at Bauville and Keelogs, Clonglash, Buncrana, Co. Donegal F93 WR65. The development works are described as: The installation of plant/machinery for the segregation of coal and associated use of lands.

Dear Sir/madam

I refer to your letter dated 28th October inst. requesting Andrew Coyle Coal Ltd. to submit relevant information by 25th November 2025, to assist the Planning Authority in making a declaration on the above matter. Andrew Coyle Coal Ltd., has instructed this office to respond to the section 5 declaration submission by Ronan Woods, Genesis Planning Consultants under the P&D Act 2000 (as amended), in relation to development at the Andrew Coyle Coal Ltd premises. The information provided below offers information, addressing the Genesis Planning Consultants assertion that the development is not exempted development.

1. Genesis Planning Consultants grounds of submission.

1.1 The Genesis Planning Consultants declaration submission provides four grounds, supporting its assertion, that the works on the Andrew Coyle Coal Ltd property is not exempted development.

1.2 These grounds are listed below

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- (i) Article 9(1)(a)(i) of the Planning and Development Regulations applies to the lands under ABP Decision 248403. Specifically condition 8 of ABP's decision restricts any materials or equipment on the site to not exceed 2.4 metres above ground level.
 - (ii) The structure materially alters the external appearance of the premises or the undertaking.
 - (iii) Article 9(1)(a)(vi) of the Planning Development Regulation applies to the lands.
 - (iv) The use is inconsistent with the use pertaining to the lands.
- 1.3 Ground 1 relates to Article 9(1)(a)(i) of the Planning and Development Regulations 2001-23 (the Regulations) and specifically restricts any exemption under Article 6 of the Regulations, if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
- 1.4 Ground 2 relates to the structure materially altering the external appearance of the business premises and as such would not comply with the conditions imposed under Schedule 2, Part 1, Class 21(a)(iii) of the Planning & Development Regulations 2001-23 (the Regulations).
- 1.5 Ground 3 relates to Article 9(1)(a)(vi) of the Regulations, which restricts any exemption under Article 6 of the Regulations, if the carrying out of such development would interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- 1.6 Ground 4 relates to the use for the plant being inconsistent with the use pertaining to the lands and is to therefore a new use on the lands and constitutes an unauthorised change of use.



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2. Response to the Genesis submission Ground 1.

- 2.1 It is acknowledged that condition 8 of planning permission PL05E.248403 did include a restriction on the storage or stacking of loose or bagged coal or pallets, or of any other materials or equipment, to a height in excess of 2.4 metres above ground level on the site.
- 2.2 The development associated with planning permission PL05E.248403, as set out in the public notices, provided for
- (i) Minor relocation and increased floor area (100m²) of permitted coal storage shed.
 - (ii) 2 No. lean-to extensions to the storage shed and its change of use to coal bagging facility, complete with associated internal and external machinery and plant/equipment
 - (iii) Extended concrete coal storage yard with concrete boundary wall, soil embankment and chain link security fence with planted hedgerow along part of the eastern and southern boundaries.
 - (iv) Detached bagged coal storage shed.
 - (v) Diesel and home-heating oil pumps to serve the public.
 - (vi) Mechanical coal sorter and signage on the existing office building.
 - (vii) Planning permission is also sought for the continuation of soil embankment with planted hedgerow along part of the eastern and southern boundaries with all associated site development works.
- 2.3 The restriction in height under condition 8 of permission PL05E.248403, relates to two elements namely (a) storage or stacking of loose or bagged coal or pallets and (b) of any other materials or equipment. Andrew Coyle Coal Ltd considers that the restriction in height to 2.4m for storage/stacking of loose coal or pallets, or other materials or equipment, identified in condition 8, relates specifically to those elements in the description of the development for planning permission PL05E.248403 and does not apply generally to storage/stacking of loose coal or pallets, or other materials or equipment, that might be required in the future by the business in other parts of the



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overall site. This is considered a reasonable interpretation of condition 8 of planning permission PL05E.248403.

- 2.4 In this regard, it is significant that subsequent to the decision on PL05E.248403 in September 2017, a planning permission, 19/51284 was granted in January 2020, which provided for the stacking of bagged coal on pallets up to 4.8m high on the site, twice the restricted height of 2.4m in condition 8 on another part of the site. If the height restriction imposed under of planning permission PL05E.248403, related to the entire Andrew Coyle Coal Ltd. site, then permission would not have been granted for the stacking of bagged coal on pallets up to 4.8m high
- 2.6 Accordingly, it is concluded that the height of the coal segregation plant, does not contravene condition 8 of planning permission PL05E.248403 and only refers to those items of equipment included in the development description.

3. Response to the Genesis submission Ground 2.

- 3.1 Andrew Coyle Coyle Ltd. is relying on Schedule 2, Part 1, Class 21(a)(iii) of the Regulations, to support its claim that the development of a coal segregation plant is exempted development.
- 3.2 Ground 2 by Genesis Planning Consultants against this reliance, relates to the structure materially altering the external appearance of the business premises and as such would not comply with the condition 1, imposed under Schedule 2, Part 1, Class 21(a)(iii) of the Regulations confirming that “Any such development shall not materially alter the external appearance of the premises of the undertaking”.
- 3.3 The basis for the Genesis Planning Consultants ground 2, rests on the decision by the Planning Authority under planning application 19/51052, which refused planning permission for the development as set out below.

Application Reference Number:

19/51052

Proposed development:

Retention permission for increase of storage/stacking height of loose or bagged coal or pallets within the site from 2.4m as permitted to 4.8m above ground level



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Reason for refusal:

County Donegal Development Plan Policy ED-P-14 requires that any proposal for economic development; does not harm the amenities of nearby residents; it is capable of dealing satisfactorily with any emission(s); the site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity; appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view; in the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape. Based on information available to the Planning Authority, it is considered that the development requiring retention does not comply with this policy in terms of; protection of amenities of nearby residents in terms of scenic amenity and overbearance; controlling emission(s) in terms of dust emissions; satisfactory integration into the receiving environment in terms of height of development; adequate screening of areas of outside storage in terms of overall screening. The development requiring retention does not therefore accord with policy ED-P-14. Accordingly, to permit the development would be contrary to the aforementioned policies of the said Plan and would thereby be contrary to the proper planning and sustainable development of the area.

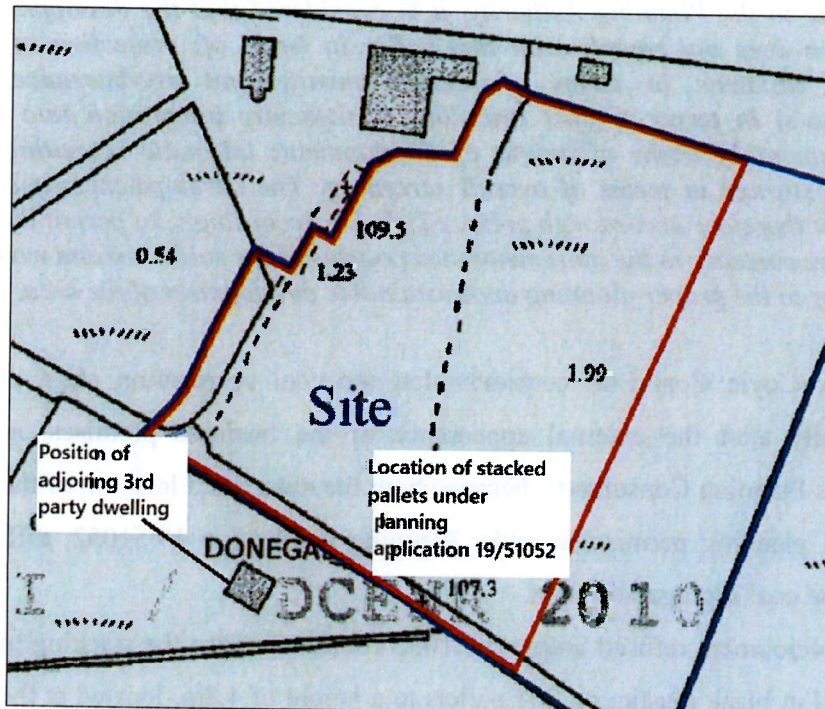
- 3.4 Andrew Coyle Coal Ltd. considers that the coal segregation plant does not materially alter the external appearance of the business premises, as asserted by Genesis Planning Consultants, because both the nature and location of the development refused planning permission under planning application 19/51052, differ completely from the coal segregation plant.
- 3.5 The development refused under 19/51052 consisted of the the stacking of bagged coal, covered in black plastic, on 204 pallets to a height of 4.8m, located at the southern end of the site, adjacent to the third party dwelling across the road from the business yard and whose occupants objected to the development. The extracts of drawings from planning application 19/51052, attached below, demonstrate that the scale of the development did constitute an adverse visual impact on the residential amenities of the objector's dwelling, which as highlighted in bold in the refusal reason above, was the substantive focus of the refusal decision.
- 3.6 However, it is an unreasonable stretch to compare the nature and location of the development refused planning permission under 19/51052, with the coal segregation



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plant, which is located to the rear of the business yard and completely screened from the public road by the permitted office building and the business sheds.



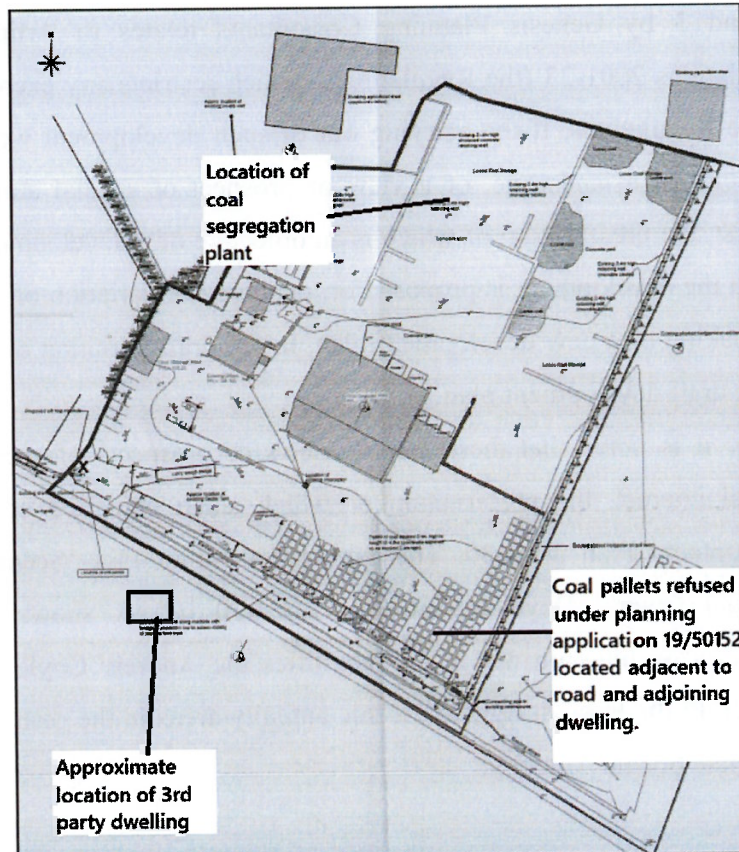
Extract

from Location Map Drawing No. 3001 in planning application 19/51052, demonstrating the location of the bagged coal on pallets 4.8m in height and the adjoining 3rd party dwelling.



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Extract of Layout Plan Drawing No 3002 from planning application 19/51052, demonstrating the location of the bagged coal on pallets 4.8m in height at the southern end of the site close to the 3rd party dwelling

- 3.7 Andrew Coyle Coal Ltd. considers that the refusal on planning application 19/51052, which was based on the protection of the residential amenities of an adjoining 3rd party dwelling, cannot be expanded to confirm, that the coal segregation plant, located to the rear of the business site and substantially screened by the existing office building and sheds, **materially** alters the external appearance of the premises of the undertaking.
- 3.8 Section 4 below elaborates further on the visual impact of the separation unit.



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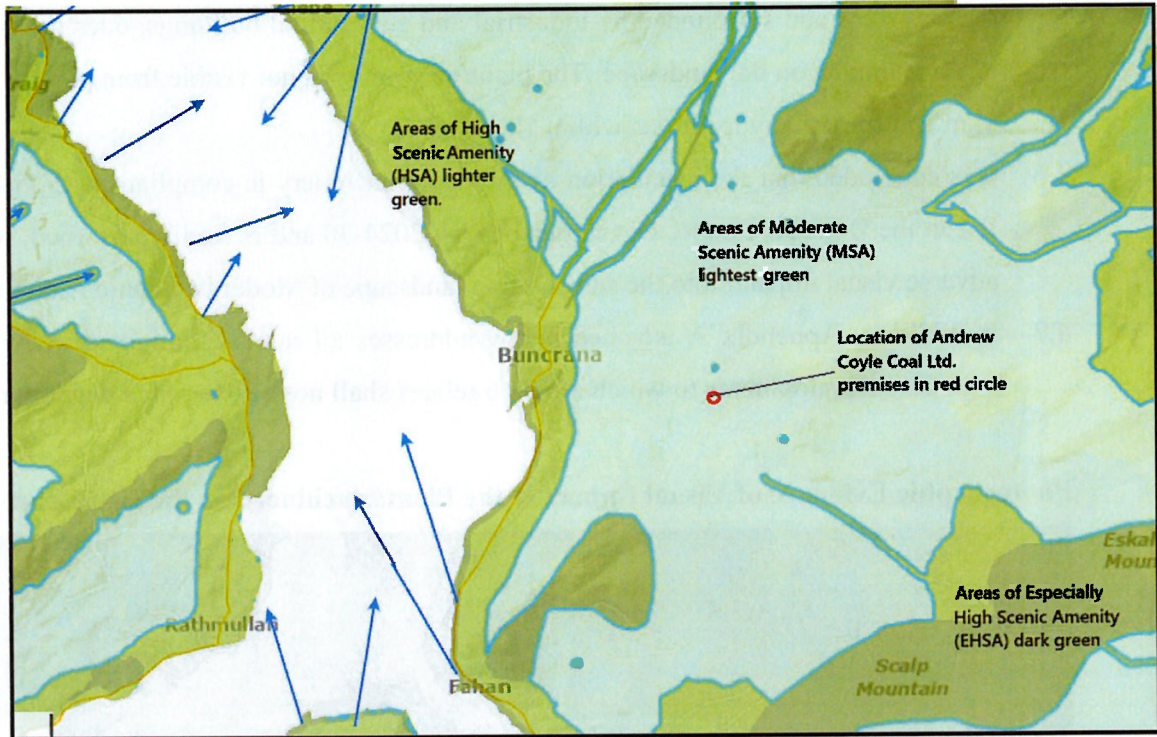
4. Response to the Genesis submission on Ground 3.

- 4.1 Ground 3 by Genesis Planning Consultants relates to Article 9(1)(a)(vi) of the Regulations 2001-23 (the Regulations), which restricts any exemption under Article 6 of the Regulations, if the carrying out of such development would interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- 4.2 Firstly it is noted that there are no views or prospects of special amenity value or special interest, the preservation of which is an objective of the Donegal County development Plan 2024-30. The extract from map 11.1 'Scenic Amenity' from the Donegal County Development Plan 2024-30 below, shows protected views and prospects by blue arrows. It also identifies the Andrew Coyle Coal Ltd. property in relation to the three designated scenic amenity areas in the plan, including the Area of Moderate Scenic Amenity.



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4.3 Areas of Moderate Scenic Amenity (MSA) are the lowest in the hierarchy of scenic amenity designations, which cover the entire county in the County Donegal Development Plan 2024-30 and are graded below Areas of High Scenic Amenity (HSA) and further below Areas of Especially High Scenic Amenity (EHSA).

4.4 It is respectfully considered that the installation of the plant/machinery does not interfere with the character of the landscape. Furthermore, the installation of the plant/machinery, because of its location to the rear of the site, adjacent to existing agricultural buildings and screened by the business's office building and sheds, can be absorbed into the moderate scenic landscape and is compliant with Policy L-P-2 in the Donegal County Development Plan 2024-30.

It is noteworthy that in a decision by An Bord Pleanála (PL05E. 248403), the Board's Inspector dealing with the impact of the depot on the landscape confirmed that "...the landscape is relatively robust and its scenic amenity is not particularly vulnerable".

4.5 The photographic evidence presented below, from viewpoint locations within 1km of the Andrew Coyle Coal Ltd site, demonstrate that the plant, which is located within the



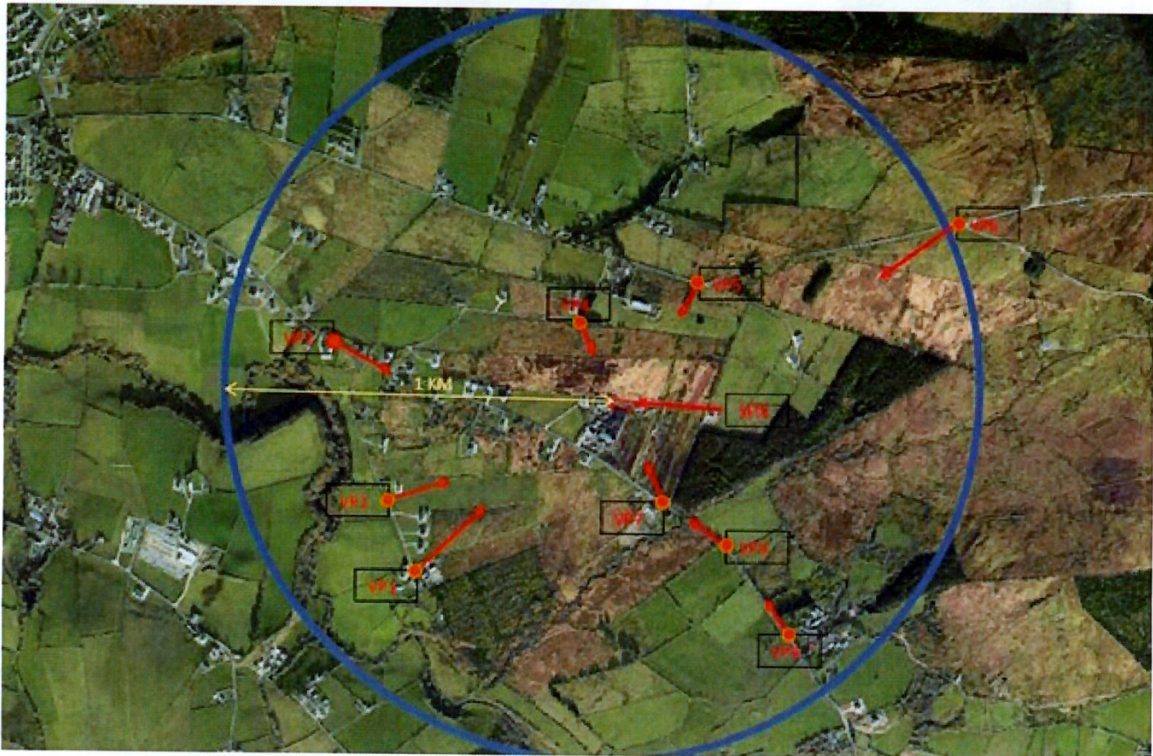
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existing yard and surrounded by industrial and agricultural buildings, does not have an adverse impact on the landscape. The plant/machinery is not visible from points beyond 1km and from many locations within 1km.

- 4.6 It is concluded that the installation of the plant/machinery is compliant with Policy L-P-2 in the Donegal County Development Plan 2024-30 and is readily absorbed, with no adverse visual impact, into the surrounding landscape of Moderate Scenic Amenity.
- 4.7 In addition, Appendix A attached below addresses all items highlighted in Article 9 regarding developments to which article 6 relates shall not be exempted development.

Photographic Evidence of Visual Impact of the Plant/machinery on the Landscape



A series of photographs were taken at strategic locations within 1km of the Andrew Coyle Coal Ltd site, to determine if any adverse visual impact arises from the installation of the plant/machinery on the local landscape, which is designated an Area of Modest Scenic Amenity. The locations of the 9 selected viewpoints are shown on the aerial photograph above.



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Each viewpoint photograph is shown below with a comment on the visual impact from each location.

- Apart from a 55m stretch of road from Viewpoint 7 towards the Andrew Coyle Coal Ltd. depot, where visual impact of the plant/machinery on the landscape is moderate, it is respectfully considered that overall the visual impact of the plant/machinery is negligible.

Viewpoint 1:



This viewpoint is located at the termination of county road L-17811-0.

No part of the Andrew Coyle Coal Ltd. buildings or the plant/machinery are visible, due to the dense tree stand between the viewpoint and the Andrew Coyle Coal Ltd. depot.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is non-existent.



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Viewpoint 2:



Viewpoint 2 is taken from a point midway along county road L-17811-0 from its junction with county road L-1781-1.

No part of the Andrew Coyle Coal Ltd.. depot, or the plant/machinery is visible from this viewpoint.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is non-existent.



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Viewpoint 3:



Viewpoint 3 is taken from the junction of county roads L-1781-1 and L-17811-0.

No part of the Andrew Coyle Coal Ltd. depot or the plant/machinery are visible from this viewpoint due to the aspect and a bend in the road.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is non-existent.



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Viewpoint 4:



Viewpoint 4 is taken from a sharp bend on county road L-7121-1.

Only the upper tip of the plant/machinery along with the roofs of agricultural buildings adjacent to the Andrew Coyle Coal Ltd. depot, which is located on lower ground.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is negligible.



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Viewpoint 5:



Viewpoint 5 is taken from county road L-71211-0 on elevated ground directly north of the Andrew Coyle Coal Ltd. depot.

The plant/machinery is visible among the industrial yard buildings and adjoining agricultural sheds.

However, it is considered that the impact of the plant/machinery on the landscape from this viewpoint is negligible.



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Viewpoint 6:



Viewpoint 6 is taken from county road L-71211-0 at the entrance to the wind farm northwest of the Andrew Coyle Coal Ltd.. depot.

The depot and plant/machinery is visible in the distance.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is negligible.



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Viewpoint 7:



Viewpoint 7 is the closest viewpoint to the Andrew Coyle Coal Ltd. depot, approximately 180m along county road L-1781-1 to the east.

The plant/machinery, loose coal stacks, the Andrew Coyle Coal Ltd. buildings and adjoining agricultural buildings are visible from this viewpoint.

However, they are only visible for a distance of 55m towards the depot from the viewpoint.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is modest to negligible.



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Viewpoint 8:



Viewpoint 8 is taken from county road L-1781-1 to the east of the Andrew Coyle Coal Ltd. depot.

The depot is not visible from this viewpoint.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is non-existent.



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Viewpoint 9:



Viewpoint 9 is taken from county road L-1781-1 further west from viewpoint 8.

Again, the Andrew Coyle Coal Ltd. depot is not visible from this viewpoint.

It is considered that the impact of the plant/machinery on the landscape from this viewpoint is non-existent.



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5. Response to the Genesis submission Ground 4.

- 5.1 Ground 4 of the Genesis Planning Consultants submission relates to the use of the plant being inconsistent with the use pertaining to the lands and is to therefore a new use on the lands and constitutes an unauthorised change of use.
- 5.2 Andrew Coyle Coal Ltd. have operated a coal import & wholesale supply business from the site for over twenty years and several planning permissions for the expansion of the business have been granted over that time. The company has always engaged in the processing of coal products through separation and preparation into different qualities, for distribution to outlets throughout the country and to meet the specific needs of customers.
- 5.3 The development permitted to the company under planning permission PL05E.248403, provided for inter alia, internal and external machinery and plant/equipment and a mechanical coal sorter, which are utilised to process the raw coal products, prior to distribution.
- 5.4 Section 4(2)(a) of the P&D Act 2000 (as amended) allows the Minister for the Environment and Local Government, to make regulations, providing for any class of development to be exempted development where the Minister is of the opinion that the carrying out of such development would not offend against principles of proper planning and sustainable development.
- 5.5 In this respect, under Class 21(a) of Schedule 2, Part 1 of the P&D Regulations 2001-23, the Minister confirms that development carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on and for the purposes of any industrial process is exempted development. Developments identified by the Minister include the installation of industrial plant or machinery, by the industrial undertaker. The Minister also included conditions to be adhered to, to ensure that the development would not offend against principles of proper planning and sustainable development. The issue of compliance with the Minister's conditions has been addressed in Section 3 above.



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- 5.6 Andrew Coyle Coal Ltd. by installing the coal segregation plant machinery is carrying out development, which enables the company to process coal more efficiently. This is the type of development, envisaged by the Minister, when implementing the exempted development articles in the Regulations, to allow industrial undertakers to install or replace plant/machinery to continue the industrial undertakers' established processes, without the need to go through the development management procedures.
- 5.7 The coal segregation plant, installed by the industrial undertaker, Andrew Coyle Coal Ltd., is an improved method of segregating and sizing coal on the company's site, which has been carried out by the company for years. It is not a change of use, as asserted by Genesis Planning Consultants.
- 5.8 Accordingly, it is considered that the installation of the machinery, to improve efficiency in the segregation and sizing of coal products is not a change of use..

6. Conclusion

- 6.1 The Planning Authority is respectfully requested to dismiss the grounds of opposition to its decision on application S5 25/35, issued on 25th April 2025 and reaffirm that the installation of the machinery on the site by Andrew Coyle Coal Ltd. is exempted development.

Jim Harley

Harley Planning Consultants



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APPENDIX A

Issues in article 9(1)(a) to 9(1)d inclusive of the Planning &
Development Regulations 2001-23 addressed.



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Planning & Development Regulations 2001-23.

Article 9(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—	Comment
(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,	The installation of the plant/machinery does not contravene a condition attached to any planning permission, or be inconsistent with any use specified in any planning permission. In this respect, conditions restricting the storage height to 2.4m has been addressed above in section 2 and noise, light and dust emission levels have been met and vision lines have been provided at the entrance to the site. The Planning Authority has acknowledged that the Andrew Coyle Coal Ltd. has complied with its planning permission.
(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,	The installation of the plant/machinery does not involve the laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.
(iii) endanger public safety by reason of traffic hazard or obstruction of road users,	The installation of the plant/machinery does not endanger public safety by reason of traffic hazard or obstruction of road users. Vehicular traffic associated with the Andrew Coyle Coal Ltd. Buncrana operation, has been reduced by 96%, as a result of the business re-location to Maydown, Derry. Full visibility is available at the entrance to the site.
(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,	Not applicable. Glare for operation of airports, aerodromes or aircraft does not arise.
(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction,	The installation of the plant/machinery does not bring forward the building line, as it is located to the rear of the Andrew Coyle Coal Ltd site, behind existing buildings.



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<p>erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,</p>	
<p>(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,</p>	<p>The installation of the plant/machinery does not involve works under a public road.</p>
<p>(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,</p>	<p>This matter has been addressed in section 4 above. The installation of the plant/machinery does not interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of the Donegal CDP 2024-30.</p> <p>In the Donegal County Development Plan 2024-30, the Andrew Coyle Coal Ltd site at Bauville Keeloges and Clonglash is designated as an 'Area of Moderate Scenic Amenity' and no special views are identified in the Plan. Areas of Moderate Scenic Amenity, are the lowest grade of landscape quality in the county and have the capacity to absorb additional development that is suitably located, sited and designed. In a decision by An Bord Pleanala (PL05E. 248403), the Board's Inspector dealing with the impact of the depot on the landscape confirmed that "...the landscape is relatively robust and its scenic amenity is not particularly vulnerable".</p>
<p>(vii) consist of or comprise the excavation, alteration or demolition (other than peat</p>	<p>Not applicable. No places, caves, sites, features or other objects of</p>

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<p>extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,</p>	<p>archaeological, geological, historical, scientific or ecological interest exist within the Andrew Coyle Coal Ltd. site. The closest designated item is a kiln (code 40902933, over 0.5kms to the north.</p>
<p>(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,</p>	<p>Not applicable. No archaeological monument exists within or in the vicinity of the Andrew Coyle Coal Ltd site.</p>
<p>(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,</p>	<p>The development does not within the categories set out in schedule 5 of the planning regulations and so is not subject to a requirement for environmental impact assessment. No liquid waste or water is discharged from this process, which is totally self-enclosed. The development is not in or adjacent to any Natura 2000 site and it would not involve processes that would lead to emissions that would have downstream effects on such a site. It would not, therefore, be likely to have significant effects on a Natura 2000 site and is not subject to a requirement for an appropriate assessment. This has been confirmed by the Board's Inspector and accepted by the Board (paragraph 8.2 page 10 PL05E. 248403)</p>
<p>(viiC) consist of or comprise development which would be likely to have an adverse</p>	<p>Not applicable. The plant/machinery is not located in an area designated as a</p>

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impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.	natural heritage area.
(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,	The installation of the plant/machinery does not comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. The Planning Authority is satisfied that the development is in compliance with all imposed conditions and no enforcement action served on the company.
(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,	The erection of the plant will not preclude or restrict the continuance of an existing use of a building or other structure, where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use.
(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,	No fencing or enclosure of habitually open land is involved in the installation of the plant/machinery.
(xi) obstruct any public right of way,	The installation of the plant/machinery does not obstruct any public right of way,
(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would	The plant/machinery is not within an architectural conservation area.

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<p>materially affect the character of the area,</p> <p>(b) in an area to which a special amenity area order relates, if such development would be development:—</p> <p>(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or</p> <p>(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or</p> <p>(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or</p> <p>(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,</p>	<p>No special amenity area order exists at the location of the plant/machinery.</p>
<p>(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,</p>	<p>The industrial plant does not fall within the categories set out in Schedule 5 of the planning regulations and so is not subject to a requirement for environmental impact assessment.</p>
<p>(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.</p>	<p>The installation of the plant/machinery does not consist of the provision of, or modifications to, an establishment, which could have significant repercussions on major accident hazards.</p>



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Our Ref: S525/84

21st November, 2025

Andrew Coyle Coal Ltd.

Re: Section 5 – Declaration relating to the installation of plant/machinery for the segregation of coal and associated use of lands.

A Chara,

I wish to acknowledge receipt of your declaration received on 21st November, 2025 in relation to the above.

Yours sincerely,

Donegal County Council
Planning Services

SECTION 5 REFERRAL REPORT – Ref. No: S5 25/84

1.0 BACKGROUND

1.1 Location:

Lands at Bauville and Keeloges, Clonglash, Bunrana, Co. Donegal, F93 WR65

1.2 Site Description:

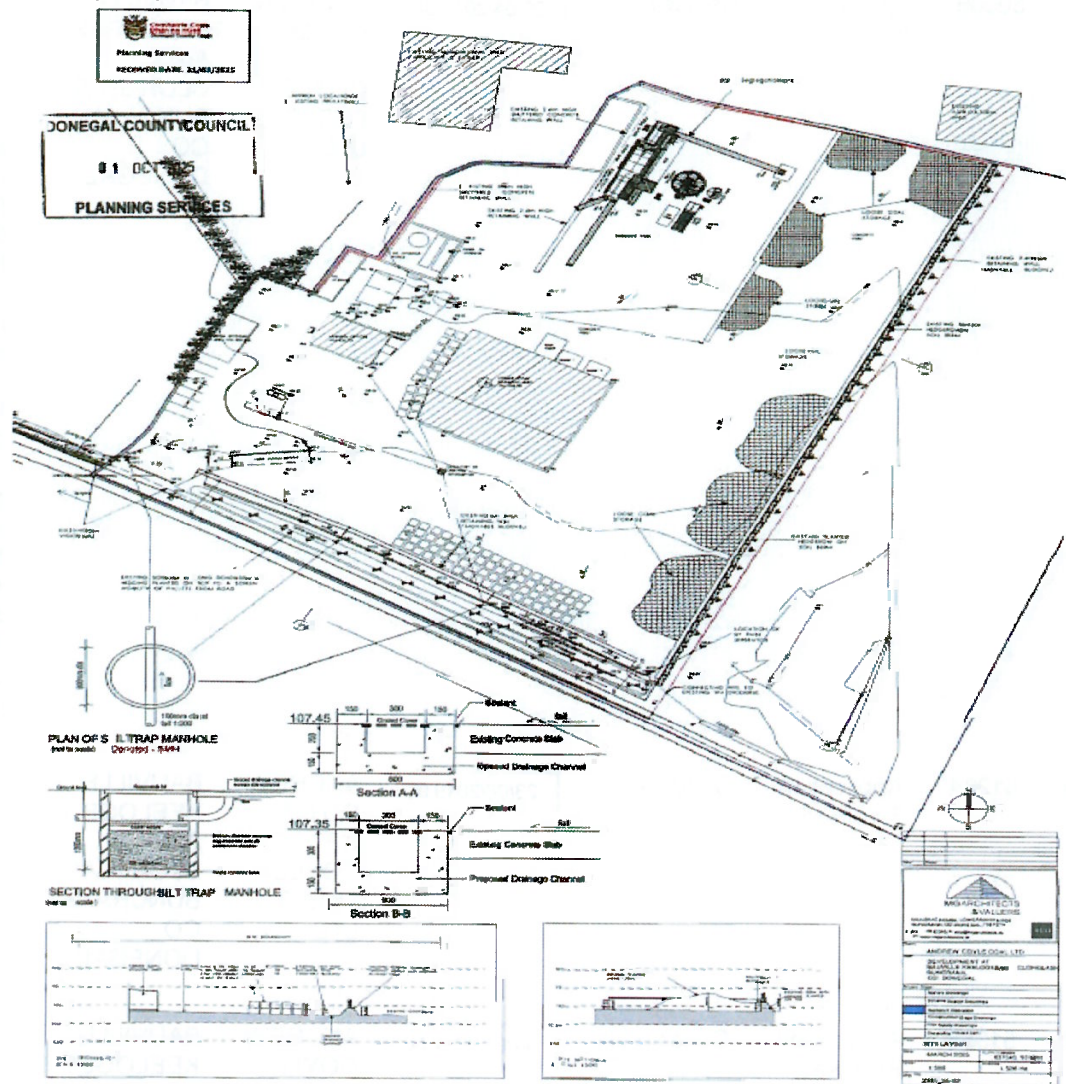
The site is currently occupied by Coyle Coal and Fuels. The site consists of approx. 5 no. sheds in use for the commercial business. The site is fenced off and screened by mature hedgerows and trees and access via a lockable security gate.

1.3 Planning History

19	50606	Application Finalised	Refused	26/04/2019 OC	ANDREW COYLE OF COYLE FUELS LTD	BAUVILLE KEEOLOGES AND CLONGLASH BUNCRANA CO. DONEGAL	AN AMENDMENT OF CONDITION 2 OF PERMISSION REF: 05/70314 AND OF CONDITION 2 OF PERMISSION REF: 16/51749 (PL05E.248403) IN ORDER TO ALLOW FOR VEHICLE/TRUCK/HGV ACCESS AND EGRESS BY DEPOT STAFF TO THE DEPOT BETWEEN 06.00 HOURS AND 20.00 HOURS MONDAY TO FRIDAY AND BETWEEN 06.00 HOURS AND 16.00 HOURS ON SATURDAY AT EXISTING ESTABLISHED FUEL DEPOT
19	51284	Application Finalised	Conditional	23/08/2019 OC	ANDREW COYLE OF COYLE FUELS LTD	BAUVILLE KEEOLOGES AND CLONGLASH BUNCRANA CO. DONEGAL	AN AGRICULTURAL CONCRETE YARD AND CHANGE OF USE OF THE YARD FOR STORAGE OF BAGGED COAL
22	51358	Application Finalised	Conditional	11/08/2022 OC	ANDREW COYLE OF COYLE FUELS LTD	BAUVILLE, KEEOLOGES AND CLONGLASH BUNCRANA LIFFORD PO CO. DONEGAL	(1) DEVELOPMENT OF A NEW VEHICULAR ENTRANCE TO SOUTH EAST OF YARD (2) ERECTION OF 2.4M HIGH BOUNDARY SECURITY FENCE TO

							NORTH WEST BOUNDARY OF YARD AT EXISTING FUEL DEPOT
23	51806	Application Finalised	Conditional	24/11/2023 OC	JOHN COYLE OF COYLE FUELS LTD	BAUVILLE KEELOGES CLONGLASH BUNCRANA LIFFORD PO CO. DONEGAL	2 NO. DIESEL FUEL DISPENSING PUMPS AT EXISTING ESTABLISHED FUEL DEPOT

Site Layout plan



1.4 Proposed Development:

The installation of Plant/ Machinery for the segregation of coal and associated use of lands.

2.0. THE QUESTION

The applicant Mr Ronan Woods, has made a submission to Donegal County Council requesting that a Declaration be made under Section 5 of the Planning and Development Act, 2000 (as amended) as to whether or not the following is exempt from planning permission

- (i) The installation of plant/ machinery for industrial purposes i.e the placement of a coal segregation plant.

Following the submission of this Section 5 referral the planning authority in accordance with Section 5(2)(c) PDA wrote to the property owner Andrew Coyle Coal Ltd on the 24th October 2025 affording them the opportunity to comment on the nature and extent of the work referred to in the Section 5 referral. On foot of this correspondence the planning authority received a detailed report on 21st Ult. from Harley Planning Consultants Ltd specifically dealing with the substantive planning considerations detailed in the S5 referral. This detailed report sets out a response to the 4 no. grounds raised by Genesis Consultants on why the development is not exempt development. The planning authority concurs with the opinion set out in this report which reflects the position determined by the planning authority in assessing the original Section 5 referral sought by Andrew Coyle Coal Ltd under reference no. S5 25/35 for the installation of plant/machinery for industrial purposes ie. the placement of coal segregation plant.

3.0 EVALUATION

3.1 **Planning and Development Act, 2000 (as amended) Section 2(1)**

In this Act, except where the context otherwise requires –
“**Structure**” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so define, and

- (a) Where the context so admits, includes the land on, in or under which the structure is situate...

“**works**” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....

Section 3(1)

“**Development**” in this Act means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 177U(9)

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act. This includes Section 4(1)(h) i.e:

- Development consisting of the carrying out of works for the maintenance, improvement or alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of the structure or neighbouring structures.

Section 4(2)(a)

The Minister may by **regulations** provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) “by reason of the size, nature, or limited effect on its surroundings.....”
- (ii) “the development is authorised, or is required to be authorised, by or under any enactment....”

Section 4(2)(b)

“**Regulations** under paragraph (a) maybe subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.”

Section 4(2)(c)

“**Regulations** under this subsection may, in particular and without prejudice to the generality of paragraph (a) provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purposes being exempted development for the purposes of this Act”.

Section 177U(9)

“In deciding upon a declaration for the purposes of Section 5 of this Act a planning authority or the Board, as the case maybe, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this Section.”

3.2 Planning and Development Regulations, 2001 (as amended)

Article 6(1)

Subject to Article 9, development of class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) if the carrying out of such development would -
Sub-paragraphs (i) – (xii) (inclusive)

Class 21(a) of Part 1 of Schedule 2 (*Development for Industrial purposes*)

Class 21(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—

(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,

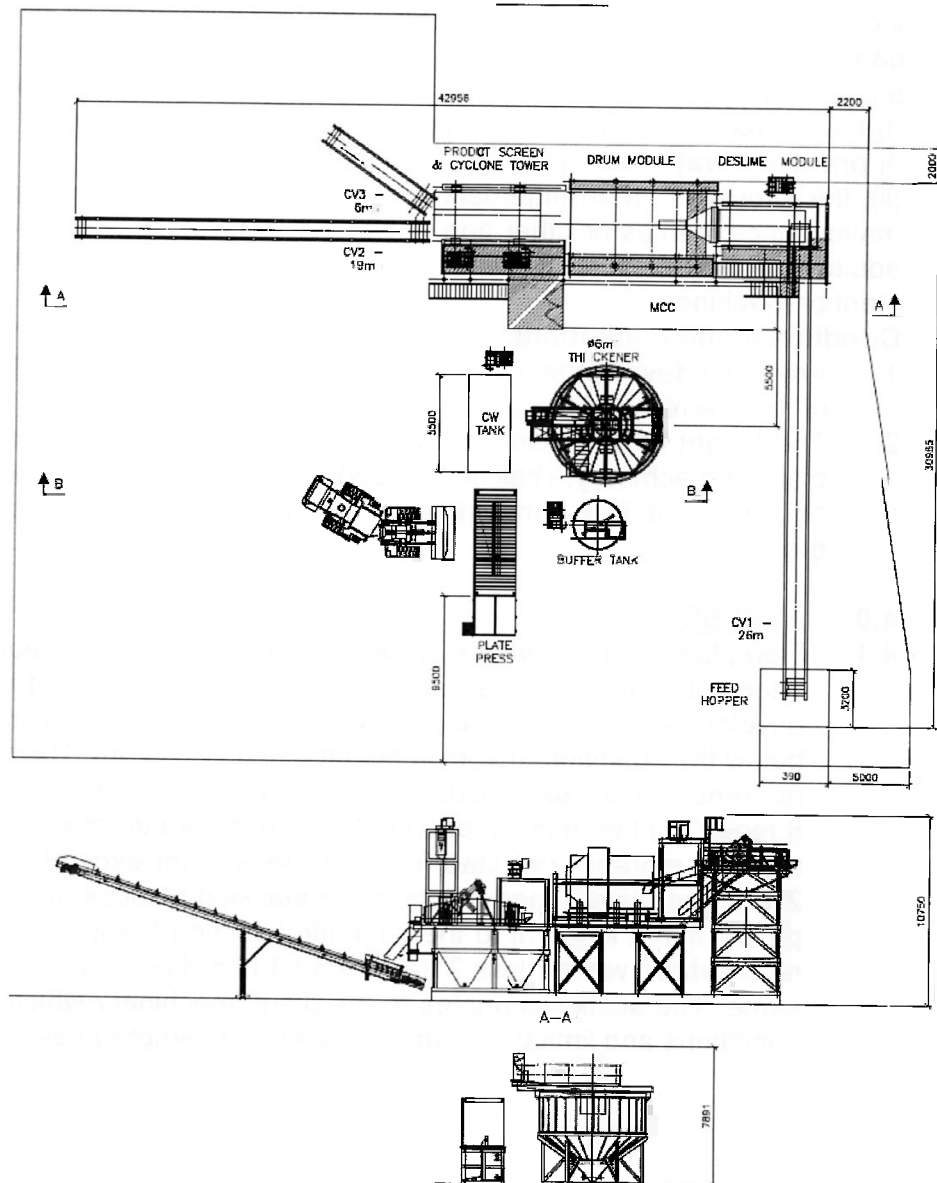
(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus, the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

Conditions and Limitations:

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.
2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

4.0 ASSESSMENT

- 4.1 Floorplans and elevations of the proposed coal segregation plant have been submitted, (see below). The coal segregation plant is considered development however the plant does not materially alter the site and is below the conditioned 15m in height being at 10.75m. The applicant has referenced a decision made under ABP 248403 highlighting condition no 8 regarding the erection of a berm along the southern eastern boundary and the storage and stacking of materials not exceeding a height of 2.4m. The storage and height of the stacking of loose or bagged coal or pallets is not relevant to the submitted section 5 application as there is no provision within class 21(a) of Part 1 of Schedule 2 for the storage of same. The section 5 relates to the plant/ machinery which is within the conditions and limitations and is therefore exempted development.



- 4.2 Having regard to the exemptions for development for industrial purposes under Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended), the coal segregation plant is covered by exempted development rights.
- 4.4 Consideration has also been given to the proximity to the site to any Natura 2000 sites, the closest being the Lough Swilly SAC/SPA located approx. 3.5km away. Having regard to the scale and nature of the proposed development, within an established residential development, alongside the physical distances from the nearest Natura 2000 site, and no known direct hydrological links, it is not considered that the proposed development would be likely to have any significant effect, individually or in combination with any other plan or project, and it is considered that Screening for Appropriate Assessment is not required in this instance.

4.0 Conclusion:
It is considered that:

- (i) The installation of plant/ machinery for industrial purposes i.e the placement of a coal segregation plant constitutes "development" within the meaning of the Act, being works, and is exempted development under the scope of Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended)

It should also be noted that in determining the subject section 5 referral regard was had to recent Section 5 referrals to An Bord Pleanala for determination.

5.0 RECOMMENDATION

IT IS HEREBY RECOMMENDED THAT A DECLARATION BE MADE THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE -

IS Development
&
IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The proposal to:

- (i) The installation of plant/ machinery for industrial purposes i.e the placement of a coal segregation plant
The installation of plant/ machinery for industrial purposes i.e the placement of a coal segregation plant

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

- (a) Section 2 (i), 3 (i), 177U (9) of the Planning and Development Act 2000 (as amended) and
(b) Articles 6(3), 9(1) and Class 21(a) of Part 1 of Schedule 2_of the Planning & Development Regulations 2001 (as amended).

And concluded that:

The proposal is development within the meaning of the Planning and Development Act 2000 (as amended) and is exempted development as it does come within the scope of Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

Signed:



Position: Executive Planner

Date: 11/12/2025



Frank Sweeney

Senior Executive Planner
Community Development & Planning Services
11/12/2025

Chief Executive's Order No: 2025PH3421

Planning and Development Acts 2000 (as amended)

SECTION 5:-

Request received 1st October 2025 from Mr Ronan Woods Genesis Planning Consultants, Dean Swift Building, Armagh Business Park, Hamiltonsbawn Road, Armagh BT60 1HW in relation to the installation of plant/machinery for the segregation of coal and associated use of lands at Lands at Bauville and Keelogs, Clonglash, Buncrana, Co. Donegal F93 WR65.

SUBMITTED:-

Written request received 1st October 2025 as above and report dated 11th December 2025 from the Executive Planner (Ref. No: S5 25/84 refers).

ORDER:-

Having considered the said request, the report of the Executive Planner, and the record forwarded to the Council by An Coimisiún Pleanála. in compliance with Sub-Section 6(c) of the said Section I have concluded that a declaration on the questions in the said request should be made in the terms of that in the Schedule to this Order, the main reasons and considerations therefore being detailed therein. I therefore Order that the declaration issue to the said requester and the owners/occupiers of the land concerned and, further, that it be entered in the Council's Planning Register in compliance with Sub-Section (5) of the said Section.


SENIOR EX. PLANNER

DATED THIS 11th DAY OF DECEMBER 2025

KMG

Chief Executive's Order No: 2025PH3421

Ref.No: S5 25/84

SCHEDULE

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

IS Development

IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

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

- Section 2 (i), 3 (i), 177U (9) of the Planning and Development Act 2000 (as amended) and
- Articles 6(3), 9(1) and Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

And concluded that:

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS EXEMPTED DEVELOPMENT** as it does come within the scope of Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

JS 11/12



**Comhairle Contae
Dhún na nGall**
Donegal County Council

Áras an Chontae,
Leifear,
Contae Dhún na nGall, F93 Y622

County House,
Lifford,
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Planning Services
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Ref. No: S525/84

11th December 2025

MR RONAN WOODS
GENESIS PLANNING CONSULTANTS,
DEAN SWIFT BUILDING,
ARMAGH BUSINESS PARK,
HAMILTONSBAWN ROAD,
ARMAGH
BT60 1HW

Re: The installation of plant/machinery for the segregation of coal and associated use of lands at Lands at Bauville and Keelogs, Clonglash, Buncrana, Co. Donegal F93 WR65.

A Chara,

I refer to your request received on 1st October 2025 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Coimisiún Pleanála. of such fee as may be prescribed, refer a Declaration for review by the Commission within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

**For Senior Ex. Planner
Planning Services**

/jmcc

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

DECLARATION

Chief Executive's Order No: 2025PH3421

Reference No: S525/84

Name of Requester: MR RONAN WOODS
GENESIS PLANNING CONSULTANTS,
DEAN SWIFT BUILDING,
ARMAGH BUSINESS PARK,
HAMILTONSBAWN ROAD,
ARMAGH
BT60 1HW

Summarised Description of development the subject matter of request:

The installation of plant/machinery for the segregation of coal and associated use of lands

Location: Lands at Bauville and Keelogs, Clonglash, Buncrana, Co. Donegal F93 WR65.

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

IS Development

IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

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

- Section 2 (i), 3 (i), 177U (9) of the Planning and Development Act 2000 (as amended) and
- Articles 6(3), 9(1) and Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

And concluded that:

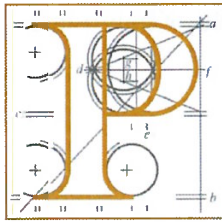
The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS EXEMPTED DEVELOPMENT** as it does come within the scope of Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



For Senior Ex. Planner
Planning Services

Dated this 11th day of December 2025

- **Appendix 3 ABP decision 248403**



An
Bord
Pleanála

Board Order
PL 05E.248403

Planning and Development Acts 2000 to 2017

Planning Authority: Donegal County Council

Planning Register Reference Number: 16/51749

Appeal by Martin Hegarty and Paddy Grant care of MKA Planning Limited of 32 Clooney Terrace, Waterside, Derry and by Andrew Coyle care of Harley Newman of Bohullion, Burt, County Donegal against the decision made on the 5th day of April, 2017 by Donegal County Council to grant subject to conditions a permission to the said Andrew Coyle care of North West Modern Designs of 42 Marian Park, Buncrana, Lifford, County Donegal in accordance with plans and particulars lodged with the said Council.

Proposed Development: Retention of minor relocation and increased floor area (100 square metres) of permitted coal storage shed, two number lean-to extensions to the storage shed and its change of use to coal bagging facility complete with associated internal and external machinery and plant/equipment, extended concrete coal storage yard with concrete boundary wall, soil embankment and chain link security fence with planted hedgerow along part of the eastern and southern boundaries, detached bagged coal storage shed, diesel and home heating oil pumps to serve the public, mechanical coal sorter and signage on the existing office building. Planning permission is also being sought for the continuation of soil embankment with planted hedgerow along part of the eastern and southern

boundaries with all associated site development works. All at Bauville, Keeloges and Clonglash, Buncrana, County Donegal.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

The proposed development would involve the expansion of an established commercial operation which, subject to compliance with the conditions set out below, would not injure the rural character of the area or the amenities of property in the vicinity of the site, and would be acceptable in terms of traffic safety and convenience. The proposed development and the development for which retention is sought would, therefore, comply with policy ED-P-12 of the Donegal County Development Plan 2012-2018 and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out, completed and retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out, completed and retained in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The business on the site, and all activities occurring thereon, shall only operate between 08.00 hours and 18.00 hours, Monday to Friday and between 08.00 hours and 14.00 hours on Saturdays. No activity shall take place outside these hours or on Sundays or public holidays.

Reason: In order to protect the residential amenities of property in the vicinity.

3. The diesel and home heating oil pumps shall be omitted from the development. Written confirmation that private fuel sales to motorists from within the subject site have ceased shall be submitted to the planning authority within three months of the date of this order.

Reason: In the interests of traffic safety and residential amenity.

4. Any exterior lighting on the site shall be arranged to prevent glare or spillage occurring on the public road or at any residential property in the vicinity, and shall not be lit outside of the operating hours specified under condition number 2 above.

Reason: In the interests of traffic safety and residential amenity.

5. Dust levels at the site boundary shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge).

Reason: To control dust emissions arising from the development and in the interest of the amenity of the area.

6. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling or at any point along the boundary of the site shall not exceed:

(i) An Leq, 1h value of 55 dB(A) during the period 08.00 to 18.00 hours from Monday to Saturday inclusive.

(ii) An Leq, 15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

Reason: To protect the residential amenities of property in the vicinity of the site.

7. Within three months of the date of this order, a monitoring programme for emissions from the site, including noise, dust and light shall be submitted to, and agreed in writing with, the planning authority. The programme shall commence within six months of the date of this order and shall provide for the submission of monitoring reports to the planning authority at least once every three months. In the event that adequate monitoring reports are not submitted or the reports indicate that the limits on emissions required under this permission have been exceeded, the planning authority may order that activity on the site cease until adequate mitigation measures have been agreed with the planning authority and implemented, and the occupier of the site shall comply with any such order.

Reason: To protect the amenities of the area and of property in the vicinity of the site.

8. Within six months of the date of this order, a berm shall be erected along the southern and eastern boundary of the site which shall be at least three metres high, measured from the ground level within the site. The berm shall be landscaped and planted in accordance with a planting scheme which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order. The agreed scheme shall include details of all other planting and boundary treatments on the site. The storage or stacking of loose or bagged coal or pallets, or of any other materials or equipment, on the site shall not exceed a height of 2.4 metres above ground level on the site.

Reason: To protect the visual character of the area.

9. Within three months of the date of this order, visibility splays shall be provided at the entrance to the site from the public road of 70 metres in each direction, measured from a point 2.4 metres from the rear of the carriageway at a height of 1.05 metres, to the satisfaction of the planning authority. In the event that the required visibility splays have not been provided by the required date to the satisfaction of the planning authority, the authority may order that activity on the site cease pending the provision of the visibility splays, and the occupier of the site shall comply with such an order.

Reason: In the interest of traffic safety.

10. A BS750 round threaded outlet fire hydrant on a 100 millimetres diameter watermain shall be located within 50 metres of the proposed development along the verge of the surfaced roadway.

Reason: To obviate fire hazards.

11. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In particular, all surface and contaminated waters shall be diverted via silt traps and a petrol interceptor prior to discharge to watercourses. No surface water shall discharge onto the public road and the developer shall take steps to ensure that no water discharges from the public road onto the site. A detailed scheme demonstrating compliance with this condition shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order.

Reason: In the interest of public health.

- **Appendix 4 Copy of EU Judgement 2023/477**



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 June 2023*

(Reference for a preliminary ruling – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Special areas of conservation – Article 6(3) – Screening of a plan or project with a view to determining whether or not it is necessary to carry out an appropriate assessment of the implications of that plan or project for a special area of conservation – Statement of reasons – Measures that may be taken into account – Project for the construction of a dwelling – Procedural autonomy – Principles of equivalence and effectiveness – Procedural rules according to which the subject matter of the dispute is determined by the pleas in law put forward at the point in time at which the action was brought)

In Case C-721/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 4 October 2021, received at the Court on 26 November 2021, in the proceedings

Eco Advocacy CLG

v

An Bord Pleanála,

other parties:

Keegan Land Holdings,

An Taisce – The National Trust for Ireland,

ClientEarth AISBL,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 27 October 2022,

* Language of the case: English.

after considering the observations submitted on behalf of:

- Eco Advocacy CLG, by O. Clarke and A. O’Connell, Solicitors, O. Collins, SC, and C. Lenaghan, Barrister-at-Law,
- An Bord Pleanála, by D. Browne, Barrister-at-Law, B. Foley, SC, and by B. Magee and J. Moore, Solicitors,
- An Taisce – The National Trust for Ireland and ClientEarth AISBL, by J. Kenny, Barrister-at-Law, and F. Logue, Solicitor,
- the Irish Government, by M. Browne, A. Joyce and M. Tierney, acting as Agents, A. Carroll, Barrister-at-Law, and by P. Gallagher and B. Kennedy, SC,
- the Italian Government, by G. Palmieri, and by G. Palatiello, avvocato dello Stato,
- the European Commission, by C. Hermes and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 January 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation, inter alia, of Article 4(2) to (5) of, and Annex III to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) (‘Directive 2011/92’), and of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).
- 2 The request has been made in proceedings between Eco Advocacy CLG and An Bord Pleanála (Planning Board, Ireland) concerning the validity of a planning permission issued by the latter.

Legal context

European Union law

Directive 92/43

- 3 Under Article 6(3) of Directive 92/43:

‘Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the

plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.’

Directive 2011/92

4 Article 4 of Directive 2011/92 provides, in paragraphs 2 to 5 thereof:

‘2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

4. Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to [European] Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or

(b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.'

5 Article 11 of that directive provides:

'1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

...

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

...

4. ...

[Judicial review procedures] shall be fair, equitable, timely and not prohibitively expensive.

...'

6 Annex III to the said directive sets out the criteria for determining whether the projects listed in Annex II to the same directive must be subject to an environmental impact assessment.

The dispute in the main proceedings and the questions referred for a preliminary ruling

7 The dispute in the main proceedings concerns a proposal for the construction of 320 dwellings, at Charterschool Land (Trim, County Meath, Ireland), in the vicinity of the special area of conservation of the River Boyne and the River Blackwater (IE0002299), designated under Directive 92/43, and the special protection area of the River Boyne and the River Blackwater (IE0004232), designated under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

8 Following various informal contacts, an application for planning permission for that project was submitted on 8 July 2020.

9 The design in question provides, inter alia, that, during the operational phase of the site, surface water run-off will be collected below ground in attenuation storage tanks. They will operate in conjunction with suitable flow control devices which will be fitted to the outlet manhole of each attenuation tank. A class 1 bypass separator will be installed on the inlet pipe to all tanks in order

to treat the surface water and remove any potential contaminants prior to entering the tank and prior to discharge. The water is discharged into a stream, a tributary of the River Boyne, located approximately 100 metres south of the site of the construction project at issue.

- 10 The planning permission application has been the subject of submissions inter alia from An Taisce (the National Trust for Ireland), a non-governmental organisation, and from Meath County Council, which raised a number of doubts as to the potential impact of that project on the areas referred to in paragraph 7 above, in particular on the water quality of the River Boyne, and on the protected species concerned.
- 11 By a decision of 27 October 2020, An Bord Pleanála authorised the said project and issued the requested planning permission, taking the view, on the basis of its inspector report of 6 October 2020, that neither an environmental impact assessment under Directive 2011/92 nor an appropriate assessment under Directive 92/43 was required.
- 12 Hearing a challenge against that decision by the applicant in the main proceedings, the referring court, by a judgment of 27 May 2021 ('the judgment of 27 May 2021'), rejected various objections raised against that challenge, before rejecting the challenge in so far as it was based on domestic law and on certain points of EU law.
- 13 With regard to the pleas on which that court has not yet ruled, it is apparent from the request for a preliminary ruling that, by those pleas, the applicant alleges, inter alia, first, that the decision of 27 October 2020 does not expressly state which documents contain An Bord Pleanála's reasoning for its decision not to require an environmental impact assessment, within the meaning of Directive 2011/92, or an appropriate assessment, within the meaning of Directive 92/43, second, that that board failed to address the doubts expressed by Meath County Council and by An Taisce in their submissions, and, third, that the said board failed to examine expressly, one by one, the headings in Annex III to Directive 2011/92. Moreover, the said court notes that An Bord Pleanála considered the sustainable drainage system at issue to be not a mitigation measure, but a standard feature of dwelling construction projects such as that at issue in the main proceedings.
- 14 However, it is apparent from the judgment of 27 May 2021 that the applicant in the main proceedings raised, for the first time at the hearing before the referring court, the first and third allegations referred to in the preceding paragraph.
- 15 In those circumstances, the High Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - '(1) Does the general principle of the primacy of EU law and/or of cooperation in good faith have the effect that, either generally or in the specific context of environmental law, where a party brings proceedings challenging the validity of an administrative measure by reference, expressly or impliedly, to a particular instrument of EU law, but does not specify which provisions of the instrument have been infringed, or by reference to which precise interpretation, the domestic court before which proceedings are brought must, or may, examine the complaint, notwithstanding any rule of domestic procedure requiring the specific breaches concerned to be set out in the party's written pleadings?

- (2) If the answer to the first question is “Yes”, [does Article] 4(2), (3), (4) and/or (5) [of] and/or Annex III [to] ... Directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under [Article] 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there should be an express, discrete and/or specific statement as to what documents exactly set out the reasons of the competent authority?
- (3) If the answer to the first question is “Yes”, [does Article] 4(2), (3), (4) and/or (5) [of] and/or Annex III [to] ... Directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under [Article] 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there is an obligation to expressly set out consideration of all specific headings and sub-headings in Annex III [to Directive 2011/92], in so far as those headings and sub-headings are potentially relevant to the development?
- (4) [Must Article] 6(3) of Directive 92/43 ... be interpreted as meaning that, in the application of the principle that in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site, the competent authority of a Member State is entitled [not] to take account of features of the plan or project involving the removal of contaminants that may have the effect of reducing harmful effects on the European site solely on the grounds that those features are not intended as mitigation measures even if they have that effect, and that they would have been incorporated in the design as standard features irrespective of any effect on the European site concerned?
- (5) [Must Article] 6(3) of Directive 92/43 ... be interpreted as meaning that, where the competent authority of a Member State is satisfied notwithstanding the questions or concerns expressed by expert bodies in holding at the screening stage that no appropriate assessment is required, the authority must give an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned, and that expressly and individually removes each of the doubts raised in that regard during the public participation process?
- (6) If the answer to the first question is “Yes”, [must Article] 6(3) of [Directive] 92/43 and/or the directive read in the light of the principle of legal certainty and good administration under [Article] 41 of the Charter of Fundamental Rights of the European Union has the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of appropriate assessment, there should be an express, discrete and/or specific statement as to what documents exactly set out the reason of the competent authority?’

Consideration of the questions referred

The first question

- 16 By its first question, the referring court asks, in essence, whether EU law must be interpreted as meaning that, where a party brings an action for annulment of an administrative decision and relies in support of that action, expressly or implicitly, on a specific act of EU law, but does not specify which provisions of that act have been infringed or of which precise interpretation it avails, the national court seised of the said action must or may hear and determine that action notwithstanding the existence of a national procedural rule according to which the application must set out the specific infringements concerned.
- 17 In its request for a preliminary ruling, the referring court does not reproduce the procedural rule in question. However, it follows from that request, from the file before the Court and from the written observations submitted in the present proceedings that what are contemplated in that regard are the Rules of the Superior Courts, according to which, first, an application for judicial review must state precisely each ground, giving particulars where appropriate and identify in respect of each ground the facts or matters relied upon as supporting that ground and, second, an applicant may not rely upon any grounds or any relief sought at the hearing other than those set out in that statement.
- 18 In the case at hand, it follows from the judgment of 27 May 2021 that it is in breach of those procedural rules that the applicant in the main proceedings relies, before the referring court, on the pleas giving rise to the second, third and sixth questions, for which reason that court considers itself compelled to reject those pleas as inadmissible, unless EU law requires it or allows it to examine them.
- 19 Consequently, in order to provide the referring court with a useful answer, it must be considered that, by its first question, that court asks, in essence, whether EU law must be interpreted as precluding a national procedural rule such as that described in paragraph 17 above.
- 20 In that regard, as the Advocate General observed, in essence, in points 29 and 30 of her Opinion, although EU law requires, pursuant to Article 11 of Directive 2011/92 and Article 9 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1), inter alia that environmental associations be guaranteed access to an effective and fair review procedure, it does not prescribe how and at what point in time the grounds aimed at challenging the lawfulness of relevant decisions, acts or omissions must be raised.
- 21 According to the Court's settled case-law, in the absence of EU rules in the field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment of 7 June 2007, *van der Weerd and Others*, C-222/05 to C-225/05, EU:C:2007:318, paragraph 28 and the case-law cited).

- 22 As regards, in the first place, the principle of effectiveness, it is apparent from the case-law that that principle does not, as a rule, require national courts to raise of their own motion an issue concerning the breach of provisions of EU law, where examination of that issue would oblige them to go beyond the ambit of the dispute defined by the parties themselves and rely on facts and circumstances other than those on which the party with an interest in application of those provisions has based its claim (judgment of 26 April 2017, *Farkas*, C-564/15, EU:C:2017:302, paragraph 32 and the case-law cited).
- 23 Moreover, the Court has held that national procedural rules according to which the subject matter of the dispute is determined by the pleas in law put forward at the point in time at which the action was brought are consistent with the principle of effectiveness in so far as they ensure proper conduct of proceedings by, in particular, protecting them from the delays inherent in examination of new pleas (judgment of 6 October 2021, *Conorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 64 and the case-law cited).
- 24 In the present case, the procedural rules at issue, as described in paragraph 17 above, do not appear to be such as to make it impossible or excessively difficult in practice to exercise the rights conferred by Directives 2011/92 and 92/43, at issue in the main proceedings, but, on the contrary, are such as to facilitate the proper conduct of proceedings by requiring that the pleas relied on in the action be raised with a sufficient degree of precision.
- 25 Last, while the Court has held that, in certain areas, and in the area of consumer protection in particular, national courts may be required, of their own motion, to examine compliance with the requirements which flow from EU law in the field (see, to that effect, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 66 and the case-law cited), such a requirement, which is the consequence of the specific characteristics of those areas and of the EU law provisions concerned, such as the necessity of compensating for the imbalance which exists between the consumer and the seller or supplier, may not, however, be inferred, in the case at hand, from the EU law requirements envisaged by the pleas referred to in paragraph 18 above.
- 26 In the second place, in so far as, according to the information available to the Court, the procedural rules at issue in the main proceedings apply irrespective of whether the alleged infringements concern Irish law or EU law, they do not appear to be contrary to the principle of equivalence, either.
- 27 It is true that respect for the principle of equivalence requires that, where the provisions of national law relating to procedural rules confer on a court the obligation to raise of its own motion a plea based on the infringement of national law, such an obligation must prevail in the same way for the same type of plea based on the infringement of EU law. The same applies if national law confers on the court the power to raise such a plea of its own motion (judgment of 26 April 2017, *Farkas*, C-564/15, EU:C:2017:302, paragraph 35 and the case-law cited).
- 28 However, in the present case, there is nothing in the information available to the Court to indicate that, under Irish law, the referring court has such an obligation or such an option. It follows, on the contrary, from the judgment of 27 May 2021 that, under EU law, any pleas in law of the kind referred to in paragraph 18 above, whether they be based on an infringement of EU law or of national law, not having been formulated with the degree of precision required in the action, must be declared inadmissible by the national courts.

- 29 In the light of the foregoing considerations, the answer to the first question is that EU law must be interpreted as not precluding a national procedural rule according to which, first, an application for judicial review, both under national law and under provisions of EU law such as Article 4(2) to (5) of, and Annex III to, Directive 2011/92 or Article 6(3) of Directive 92/43, must state precisely each ground, giving particulars where appropriate and identify in respect of each ground the facts or matters relied upon as supporting that ground and, second, an applicant may not rely upon any grounds or any relief sought at the hearing other than those set out in that statement.

The second, third and sixth questions

- 30 In view of the answer to the first question, there is no need to answer the second, third and sixth questions.

The fifth question

- 31 By its fifth question, which it is appropriate to examine before the fourth question, the referring court asks, in essence, whether Article 6(3) of Directive 92/43 must be interpreted as meaning that, where a competent authority of a Member State decides that an appropriate assessment is not necessary, it is obliged to state, in an explicit and detailed manner, the reasons on which it bases its decision, so as to dispel all reasonable scientific doubt concerning the effects of the proposed plan or project for the site concerned and to remove expressly and individually each of the doubts raised in that regard during the public participation process.
- 32 Neither Article 6(3) of Directive 92/43 nor any other provision of that directive lays down requirements as to the statement of reasons for decisions taken pursuant to Article 6(3).
- 33 That said, it should be recalled, in the first place, that the right to good administration, in so far as it reflects a general principle of EU law, has requirements that must be met by the Member States when they implement EU law. Among those requirements, the obligation to state reasons for decisions adopted by the national authorities is particularly important, since it puts their addressees in a position to defend their rights under the best possible conditions and decide in full knowledge of the circumstances whether it is worthwhile to bring an action against those decisions. It is also necessary in order to enable the courts to review the legality of those decisions (judgment of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraphs 39 and 40 and the case-law cited).
- 34 In the second place, Article 6(3) of Directive 92/43 establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 117 and the case-law cited).
- 35 Article 6(3) distinguishes two stages in the prescribed assessment procedure.
- 36 The first, the subject of that provision's first sentence, requires Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on the site. The second, the

subject of the second sentence, which arises following the appropriate assessment, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4) of Directive 92/43 (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 119 and the case-law cited).

- 37 In that regard, first, it follows from the Court's case-law that the requirement of an appropriate assessment of the implications of a plan or project under Article 6(3) of Directive 92/43 is conditional on there being a likelihood or a risk that the plan or project will have a significant effect on the site concerned. Having regard to the precautionary principle, in particular, such a risk is deemed to be present where it cannot be ruled out, having regard to the best scientific knowledge in the field, that the plan or project at issue might affect the conservation objectives for the site. The assessment of that risk must be made in the light, in particular, of the characteristics and specific environmental conditions of the site concerned by such a plan or project (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 134 and the case-law cited).
- 38 Second, it is settled case-law that an appropriate assessment of the implications of a plan or project implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity only if they have made certain that it will not adversely affect the integrity of that site. That is so where there is no reasonable scientific doubt as to the absence of such effects (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 120 and the case-law cited).
- 39 In accordance with the case-law, that assessment may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the site concerned (judgments of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, paragraph 39 and the case-law cited, and of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 49).
- 40 Such a requirement entails that the competent authority should be in a position, following an appropriate assessment, to state to the requisite legal standard the reasons why it was able, prior to the granting of the authorisation at issue, to achieve certainty, notwithstanding any opinions to the contrary expressed, that there was no reasonable scientific doubt with respect to the environmental impact of the work envisaged on the site concerned (see, to that effect, judgment of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 51).
- 41 Such requirements to state reasons must also be satisfied where, as in the present case, the competent authority approves a project likely to have an effect on a protected site without requiring an appropriate assessment within the meaning of Article 6(3) of Directive 92/43.
- 42 It follows that, although, where a competent authority decides to authorise such a project without requiring an appropriate assessment within the meaning of that provision, EU law does not require that authority to respond, in the statement of reasons for such a decision, one by one, to all the points of law and of fact raised by the interested parties during the administrative procedure, the said authority must nevertheless state to the requisite standard the reasons why it

was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.

- 43 In the light of the foregoing considerations, the answer to the fifth question is that Article 6(3) of Directive 92/43 must be interpreted as meaning that although, where a competent authority decides to authorise a plan or project likely to have a significant effect on a site protected under that directive without requiring an appropriate assessment within the meaning of that provision, that authority is not required to respond, in the statement of reasons for its decision, to all the points of law and of fact raised during the administrative procedure, it must nevertheless state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.

The fourth question

- 44 By its fourth question, the referring court asks, in essence, whether Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site protected under that directive, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, irrespective of any effect on the site.
- 45 It is apparent from the request for a preliminary ruling that that court asks that question in particular in the light of the judgment of 12 April 2018, *People Over Wind and Sweetman* (C-323/17, EU:C:2018:244). Specifically, it is asking whether, in the light of that judgment, An Bord Pleanála was entitled to take account of the measures described in paragraph 9 above for the purposes of its decision not to require an appropriate assessment of the implications of the project at issue in the main proceedings on the areas referred to in paragraph 7 above.
- 46 In that regard, it should be noted that, in paragraph 40 of the judgment of 12 April 2018, *People Over Wind and Sweetman* (C-323/17, EU:C:2018:244), the Court held that Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.
- 47 The Court *inter alia* considered, in the same judgment, that the fact that measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned are taken into consideration when determining whether it is necessary to carry out an appropriate assessment presupposes that it is likely that the site is affected significantly and that, consequently, such an assessment should be carried out, that conclusion being supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment. Moreover, according to the Court, taking account of such measures at the screening stage would be liable to compromise the practical effect of Directive 92/43 in general, and the assessment stage in particular, as the latter stage would be deprived of its

purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive (see, to that effect, judgment of 12 April 2018, *People Over Wind and Sweetman*, C-323/17, EU:C:2018:244, paragraphs 35 to 37).

- 48 However, such considerations cannot have the effect of precluding the taking into account, during the screening phase of a project, of all the constituent elements of that project inherent in it which have the effect of reducing the harmful effects of the project on the site concerned.
- 49 Thus, where such elements are incorporated into the design of a project not with the aim of reducing the negative effects of that project on the site concerned, but as standard features required for all projects of the same type, those elements cannot, inter alia, be regarded as indicative of probable significant harm to that site, contrary to the measures referred to in paragraphs 46 and 47 above.
- 50 Subject to the verifications which it is for the referring court to carry out, it appears that the incorporation of the measures referred to in paragraph 9 above into the design of projects such as that at issue in the main proceedings is required, generally, by planning acts and that, in the case at hand, it was required by the Meath County Development Plan 2013-2019, which, moreover, has been the subject of an environmental assessment under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).
- 51 Article 6(3) of Directive 92/43, interpreted in the light of the precautionary principle, does not therefore preclude the taking into account of such measures during the screening phase of those projects.
- 52 In the light of the foregoing considerations, the answer to the fourth question is that Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site.

Costs

- 53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

- 1. EU law must be interpreted as not precluding a national procedural rule according to which, first, an application for judicial review, both under national law and under provisions of EU law such as Article 4(2) to (5) of, and Annex III to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, or Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the**

conservation of natural habitats and of wild fauna and flora, must state precisely each ground, giving particulars where appropriate and identify in respect of each ground the facts or matters relied upon as supporting that ground and, second, an applicant may not rely upon any grounds or any relief sought at the hearing other than those set out in that statement.

2. Article 6(3) of Directive 92/43

must be interpreted as meaning that:

although, where a competent authority decides to authorise a plan or project likely to have a significant effect on a site protected under that directive without requiring an appropriate assessment within the meaning of that provision, that authority is not required to respond, in the statement of reasons for its decision, to all the points of law and of fact raised during the administrative procedure, it must nevertheless state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.

3. Article 6(3) of Directive 92/43

must be interpreted as meaning that:

in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site.

Prechal

Arastey Sahún

Biltgen

Wahl

Passer

Delivered in open court in Luxembourg on 15 June 2023.

A. Calot Escobar
Registrar

A. Prechal
President of the Chamber



**Comhairle Contae
Dhún na nGall**
Donegal County Council

Áras an Chontae,
Leifear,
Contae Dhún na nGall, F93 Y622

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Ref. No: S525/84

11th December 2025

MR RONAN WOODS
GENESIS PLANNING CONSULTANTS,
DEAN SWIFT BUILDING,
ARMAGH BUSINESS PARK,
HAMILTONSBAWN ROAD,
ARMAGH
BT60 1HW

Re: The installation of plant/machinery for the segregation of coal and associated use of lands at Lands at Bauville and Keelogs, Clonglash, Buncrana, Co. Donegal F93 WR65.

A Chara,

I refer to your request received on 1st October 2025 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Coimisiún Pleanála. of such fee as may be prescribed, refer a Declaration for review by the Commission within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

**For Senior Ex. Planner
Planning Services**

/jmcc

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

DECLARATION

Chief Executive's Order No: 2025PH3421

Reference No: S525/84

Name of Requester: MR RONAN WOODS
GENESIS PLANNING CONSULTANTS,
DEAN SWIFT BUILDING,
ARMAGH BUSINESS PARK,
HAMILTONSBAWN ROAD,
ARMAGH
BT60 1HW

Summarised Description of development the subject matter of request:

The installation of plant/machinery for the segregation of coal and associated use of lands

Location: Lands at Bauville and Keelogs, Clonglash, Buncrana, Co. Donegal F93 WR65.

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

IS Development

IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

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

- Section 2 (i), 3 (i), 177U (9) of the Planning and Development Act 2000 (as amended) and
- Articles 6(3), 9(1) and Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

And concluded that:

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS EXEMPTED DEVELOPMENT** as it does come within the scope of Class 21(a) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



For Senior Ex. Planner
Planning Services

Dated this 11th day of December 2025

- **Appendix 2 Project drawings comprising**
 - Site Location Map
 - Site Layout Plan
 - Plans, Section and Elevations



**Comhairle Contae
Dhún na nGall**
Donegal County Council

Planning Services

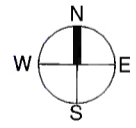
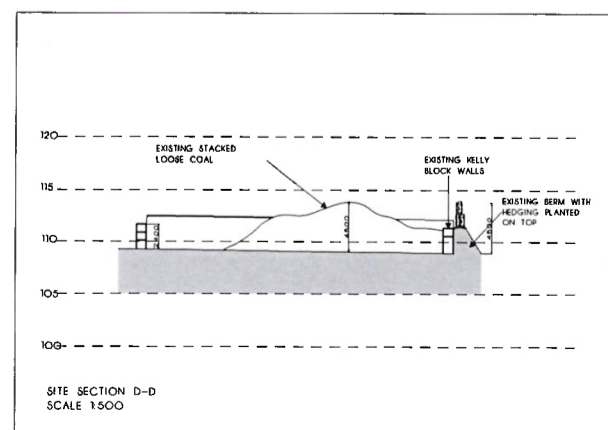
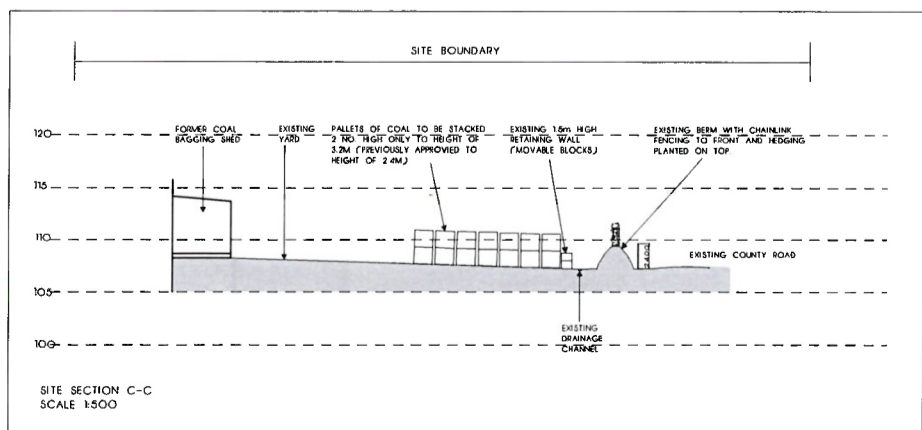
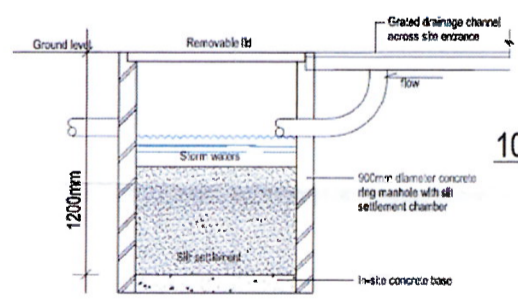
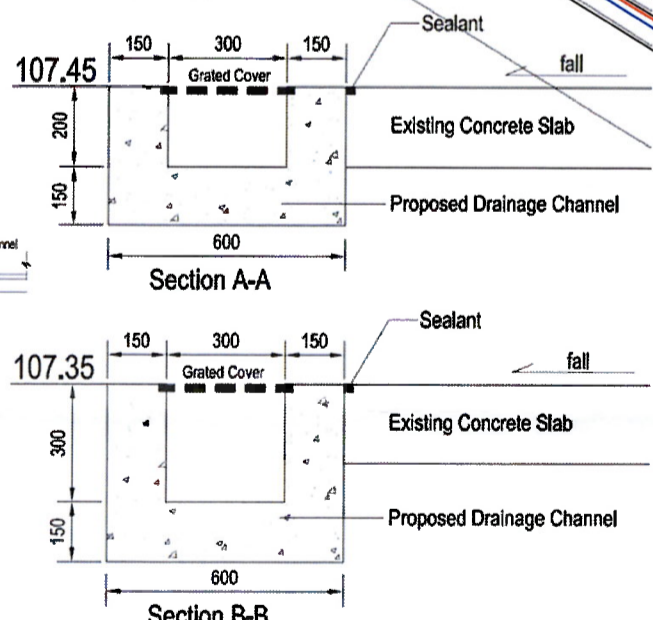
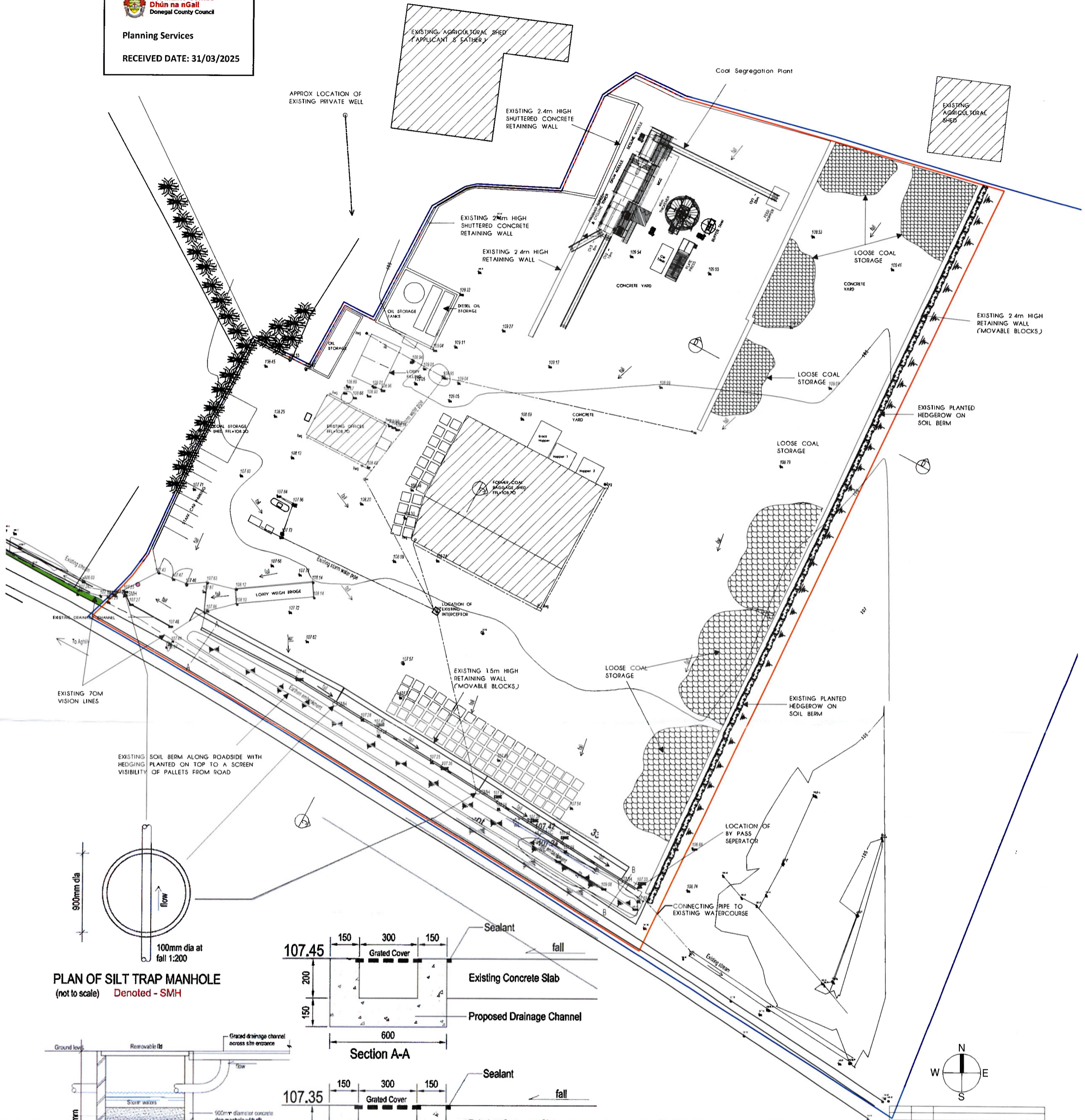
RECEIVED DATE: 31/03/2025



MELBROOK HOUSE, LOWERMAN STREET, CLONMEL, CO. DUBLIN 15 T: 01853 80642 F: 01853 80643 W: www.mgarchitects.ie	
ANDREW COYLE COAL LTD DEVELOPMENT AT BAUVILLE, KEELDOES AND CLONGLASH, CO. DONEGAL	
Survey To: <input type="checkbox"/> Survey <input checked="" type="checkbox"/> Site Visit <input type="checkbox"/> Design <input type="checkbox"/> Application <input type="checkbox"/> Construction <input type="checkbox"/> Final <input type="checkbox"/> Other	Date: <input type="text"/>
Title: SITE LOCATION MAP	Scale: 1:2500 Date: 03/03/2025 Drawn by: 1:2500 No: 2385_SS-01



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Client:	ANDREW COYLE COAL LTD	
Job:	DEVELOPMENT AT BAUVILLE KEELOGES AND CLOGLASH, BUNCRANA, CO. DONEGAL	
Project Stage:	<input type="checkbox"/> Survey Drawings <input type="checkbox"/> Scheme Design Drawings <input checked="" type="checkbox"/> Section 5 Delimitation <input type="checkbox"/> Construction Stage Drawings <input type="checkbox"/> Fire Safety Drawings <input type="checkbox"/> Disability Access Cert.	
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Date:	MARCH 2025	S.Y. Co. address: 637545, 931265
Scale:	1:500	Site Area: 1.526 Ha
Draw No.:	2365_S5-02	

