

Report on	An application which has been made to the Department to vary conditions 7 and 12 of original permission LA03/2017/0301/F in relation to sand extraction from Lough Neagh.
Date of Meeting	2 Aug 2022
Reporting Officer	Melvin Bowman
Contact Officer	Dr Chris Boomer.

Is this report restricted for confidential business?	Yes	
If 'Yes', confirm below the exempt information category relied upon	No	x

1.0	Purpose of Report
1.1	To inform and seek members agreement to issue a Council consultation response to the Department on an application received by it to vary 2 conditions attached to the original permission granted under LA03/2017/0310/F for sand extraction from Lough Neagh. A copy of the original decision notice is attached to this report.
2.0	Background
2.1	<p>Mid-Ulster District Council have been consulted on the 13 June 2022 by DFI on application LA02/2021/0940/F which relates to the following:</p> <p>Proposal: Application for the extraction, transportation and working of sand and gravel from Lough Neagh. Sand and gravel to be extracted from within two distinct areas totalling some 3.1km², in the north-west of Lough Neagh situated approximately east of Traad Point, north of Stanierds Point, west of Doss Point and south of Ballyronan and the ancillary deposition of silt and fine material.</p> <p>Location: Lough Neagh, within the Mid Ulster District Council, Antrim and Newtownabbey Borough Council, Armagh, Banbridge and Craigavon Borough Council and Lisburn and Castlereagh City Council areas.</p>
2.2	Specifically the application seeks to remove condition 7 of the original permission which restricts the operations to the hours of daylight during winter months. In addition, it seeks to amend condition 12 which relates to restriction on the size of barges used for the sand extraction process.
2.3	The reasons given on the original approval for both of these 2 conditions is to ensure extraction is limited to the approved areas, and controlled, in the interests of the protection of designated sites.

3.0	Main Report
3.1	<p>Whilst it is noted that the specific reasons on the decision notice for both conditions 7 and 12 relate to the need to control extraction and protect designated sites, in reading all the conditions attached to the original sand extraction permission, it is clear that other conditions ultimately control the total amount of sand extraction that can take place from the lough.</p>
3.2	<p>It is of course also important however that all other potential impacts of amending condition 7 are assessed and as such I consulted our Environmental Health Department for their view on whether amending this condition could impact on residential amenity for those who live on the lough shore / dock areas. They have responding presenting no objections given that the Noise Impact Assessment which accompanies the application demonstrates that the removal of this condition will not impact on residential amenity. I note that the DFI have sought the views of NIEA on any natural heritage impacts associated with this variation and would trust that their comments will be carefully considered in any decision reached by the Department. As such I would suggest to members that in respect of condition 7 which seeks to removal of daylight only operating hours that the Council offer no objections.</p>
3.3	<p>In relation to the variation of Condition 12 which states: <i>'Only barges of the dimensions specified in Table 2.1 of the Environmental Statement shall be permitted to extract mineral from the permitted areas. Any Barge to be replaced shall be of no greater dimensions than that which it replaces: Reason: To ensure extraction is controlled in the interests of protection of the designated sites.</i></p> <p>I do not foresee any obvious implications relating to the amount of extraction which is still conditioned by the original permission given that Conditions 8 to 10 of that permission provide the means by which the total amount of sand which can be taken from the approved extraction areas is ultimately controlled (1.5 million tonnes in any calendar year) and a requirement to cease extraction once this 1.5m Tonnes is extracted.</p>
3.4	<p>The use of larger barges, which may give rise to other concerns such as natural heritage or neighbouring amenity, remains a matter for NIEA and EHD to provide comment on. I note that DFI have sought these views. Our own Environmental Health Department have assessed the submitted noise report which accompanies this application and have indicated that, whilst they offer no objections to the variation of this condition, that any new barges or replacement barges have a sound power limit of 105 db (A) and that this is included within any variation of this condition. I note that other neighbouring Councils have offered no objections to the application.</p>

4.0	Other Considerations
4.1	Financial, Human Resources & Risk Implications
	Financial: N/A
	Human:N.A
	Risk Management: N/A
4.2	Screening & Impact Assessments
	Equality & Good Relations Implications: N/A
	Rural Needs Implications: N/A
5.0	Recommendation(s)
5.1	<p>That members agree to issue the following consultation response to DFI:</p> <p>Mid-Ulster District Council have no objections to this application subject to the Department ensuring all appropriate assessments of any impacts on the natural environment / designated sites is carried out and that in varying Condition 12 that any new barge or replacement barge shall have a sound power limit of 105 db (A) secured by any varied condition.</p>
6.0	Documents Attached & References
6.1	Appendix 1 - Copy of LA03/2017/0310/F Permission.



Department for
Infrastructure
www.infrastructure-ni.gov.uk

APPROVAL OF PLANNING PERMISSION

Planning Act (Northern Ireland) 2011

Application No: **LA03/2017/0310/F**

Date of Application: **16th March 2017**

Site of Proposed
Development:

**Lough Neagh
within the Mid Ulster District Council
Antrim and Newtownabbey Borough Council
Armagh Banbridge and Craigavon Borough Council and
Lisburn and Castlereagh Council Areas**

Description of Proposal:

**Application for the extraction, transportation and working of
sand and gravel from Lough Neagh. Sand
and gravel to be extracted from within two distinct areas
totalling some 3.1km², in the north-west
of Lough Neagh situated approximately east of Traad Point,
north of Stanierds Point, west of Doss
Point and south of Ballyronan and the ancillary deposition
of silt and fine material.**

Applicant: **Lough Neagh Sand Traders Ltd**
Address: **C/O Carson McDowell LLP
Murray House
4 Murray Street
Belfast
BT1 6DN**

Agent: **Quarryplan Ltd**
Address: **6 Saintfield Road
Crossgar
Downpatrick
BT30 9HY**

Drawing Ref: **01**

The Department for Infrastructure in pursuance of its powers under the above-mentioned Act hereby

GRANTS PLANNING PERMISSION

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:



1. Extraction of sand and gravel shall cease by 10 May 2032.

Reason: To limit the duration of the development in the interests of protection of the designated sites.

2. Extraction of sand and gravel shall be limited to the two shaded areas edged in black and hatched orange identified in the Legend as Proposed Extraction/Dredging Area ('the permitted areas') as indicated on stamped approved Drawing 01 received on 15 May 2017.

Reason: To ensure extraction is controlled in the interests of protection of the designated sites.

3. Extraction shall only be permitted to the extent that any sand and gravel extracted from the permitted areas is landed at any of the 8 landing sites assessed in the Environmental Statement (April 2017) and which are subject to the Agreement dated 6 January 2021 made under Section 76 of Planning (Northern Ireland) Act 2011 in connection with this planning permission.

Reason: To ensure land based operations are controlled in the interests of protection of the designated sites and to correspond with the assessed environmental effects.

4. Extraction operations shall be monitored through the use of an Electronic Monitoring System (EMS). Other than when the barge is moored at the quay, all dredging related activities (including pumping, priming and other operations of the boom/winch/pump mechanisms) must be carried out only within the permitted areas.

Reason: To ensure extraction is controlled in the interests of protection of the designated sites.

5. Details of the Electronic Monitoring System (EMS) including the time period for implementation shall be submitted to the Department within 28 days of the date of this permission for approval in writing. The EMS should be fully implemented within the timeframe agreed. All extraction shall cease within 1 day of the date for submission if the EMS details are not submitted or within 1 day of the agreed implementation date if not fully implemented by the agreed date. The EMS shall include details of:

- the equipment proposed to be used;
- the method of recording data;
- the method of reporting operations; and
- identification of operations taking place outside the permitted areas.

The current EMS shall remain in operation until the agreed implementation date. If within 3 months of the date of the decision, an implementation date has not been agreed, all extraction activity shall cease.

Reason: To ensure that the proposed development is appropriately monitored in the interests of protection of the designated sites.



6. The applicant shall, upon receipt of a written request from the Department make available within 7 days any reports generated from the EMS system in condition 5, for any period.

Reason: To ensure extraction is limited to the approved area in the interests of protection of the designated sites.

7. Between 1 October and 31 March barges shall not leave dock earlier than sunrise or return later than sunset. (Sunrise and sunset are defined as the time stated by HM Nautical Almanac Office for the City of Belfast).

Reason: To avoid disturbance of the site selection features of the designated sites.

8. Extraction of sand and gravel shall be limited to a maximum of 1.5 million tonnes per calendar year. The Department shall be provided with a written report by 31 January of the following year, which shall detail the tonnage extracted in the previous calendar year. Details of the structure of the report shall be submitted to the Department within 28 days of the date of this permission for approval in writing. All extraction shall cease within 1 day of the date for submission if the written report is not submitted within the stated timescales.

Reason: To ensure the volume of extraction is limited in the interests of protection of the designated sites.

9. The Department shall be notified in writing within 14 days when total extraction has reached 1.3 million tonnes in each calendar year.

Reason: To ensure the volume of extraction is monitored in the interests of protection of the designated sites.

10. All extraction shall cease when total extraction has reached 1.5 million tonnes in any calendar year. The Department shall be notified in writing within 7 days of having reached the 1.5 million tonne limit.

Reason: To ensure the volume of extraction is limited in the interests of protection of the designated sites.

11. No more than 15 barges shall operate to extract mineral within the permitted areas at any time.

Reason: To ensure extraction is controlled in the interests of protection of the designated sites.

12. Only barges of the dimensions specified in Table 2.1 of Chapter 2, Volume 2 of the Environmental Statement (April 2017) shall be permitted to extract mineral from the permitted areas. Any barge to be replaced shall be of no greater dimensions than that which it replaces.

Reason: To ensure extraction is controlled in the interests of protection of the designated sites.



13. The barges, as detailed in Condition 12, shall not operate after 3pm on Saturdays, all day Sundays or on any Bank Holiday.

Reason: In the interests of residential amenity.

14. An Emergency Response Plan (ERP) for all offshore activities shall be submitted to the Department within 28 days of the date of this permission for approval in writing. The ERP shall be fully implemented within an agreed period. All extraction shall cease within 1 day of the date for submission if the ERP details are not submitted or within 1 day of the agreed implementation date if not fully implemented by the agreed date. The agreed ERP must be available for inspection at all times on each vessel.

Reason: To ensure protection of the designated sites

15. Within 28 days of this permission the developer shall submit to the Department in writing an archaeological programme which shall be in accordance with the British Marine Aggregate Producers Association (BMAPA) Protocol for Reporting finds of Archaeological interest (BMAPA and English Heritage 2005) provided at Appendix IV of Appendix 11.1 of the Environmental Statement submitted on 10 May 2017. The agreed programme shall be implemented and operated for the duration of the development hereby permitted.

Reason: To ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

16. Access shall be afforded to the site and barges at all reasonable times to any archaeologist nominated by the Department to observe the operations and to monitor the implementation of archaeological requirements.

Reason: To monitor programmed works in order to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition or agreement, is completed in accordance with the approved programme.

17. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the programme of archaeological work approved under condition 15. These measures shall be implemented and a final archaeological report shall be submitted to the Department within 12 months of the completion of archaeological site works.

Reason: To ensure that the results of archaeological works are appropriately analysed and disseminated and the excavation archive is prepared to a suitable standard for deposition.

Informatives

1. A Section 76 Planning Agreement under the Planning (Northern Ireland) Act 2011 has been made to ensure that from the Commencement of Development the applicants shall adhere to a number of commitments at the 8 landing sites. A copy of the Section 76 Planning Agreement has been registered as a statutory charge and is available through Land and Property Services.

2. This permission is limited by the terms of the conditions, and Conditions 1, 2 and 3 in particular, to ensure that it corresponds to the development for which permission was sought and to ensure that what is permitted corresponds with the effects that have been assessed





Department for

Infrastructure

www.infrastructure-ni.gov.uk

both as part of the EIA and HRA processes and considered in the decision to grant planning permission. Extraction of sand and gravel in the permitted areas is only allowed in association with the 8 landing sites subject to consideration in the planning process and as regulated by the terms of this permission and the Section 76 Agreement. Any extraction taking place outside the permitted areas, and not landed on one of those landing sites, will be development without planning permission and constitute a breach of planning control.

3. Bats and Otters

The applicant's attention is drawn to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), under which it is an offence:

- Deliberately to capture, injure or kill a wild animal of a European protected species, which includes the otter (*Lutra lutra*) and all species of bat;
- Deliberately to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- Deliberately to disturb such an animal in such a way as to be likely to;
- affect the local distribution or abundance of the species to which it belongs;
- Impair its ability to survive, breed or reproduce, or rear or care for its young; or
- Impair its ability to hibernate or migrate;
- Deliberately to obstruct access to a breeding site or resting place of such an animal; or
- To damage or destroy a breeding site or resting place of such an animal.

If there is evidence of bat and/or otter activity on the site, all works should cease immediately and further advice sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT72JA. Tel. 028 905 69605

4. BADGER

The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly:

- kill, injure or take any wild animal included in Schedule 5 of this Order, which includes the badger (*Meles meles*).
- damage or destroy, or obstruct access to, any structure or place which badgers use for shelter or protection;
- damage or destroy anything which conceals or protects any such structure;
- disturb a badger while it is occupying a structure or place which it uses for shelter or protection.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

If there is evidence of badger on the site, all works should cease immediately and further advice sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. Tel. 028 905 69605

When a licence may be required:

Any works within 25 metres of a badger sett will require a wildlife licence to be obtained from NIEA. Licence applications should be made to the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. Tel. 028 905 69605



5. Birds

The applicant's attention is drawn to Article 4 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly:

- kill, injure or take any wild bird; or
- take, damage or destroy the nest of any wild bird while that nest is in use or being built; or
- at any other time take, damage or destroy the nest of any wild bird included in Schedule A1; or
- obstruct or prevent any wild bird from using its nest; or
- take or destroy an egg of any wild bird; or
- disturb any wild bird while it is building a nest or is in, on or near a nest containing eggs or young; or
- disturb dependent young of such a bird.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

It is therefore advised that any tree, hedge loss or vegetation clearance should be kept to a minimum and removal should not be carried out during the bird breeding season between 1 March and 31 August.

6. SMOOTH NEWT

The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5 of this Order, which includes the smooth or common newt (*Lissotriton vulgaris*, formerly *Triturus vulgaris*). It is also an offence to intentionally or recklessly: damage or destroy, or obstruct access to, any structure or place which newts use for shelter or protection; damage or destroy anything which conceals or protects any such structure; disturb a newt while it is occupying a structure or place which it uses for shelter or protection.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

If there is evidence of newts on the site, all works must cease immediately and further advice sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. Tel. 028 905 69605

7. The applicant should be aware of Section 47 of the Fisheries Act (NI) 1966, which covers their responsibilities relating to Penalties for pollution and the consequences of causing or permitting the release of any deleterious materials into any waters. It is an offence under Section 47 of this Act to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.

8. It is advisable that all waste water generated on vessels is stored on board and only discharged at the relevant processing wharves into suitable treatment or storage facilities, prior to off-site removal by an appropriately licensed waste carrier.

9. It is an offence under the Water (Northern Ireland) Order 1999 to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and/or three months imprisonment.



10. The applicant is advised that under Article 11 of the Roads (NI) Order 1993, the Department for Infrastructure is empowered to take measures to recover any reasonably incurred expenses in consequence of any damage caused to the public road as a result of extraordinary traffic generated by the proposed development. The applicant should contact DfI Roads local Section offices in order that an agreement may be reached regarding maintenance costs and incurred expenses in consequence of any damage caused to the public road.

11. For guidance on the preparation of the Written Scheme and Programme of Archaeological Work, please contact Historical Environment Division (HED) (Ref: SM11/1 Lough Neagh Dredging).

Application for an excavation licence, required under the Historic Monuments and Archaeological Objects (NI) Order 1995, should be submitted to HED.

12. When making this decision the Department has taken into consideration environmental information within the terms of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015.

13. Reference to the "Environmental Statement" relates to the Environmental Statement which was submitted with the application (ES April 2017) and additional information received by the Department on 14 November 2017.

Dated: 6th January 2021

Authorised Officer



