

Report on	DFIs Notice of Opinion to approve application LA03/2021/0940/F relating to sand extraction from Lough Neagh.
Date of Meeting	1 st Aug 2023
Reporting Officer	Melvin Bowman
Contact Officer	Dr Chris Boomer.

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

1.0	Purpose of Report
1.1	<p>The purpose of this report is to advise members of DFIs Notice of Opinion to approve an application which seeks the non-compliance with conditions number 07 and condition number 12 of planning approval LA03/2017/0310/F.</p> <p>DFI have invited any requests for an opportunity to appear before and be heard by the Planning Appeals Commission, or a person appointed by the Department for the purpose of a hearing, in writing, within 8 weeks from the date of service of the Notice.</p>
2.0	Background
2.1	On 26 th June 2023 DFI issued a Notice of Opinion to approve the following proposal:
2.2	<p>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.</p> <p>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 without complying with condition number 07 and condition number 12 of planning approval LA03/2017/0310/F.</p> <p>Applicant: Lough Neagh Sand Traders Limited Agent: Quarryplan</p>
2.3.	<p>These Conditions relate to:</p> <p>Condition 7 (daylight only operating hours restriction) and</p>

	Condition 12 (the replacement of barges presently operating on the Lough).
3.0	Main Report
3.1	<p>The DFI case officers report (attached in Appendix A) indicates the following:</p> <p>It is proposed to remove condition 7 which, if approved, would allow for the operation of barges during the hours of darkness during the winter months.</p> <p>The applicant also seeks to develop the land without compliance with condition 12, which currently restricts the replacement of any barge to the same dimensions to that which it replaces (no greater), subject to the insertion of a condition restricting the replacement of a barge to no greater dimension than the largest barge currently permitted, allowing for a tolerance of 10% in dimension. It is proposed that the replacement barge shall not be permitted to emit any greater noise output or emissions to air than the barge it is proposed to replace.</p> <p>While there is no condition attached to the original planning permission which restricts the hours of operation in terms of the mineral extraction element, covenant 7 of the Planning Agreement under section 76 of the Act restricts the operational activities at each landing site, including the processing of extracted mineral (but excluding the departure of barges from the landing sites to the extraction area and their return thereafter) to only taking place between 6am and 7pm on any day Monday to Friday (excepting Bank Holidays) inclusive and between 9am to 3pm on a 23 Saturday. There is therefore a level of protection for the amenity of residents in close proximity to the landing sites.</p>
3.2	<p>The Environmental Health Departments of Mid Ulster District Council, Antrim and Newtownabbey Borough Council, Armagh Banbridge and Craigavon Borough Council and Lisburn and Castlereagh Council Areas were consulted on this s54 application and are content with the proposals. Should the application be approved, condition 13 will remain ensuring that the amenity of local residents at weekends and on bank holidays is protected. Covenant 7 of the Planning Agreement will also remain in place. The case officer is therefore content that there will not be a detrimental impact on residential amenity should condition 7 be amended as discussed above (barge operations confined to the period 06.00 to 18.00 during winter months) rather than removed entirely, which would add another level of protection to residential amenity.</p>
3.3	<p>It is proposed that the replacement barge shall not be permitted to emit any greater noise output or emissions to air than the barge it is proposed to replace. To ensure that this is the case, the applicants propose notifying the Department with particulars of the replacement regarding length and emissions, await its agreement and notify the Department 7 days prior to the replacement barge coming in to service. All of the Environmental Health Departments have no objection to the substitution of condition 12, provided the sound power level of any replacement</p>

barge does not exceed 105 dB(A) (the stated level order) which would provide an extra level of protection of amenity at nearby noise sensitive receptors.

3.4

Bird surveys were carried out in the assessment of this application and the officer's report states:

NED state that, within its constraints (i.e., inability to differentiate birds much beyond 100m range), the survey provided no compelling evidence of significant disturbance of birds by barges during the hours of darkness. It could be argued that birds beyond the range of the optic could be detecting the approach of the barge and are therefore moving away unseen. This could result in displacement from foraging areas and therefore adverse impact cannot be ruled out, particularly during very cold weather.

NED therefore are of the opinion that caution is required as it cannot be conclusively determined that avoidance behaviour is not happening beyond the restricted detection capabilities of the submitted survey. They have recommended therefore, that a 12-hour undisturbed foraging period for birds from November to February, when physiological stresses are greatest, is conditioned, with barge operations confined to the period 0600 to 1800 during that period (restrictions at other times are not considered to be necessary).

3.5

Both NIEA and SES were content with the substitution of condition 12 as proposed by the applicant. The proposed amendments are discussed further in the report but in terms of ecology, the alteration is not considered to be detrimental to biodiversity and nature conservation.

3.6

A total of 2 representations were received. Issues raised in these are stated in the officers report as :

- If conditions are permitted to be set aside it amounts to negation of the exhaustively considered previous planning permission, amounting to its "Salami-slicing"
- There has been no change to the circumstances forming the basis of the original decision
- No new information in the environmental data submitted
- Planning conditions 7 and 12 were put in place to ensure that disturbance of site selection features was avoided/negated.

In recommending approval, the amended suggested conditions therefore are as set out below:

Condition 6.

Between 1 November and 28/29 February any barge shall not leave the dock earlier than

0600 hours or return later than 1800 hours.

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

Condition 11.

Only barges of the dimensions specified in Table 2.1 of Chapter 2, Volume 2 of the Environmental Statement (April 2022) shall be permitted to extract mineral from the permitted areas. Any proposed replacement barge shall be of no greater dimension than the largest barge in the April 2022 Table 2.1, allowing for a tolerance of 10% in dimension and the replacement barge shall emit no greater emissions to air or increase in noise output (expressed as an LAeq) than the barge and sand extraction engine system it is proposed to replace. If a barge as so specified within the Table 2.1 of Chapter 2, Volume 2 of the

Environmental Statement (April 2022) is to be replaced -

a) The Department shall be notified in writing of the details of the replacement barge to

include the particulars with regards to length, emissions to air and noise output (expressed as an LAeq);

b) Thereafter such replacement shall be agreed in writing by the Department; and

c) The Department shall be notified 7 days prior to the replacement barge entering the Lough.

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

Condition 12.

The barges, as detailed in Condition 11, shall not operate after 1500 hours on Saturdays, all day Sundays or on any Bank Holiday.

Reason: In the interests of residential amenity.

3.7

DFI advise that given the small numbers of representations received in this case it is considered that a public inquiry is not required to consider representations on the application and having weighed all the considerations it is recommended that the

3.8	<p>application proceeds by way of a Notice of Opinion (Annex 1) to grant planning consent.</p> <p>In their letter DFI indicate that it must receive any request for an opportunity to appear before and be heard by the Planning Appeals Commission, or a person appointed by the Department for the purpose of a hearing, in writing, within 8 weeks from the date of service of the Notice.</p> <p>Members will be aware that the Council have been alerted to alleged unauthorised sand extraction and Enforcement investigations are currently ongoing into this alleged unauthorised activity.</p>
4.0	Other Considerations
4.1	<p>Financial, Human Resources & Risk Implications</p> <p>Financial: N/A</p> <p>Human:N.A</p> <p>Risk Management: N/A</p>
4.2	<p>Screening & Impact Assessments</p> <p>Equality & Good Relations Implications: N/A</p> <p>Rural Needs Implications: N/A</p>
5.0	Recommendation(s)
5.1	<p>That members note the Departments opinion to approve the application and agree that the Council has no further comments to add.</p>
6.0	Documents Attached & References
6.1	<p>Appendix A – copy of DFI officers report and Notice of Opinion.</p>

**Section 54 Planning Application
Development Management Report**

Ref Number: LA03/2021/0940/F

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 without complying with condition number 07 and condition number 12 of planning approval LA03/2017/0310/F.

Location: 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.

Applicant: Lough Neagh Sand Traders Ltd.

**Regional Planning Policy & Casework
Directorate**

1. THE S54 APPLICATION

1.1 This application under s54 of the Planning Act (NI) 2011 seeks to develop land without compliance with a number of conditions attached to permission LA03/2017/0310/F which was for the extraction of sand from the bed of Lough Neagh, within a defined area in the north west corner of the Lough, granted for a period of 15 years.

1.2 A permission under s54 of the Planning Act (NI) 2011 is an independent permission to carry out the same development as previously permitted, but subject to non-compliance with one or more conditions. It does not allow for the amendment of the description of development of the previous (original) permission. A *section 54 application* is therefore a second application. A successful application results not in the variation of an already existing permission, but the grant of a fresh permission for the same description of development as the original application, in this case, LA03/2017/0310/F.

1.3 The applicant proposes development without compliance with

- Condition 7 (daylight only operating hours restriction) and
- Condition 12 (the replacement of barges presently operating on the Lough).

1.4 It is proposed to remove condition 7 which, if approved, would allow for the operation of barges during the hours of darkness during the winter months. The applicant also seeks to develop the land without compliance with condition 12, which currently restricts the replacement of any barge to the same dimensions to that which it replaces (no greater), subject to the insertion of a condition restricting the replacement of a barge to no greater dimension than the largest barge currently permitted, allowing for a tolerance of 10% in dimension. It is proposed that the replacement barge shall not be permitted to emit any greater noise output or emissions to air than the barge it is proposed to replace.

2.0 SITE AND SURROUNDING AREA

2.1 Lough Neagh is a shallow lake located in the centre of Northern Ireland. It is the largest freshwater lake in the UK with a surface area of 383km². It has a mean depth of 8.9m and a maximum depth of 34m in an area known as the Trench to the north west of the Lough. The shoreline measures 125km and consists of mainly rocks and stones with some sandy bays. There are 8 landing sites around the shore whereby the applicants carry out the land-based activities associated with the sand extraction, namely processing, storage and distribution.

2.2 Lough Neagh and Lough Beg are designated as *Areas of Special Scientific Interest* (ASSI) and together they form a *Special Protection Area* (SPA) under the Birds Directive (79/409/EEC). In addition, they form a *Wetland of International Importance* (Ramsar Site) under the Ramsar Convention. Accordingly, it is protected by Conservation (Natural Habitats, etc.) Regulations 1995 (as amended) and the Environment (Northern Ireland) Order 2002. For reference, NIEA have listed the qualifying interest features in its consultation response. The Lough Neagh area also includes *Lough Neagh National Nature Reserve* (NNR).

2.3 The site boundary follows but does not abut the shoreline of the Lough, only connecting with it at the eight landing sites. The area of approved extraction area is however refined to within two distinct areas in the northwest corner of the Lough. The two areas extend to some 3.1km².

2.4 The extraction of sand from the bed of Lough Neagh has been a long established practice, ongoing for over 70 years. The Lough Neagh Sand Traders (LNST) are responsible for carrying out sand extraction and the processing and trading activity at eight sites around the Lough.

3.0 ADVERTISEMENT, NEIGHBOUR NOTIFICATION AND REPRESENTATIONS

With regards neighbour notification, there are no identified occupiers on neighbouring land to the planning application site, in accordance with article 8(2) of the Planning (General Development Procedure) Order (NI) 2015 ('GDPO').

3.1 The application has been subject to public consultation in accordance with established procedures through the development management process. The application was advertised on **23rd June 2022 and 30th June 2022**. It is considered that all statutory consultation requirements have been met.

3.2 A total of 2 representations were received. Issues raised in these are:

- If conditions are permitted to be set aside it amounts to negation of the exhaustively considered previous planning permission, amounting to its “Salami-slicing”
- There has been no change to the circumstances forming the basis of the original decision
- No new information in the environmental data submitted
- Planning conditions 7 and 12 were put in place to ensure that disturbance of site selection features was avoided/negated.

3.3 With regards the assertion that the application is “salami slicing” and that there has been no change to the circumstances, under s54 of the 2011 Planning Act a developer is entitled to apply to develop land without compliance with conditions attached to a previous planning permission and the Department is required to consider such an application in consultation with expert bodies.

3.4 In relation to the statement that no new information has been submitted, as will be discussed later in this report, the applicant has carried out and submitted additional survey works regarding the effects of the operations on birds (particularly wintering nocturnal feeding diving ducks) during the hours of darkness.

3.5 The consideration of the issues in relation to the non-compliance with conditions 7 and 12 and the impact of such on site selection features have been addressed in the *Planning Assessment* at section 6.

4.0 PLANNING HISTORY

4.1 A planning application for the extraction of sand from a defined area in the northwest corner of Lough Neagh was received in March 2017.

4.2 Five independent sand trading businesses carry out sand extraction and the processing and trading activity at eight sites around the Lough. A collective planning application has been made by these businesses under the name of Lough Neagh Sand Traders Limited (LNST).

4.3 Given the ecological importance of Lough Neagh in terms of European designations (SPC/ASSI/RAMSAR) the Department concluded that a Public Local Inquiry was the appropriate forum to discuss the original planning application.

4.4 Following a request by the Department, the Planning Appeals Commission (PAC) convened a Public Local Inquiry into the planning application. The Inquiry took place on 20-21 June 2018 and parties taking part in the Inquiry included Friends of the Earth (FoE), RSPB, LNST and Shaftsbury Estate (owners of the bed of the Lough).

4.5 The PAC report, received on 7 May 2019, recommended that planning approval should be granted. The Minister granted permission on 6 January 2021.

5.0 EIA History and Determination and Habitats Regulation Assessment

5.1 A s54 application, if approved, takes effect as a fresh independent permission to carry out the same development as previously permitted subject to the new or amended conditions. Accordingly, this s54 application is determined to be EIA development by virtue of regulation 6(2)(a) of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

5.2 The application was required to be accompanied by an Environmental Statement which was submitted on **22 April 2022**.

5.3 Regulation 24(1) of the 2017 EIA Regulation states that when determining an EIA application, the Department shall—

- (a) examine the environmental information;

(b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, its own supplementary examination;

(c) integrate that reasoned conclusion into the decision as to whether planning permission or subsequent consent is to be granted; and

(d) if planning permission is to be granted, consider whether it is appropriate to attach conditions or impose monitoring measures.

5.4 Accordingly, key elements of the EIA, any additional information and any comments made by the consultee bodies (summarised at Appendix 2) are considered in section 6 of this report to allow a reasoned conclusion to be reached (Appendix 3). Draft conditions are included at Appendix 1 of this report and are considered to address and assist with mitigating the significant effects that are likely to arise as a result of the development described in this EIA application.

5.5 DfI Regional Planning Policy & Casework Directorate in its role as the competent authority under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 ('HRA'), and in accordance with its duty under regulation 43, has adopted the HRA report, and conclusions therein, prepared by Shared Environmental Service, dated 14 December 2022. SES concluded that, provided the proposed mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site. This is considered further in Section 6.

6.0 PLANNING ASSESSMENT

6.1 The principle of development has been established in planning approval LA03/2017/0310/F. In terms of decision making a section 54 application should be treated just like any other application, and due regard paid to the development plan and other material considerations. The application falls to be assessed under the relevant policy criteria and all material considerations relevant to the amendments

sought under this application are considered below. The main considerations for this application are:

- *Development Plan Context*
- *Planning Policy Context*
- *Residential Amenity and Human Health*
- *Landscape and Visual Impact*
- *Biodiversity and Nature Conservation*
- *Habitats Assessment*

Development Plan Context

6.2 Under section 6(4) and s45 of the Act, determination must be made in accordance with the local development plan unless material considerations indicate otherwise. Given the extent of the site boundary of the planning application, a number of area plans are potentially relevant. However the approved area for extraction is wholly located within the boundary of the Cookstown Area Plan 2010.

6.3 The landing sites are dispersed around the Lough across several council areas. Whilst the landing sites are not the subject of this planning application the relevant provisions of the development plans are included for information.

Cookstown Area Plan 2010 (CAP)

6.4 The extraction site falls within Mid Ulster Council area. The CAP area extends along the western shore from Stewartstown to north of Ballyronan. The *Environmental Designations Map* (No. 2) show the SPA, ASSI, ASI and RAMSAR designations and plan objectives include '*the protection and enhancement of landscape features, natural habitats.....which are of conservation importance.*' Within the *Agriculture* chapter, specific reference is made to the importance of the commercial fishing industry. *Areas of Constraint on Mineral Developments* (ACMDs) are designated at Ballinderry, Camlough, Cavanacaw/Tandragee, Killucan and Sperrin. The approved extraction area is also located within an ACMD. In view of their nature conservation importance *Areas of Special Scientific Interest* (ASSI)

located beyond the areas listed above (with the specific exception of Ballysudden ASSI) are also considered to be ACMDs.

6.5 ACMDs are designated to safeguard the most valuable areas and features of the environment within the Cookstown District from the detrimental effects of mineral extraction. Their identification has taken account of nature conservation interests.

6.6 Current policy for the control of mineral developments within ACMDs is **Policy MIN 3** of the *Planning Strategy for Rural Northern Ireland* (PSRNI) and is discussed further below.

Antrim Area Plan (June 1989)

6.7 Paragraphs 6.3, 12.1, 12.4, 14.2, 14.6 are considered relevant. In summary, development which would adversely affect areas defined for nature conservation importance, including designated sites, will not normally be permitted. This includes mineral developments (para 14.6) which would prejudice the essential character of designated areas such as ASSI, although para 14.2 advises that in determining applications for quarrying development a balance should be struck between the economic benefits and the need to minimise environmental disturbance and protect landscape quality. It should be noted that the approved extraction is not within the boundaries of this council area.

Craigavon Area Plan 2010

6.8 Within the Armagh, Banbridge and Craigavon Borough (ABC) area much of the shoreline and Lough Neagh is designated as an ACMD. Plan **Policy MIN 1** *Areas of Constraint on Mineral Developments* is relevant to the southern areas of the Lough. The policy restricts proposals for minerals development within these areas in accordance with the provisions of prevailing regional policy (**MIN 3 of PSRNI** discussed further below). It should be noted that extraction is not within the boundaries of this Council area (but within Mid Ulster Council area – see Cookstown Area Plan above).

Dungannon and South Tyrone Area Plan 2010

6.9 **Policy MN1** designates *Areas of Constraint on Minerals Development* (ACMD) including *The Lough Neagh Western Shores Area* (coinciding with RAMSAR and ASSI designations). ACMDs are designated to safeguard the most valuable and vulnerable areas and features of the environment within Dungannon and South Tyrone Borough from the detrimental effects of mineral extraction. Proposals for the development of mineral resources within these areas will be determined in accordance with the provisions of prevailing regional planning policy (**MIN 3 of PSRNI**). It should be noted that extraction is not within the boundaries of this council area.

Magherafelt Area Plan 2015

6.10 An *Area of High Scenic Value* (AoHSV) is designated on the *West Lough Neagh Shores* area extending from Traad Point to the woodlands of Portglenone Forest. Plan **Policy CON 1** advises that within designated AoHSV planning permission will not be granted to development that would adversely affect the quality and character of the landscape. In this instance 3 landing facilities are located within the AoHSV and whilst lawful, nonetheless are considered to be significant structures within this scenic area. It should be noted that extraction is not proposed within the boundaries of this council area.

Lisburn Area Plan 2001

6.11 **Policy MN1** designates parts of the shoreline of Lough Neagh as an ACMD, in support of the SPA, Ramsar and ASSI designations. Proposed developments will be determined in accordance with **Policy MIN 3** of the PSRNI. Dredging is not proposed in this area, so the policy does not apply. In addition, while landing sites 5 and 6 fall within this area, no extraction is proposed at these locations.

6.12 It should be noted that under **Policy COU2**, the character of the countryside in the vicinity of Lough Neagh is designated as a *Countryside Policy Area* (CPA). However, the policy provisions of **PPS 21** (discussed below) take precedence over CPA designations in existing development plans.

Draft BMAP 2015

6.13 In March 2016 the High Court ruled that BMAP had been unlawfully adopted. In November 2016 the Court approved an Order which further declared that the adoption was unlawful. It also stated that all other elements in the adopted (unlawfully) BMAP may be taken into account in informing planning decisions. However, an appeal was launched against this order and the Court of Appeal ruled that draft BMAP remains, in its entirety, unadopted. In the draft Plan Lough Neagh falls within the former Lisburn Council area. The Lough has been designated as an *Area of High Scenic Value* (AoHSV). The *Environmental Designations Map* also refers to the SPA, ASSI and Ramsar designations on the Lough. As a result, the Lough is also considered to be an ACMD in draft BMAP. It should again be noted that extraction does not take place within this plan area.

6.14 The *Countryside and Coast Strategy* of BMAP states that mineral development provides employment and materials for construction. However, extraction and processing can have significant impacts on the countryside and a sustainable approach should take account of the need to protect and conserve environmental resources. Lough Neagh is also identified as an important resource in terms of commercial and valuable export fishing market that sustains important local employment. The response by DAERA Inland Fisheries on the original application highlights the importance of shallow areas (<5m depth) within the Lough for fish fry nursery habitat used by commercial fishing interests as bait.

6.15 Accordingly in terms of the development plan context, Lough Neagh is identified across all the area plans as being of ecological benefit and an area of constraint on mineral development.

6.16 It is appropriate here to refer to the fact that Mid Ulster draft Plan Strategy (dPS) was initially published on 22 February 2019 and sets out the strategic policies and detailed management policies to guide decisions in the development management process in the Borough. The draft *Plan Strategy* is a material consideration in the determination of this application as the extraction area of the proposed development lies within this Council Area. Development proposals should be considered against both current policies and those in emerging local development plans (LDPs). Also

relevant is the stage the draft Plan has reached and the relevant consultation responses received.

6.18 Two draft mineral policies are particularly relevant to this proposal:-

- **MIN 2** – Extraction and processing of hard rock and aggregates. The policy refers to ACMDs – but there is specific reference in the *Justification & Amplification* (Para 14.17) regarding Lough Neagh and this application. Excepting the shores which are designated as a *Special Countryside Area* (SCA), the dPS has not designated the Lough (as an ACMD or SCA) noting that it has been historically used for sand dredging. It further notes that sand extraction is the subject of a regionally significant application, and the Council will review this approach depending on the outcome of the application.
- **MIN 5** – Restoration of mineral sites. All applications for mineral development must include, where appropriate, satisfactory and sustainable restoration proposals.

6.19 Natural Heritage policies are also relevant including:-

- **Policy SCA 1 *Special Countryside Areas*** – This policy introduces an SCA at Lough Neagh/Lough Beg within which there will be a presumption against all new development in order to protect the quality and unique amenity value of unique landscapes. (This relates to the shores of Lough Neagh rather than the water body.)
- **Policy NH 1 – *International Designations*** – Planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on a European Site of a listed or proposed Ramsar site.

- **Policy NH 2 – Protected Species** – Proposals for development likely to impact on protected species must be fully considered prior to any determination. They shall not accord with the Plan if:-

1. There is any likely harm to a European protected species;

2. It is likely to harm any other statutorily protected species, including national protected species, which cannot be adequately mitigated or compensated against.

- **Policy NH 3** deals with national designations such as ASSI, **Policy NH 4** with local designations (SLNCI, local nature reserves) and **NH 5** deals with other habitats, species or features of natural importance (priority habitats, priority species).

6.20 In terms of the shore of Lough Neagh, Tourism policies **TOU 1, TOU 2, TOU 3** and **TOU 4** are also relevant. Four *Tourism Opportunity Zones* (TOZs) have been identified at key locations along the shoreline at Washingbay, Mountjoy, Traad Point and The Battery.

6.21 The question arises however as to the weight to be afforded to the draft Plan and whether any issue of prematurity arises. Paragraph 5.73 of the SPPS (September 2015) states:-

“Where a new LDP is under preparation or review it may be justifiable, in some circumstances, to refuse planning permission on the grounds of prematurity. This may be appropriate in respect of development proposals which are individually so substantial, or whose cumulative effect would be so significant, that to grant planning permission would prejudice the outcome of the plan process by predetermining decisions about the scale, location or phasing of new development which ought to be taken in the LDP context. A proposal for development that has an impact on only a small area would rarely come into this category, but refusal might be justifiable where a proposal would have a significant impact on an important settlement, or a substantial

area, with an identifiable character. Where there is a phasing policy in the LDP, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect”.

6.22 The *Joint Ministerial Statement* (JMS) on ‘Development Plans and the implementation of the Regional Development Strategy’ (April 2005) also remains technically extant although it was drafted in the context of the development plan process under the unitary planning system. It does not account for the new process for bringing forward local development plans, was published prior to planning reform / the transfer of responsibility for plan-making to the new Councils and does not reflect new legislative provisions. It is suggested that, whilst the JMS might be considered, insofar as there is any conflict between the two, more weight should be given to the more recent policy provision made by the SPPS, which was itself advanced by the then Minister of the Environment, agreed by the Northern Ireland Executive and judged to be in general conformity with the RDS 2035 (paragraph 1.3 SPPS).

6.23 The dPS has been subject to representations including representations to mineral policies and natural heritage policies (for e.g. FoE (who have objected to lack of SCA protection for the Lough), RSPB, Quarryplan, and NIEA). Counter representations have also been made. In the case of the Mid Ulster dPS, the policy on ACMD/SCA on Lough Neagh has not been directly addressed. The matter appears to have been ‘deferred’ pending the outcome of the original application and the Council consider that the Lough continues to be afforded protection in the interim through the various environmental designations. Additionally, while Mid Ulster dPS has indicated they will review their approach to extraction on the Lough in light of the outcome of the original planning application (para 14.17), there is no indication their policy direction would go further than that contained within the current Cookstown Area Plan. No conflict or prematurity would appear to be engaged. The Department is therefore of the opinion that the policies contained within the dPS should only be afforded limited weight given its current status at this early stage in the process (i.e. it has not been to Independent Examination (IE)).

6.24 While the extraction area lies within Mid Ulster Council Area, the landing sites are dispersed around the shoreline of Lough Neagh. Both LCCC and Antrim & Newtownabbey Councils have published their draft plans and relevant policies have been considered including:-

LCCC

Strategic Policy 13 – Mineral Development

Strategic Policy 16 – Tourism

Strategic policy 19 – Protecting & Enhancing Natural Heritage

Mineral Policies

MD 1- Environmental Protection

MD 2 – Visual Impact

MD 3 – Areas of Mineral Constraint

MD 7 – Safety and Amenity

MD 8 – Traffic Implications

MD 9 – Restoration Proposals

Natural Heritage

NH 1 - European & Ramsar Sites – International

NH 2 – Species Protected by Law

NH 3 – Sites of Nature Conservation Importance – National

NH 5 – Habitats, Species or Features of Natural Heritage Importance

Antrim and Newtownabbey Borough Council

Strategic Policies and related DM policies

SP 2 Employment – DM 2 Economic Development – Countryside and DM 9 Tourism Development

SP 3 Transportation & Infrastructure – DM 10 Access and Parking

SP 8 Natural Heritage – DM 37 Designated Sites of Nature Conservation Importance, DM 38 Protected Species, DM 39 Habitats, Species and Features of Natural Heritage Importance

SP 9 Natural Resources – DM 43 Minerals Development

6.25 The Independent Enquiry hearings into these two plans concluded in 2022. However, as they have not yet been adopted, the Department is of the opinion the dPS for both Council areas should only be afforded limited weight.

Planning Policy Context

6.26 The *Strategic Planning Policy Statement* for Northern Ireland (SPPS) advises that until such times as a Plan Strategy for a council area has been adopted, planning authorities will apply existing policy within specified retained documents. In this case, the policy provisions of **PPS 21**, **PPS 2** and the relevant provisions of the mineral policies in **PSRNI** are relevant. The SPPS states that in decision-taking, the factors to be considered on a case-by-case basis for minerals development will depend on the scale of the proposed mineral development and its local context.

PPS 21 - Sustainable Development in the Countryside

6.27 **Policy CTY 1** states there are a range of developments which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. It advises that planning permission will be granted for minerals development in accordance with the MIN Policies of PSRNI.

A Planning Strategy for Rural Northern Ireland (PSRNI)

6.28 PSRNI recognises minerals as an important natural resource and their exploitation makes an essential contribution to the nation's prosperity and quality of life. The mineral extraction industry provides employment often in rural areas and produces a wide range of products for a variety of purposes in construction, agriculture and industry. In Northern Ireland the primary minerals are sand and gravel and crushed rock used mainly in construction. In the foreseeable future, supplies of primary minerals are likely to come from traditional sources.

6.29 It goes on to say that minerals can only be extracted where they are found. Whilst they are essential, their working can have a significant effect on the landscape and on people's living conditions. Because of their nature, scale, location and duration of operation, minerals developments often impact more severely on the environment than other forms of development so they must be subject to rigorous control standards.

6.30 The PSRNI identifies a general presumption in favour of development. When considering an application account shall be taken of the value of the mineral to the economy, the environmental implications of the proposal and the degree to which adverse effects can be mitigated in relation to the character of the local area.

6.31 As set out above, this application falls within an ACMD. **Policy MIN 3** advises there will be a presumption against the granting of planning permission for the extraction of minerals in ACMDs. Exceptions to this policy may be made where the proposed operations are short-term and the environmental implications are not significant. **Policy MIN1** requires an assessment of the need for the mineral resource against the need to protect and conserve the environment and this should take account of all relevant environmental, economic, and other considerations. It also recognises that the provision of reliable protective measures will be an important factor in assessing the acceptability of the extraction proposal.

6.32 As discussed, the application for non-compliance with conditions does not re-examine the principle of the development i.e. extraction from the bed of the lough is established through the granting of original permission LA03/2017/0310/F. The matters for consideration are restricted to a question of the conditions subject to which planning permission should be granted, however, any planning permission would result in a new planning decision.

6.33 Where applicable, the application has been assessed under the relevant policy but it is considered that it is in compliance with the applicable provisions of the mineral policies in the PSRNI. While the application falls within an *Area of Constraint on Mineral Development*, the principle of the development cannot be revisited when considering the section 54 application and as discussed, this is already established. This zoning is therefore not attributed weight in the consideration of this application.

Ecology/ Biodiversity and Nature Conservation

6.34 At the Public Local Inquiry in June 2018 it became apparent that the bird survey work undertaken for the Environmental Impact Assessment on the original

application was to assess how birds react to dredging and barge movements on Lough Neagh and the onshore activities at the quays. However, such survey work was not undertaken at night and therefore the effects of birds during the hours of darkness had not been assessed. The HRA prepared by SES relating to application LA03/2017/0310/F identified the potential for movement and operation of sand dredging barges during the hours of darkness to cause disturbance to waterfowl species, particularly several species of diving duck wintering on Lough Neagh. Accordingly, the Department attached a planning condition (Condition 7) restricting movement of barges to daylight hours only, removing the potential to impact on wildfowl through disturbance due to barge movements during the hours of darkness.

6.35 The applicant proposes the development of land without compliance with condition 7 (daylight only operating hours restriction) which states:

- *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.

6.36 Subsequently, the applicant carried out additional specific survey work to support this s54 application, the conclusions of which, according to the applicant, were:

“...the activities of the sand barges during the hours of darkness would not give rise to an adverse effect on the integrity of Lough Neagh and Lough Beg SPA/Ramsar (or a significant adverse effect on any underpinning designation) with reference to the conservation objectives and all relevant qualifying interest features.”

6.37 NIEA Natural Environment Division were consulted on the application. NED have stated that while the diurnal distribution of the various species wintering on the lough is generally well known, very little is known about use of the Lough for foraging during the hours of darkness. Subsequently, it is difficult to accurately assess the potential for nocturnal disturbance by vessel movements or dredging operations. Recent diurnal monitoring indicates that relatively large aggregations of the three key

diving duck species regularly occur in proximity to four of the onshore processing sites and the extraction area itself. It is therefore possible that commuting vessels may pass through associated feeding areas. The area around the extraction locations has been consistently important for *Scaup* in recent years. This species has tended to be the most numerically stable of the diving ducks during the period of general decline. It is important that this stability is maintained. Given the current uncertainty regarding distribution and behaviour of waterfowl after dark, it was considered prudent to put in place mitigation measures to minimise nocturnal disturbance, particularly during that part of the winter when the highest numbers of birds are recorded and when these tend to be subject to the greatest energetic stress due to prevailing low temperatures.

6.38 As indicated above, additional night surveys were carried out to assess the effects of nocturnal movements of the barges on wintering birds with emphasis on assessing the level of disturbance caused. LNST discussed methods with NED by which this could be carried out and a radar-based survey was proposed. However, difficulties were encountered in obtaining the radar equipment and it was not available in time for the survey season. While this seriously reduced the potential efficacy of the survey, NED was content for the project to proceed using night vision optics. This was because, despite it limiting bird detectability to around a 100m radius of the vessel during complete darkness, very little information on the response of waterbirds to vessel movements during darkness was available. It was thus considered that this survey might at least give an indication as to whether large numbers of birds were being encountered on the barge routes and if there was a large-scale adverse response. Surveys commenced in December 2018 whereby barges simulated extraction operations while in the extraction zone.

6.39 During transects (62 in total), observers on the barges recorded all birds encountered (including those in flight), their minimum distance from the vessel and their response in terms of disturbance (i.e. whether the birds moved away or took flight).

6.40 The numbers of birds encountered during transects was generally low relative to the populations present on Lough Neagh. Birds in flight, particularly gulls,

predominated. There was no indication that the presence or movement of the barges adversely affected the behaviour of birds in flight in any way. Gulls were even recorded landing and foraging on barges in the extraction zone.

6.41 Whilst NED had some issues with the method of data summary reporting provided by the applicant, they note that disturbance by vessels is most likely to have an adverse impact on birds on the water, by disrupting foraging or forcing expenditure of energy through escape flight. Therefore, NED's assessment is confined to the birds on the water during the hours of darkness and information provided on those recorded only in flight, during daylight transects and from the shore was disregarded.

6.42 NED state that, within its constraints (i.e., inability to differentiate birds much beyond 100m range), the survey provided no compelling evidence of significant disturbance of birds by barges during the hours of darkness. It could be argued that birds beyond the range of the optic could be detecting the approach of the barge and are therefore moving away unseen. This could result in displacement from foraging areas and therefore adverse impact cannot be ruled out, particularly during very cold weather. NED therefore are of the opinion that caution is required as it cannot be conclusively determined that avoidance behaviour is not happening beyond the restricted detection capabilities of the submitted survey. They have recommended therefore, that a 12-hour undisturbed foraging period for birds from November to February, when physiological stresses are greatest, is conditioned, with barge operations confined to the period 0600 to 1800 during that period (restrictions at other times are not considered to be necessary).

6.43 The planning application was also considered in light of the assessment requirements of regulation 43(1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by SES on behalf of DfI Planning. The *appropriate assessment* concluded that based on the information provided, and in light of the expert opinion of the Statutory Nature Conservation Body (NIEA), it has not been demonstrated that the removal of condition 7 would not have an adverse effect on site integrity. SES agree (as suggested by NIEA) that an amendment to the applicant's proposed condition is required to provide mitigation ensuring no

adverse effect on site integrity. It is recommended that a condition that reflects the comments of this expert consultee be attached to a decision notice, should approval be granted.

6.45 As discussed, the applicant is also proposing to develop land without compliance with condition 12 which, if approved, would result in a change to the size of the barges currently permitted to be operated. The ES identified the following pathways by which significant effects could arise as a result of the change:

- An increased level of disturbance to sensitive receptors through barge movements to the Lough:
 - Visual disturbance: increased size of barge
 - Visual disturbance: increased speed of barge
 - Increased noise disturbance
- Increased water quality impacts
- Increased air quality impacts

6.46 With regards potential visual disturbance related to an increase in the barge size, the ES concluded that the birds do not consider the barges to be a threat which would otherwise induce a significant flight response, and thus changing the barge size would have no greater effect than that previously assessed. The conclusion is reached both in relation to daytime and night-time operations. In relation to the visual disturbance as a result of increased speed of the new barges the ES concludes that the speed of the new barge could not increase significantly over those levels previously considered as the barges remain large, slow-moving vessels, heavily restricted by their bulk and weight, especially when loaded. I am content therefore that there will not be a visual disturbance on sensitive receptors through non-compliance with condition 12 in its present form and the inclusion of an amended wording.

6.47 In relation to potential noise disturbance and impact on air quality, the ES considered that there may be a significant impact on bird and fish species due to an increase in the size of the barges. The ES suggests mitigation in the form of a suitably worded revised planning condition 12 that secures commitment that the

replacement barge shall not emit any greater noise output or emissions to air than the barge it is proposed to replace. I am content that this will mitigate any potential noise impacts or impacts on air quality on sensitive receptors should condition 12 be substituted as proposed.

6.48 Finally in relation to potential impact on water quality relevant to plants, fish, benthic invertebrates and bird features, the ES concludes that there is unlikely to be a significant impact on sensitive receptors as a result of petrochemical released from a larger barge and therefore no further mitigation beyond that already in place is considered necessary. I am content that substituting condition 12 as proposed will not impact on the water quality.

6.49 Both NIEA and SES were content with the substitution of condition 12 as proposed by the applicant. The proposed amendments are discussed further in the report but in terms of ecology, the alteration is not considered to be detrimental to biodiversity and nature conservation.

Residential Amenity and Human Health

6.50 As discussed the applicant proposes the development of land without compliance with condition 7 (daylight only operating hours restriction). Under such arrangements, the barges would be permitted to leave the docks at any time of the day (and night), all year round, as opposed to only during the non-winter months (April to September). The applicant is also proposing to substitute condition 12 which, if approved, would result in a change to the size of the barges currently permitted to be operated and thus there may be noise and emission effects. A consideration of the potential impacts of such on residential amenity and human health is therefore required.

6.51 Under the original application, the barges can leave the site at any time, apart from those specified in condition 7, and also condition 13 (after 3pm on Saturdays, all day Sundays and on any Bank Holiday). The restrictions specified in condition 7 were applied solely for the protection the site selection features of the designated sites as opposed to for the protection of amenity.

6.52 In addition, while the barges can indeed leave the dock at any time (apart from the times discussed above) the ES states:

“Whilst barges may leave their moorings at the 8 sand quays from an early hour, the operations to include the winning and working of the material and all the associated down-stream landing, processing, stockpiling and distribution of the materials take place within the following operational hours:

Hours of Operation

06:00 to 19:00 Monday to Friday

06:00 to 15:00 Saturday

No extraction on Sundays or Bank Holidays (para 2.16.2)”

6.53 It has been raised by the Lisburn and Castlereagh Council Environmental Health Department that the ES has only assessed the impact of extraction from 7am, contrary to operating hours detailed the above, and that if extraction takes place from 6am this would technically be night-time hours. As detailed in planning practice guidance *Assessing Environmental Impacts from Mineral Extraction – Noise Emissions* (March 2014), 7am and 7pm are normal working hours and extraction benefits from a noise limit of background +10dB. Extraction between 10pm and 7am would be limited to 42dB and compliance with this noise limit has not been demonstrated. However, the applicant’s acoustic consultancy has shown that the worst-case noise level will not exceed 42 dB(A) at any time (see Table 5 in Appendix 6.1 of the ES) and therefore EHO are content.

6.54 While there is no condition attached to the original planning permission which restricts the hours of operation in terms of the mineral extraction element, covenant 7 of the Planning Agreement under section 76 of the Act restricts the operational activities at each landing site, including the processing of extracted mineral (but excluding the departure of barges from the landing sites to the extraction area and their return thereafter) to only taking place between 6am and 7pm on any day Monday to Friday (excepting Bank Holidays) inclusive and between 9am to 3pm on a

Saturday. There is therefore a level of protection for the amenity of residents in close proximity to the landing sites.

6.56 The Environmental Health Departments of Mid Ulster District Council, Antrim and Newtownabbey Borough Council, Armagh Banbridge and Craigavon Borough Council and Lisburn and Castlereagh Council Areas were consulted on this s54 application and are content with the proposals. Should the application be approved, condition 13 will remain ensuring that the amenity of local residents at weekends and on bank holidays is protected. Covenant 7 of the Planning Agreement will also remain in place. I am therefore content that there will not be a detrimental impact on residential amenity should condition 7 be amended as discussed above (barge operations confined to the period 06.00 to 18.00 during winter months) rather than removed entirely, which would add another level of protection to residential amenity.

6.57 The applicant is also proposing to substitute condition 12 which currently restricts the replacement of any barge to the same dimensions to that which it replaces (no greater), to a condition restricting the replacement of a barge to no greater dimension than the largest barge currently permitted, allowing for a tolerance of 10% in dimension. It is proposed that the replacement barge shall not be permitted to emit any greater noise output or emissions to air than the barge it is proposed to replace. To ensure that this is the case, the applicants propose notifying the Department with particulars of the replacement regarding length and emissions, await its agreement and notify the Department 7 days prior to the replacement barge coming in to service. I am content that condition 12 can be substituted as such.

6.58 All of the Environmental Health Departments have no objection to the substitution of condition 12, provided the sound power level of any replacement barge does not exceed 105 dB(A) (the stated level order) which would provide an extra level of protection of amenity at nearby noise sensitive receptors. I am content that the substitution of condition 12 will have no greater impact on residential amenity and human health than that attached to the original permission.

Landscape and Visual Impact

6.59 **Policy MIN 2** of PSRNI states that the planning authority shall have regard for the visual implications of mineral extraction and that in order to minimise their visual impact, they should be located where possible to take advantage of existing landform and features. Should the application be granted, the applicant could replace any of the current barges with one of a larger dimension (albeit restricted to no greater dimension than the largest barge currently permitted, allowing for a tolerance of 10% in dimension). In addition, the barges may be on the Lough for a greater length of time than currently permitted. Therefore a consideration of the visual impact is appropriate.

6.60 The potential visual impacts associated with this application are considered to be limited only to the barge activity on the surface. The Lough itself is the dominant landscape feature in the locality but it is not itself designated for landscape value. It is considered that boat activity is not particularly unusual on a water body especially one of this scale. Therefore the visual impact of barge movement will have little impact on the quality of the surrounding landscape. I do not consider that any changes to the barge size and the duration they are on Lough would be detrimental to the landscape and visual amenity.

6.61 It would be important to note here that Policy MIN 8 of PSRNI requires mineral workings to be restored at the earliest opportunity – to make them fit for beneficial use and environmentally acceptable after extraction. Applications for extraction must include satisfactory restoration proposals. However as it is considered that non compliance with conditions as proposed in this application will not have an impact on the extraction, other than the times within which it can be conducted, consequently non-compliance will not impact on any requirement for restoration. Restoration was discussed and addressed in the original application, and it was deemed that, given the nature and location of the extraction, restoration of the extracted area in this instance would not be appropriate.

7.0 Conclusion

7.1 After fully assessing the development proposal, the information submitted in support of the application, the comments of all consultees and having regard to the relevant planning policy context, the statutory development plan, and all other relevant material considerations, the following conclusions have been reached;

- The rationale provided by the applicant for non-compliance with the conditions has been considered and it is indicated, where relevant, agreement with the case advanced. I have also set out other changes and suggestions as appropriate.
- The conditions proposed do not alter the extent or the nature of the development already permitted.
- Two letters of representation were received which raised concerns that the original conditions attached were to protect the site selection features and to remove such would have an impact on these. These comments have been taken into the consideration of the application.
- The Environmental information along with other additional information and comments made by the consultee bodies (summarised at Appendix 2) has been taken into account and it has been determined that the potential significant effects have been identified, adequately assessed and mitigation measures provided (where required). On this basis, in accordance with regulation 24(1) of the 2017 EIA Regulations, a reasoned conclusion has been reached (Appendix 3).
- A HRA has been carried out and concluded that, provided the proposed mitigation is appropriately conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site. This report and the SES draft HRA should be considered the HRA/ appropriate assessment by the competent

authority for the purposes of the Habitats Regulations and Directive. It is attached at Appendix 4. DfI Regional Planning Policy & Casework Directorate in its role as the competent Authority under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 ('HRA' as amended), and in accordance with its duty under regulation 43, has adopted the HRA report, and conclusions therein, prepared by Shared Environmental Service, dated 14 December 2022.




8.0 Recommendation

8.1 Article 21 of GDPO empowers the Department to request that the Planning Appeals Commission or other appointed person hold a public inquiry for purposes of considering representations on the application. Where no Public Local Inquiry is held, the Department must serve a Notice of Opinion on the applicant and the council indicating the decision which the Department proposes to make on the application.

8.2 The Department may cause a public local inquiry to be held where it is considered that the inquiry will provide additional information to inform the Department in making a final planning decision. It is noted that consultation responses have indicated that a satisfactory level of information has been submitted to enable consultees to advise the Department on specific technical issues. A key test for the Department in deciding the process route is whether a public local inquiry is necessary to provide a forum for presentation and consideration of issues arising from the representations received and which need to be assessed to allow the Department to determine the application.

8.3 The proposal has been considered having regard to the information submitted in support of the development including all relevant material considerations, other documentation submitted with the application, the relevant planning policies, and the views of bodies with environmental responsibilities. Given the small numbers of representations received in this case it is considered that a public inquiry is not

required to consider representations on the application and having weighed all the considerations it is recommended that the application proceeds by way of a Notice of Opinion (Annex 1) to grant planning consent

SECTION 54 DETERMINATION	
Application No:	LA03/2021/0940/F
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 without complying with condition number 07 and condition number 12 of planning approval LA03/2017/0310/F.
Location:	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.
The above application was considered at a development control group meeting:	Following discussion of the information submitted in support of the application, the comments of all consultees and having regard to the relevant planning policy context, the statutory development plan, and all other relevant material considerations, the group concurs with the findings of the report and the recommendation to approve.
DC Group recommendation:	Notice of Opinion to Approve
Group Signatures:	<p>1. </p> <p>2. </p> <p>3. </p> <p>Date: 19/4/21</p>

Appendix 1 Draft NOP – LA03/2021/0940/F

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 under planning approval LA03/2017/0310/F.

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 2022) and which are subject to the Agreement with the Department 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 the Electronic Monitoring System (EMS) agreed with the Department on 2 April 2021 and there shall be adherence to the following:

- 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) shall be carried out only within the permitted areas.
- The Department shall be provided with access to the information held within the EMS at any time for the duration of the permission; -

- Real time alerts shall be provided via email to the Department at the agreed email address
- Measures shall be implemented to alert an operator that the EMS tracking device is not functioning;
- At the point when an employee becomes aware that the EMS tracker on a barge is not functioning, that barge shall not leave the dock and if already away from the dock, they shall stop extracting (if currently doing so) and return to dock. Details of the journey including any material already extracted shall be recorded manually;
- The EMS reports submitted to the Department shall be made on a monthly basis (for each calendar month); and
- The EMS shall be subject to periodic review during the operational phase of the development. Any amendments to the EMS following a review shall take effect in a time period as agreed by the Department.

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

5. 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 4, for any period.

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

6. Between 1 November and 28/29 February any barge shall not leave the dock earlier than 06.00 hours or return later than 18.00 hours.

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

7. 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.

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

8. 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.

9. 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.

10. 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.

11. Only barges of the dimensions specified in Table 2.1 of Chapter 2, Volume 2 of the Environmental Statement (April 2022) shall be permitted to extract mineral from the permitted areas. Any proposed replacement barge shall be of no greater dimension than the largest barge in the April 2022 Table 2.1, allowing for a tolerance of 10% in dimension and the replacement barge shall emit no greater emissions to air or increase in noise output (expressed as an LAeq) than the barge and sand extraction engine system it is proposed to replace. If a barge as so specified within the Table 2.1 of Chapter 2, Volume 2 of the Environmental Statement (April 2022) is to be replaced -

a) The Department shall be notified in writing of the details of the replacement barge to include the particulars with regards to length, emissions to air and noise output (expressed as an LAeq);

b) Thereafter such replacement shall be agreed in writing by the Department; and

c) The Department shall be notified 7 days prior to the replacement barge entering the Lough.

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

12. The barges, as detailed in Condition 11, shall not operate after 3pm on Saturdays, all day Sundays or on any Bank Holiday.

Reason: In the interests of residential amenity.

13. The Emergency Response Plan (ERP) for all offshore activities agreed with the Department on 30 June 2021 shall be available for inspection at all times on each vessel.

Reason: To ensure protection of the designated sites.

14. The archaeological programme, in accordance with the British Marine Aggregate Producers Association (BMAPA) Protocol for Reporting finds of Archaeological interest (BMAPA and English Heritage 2005), agreed with the Department on 2 April 2021 shall operate 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.

15. 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.

16.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 as agreed by the Department on 2 April 2021. 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.

Appendix 2 – Summary of Consultation Responses Received

Lisburn City and Castlereagh Council Environmental Health Department

Content with the proposal in principle subject to amendments to the proposed amendments to condition 12 such that any new barge should be provided to the Department in the form of an LAeq for both the sand extraction engine system and the barge engine. No objection to the removal of condition 7.

Lisburn City and Castlereagh Council

The Council is content with the proposal in principle subject to conditions suggested by the Environmental Health Department

Antrim and Newtownabbey Borough Council Environmental Health Department

Content with the proposal in principle subject to amendments to the proposed amendments to condition 12 to include sound power level in order to protect amenity at nearby noise sensitive receptors No objection to the removal of condition 7.

Antrim and Newtownabbey Borough Council

The Council has agreed not to provide a corporate view on the merits of the development, thus allowing individual Members or parties to express support for or object to the development if they so wish.

Armagh City, Banbridge and Craigavon Borough Council Environmental Health Department

No objection to the removal of condition 7. No objection to the variation of condition 12, provided the sound power level of any replacement barge does not exceed 105 dB(A). Recommend that this sound power level is restricted so as not to exceed the stated level order to protect amenity at nearby noise sensitive receptors.

Armagh City, Banbridge and Craigavon Borough Council

The Council would advise that the comments of DAERA Natural Environmental Division (NED) and Shared Environmental Services (SES) and our own Environmental Health Department (who have been consulted separately), are material to this proposal, and should be obtained by DfI to help inform their decision. No additional comments to make at this time.

Mid Ulster District Council Environmental Health Department

No objection to the removal of condition 7. No objection to the variation of condition 12 limiting the dimensions of any new/replacement barges provided their sound power level does not exceed 105 dB(A). Recommend that this sound power level is included within condition 12.

Mid Ulster District Council

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. The Department to be satisfied and legal advice taken that this will not cause harm to species or the biodiversity of the Lough. Also, that amenity of neighbouring residences is protected through the use of controls and remote noise generated.

Water Management Unit

Water Management Unit has no objection to the variation of Conditions on operating hours and barge sizes.

Inland Fisheries

Inland Fisheries are content that the variations applied for are unlikely to have any material impact on our previously provided responses.

NIEA Natural Environment Division

NED is of the opinion that it would be possible to amend Condition 7 of LA03/2017/0310/F to allow some operation of sand barges within the hours of darkness. While the results presented suggest that removal of restrictions would be unlikely to have a significant adverse impact on selection features of the Lough Neagh and Lough Beg SPA, NED feel that caution is required as it cannot be conclusively determined that avoidance behaviour is not happening beyond the restricted detection capabilities of the current survey.

Consequently, NED consider that it would be prudent to allow a 12-hour undisturbed foraging period for waterbirds during November to February, when physiological stresses are greatest, with barge operations confined to the period 06:00 to 18:00 at that time. Restrictions at other times of year are unlikely to be necessary.

NED are content with the proposed amendments to Condition 12, re barge size.

Shared Environmental Services

This planning application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of DfI Strategic Planning Directorate which is the competent authority responsible for authorising the project.

Following an appropriate assessment in accordance with the Regulations and having considered the nature, scale, timing, duration and location of the project, SES advises the project would not have an adverse effect on the integrity of any European site either alone or in combination with other plans or projects. The appropriate assessment has concluded that on the basis of the information provided and in light of the expert opinion of the Statutory Nature Conservation Body it has not been demonstrated that the removal of condition 7 would not have an adverse effect on site integrity and an amendment to the proposal is required to provide mitigation ensuring no adverse effect on site integrity. The proposed amendment to condition 12 includes mitigation to ensure no increase in noise or emissions from replacement barges. It is concluded that the amendment to condition 12 will not have an adverse effect on site integrity.

Appendix 3 - Regulation 24 Reasoned Conclusion

The proposed development has been applied for under s54 of the Planning Act (NI) 2011 and seeks non-compliance with a number of conditions attached to permission LA03/2017/0310/F which was for the extraction of sand from the bed of Lough Neagh. The applicant proposes development without compliance with

- Condition 7 (daylight only operating hours restriction) and
- Condition 12 (the replacement of barges presently operating on the Lough).

A Section 54 application does not allow for the amendment of the description of development of the previous (original) permission and if successful results not in the variation of an already existing permission, but the grant of a fresh permission for the same description of development as the original application. The original application, LA03/2017/0310/F was accompanied by an Environmental Statement (ES) which considered the likely significant impacts of the project on the environmental aspects within and around the project (geology, water environment, noise, ecology, landscape, air quality, vehicle movements, cultural heritage, socio economics and tourism) and included the measures envisaged to mitigate those impacts, where required.

The applicant submitted an addendum to the original ES to accompany the current application. This considers the potential significant impacts on environmental aspects within and around the proposed development that could occur as a result of the non-compliance with the conditions attached to the original permission, as proposed, together with strategies to minimise or avoid them. Some of the aspects considered in the original ES will be unaffected by the non-compliance and thus the conclusions drawn on those remain unchanged.

An assessment of compliance of the proposed development with the objectives and requirements of the EIA took into account the following reports and supporting information that formed part of the application package:

- ES, ES Addendum and Appendices
- ES Non-Technical Summary

The Department has examined the environmental information. The examination involved whether the EIA process identified, described and assessed the direct and indirect effects of the project taking into account both the information supplied by the applicant and the feedback provided by consultation responses. Consultation responses are available in full on the planning portal and are summarised in this Development Management Report (DMR).

After the examination undertaken by the Department, the main likely significant effects and mitigation measures (where required) of the proposed development on the environment are as follows:

Ecology

The ES identifies a potential likely significant effect on ecologically important features (statutory and non-statutory designated sites within the zone of influence, habitats within the site and species that utilise the site) and the mitigation measures, where required (6.3-6.4). It identifies the following pathways by which significant effects could arise as a result of the proposals:

Disturbance to sensitive receptors during the hours of darkness

An increased level of disturbance to sensitive receptors through barge movements on the lough;

- Visual disturbance: increased size of barge
- Visual disturbance: increased speed of barge
- Increased noise disturbance
- Increased water quality impacts
- Increased air quality impacts

Mitigation

The ES includes a survey and assessment report regarding the implications of barges operating at night during winter months. (Annex 7 of Appendix 7.1)

The ES concluded that the activities of the sand barges during the hours of darkness would not result in a significant impact on all bird species therefore no mitigation has been identified. However, NIEA Natural Heritage NED are of the opinion that caution is required as it cannot be conclusively determined that avoidance behaviour is not

happening beyond the restricted detection capabilities of the submitted survey (the use of night vision optics limited bird detectability to around a 100m radius of the vessel during complete darkness). They have recommended therefore that a 12-hour undisturbed foraging period for birds from November to February (when physiological stresses are greatest) is conditioned, with barge operations confined to the period 06.00 to 18.00 during that period (restrictions at other times are not considered to be necessary).

The planning application was also considered in light of the assessment requirements of regulation 43(1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of DfI Planning. The appropriate assessment concluded that based on the information provided, and in light of the expert opinion of the Statutory Nature Conservation Body (NIEA), it has not been demonstrated that the removal of condition 7 would not have an adverse effect on site integrity as it may cause disturbance to feeding/loafing bird interest features during the hours of darkness. SES are of the opinion that an amendment to the original condition as opposed to its removal is required to ensure there is no adverse effect on site integrity. It is recommended that a condition that reflects the comments of the expert consultees be attached to a decision notice, should approval be granted, in order to mitigate any adverse impacts on sensitive receptors. The wording of the condition is considered in detail in the DMR.

With regards visual disturbance in terms of increased size of barge the ES states there is unlikely to be a significant impact on sensitive receptors based on the evidence submitted with the original application and the more recent winter survey (Annex 7 of Appendix 7.1). This concluded that the birds do not see the barges as a threat which would otherwise induce a significant flight response, and thus, changing the barge size would have no greater effect than that previously assessed and therefore no mitigation is required. The conclusion is reached both in relation to daytime and night-time operations.

With regards visual disturbance in terms of increased speed of barge the ES concludes that the speed of the new barge could not increase significantly over those levels previously considered as the barges remain large, slow moving vessels,

heavily restricted by their bulk and weight, especially when loaded. It concludes there is unlikely to be a significant impact on sensitive receptors and therefore no mitigation is required. This is considered to be acceptable.

In relation to increased noise disturbance and impact on water quality, the ES considered that there may be a significant impact on bird and fish species due to an increase in the size of the barges. The mitigation suggested is a suitably worded revised planning condition that secures commitment that the replacement barge shall not emit any greater noise output or emissions to air than the barge it is proposed to replace. The wording of the condition is considered in detail in the DMR. This measure is considered appropriate to mitigate potential significant impacts.

Finally in relation to potential impact on water quality relevant to plants, fish, benthic invertebrates and bird features, it is concluded that there is unlikely to be a significant impact on sensitive receptors as a result of petrochemical releases from a larger barge and therefore no further mitigation beyond that already in place (discussed in the original ES at paragraph 7.5.123) is considered necessary. This is acceptable.



LA03_2021_0940_F -
HRA.pdf

Shared Environmental Service
Silverwood Business Park
190 Raceview Road
Ballymena
Co. Antrim
BT42 4HZ

14/12/2022

Planning Reference: LA03/2021/0940/F

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.

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.

Consultation: This planning application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of DfI Strategic Planning Directorate which is the competent authority responsible for authorising the project. The assessment which informed this response is attached at Annex A.

Outcome: Following an appropriate assessment in accordance with the Regulations and having considered the nature, scale, timing, duration and location of the project, SES advises the project would not have an adverse effect on the integrity of any European site either alone or in combination with other plans or projects.

The appropriate assessment has concluded that on the basis of the information provided and in light of the expert opinion of the Statutory Nature Conservation Body it has not been demonstrated that the removal of condition 7 would not have an adverse effect on site integrity and an amendment to the proposal is required to provide mitigation ensuring no adverse effect on site integrity. The proposed amendment to condition 12 includes mitigation to ensure no increase in noise or emissions from replacement barges. It is concluded that the amendment to condition 12 will not have an adverse effect on site integrity.

This conclusion is subject to the following mitigation measures being conditioned in any approval:

1. A 12-hour undisturbed foraging period for waterbirds must be maintained during November to February, when physiological stresses are greatest, with barge operations confined to the period 06:00 to 18:00 at that time.

Reason: To ensure the project will not have an adverse effect on the integrity of any European site.

Advice for planner: DfI Strategic Planning Directorate is advised to review the appropriate assessment provided by SES and if agreed, adopt the appropriate assessment. In recording the appropriate assessment in the planning report, the following statement may then be included:

DfI Strategic Planning Directorate in its role as the competent Authority under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), and in accordance with its duty under Regulation 43, has adopted the HRA report, and conclusions therein, prepared by Shared Environmental Service, dated 14/12/2022. This found that the project would not have an adverse effect on the integrity of any European site.

ses@midandeastantrim.gov.uk

ANNEX A

Habitats Regulations Assessment

Carried out by Shared Environmental Service, adopted by DfI Strategic Planning Directorate.

Date Completed: 14/12/2022

Planning Reference: LA03/2021/0940/F

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.

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.

Assessment stage completed

- 1. Assessment resulting in exemption
- 2. Assessment resulting in elimination
- 3. Assessment demonstrating no likely significant effect
- 4. Interim Assessment to inform e.g. EIA determination, PAD
- 5. Further information requested
- 6. Draft appropriate assessment referred to SNCB
- 7. Appropriate assessment complete, no adverse effect on site integrity without conditions
- 8. Appropriate assessment complete, no adverse effect on site integrity with conditions to mitigate
- 9. Appropriate assessment complete, adverse effect on site integrity

Summary of findings

Appropriate Assessment Outcome: The appropriate assessment has concluded that the potential for an adverse effect could not be ruled out from the removal of condition 7. NIEA has recommended an amendment to condition 7 to provide mitigation ensuring no adverse effect on site integrity. The proposed amendment to condition 12 includes mitigation to ensure no increase in noise or emissions from replacement barges. It is concluded that the amendment to condition 12 will not have an adverse effect on site integrity.

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Abbreviations/Glossary

AESI	Adverse effect on site integrity	NIW	Northern Ireland Water
Dfi	Department of Infrastructure	PAD	Pre-application discussion
EIA	Environmental Impact Assessment	RLB	Red line boundary
HRA	Habitats Regulations Assessment	SAC	Special Area of Conservation
LSE	Likely significant effect	SES	Shared Environmental Service
NA	Not applicable	SPA	Special Protection Area
NIEA	Northern Ireland Environment Agency	SNCB	Statutory Nature Conservation Body

Mitigation For the purposes of this report ‘mitigation’ includes measures to avoid, cancel or reduce effects

STAGE ONE ASSESSMENT

Note, in light of the April 2018 ruling of the European Court of Justice Case C323/17 (People over Wind and Sweetman), a cautious approach has been taken. Stage One Assessment does consider essential features and characteristics of the project but does not consider measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the integrity of European Sites. Assessment will therefore progress to Stage Two Appropriate Assessment unless there is certainty that it can be exempted, eliminated or screened out at Stage One. Incorporated and additional measures to avoid or reduce significant adverse effects will be assessed at Stage Two Appropriate Assessment.

A. Description and potential effects of the proposal

Description		
<i>Heading</i>	<i>Short description</i>	<i>Comment</i>
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 3.1km ² , 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>Section 54 Planning Application of the Planning Act (Northern Ireland) 2011, seeking permission to develop land without compliance with planning conditions No.7 (seeking removal of daylight only operating hours restriction) and No.12 (seeking variation to barge sizes) previously attached to planning permission LA03/2017/0310/F.</p> <p>HRA carried out on LA03/2017/0310/F by SES on behalf of DfI Strategic Planning Division.</p> <p>DfI determined that the application was required to be accompanied by an Environmental Statement (“ES”). LNST duly submitted the original ES lodged in support of the Original Permission and an Addendum in satisfaction of the request as issued by the Department.</p> <p>ES addendum 2.4 “The Project” <i>The project remains as described within Chapter 2 of the original ES save for the removal of condition 7 of the Original Permission to permit the movement of barges in the hours of darkness between 1st October and 31st March and the proposed amendment of condition 12 to permit a variation to the ability to replace barges up to a maximum size of 10% greater than the largest of barges for all and not limited to the existing size of the barge operated by each of the traders.</i></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.	
Type of Development	Extractive Industry	
Size and Scale	3.1 km ²	This relates to the two distinct areas edged in black and hatched orange on Drawing 01 - Site Location on the planning portal 15/05/2017. An addendum shadow HRA submitted by Ecology Solutions confirms there is no proposal to alter the area from which sand is extracted, nor is there a proposal to increase the maximum volume of sand which can be extracted each year (1.5MT).
Land-take	Proposal is wholly within Lough Neagh SPA/Ramsar.	
Resource requirements (water etc.)	Sand mixed with water is pumped from the Lough bed as detailed for LA03/2017//0310/F.	
Emission (disposal to land, water or air)	Aerial emissions from barges	Variation of condition No.12 (seeking variation to barge sizes) may cause change to emissions as assessed under LA03/2017/0310/F.
Excavation requirements	Extraction of sand as assessed under LA03/2017/0310/F.	An addendum shadow HRA submitted by Ecology Solutions and the addendum to the ES confirm there is no proposal to increase the maximum volume of sand which can be extracted each year (1.5MT).
Transportation requirements	The 5 operators utilize up to 15 sand dredging vessels of various types.	An addendum shadow HRA submitted by Ecology Solutions and the addendum to the ES confirms there is no proposal to increase the number of barges (15) which are operated by the Sand Traders.
Duration	As assessed for LA03/2017//0310/F.	
Frequency	As assessed for LA03/2017//0310/F.	
Timing	The permitted operation of the 15 approved barges is governed by condition 7, which excludes operation in the Hours of Darkness during the winter months.	Variation of condition No.7 seeks removal of daylight only operating hours restriction. Original ES 16.2.1 indicates that barges may leave their moorings at the 8 sand quays from an early hour whereas the operations to include the winning and working of the material and all the associated down-

		<i>stream landing, processing, stockpiling and distribution of the materials take place within the following operational hours: 06:00 to 19:00 Monday to Friday, 06:00 to 15:00 Saturday.</i>
Decommissioning		ES addendum 2.5 Decommissioning <i>For the avoidance of doubt, it is confirmed that the decommissioning phase of the project remains as outlined in Section 2.17 of the original ES. The approach proposed within the original document has been further embedded into the baseline by the requirements of the associated s.76 and the restoration concept.</i>
Considerations for Assessment		
Are sea defences proposed/required?	<input type="checkbox"/> Yes <input type="checkbox"/> No	N/A
Will there be in river/sea works?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Works within Lough Neagh
Is piling required?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not applicable	
Is site within a flood plain?	<input type="checkbox"/> Yes <input type="checkbox"/> No	N/A - not relevant to current application.
Is site within 30m of Otter SAC river bank?	<input type="checkbox"/> Yes <input type="checkbox"/> No	N/A
Could there be contaminated land?	<input type="checkbox"/> Yes <input type="checkbox"/> No	N/A - not relevant to current application.
Has NIW confirmed capacity for stormwater/sewage to mains?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not applicable	N/A - not relevant to current application.
Potential Effects		
<i>Development Phase</i>	<i>Type</i>	<i>Comment</i>
Pre-construction	Not applicable	
Construction	Not Applicable	
Operation	Wholly/partly in European Site Disturbance New/Increase Change to Emissions/Discharge	<u>Condition 7:</u> The HRA for LA03/2017/0310/F concluded that the potential for disturbance to feature species at night from operation of barges travelling on Lough Neagh and during the extraction process could not be excluded. This resulted in Condition 7 to exclude operation of the barges on Lough Neagh in the Hours of Darkness during the winter months, (prescribed as the period from the 1st October through to the 31 March in each calendar year), to avoid disturbance of the site selection features. The s54 application seeks to remove this condition.

Removal of this condition may cause disturbance to feature species. A shadow HRA and Environmental Statement addendum have been submitted which details further surveys and assessment.

Condition 12:

It is proposed to seek to amend condition 12 of the Original Permission to permit more flexibility regarding the replacement of the barges presently operating on the Lough.

It is proposed to amend condition 12 from:

“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.”

to:

“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 proposed replacement barge shall be of no greater dimension than the largest barge in the April 2017 Table 2.1, allowing for a tolerance of 10% in dimension and that the replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace. Any such proposed replacement of a barge as so specified within the Table 2.1 of Chapter 2, Volume 2 of the Environmental Statement (April 2017) must:

- a) Be notified to the Department, along with the particulars with regards to length, emissions to air and noise output in writing;*
- b) Thereafter such replacement agreed in writing by the Department;*
- and*
- c) The Department is notified 7 days prior to the replacement barge coming into service.”*

This represents a change to the proposal as originally assessed and could lead to increased visual and noise disturbance from larger, faster barges and to increased emissions.

Decommissioning	Not applicable	
Restoration and aftercare	Not applicable	
Unintended events	Not applicable	
Assumptions		
<i>Assumption/s</i>	<i>Impact on potential effects</i>	<i>Comment</i>
Information gaps		
<i>Information gap</i>	<i>Pathway/Receptor</i>	<i>Comment</i>

B. Overview of sites potentially affected

Site Selection				
Proposal type				Site/s potentially affected
Ammonia emitting project?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes is development within 7.5km of European site?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Select Site Select Site Select Site
Wind turbine/s	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes is it within NIEA consultation zone for a European site?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Select Site Select Site Select Site
All developments – is it hydrologically connected to a European site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If yes could it have a conceivable impact on any European site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Lough Neagh and Lough Beg SPA Lough Neagh and Lough Beg Ramsar Site Select Site
Could project increase disturbance to site selection features?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If yes detail:		Lough Neagh and Lough Beg SPA Lough Neagh and Lough Beg Ramsar Site Select Site
Any other potential impacts on European sites?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes detail:		Select Site Select Site Select Site

Site name	Relative Location of proposal	Pathway	Comment
Lough Neagh and Lough Beg SPA	Within the SPA/Ramsar	Disturbance to feature species. Change to emissions/discharge.	Summary of potential effects:

Lough Neagh and Lough Beg Ramsar Site			<ul style="list-style-type: none"> • Disturbance to feeding/loafing bird interest features during the hours of darkness. • Increased level of visual disturbance to SPA/Ramsar features through barge movements on the Lough due to increased size, speed and noise of barges. • Increased air quality impacts. • Increased water quality impacts. <p><u>Potential for significant effects cannot be ruled out.</u></p>
Sites considered but excluded from further assessment			
Site name	Reason excluded		
Ballinderry River SAC	HRA for LA03/2017/0310/F concluded on the basis of the information provided that there is no route for pollutants to impact directly on the features or Conservation Objectives of this SAC. The proposal to remove condition 7 and to amend condition 12 will not alter this conclusion and this site is screened out from further assessment.		
Rea`s Wood and Farr`s Bay SAC	HRA for LA03/2017/0310/F concluded that considering the location of the proposed extraction area and the shore based processing sites it is concluded that the sand extraction activities could not have any impacts on the SAC features or Conservation Objectives as there are no pathways resulting from the proposal which could result in degradation of the woodland feature. The proposal to remove condition 7 and to amend condition 12 will not alter this conclusion and this site is screened out from further assessment.		

C. Outcome Stage One

Proposal exempt	
Is the entire project directly connected with or necessary to the management of all the European site(s) potentially affected and listed above?	<input type="checkbox"/> Yes – project exempt <input checked="" type="checkbox"/> No – further consideration
If 'Yes' justify	Click here to enter text.
Proposal eliminated	
Can any conceivable effect on any European site be objectively ruled out?	<input type="checkbox"/> Yes – project eliminated <input checked="" type="checkbox"/> No – further consideration
If 'Yes' justify why eliminated	Click here to enter text.
Likely Significant Effect	
Considering the project as proposed, and in the absence of any incorporated or additional measures to avoid, cancel or reduce the effects on a European site, could there be a likely significant effect (LSE) on one or more site selection features of any site?	<input type="checkbox"/> No – assessment completed <input checked="" type="checkbox"/> Yes – Progress to Stage Two Appropriate Assessment

STAGE TWO APPROPRIATE ASSESSMENT

This appropriate assessment further assesses effects on European sites and features and takes account of the evidence listed in the final section 'Evidence Used to Inform Assessment'.

D. Scoping Appropriate Assessment

Sites and Features which will be further assessed			
Site	Feature/s	Development Phases	Potential Impacts
Lough Neagh and Lough Beg SPA	All features	Operation	<ul style="list-style-type: none"> • Disturbance to feeding/loafing bird interest features during the hours of darkness. • Increased level of visual disturbance to SPA/Ramsar features through barge movements on the Lough due to increased size, speed and noise of barges. • Increased air quality impacts. • Increased water quality impacts.
Lough Neagh and Lough Beg Ramsar Site			

Further information required	To be sourced from	Requested	Date
			Click here to enter a date.

E. Assessment of Mitigation Measures

Detail of mitigation measures included in proposal		
Measure	Impact on potential effects	Comment
The revised wording of condition 12 proposes mitigation - 'any proposed replacement barge shall be of no greater dimension than the largest barge in the April 2017 Table 2.1, allowing for a tolerance of 10% in dimension and <u>that the replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace</u> '.	The proposed restriction in the revised wording of condition 12 will ensure that any replacement barge will have no greater noise output or emissions to air than that which it replaces and that this must be notified to DfI.	

Assessment of mitigation measures						
List measures to avoid or reduce adverse effects on site integrity.	Type of measure	Explain how the measures will avoid or reduce the adverse effects on site integrity.	Provide evidence of how they will be implemented and by whom.	Provide evidence of the degree of confidence in their likely success	Provide time-scale, relative to the project when they will be implemented	Explain the proposed monitoring scheme and how any mitigation failure will be addressed
1. 12-hour undisturbed foraging period for waterbirds during November to February, when physiological stresses are greatest, with barge operations confined to the period 06:00 to 18:00 at that time.	<input type="checkbox"/> Incorporated <input checked="" type="checkbox"/> Additional <input checked="" type="checkbox"/> Condition	This is a precautionary measure due to the limitations of the surveys. A 12-hour undisturbed foraging period for waterbirds during November to February, to minimise any displacement of birds when physiological stresses are greatest.	Planning condition	This condition is recommended by NIEA NED ornithologists, based on expert opinion.	During the operational period.	Enforced by current planning legislation.
2. Any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace.	<input checked="" type="checkbox"/> Incorporated <input type="checkbox"/> Additional <input type="checkbox"/> Condition	This measure will ensure that there is no increase in emissions to air that could impact on supporting habitat and no increase in disturbance due to increased noise.	Planning condition	The revised wording of condition 12 proposes that any proposed replacement of a barge must be notified to the Department, along with the particulars with regards to length, emissions to air and noise output in writing to be agree with the Department.	During the operational period.	Enforced by current planning legislation.

F. Assessment of Sites and Features

Lough Neagh and Lough Beg SPA		Pathway/s: Disturbance to feature species, deterioration in water quality, emissions to air.		
Overall Objective	To maintain each feature in favourable condition			
Feature	Feature Objective	Operation	Decommissioning	
Qualifying Feature*	To maintain or enhance the population of the qualifying species. To maintain or enhance the range of habitats utilised by the qualifying species. To ensure that the integrity of the site is maintained; To ensure	Potential impacts		
Under Article 4.1 and 4.2 of Directive 2009/147/EC supporting internationally important numbers of:		<p>Removal of condition 7:</p> <p>Disturbance to feature species from operation of barges travelling on Lough Neagh and during the extraction process during hours of darkness.</p> <p><i>Potential impacts from disturbance to feature species could occur from the operation of the barges around the shoreline at quay sites, in transit on the Lough and during the sand extraction process.</i></p>	N/A - this remains as assessed for LA03/2017/0310/F.	

<p>Common Tern (B), (F) Great crested Grebe (B,W,P), (N, F, F) Whooper Swan (W), (F) Bewick's Swan (W), (U) Golden Plover (W), (F) Pochard (W), (U) Tufted Duck (W), (U) Scaup (W), (F) Goldeneye (W), (U)</p> <p>Assemblage species (includes those listed above):</p> <p>Little Grebe (W) Cormorant (W) Greylag Goose (W) Shelduck (W), (F) Wigeon (W) Gadwall (W) Teal (W) Mallard (W) Shoveler (W) Coot (W) Lapwing (W)</p> <p>Waterbird Assemblage (U) *SPA feature list taken from the Conservation Objectives</p> <p>B – Breeding, W= Wintering, P=Passage, F = Favourable Condition, U = Unfavourable Condition, N= Not stated. Condition information taken from Lough Neagh</p>	<p>there is no significant disturbance of the species and to ensure that the following are maintained in the long term. Population of the species as a viable component of the site. Distribution of the species within site. Distribution and extent of habitats supporting the species structure, function and supporting processes of habitats supporting the species.</p>	<p><i>All feature species are susceptible to disturbance from noise, artificial light and from direct physical disturbance from barges or from deployment/retrieval of the suction head.</i></p> <p><i>This could be direct disturbance at feeding or loafing/roosting sites, or at nesting sites around the shoreline.</i></p> <p>Pochard, Tufted Duck and Scaup (diving ducks) are noted as being nocturnal feeders. NIEA (03/10/2022) states that the majority of species that may be susceptible to disturbance are selection features of the Lough Neagh and Lough Beg SPA and Ramsar site. The main species of concern are Pochard, Tufted Duck, Scaup and Goldeneye.</p> <p>The original HRA concluded '<i>Considering the most recent WeBS data (2017/18), results of the submitted bird surveys, the assessment carried out in APEM 2016, the Article 12 report and the further clarification by NIEA it is considered that the proposal will not have an adverse effect on site integrity through disturbance to feature species during daytime operation</i>'.</p> <p>In the absence of further information on nocturnal disturbance and taking a precautionary approach a condition was required to limit times at which barges are on the lough during the season when wintering wildfowl are present.</p> <p>An addendum shadow HRA has been supplied by Ecology Solutions. This is supported by Annex 7 "Wintering Bird Hours of Darkness Survey Report" (2021) produced by Ecology Solutions. The methodology of this survey work was agreed with NIEA (NED) and the surveys were undertaken over the 2018/2019 winter period.</p> <p>The sHRA at 5.31 concludes '<i>In view of the relevant data and the assessment undertaken, given the extremely limited area of the lough that is affected by barge movements and activity, compared to the habitat resources available in the wider lough and the observations in relation to bird distribution and disturbance, effects were concluded not to be significant. Indeed, effects can be categorised as nugatory</i>'.</p> <p>The NIEA consultation response (03/10/2022) has been reviewed. NIEA ornithologists have reviewed the submitted survey report and sHRA and note the following:</p> <p><i>'Following discussions with NIEA, a radar-based survey was proposed. The specialist radar to be used would have the ability to determine the distribution of waterbirds and their response to vessel movements beyond the range of any night -vision optics operated from sand barges. Unfortunately, difficulties were encountered in obtaining the radar equipment and this was not available in time for the survey season. While this development seriously reduced the potential efficacy of the survey, NIEA was content for the project to proceed using night vision optics, despite this limiting bird detectability to around a 100m radius of the vessel during complete darkness, as very little information on the response of waterbirds to vessel movements during darkness was available and it was considered that this survey might at least give an indication as to whether large numbers of birds were being encountered on the barge routes and if there was a large-scale adverse response</i>'.</p>	
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SPA Monitoring Report
2013.

'Disturbance by vessels is most likely to have an adverse impact on birds on the water, by disrupting foraging or forcing expenditure of energy through escape flight. For this reason, this assessment of the impact of barge movements on bird populations is confined to those birds recorded on the water during the hours of darkness. Information on those recorded only in flight, recorded during daylight transects and recorded from the shore is therefore disregarded'

'The surveys carried out have provided little evidence of significant disturbance of birds by barge movements during the hours of darkness. Most incidents involve small numbers of birds which tend only to respond at a relatively short distance from vessels, typically less than 50m. The results also indicate that large aggregations of birds are only rarely encountered on the barge routes after dark. The extraction zone also appears to be relatively little used by waterbird's.

Despite this and due to the constraints of the survey NIEA conclude:

'It could therefore be argued that rafts of birds may be detecting the approach of barges at a distance beyond the range of optics and moving away unseen. This could involve displacement from foraging areas, in which case an adverse impact could not be ruled out, particularly during very cold weather'.

'While the results presented suggest that removal of restrictions would be unlikely to have a significant adverse impact on selection features of the Lough Neagh and Lough Beg SPA, NED feel that caution is required as it cannot be conclusively determined that avoidance behaviour is not happening beyond the restricted detection capabilities of the current survey'.

NED is therefore suggesting the wording of Condition 7 be amended to allow some operation of barges within the hours of darkness but to ensure a 12-hour undisturbed foraging period for waterbirds during November to February, when physiological stresses are greatest.

'NED consider that it would be prudent to allow a 12-hour undisturbed foraging period for waterbirds during November to February, when physiological stresses are greatest, with barge operations confined to the period 06:00 to 18:00 at that time. Restrictions at other times of year are unlikely to be necessary'.

Conclusion: Taking account of the information presented in the sHRA and ES addendum and the assessment of the supporting information provided by NIEA ornithologists it is concluded that the removal of condition 7 may result in an adverse effect on site integrity. NIEA has recommended an amendment to condition 7 which will allow some operation of barges within the hours of darkness but to ensure a 12-hour undisturbed foraging period for waterbirds during November to February.

Amendment to condition 12:

Increased level of visual disturbance to SPA/Ramsar features through barge movements on the Lough due to increased size, speed and noise of barges.

		<p>The HRA for LA03/2017/0310/ F noted that results from the wintering bird surveys indicate the more significant number of birds are concentrated around the shore within the more sheltered bays. Results also indicated that the birds are largely unfazed by the operation of the barges both as they move across the Lough and when undertaking sand extraction operations. Boat based observations by Tomankova et al (2014) indicate that few birds are found beyond 1.5 km during daylight hours'. Results also indicated that breeding and foraging birds were largely unfazed by the movement of the barges across the Lough and the sand extraction process. No flight or fright response was noted.</p> <p>The sHRA (5.37) submitted by Ecology Solutions concludes <i>'that for the most part, the relevant bird populations are simply not present where the barges are traversing or operating within the lough (being close to shore), but that they are not significantly affected by the movement of the barges or the extraction of sand (during the day or night). They do not see the barges as a threat which would otherwise induce a significant flight response. Observed behaviours indicate a level of habituation'</i>.</p> <p>The sHRA (5.39) notes that during the survey work (Winter 2018-19) the smaller, faster dive boat accompanying the barges caused a greater level of disturbance and at a greater distance than the barges concluding that the higher speed and perhaps higher noise level of smaller boats instigates the predator/prey flight response.</p> <p><u>It is therefore concluded that an increase in barge size/speed is unlikely to impact on feature species though visual disturbance.</u></p> <p>The revised wording of condition 12 proposes <i>'any proposed replacement barge shall be of no greater dimension than the largest barge in the April 2017 Table 2.1, allowing for a tolerance of 10% in dimension and that the replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace'</i>.</p> <p>ES Addendum chapter 5 Noise Assessment concludes <i>'In terms of noise impact, the replacement of the barges with a barge of no greater size than the largest currently operated and an engine which will at worse be no louder than that presently operating, will result in no change or a possible decrease in noise levels given the revised wording of condition 12 and the limits it seeks to impose with regards to noise emissions of any replacement barge'</i>.</p> <p>The sHRA states at 5.45 <i>'Any replacement barge will, due to obsolescence, have an engine which is newer, more efficient and quieter than that which is being replaced. This is in part simply reflective of the technological advances which have been made over the years. In this light, there would be no net increase in noise levels and thus no change from the original assessment conclusions'</i>.</p> <p>The proposed restriction in the revised wording of condition 12 will ensure that any replacement barge will have no greater noise output than that which it replaces and that this must be notified to DfI.</p>	
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It is therefore concluded that an increase in barge size is unlikely to impact on feature species though increased noise disturbance – mitigation is included in the proposed amended wording.

Increased air quality impacts.

Air quality impacts were assessed in the original HRA with respect to impacts on shoreline vegetation (supporting habitat) when barges are arriving, depositing loads and leaving quay sites.

This concluded that due to the localised nature of effects and the proportion of Lough shore habitat potentially impacted it is considered that aerial emissions from the barges and road movements will not have an adverse effect on the integrity of Lough Neagh and Lough Beg SPA/Ramsar.

The ES addendum Chapter 8 (Redmore Environmental) reviews the proposal in relation to the amendment to condition 12.

'The previous assessment considered the annual number of road vehicle and barge movements when determining the potential for impacts from exhaust emissions. These will not be affected by the amendment of the boat size restriction (condition 12) as the amount of material extracted, landed and exported will not change. The use of newer barges through amendment of the boat size restriction may lead to a reduction in atmospheric emissions from this source due to improvements in engine technology and progressive emission standards associated with newer craft. Based on these factors, vehicle exhaust emissions impacts associated the proposals are considered not significant'.

The revised wording of condition 12 proposes mitigation - *'any proposed replacement barge shall be of no greater dimension than the largest barge in the April 2017 Table 2.1, allowing for a tolerance of 10% in dimension and that the replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace'.*

The proposed restriction in the revised wording of condition 12 will ensure that any replacement barge will have no greater emissions to air than that which it replaces and that this must be notified to DfI.

Increased water quality impacts.

The original HRA assessed impacts on water quality from pollution from fuels/chemicals/waste water during extraction and processing. Condition 14 of the planning permission required the submission of an Emergency Response Plan to secure pollution prevention measures on board vessels. The ES addendum Chapter 4 Water Environment (HR Wallingford) states the risk of vessel emissions to Lough Neagh (Minor hydrocarbon, chemical and waste water spills or discharges) will remain the same as those previously evaluated.

ES addendum Chapter 4 - HR Wallingford has assessed the potential for operational effects (as assessed in the original ES and HRA) from the proposed amendment to condition 12 and

		<p>concluded no greater impacts will arise from those impacts identified and assessed within the original ES.</p> <p>Considering the nature of the amendment to condition 12 there will be no increased risk of water quality impacts from barge movements or operational activities.</p> <p>Conclusion: Taking account of the information presented in the sHRA and ES addendum it is concluded that the proposed amendment to condition 12 will have no adverse effect on site integrity.</p>	
		Impact of mitigation on potential effects	
		<p>Removal of condition 7 – NED has advised that an adverse impact cannot be ruled out on the basis of the information provided and has proposed mitigation in relation to timing of barge movements which will allow a 12-hour undisturbed foraging period for waterbirds during November to February.</p> <p>Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.</p>	N/A
		Residual impacts	
		No Adverse Effect on Site Integrity	N/A

Lough Neagh and Lough Beg Ramsar		Pathway/s: Disturbance to feature species, deterioration in water quality, emissions to air.	
Overall Objective		Not published - assumed to be to maintain or enhance the population of the qualifying species, to maintain or enhance the distribution, extent, structure, function and supporting processes of the qualifying habitats.	
Criterion	Qualifying Feature/s	Operation	Decommissioning
1	A particularly good representative example of natural or near-natural wetlands, common to more than one biogeographic region. The site is the largest freshwater lake in the United Kingdom. Lough Neagh a relatively shallow body of water supporting beds of submerged aquatic vegetation fringed by associated species-rich damp grassland, reedbeds, islands, fens, marginal swampy	<p>Potential impacts</p> <p>Amendment to condition 12:</p> <p>Potential impact on lake waterbody from deterioration in water quality from use of fuels/disposal of waste water as detailed above for SPA.</p> <p>Condition 14 of the planning permission required the submission of an Emergency Response Plan to secure pollution prevention measures on board vessels. The ES addendum Chapter 4 Water Environment (HR Wallingford) states the risk of vessel emissions to Lough Neagh (Minor</p>	N/A - this remains as assessed for LA03/2017/0310/F.

	<p>woodland and pasture. Other interesting vegetation types include those associated with pockets of cut-over bog, basalt rock outcrops and boulders, and the mobile sandy shore.</p>	<p>hydrocarbon, chemical and waste water spills or discharges) will remain the same as those previously evaluated.</p> <p>Considering the nature of the amendment to condition 12 there will be no increased risk of water quality impacts from barge movements or operational activities.</p> <p>Aerial deposition of pollutants as detailed above for SPA</p>	
Impact of mitigation on potential effects			
<p>Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.</p>			N/A
Residual impacts			
<p>No Adverse Effect on Site Integrity</p>			N/A
2	<p>Supports an appreciable assemblage of rare, vulnerable or endangered species or sub-species of plant or animal or an appreciable number of individuals of any one of these species. The site supports over 40 rare or local vascular plants which have been recorded for the site since 1970; the most notable are eight-stamened waterwort <i>Elatine hydropiper</i>, marsh pea <i>Lathyrus palustris</i>, Irish lady's tresses <i>Spiranthes romanzoffiana</i>, alder buckthorn <i>Frangula alnus</i>, narrow small-reed <i>Calamagrostis stricta</i> and holy grass <i>Hierochloa odorata</i>. The Lough and its margin are also home to a large number of rare or local invertebrates, including two aquatic and two terrestrial molluscs, a freshwater shrimp <i>Mysis relicta</i>, eight beetles, five hoverflies, seven moths and two butterflies. Of the rare beetles recorded two, <i>Stenus palposus</i> and <i>Dyschirius obscurus</i>, have their only known Irish location around the Lough. The Lough also supports twelve species of dragonfly.</p>	<p>Potential impacts</p> <p>Amendment to condition 12:</p> <p>Degradation of Ramsar features and supporting habitats from impacts on water quality, aerial emissions as detailed above for SPA.</p>	As above
Impact of mitigation on potential effects			
<p>Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.</p>			
Residual impacts			
<p>No Adverse Effect on Site Integrity</p>			
3	<p>This site is of special value for maintaining the genetic and ecological diversity of a region because of the quality and peculiarities of its flora and fauna. The site regularly supports substantial numbers of individuals from particular groups of</p>	<p>Potential impacts</p> <p>Amendment to condition 12:</p> <p>Degradation of Ramsar features and supporting habitats from impacts on water quality, aerial emissions as detailed above for SPA.</p>	As above

	waterfowl which are indicative of wetland values, productivity and diversity. In addition, this site is of special value for maintaining the genetic and ecological diversity of Northern Ireland because of the quality and peculiarities of its flora and fauna. A large number of plants and animal species are confined or almost confined to this area within Northern Ireland.	Impact of mitigation on potential effects	
		Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.	
		Residual impacts	
		No Adverse Effect on Site Integrity	
4	This site is of special value as the habitat of plants or animals at a critical stage of their biological cycles. The site supports an important assemblage of breeding birds including the following species with which occur in nationally important numbers: great crested grebe <i>Podiceps cristatus</i> , gadwall <i>Anas strepera</i> , pochard <i>Aythya ferina</i> , tufted duck <i>Aythya fuligula</i> , snipe <i>Gallinago gallinago</i> and redshank <i>Tringa totanus</i> . Other important breeding wetland species include shelduck <i>Tadorna tadorna</i> , teal <i>Anas crecca</i> , shoveler <i>Anas clypeata</i> , lapwing <i>Vanellus vanellus</i> and curlew <i>Numenius arquata</i>	Potential impacts	
		Amendment to condition 12: Degradation of Ramsar features and supporting habitats from impacts on water quality, aerial emissions as detailed above for SPA.	As above
		Impact of mitigation on potential effects	
		Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.	
		Residual impacts	
		No Adverse Effect on Site Integrity	
5	Assemblages of international importance with peak counts in winter: 86639 waterfowl (5 year peak mean 1998/99-2002/2003)	Potential impacts	
		Removal of condition 7: Disturbance to feature species from operation of barges travelling on Lough Neagh and during the extraction process during hours of darkness, as above for SPA.	As above
		Amendment to condition 12: Degradation of Ramsar features and supporting habitats from impacts on water quality, aerial emissions as detailed above for SPA.	
		Impact of mitigation on potential effects	
		Removal of condition 7 – NED has advised that an adverse impact cannot be ruled out on the basis of the information provided and has proposed mitigation in relation to timing of barge movements which will allow a 12-hour undisturbed foraging period for waterbirds during November to February.	
		Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the	

		<p>barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.</p> <p>Residual impacts</p> <p>No Adverse Effect on Site Integrity</p>	
6	<p>Tundra swan, <i>Cygnus columbianus bewickii</i>, Whooper swan, <i>Cygnus cygnus</i>, Common pochard, <i>Aythya ferina</i>, Tufted duck, <i>Aythya fuligula</i>, Greater scaup, <i>Aythya marila marila</i>, Common goldeneye, <i>Bucephala clangula clangula</i>.</p>	<p>Potential impacts</p> <p>Removal of condition 7:</p> <p>Disturbance to feature species from operation of barges travelling on Lough Neagh and during the extraction process during hours of darkness, as above for SPA.</p> <p>Amendment to condition 12:</p> <p>Degradation of Ramsar features and supporting habitats from impacts on water quality, aerial emissions as detailed above for SPA.</p>	As above
		Impact of mitigation on potential effects	
		<p>Removal of condition 7 – NED has advised that an adverse impact cannot be ruled out on the basis of the information provided and has proposed mitigation in relation to timing of barge movements which will allow a 12-hour undisturbed foraging period for waterbirds during November to February.</p> <p>Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.</p>	
		Residual impacts	
		No Adverse Effect on Site Integrity	
7	<p>The site supports a population of pollan <i>Coregonus autumnalis</i>, one of the few locations in Ireland and one of the two known locations in the UK (the other is Lower Lough Erne). It is one of the most important species in Ireland in terms of faunal biodiversity since it occurs nowhere else in Europe, and the Irish populations are all well outside the typical range – the Arctic Ocean drainages of Siberia, Alaska and north-western Canada, where it is known as the Arctic cisco.</p>	<p>Potential impacts</p> <p>Amendment to condition 12:</p> <p>Potential impact on feature from deterioration in water quality from use of fuels/disposal of waste water and from noise disturbance as detailed above for SPA.</p> <p>Condition 14 of the planning permission required the submission of an Emergency Response Plan to secure pollution prevention measures on board vessels. The ES addendum Chapter 4 Water Environment (HR Wallingford) states the risk of vessel emissions to Lough Neagh (Minor hydrocarbon, chemical and waste water spills or discharges) will remain the same as those previously evaluated.</p>	As above

		Considering the nature of the amendment to condition 12 there will be no increased risk of water quality impacts from barge movements or operational activities.	
		Impact of mitigation on potential effects	
		Amendment to condition 12 – the applicant has proposed revised wording to ensure any replacement barge will emit no greater emissions to air or increase in noise output than the barge it is proposed to replace ensuring no increase in disturbance or risk of pollutants deposition.	
		Residual impacts	
		No Adverse Effect on Site Integrity	

Full details on Ramsar Information Sheet:

<http://incc.defra.gov.uk/pdf/RIS/UK12016.pdf>

Ramsar Criteria are explained at:

http://www.ramsar.org/sites/default/files/documents/library/ramsarsites_criteria_eng.pdf

G. Assessment of In Combination Effects

Are there any residual insignificant effects on site integrity?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Comment: With the application of the mitigation detailed there will be no residual insignificant effects on site integrity. In addition the ES addendum concludes on consideration of the baseline and the nature of this location, no other developments (including approved and still implementable planning applications) have been identified which would have the potential for significant cumulative effects with the application.
Select Site			
Select Site			
Additional projects to be considered			
Project reference	Project Name	Insignificant AESIs for that project	Could it lead to cumulative impacts?

H. Outcome of Appropriate Assessment

Site	Residual effect following application of mitigation measures?	Comment
Lough Neagh and Lough Beg SPA Lough Neagh and Lough Beg Ramsar Site	<input checked="" type="checkbox"/> No adverse effect on site integrity	
Select Site Select Site	<input type="checkbox"/> Insignificant adverse effect on site integrity	
Select Site Select Site	<input type="checkbox"/> Significant adverse effect on site integrity	

Taking account of the assessment above, including any incorporated and additional mitigation measures, could there be an adverse effect on site integrity for any site from the proposal alone or in combination with other projects or plans?		<input checked="" type="checkbox"/> No AESI – summarise outcome and record any conditions required to ensure mitigation is implemented <input type="checkbox"/> Yes AESI – detail here.
Recommendation	The appropriate assessment has concluded that the potential for an adverse effect could not be ruled out from the removal of condition 7. NIEA has recommended an amendment to condition 7 to provide mitigation ensuring no adverse effect on site integrity. The proposed amendment to condition 12 includes mitigation to ensure no increase in noise or emissions from replacement barges. It is concluded that the amendment to condition 12 will not have an adverse effect on site integrity.	
Conditions to ensure mitigation is implemented		
Are any conditions required to ensure that the proposal and mitigation measures are adhered to?		<input checked="" type="checkbox"/> Yes – complete next section and add condition/s <input type="checkbox"/> No – assessment complete
Condition Number	Detailed Conditions	
1.	A 12-hour undisturbed foraging period for waterbirds must be maintained during November to February, when physiological stresses are greatest, with barge operations confined to the period 06:00 to 18:00 at that time.	

EVIDENCE USED TO INFORM ASSESSMENT

Title	Date	Source	Comment
Application Documents	14/12/2022	NI Planning Portal	
Conservation Objectives	14/12/2022	NIEA Website	
ArcView Spatial Information	14/12/2022	Spatial NI and NIEA	
Representations	14/12/2022	NI Planning Portal	Two objections noted.
Information gap/s		What is the impact of these?	
None			

Uncertainties	What is the impact of these?
None	

Consultation with Statutory Nature Conservation Body (SNCB)	
Was the SNCB consulted?	<input checked="" type="checkbox"/> Yes – provide date and advice below <input type="checkbox"/> Not necessary as Stage One found appropriate assessment not required
Date	Advice
03/10/2022	<p>Water Management Unit has no objection to the variation of Conditions on operating hours and barge sizes.</p> <p>DAERA Inland Fisheries response to - LA03/2021/0940/F. Section 54 Planning Application of the Planning Act (Northern Ireland) 2011, seeking permission to develop land without compliance with planning conditions No.7 (seeking removal of daylight only operating hours restriction) and No.12 (seeking variation to barge sizes) previously attached to planning permission LA03/2017/0310/F. Lough Neagh within the Mid Ulster District Council Antrim & Newtownabbey Borough Council Armagh Banbridge & Craigavon Borough Council and Lisburn & Castlereagh City Council areas.</p> <p>Considerations <u>Inland Fisheries are content that the variations applied for are unlikely to have any material impact on our previously provided responses.</u></p> <p>Explanation Inland Fisheries notes the nature and location of the application to seek a variation to conditions number 7 and 12 of the previously granted planning application under Section 54 Planning Application of the Planning Act (Northern Ireland) 2011 and have previously responded to the original planning application LA03/2017/0310/F and the Lough Neagh - Review of PAC Report etc. - LA03/2017/0310/F. It is noted that the applicant has included within appendix 7.1 of the ES the Fisheries management plan for Lough Neagh produced by Inland Fisheries (DCAL), a new version of this has received ministerial approval and is in the process of being published on the DAERA website and should be available for consideration shortly. Condition no.7 in relation to working only in daylight hours, this condition was not requested by Inland Fisheries and is unlikely to make any material difference to our original response. Condition no.12 in relation to seeking variation to barge sizes, again, this condition was not requested by Inland Fisheries and is unlikely to make any material difference to our original response.</p> <p>Informatives We would like to draw the applicant’s attention to Section 47 of the Fisheries Act (NI) 1966, which covers the applicant’s responsibilities relating to Penalties for Pollution and the consequences of causing or permitting the release of any Deleterious materials into any waters.</p> <p>NED acknowledge the reason for consultation, and acknowledge that the Environmental Statement Addendum has been prepared given the proposed changes to Conditions 7 and 12 of planning application LA03/2017/0310/F. NED acknowledge the proposed changes to vary conditions are in relation to: i) A proposed change to the type (e.g. size) of barges which are permitted to be operated by the Sand Traders;</p>

ii) Operation of the barges (for sand extraction purposes) during the hours of darkness over the winter period.

Condition 7 of planning permission LA03/2017/0310/F places a restriction on the hours of operation of barges carrying out the extraction and transport of sand within Lough Neagh, with no barge movements to take place during the 'hours of darkness' between the months of October and March (inclusive). Condition 12 restricts the Sand Traders to using only barges of the dimensions specified within the Environmental Statement (in operation at the time of the planning application / determination). The available sand resource within Lough Neagh covers only a relatively small proportion of its total area in comparison to other substrates. Sand deposits are largely confined to inshore areas particularly in the western half of the lough. Recent workings have been confined to the north-west quadrant. It is estimated that the previously worked extraction area is equivalent to 3.3% of the lough bed. The current sand extraction area is located within the Lough Neagh and Lough Beg SPA which has been designated for its internationally important wintering populations of waterbirds and for breeding Great Crested Grebe and Common Tern. The extraction sites are also covered by ASSI and Ramsar designations. Processing of extracted sand is carried out at eight pre-existing facilities distributed around the lough shore, to which sand is transported by barge.

The Habitats Regulations Assessment prepared by Shared Environmental Services relating to application LA03/2017/0310/F for the extraction, transportation and working of sand and gravel from Lough Neagh identified the potential for movement and operation of sand dredging barges during the hours of darkness to cause disturbance to waterfowl species, particularly several species of diving duck, wintering on Lough Neagh. A precautionary approach to this issue resulted in the imposition of Condition 7. The majority of species that may be susceptible to disturbance are selection features of the Lough Neagh and Lough Beg SPA and Ramsar site. The main species of concern are Pochard, Tufted Duck, Scaup and Goldeneye. While the diurnal distribution of the various species wintering on the lough is generally well known as a result of regular monitoring through the Wetland Bird Survey, very little is known about use of the lough for foraging during the hours of darkness. It is therefore difficult to accurately assess the potential for nocturnal disturbance by vessel movements or dredging operations.

Diurnal records and limited nocturnal observations suggest that there is generally little waterfowl activity beyond 1.5km from the shoreline. Extrapolation of foraging distribution from the location of significant diurnal loafing areas may not be entirely reliable, though there may be a tendency for feeding sites to be located relatively close to loafing areas in order to minimise energy expenditure associated with commuting between these. Recent diurnal monitoring indicates that relatively large aggregations of the three key diving duck species regularly occur in proximity to four of the onshore processing sites and the extraction area itself. It is therefore possible that commuting vessels may pass through associated feeding areas. The area around the extraction area has been consistently important for Scaup in recent years. This species has tended to be the most numerically stable of the diving ducks during the period of general decline. It is important that this stability is maintained.

At present there is little hard evidence of significant disturbance of waterfowl by sand barges during the day and NIEA has previously been content with the operation of barges during daylight hours. Ad hoc observations indicate that small vessels travelling at speed have a much greater impact, often causing large numbers of birds to take flight. Given the current uncertainty regarding distribution and behaviour of waterfowl after dark, however, it was considered prudent to put in place mitigation measures to minimise nocturnal disturbance, particularly during that part of the winter when the highest numbers are of bird are recorded and when these tend to be subject to the greatest energetic stress due to prevailing low temperatures.

As implementation of Condition 7 resulted in a curtailment of sand dredging activities from levels previously operating, the Lough Neagh Sand Traders proposed to carry out a programme of surveys of the effects of nocturnal movements of sand barges on the behaviour of wintering waterbirds, with particular emphasis on assessing the level of disturbance caused.

Following discussions with NIEA, a radar-based survey was proposed. The specialist radar to be used would have the ability to determine the distribution of waterbirds and their response to vessel movements beyond the range of any night -vision optics operated from sand barges.

Unfortunately, difficulties were encountered in obtaining the radar equipment and this was not available in time for the survey season. While this development seriously reduced the potential efficacy of the survey, NIEA was content for the project to proceed using night vision optics, despite this limiting bird detectability to around a 100m radius of the vessel during complete darkness, as very little information on the response of waterbirds to vessel movements during darkness was available and it was considered that this survey might at least give an indication as to whether large numbers of birds were being encountered on the barge routes and if there was a large-scale adverse response.

See full response for NIEA comments on surveys.

The surveys carried out have provided little evidence of significant disturbance of birds by barge movements during the hours of darkness. Most incidents involve small numbers of birds which tend only to respond at a relatively short distance from vessels, typically less than 50m. The results also indicate that large aggregations of birds are only rarely encountered on the barge routes after dark. The extraction zone also appears to be relatively little used by waterbirds.

The likelihood of disturbance appears to be more related to vessel speed and noise level than to size.

This is supported by ad hoc observations in both daylight and darkness. It is also stated within the survey report that birds appeared to be more wary of the smaller, faster dive boat than the accompanying barges (Ecology Solutions 2021: Annex 7, Sections 3,34 & 3.57).

The Lough Neagh Sand Traders are seeking variation of Condition 12 to allow gradual replacement of the current barge fleet with larger vessels. The largest barge currently operating on the Lough is 47.23m long and 8m wide. The remainder of the fleet typically measure around 35m x 6m. It is unlikely that any new vessels would exceed 50-60m in length as there are logistical constraints upon the size of barges operable on Lough Neagh due to road transport issues, capacity of cranes and the size of quays. It is also unlikely that new vessels would produce more emissions or noise than those currently operating as they would more modern and efficient engines.

It has been proposed that Condition 12 is amended to specify that any new (replacement) barges should not exceed the dimensions of the largest vessel operation at the time when the original condition was imposed and that there should be no increase in emissions or noise output. NED would have no issues with this amendment.

As noted above, the survey results provide no compelling evidence of significant disturbance of waterbirds by sand barges, within the constraints of the survey (i.e. the inability of night vision optics to differentiate birds much beyond 100m range).

	<p>It could therefore be argued that rafts of birds may be detecting the approach of barges at a distance beyond the range of optics and moving away unseen. This could involve displacement from foraging areas, in which case an adverse impact could not be ruled out, particularly during very cold weather.</p> <p>Results from the daylight transects fail to provide any evidence of large-scale avoidance beyond 100m but sample sizes are small. At night, many birds also allowed close approach by the barges before taking off or moving away. While it would require a full radar survey, as originally proposed, to determine conclusively whether or not avoidance at distance is occurring, the inference from the results presented is that it is probably not.</p> <p>NED is of the opinion that it would be possible to amend Condition 7 of LA03/2017/0310/F to allow some operation of sand barges within the hours of darkness. While the results presented suggest that removal of restrictions would be unlikely to have a significant adverse impact on selection features of the Lough Neagh and Lough Beg SPA, NED feel that caution is required as it cannot be conclusively determined that avoidance behaviour is not happening beyond the restricted detection capabilities of the current survey.</p> <p>Consequently, NED consider that it would be prudent to allow a 12-hour undisturbed foraging period for waterbirds during November to February, when physiological stresses are greatest, with barge operations confined to the period 06:00 to 18:00 at that time.</p> <p>Restrictions at other times of year are unlikely to be necessary.</p> <p>NED are content with the proposed amendments to Condition 12, re barge size.</p>
Click here to enter a date.	
<p>Does the HRA outcome fully reflect this advice?</p>	<p>Yes</p>
<p>If no provide justification for why it was not followed.</p>	

NOTICE OF OPINION

The Planning (General Development Procedure) Order (Northern Ireland) 2015

Application Ref; LA03/2021/0940/F

Date of Application: 1 October 2021

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 without complying with condition number 07 and condition number 12 of planning approval LA03/2017/0310/F.

Applicant: Lough Neagh Sand Traders Limited

Agent: Quarryplan

Drawing Ref:

In pursuance of its power under article 21(2) of the above mentioned Order, the Department for Infrastructure hereby gives notice that permission for the above mentioned development in accordance with your application SHOULD IN ITS OPINION BE GRANTED 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 under planning approval LA03/2017/0310/F.

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 2022) and which are subject to the Agreement with the Department under section 76 of the Planning Act (NI) 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 the Electronic Monitoring System (EMS) agreed with the Department on 2 April 2021 and there shall be adherence to the following:

- 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) shall be carried out only within the permitted areas.
- The Department shall be provided with access to the information held within the EMS at any time for the duration of the permission; -
- Real time alerts shall be provided via email to the Department at the agreed email address
- Measures shall be implemented to alert an operator that the EMS tracking device is not functioning;
- At the point when an employee becomes aware that the EMS tracker on a barge is not functioning, that barge shall not leave the dock and if already away from the dock, they shall stop extracting (if currently doing so) and return to dock. Details of the journey including any material already extracted shall be recorded manually;
- The EMS reports submitted to the Department shall be made on a monthly basis (for each calendar month); and
- The EMS shall be subject to periodic review during the operational phase of the development. Any amendments to the EMS following a review shall take effect in a time period as agreed by the Department.

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

5. 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 4, for any period.

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

6. Between 1 November and 28/29 February any barge shall not leave the dock earlier than 0600 hours or return later than 1800 hours.

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

7. 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.

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

8. 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.

9. 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.

10. 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.

11. Only barges of the dimensions specified in Table 2.1 of Chapter 2, Volume 2 of the Environmental Statement (April 2022) shall be permitted to extract mineral from the permitted areas. Any proposed replacement barge shall be of no greater dimension than the largest barge in the April 2022 Table 2.1, allowing for a tolerance of 10% in dimension and the replacement barge shall emit no greater emissions to air or increase in noise output (expressed as an LAeq) than the barge and sand extraction engine system it is proposed to replace. If a barge as so specified within the Table 2.1 of Chapter 2, Volume 2 of the Environmental Statement (April 2022) is to be replaced -

- a) The Department shall be notified in writing of the details of the replacement barge to include the particulars with regards to length, emissions to air and noise output (expressed as an LAeq);
- b) Thereafter such replacement shall be agreed in writing by the Department; and
- c) The Department shall be notified 7 days prior to the replacement barge entering the Lough.

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

12. The barges, as detailed in Condition 11, shall not operate after 1500 hours on Saturdays, all day Sundays or on any Bank Holiday.

Reason: In the interests of residential amenity.

13. The Emergency Response Plan (ERP) for all offshore activities agreed with the Department on 30 June 2021 shall be available for inspection at all times on each vessel.

Reason: To ensure protection of the designated sites.

14. The archaeological programme, in accordance with the British Marine Aggregate Producers Association (BMAPA) Protocol for Reporting finds of Archaeological interest (BMAPA and English Heritage 2005), agreed with the Department on 2 April 2021 shall operate 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.

15. 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.

16.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 as agreed by the Department on 2 April 2021. 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.

Dated: 26 June 2023

Signed: _____
Authorized Officer

for
Regional Planning Policy & Casework Directorate