

Report on	Further correspondence received from DFI following MUDC Councils letter of 10 th Aug 2023 following a Notice of Opinion to approve application LA03/2021/0940/F (deposition of silt and fine material without complying with condition number 07 and condition number 12 of planning approval) at Lough Neagh.
Date of Meeting	3 rd Oct 2023
Reporting Officer	Melvin Bowman
Contact Officer	Dr Chris Boomer.

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

1.0	Purpose of Report
1.1	<p>The purpose of this report is to advise members of further correspondence received from DFI on the 29 Aug 2023 relating to its recent 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 had previously invited 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, Antrimand 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 Condition 12 (the replacement of barges presently operating on the Lough).</p>
2.4	<p>At the Planning Committee meeting held on the 1st Aug 2023 members expressed a number of concerns relating to the Notice of Opinion and these were set out in a letter issued to the Department on the 10th Aug 2023. This letter also contained an invitation to Department officials to attend the next planning committee in order to address the matters and concerns raised by members.</p>
<p>3.0 Main Report</p>	
3.1	<p>The DFI response dated 29th Aug 2023 to the Councils letter of 10th Aug 2023 is attached in the appendix to this report along with the Councils most recent further letter issued to DFI on the 15th Sept 2023.</p>
3.2	<p>The Department have set out its response to each of the points raised by members relating to the Notice of Opinion but have declined the Councils invitation to attend to planning committee. The response concludes by asking the Council to confirm that it is requesting an opportunity of appearing before and being heard by the Planning Appeals Commission or that it is not requesting such an opportunity</p>
3.3	<p>In response to this, the Service Director wrote to the Department on the 15th September 2023 setting out the Councils view that, given the lack of expertise held by the Councils planning officers on this issue, that members would be greatly assisted in understanding the full impacts of the proposed variation to these conditions relating to sand extraction if officers from the Department would attend the Committee. A further invitation to this effect was therefore again extended to officers in DFI to attend the Oct 3rd 2023 planning committee meeting. Representatives of The Lough Neagh Sand Traders, being aware of the Councils concerns, have indicated a willingness to attend the committee.</p>
3.4	<p>DFI responded to the Council on the 20th Sept 2023 declining the invitation. A copy of this letter is also included in the appendix to this report.</p>
<p>4.0 Other Considerations</p>	
4.1	<p>Financial, Human Resources & Risk Implications</p>

	Financial: N/A
	Human:N.A
	Risk Management: N/A
4.2	Screening & Impact Assessments
	Equality & Good Relations Implications: N/A
	Rural Needs Implications: N/A
5.0	Recommendation(s)
5.1	That members determine, having considered the correspondence from DFI, that a hearing by the PAC is still being sought.
6.0	Documents Attached & References
6.1	Appendix A – copy of correspondence from DFI Copy of Councils letters to DFI dated 10 th Aug and 15 th Sept 2023.

Regional Planning Policy and Casework

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Mid-Ulster District Council
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BT45 6EN**

Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB
Tel: 0300 200 7830

Our reference: LA03/2021/0940/F

Date: 29 August 2023

Dear Dr Boomer

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.

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.

Thank you for your letter of 10 August 2023 in response to the Department's Notice of Opinion to approve the above-mentioned planning application and the request for clarification.

While noting the that the Council have exercised their right to an opportunity to appear before and be heard by the Planning Appeals Commission, the Department considers that some response to the points made may be useful in providing additional assurance and clarification. In addition to the applicant's documents, including an Environmental Statement, which are publicly available on the Planning Register, the Department has uploaded its Development Management Report. The DMR sets out the Department's assessment of this application and provides detail on the matters raised in your letter.

The points asserted in your letter have been addressed in the order you have identified them.

That the permission was granted in order to control the extent and pace of mineral extraction on the lough and the conditions and planning agreement were required in order to do this.

The original permission saw sand extraction on Lough Neagh regulated. It applied a maximum restriction to the area of extraction along with the volume of material extracted. These parameters will remain unchanged by the current application. What the current application does do, is amend the manner in which that restricted area and that volume of material is extracted - by spreading the working period over a wider period of time, including into the hours of darkness. The original permission included a condition restricting nighttime operations during specified months because it had not been subject to assessment at that time.

Section 54 of the Planning Act (NI) 2011 entitles a developer to apply to develop land without compliance with conditions attached to a previous planning permission and the Department has a duty to consider such an application in consultation with expert bodies.

These changes could lead to an increase in the rate of extraction activities in the lough and the Council is not satisfied that the impact of this substantial activity has been properly examined.

The applicant has not sought any change to the previously restricted area, the maximum volume of material that can be extracted annually or the length of time over which the material can be extracted. In short, no more material is permitted to be extracted from the lough than is already allowed and the permission is still conditioned to expire on 10 May 2032. More detail on this matter is available at section 1.3 of the *Environmental Statement Addendum*.

You will note from the Notice of Opinion that conditions 1, 7, 8 and 9 remain as per the previous permission.

It appears there has not been adequate consideration to the scaring on the lough bed and the impact on fish and aquatic life.

An application under s.54 of the act considers only the conditions subject to which the previous development was granted, it does not re-examine the principle of the development i.e. extraction from the bed of the lough established through the granting of original permission LA03/2017/0310/F. The conditions proposed in the Notice of Opinion do not alter the extent or the nature of the development already permitted. Such issues were considered under the previous application, which was the subject of a public local inquiry, whereby the principle of development was approved.

What is being considered in this application is whether the extraction of sand from Lough Neagh can be carried out during a longer part of the day. Impacts associated with that change have been considered by the statutory nature conservation body and the Department.

A refusal of this permission would not prevent extraction from the Lough nor any impacts that could currently occur because of that development. The applicant can still continue to implement the original permission.

It also appears that there has been insufficient survey work conducted in relation to the nocturnal activities of terrestrial life including birds and the insects on which they feed.

The Department and its consultees were previously aware of this same issue. Indeed this was raised by the Northern Ireland Environment Agency (NIEA) and Shared Environmental Services (SES) and an assessment is provided in the *Development Management Report*.

It may be helpful to highlight the DAERA NIEA response of 3 October 2022 which advised that caution is required with regards the entire removal of the condition. SES, in the *appropriate assessment* completed on behalf of DfI, agreed with this opinion.

Accordingly, as discussed at para 6.42-6.43 of the *Development Management Report*, the Department has recommended an amendment to condition 7 which confines the barge operations to the period 0600hr to 1800hr from November to February as opposed to the removal of condition 7 entirely.

There has been inadequate consideration of the multiple impacts and threats facing the lough such as water quality the growth of algae and invasive species, impact of ammonia nitrate in conjunction with the impact of more intensive extraction activities, the growth of algae which may be linked to nitrates impacting on water quality.

It is unclear what synergy there is between the additional hours of operation of the barges and some of the threats and impacts expressed by the council.

However, the Department considered impacts with regards the proposed non-compliance with condition 12, which currently restricts the replacement of any barge to the same dimensions to that which it replaces (no greater). 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 was suggested. 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. The Department considers that there is unlikely to be a significant impact on sensitive receptors as a result of emissions from a larger barge. NIEA and SES had no objection to the amendment to this condition.

More detail on this assessment can be found at 6.47 – 6.48 of the *Development Management Report*, 6.3.4 of the *Environmental Statement Addendum*, paragraphs 7.5.123 -7.5.150 and chapter 5 of the *Environmental Statement*.

Concerns over enforcement

At present the activities undertaken by the Lough Neagh Sand Traders (LNST) under the previous approval are monitored and restricted through a series of conditions. The LSNT operate a GPS based digital tracking system that provides a live link to the Department for the purposes of tracking barge movements. Using this system, the Department can, in real time, locate any barge on the lough, monitor its departure

and arrival times, and determine the extraction rates and maximum extraction volumes.

The Department has a dedicated resource in the Regional Planning Policy and Casework Directorate and undertakes regular inspections of the various land-based depots as well as analysis and scrutiny of submitted reports.

Amongst the legal tests for conditions on a planning approval is enforceability and the Department is content that the conditions proposed meet all the tests including that of being enforceable. Indeed, for several years the Department has been monitoring and enforcing the existing conditions.

Regular monitoring in tandem with the GPS tracking system ensures that operations by the LNST at any time of the day or night, which would be in breach of conditions, could be enforced.

Not only has the Department been responsible for the discharge of any conditions associated with the previous approval, but it has also undertaken any follow up compliance action in respect of the permission.

If the council has concerns regarding any other enforcement matters concerning the Lough it can raise these in an appropriate manner and forum but it should be highlighted that an opportunity to appear before and be heard by the PAC should be in relation to this application and its merits only.

Regarding the council's invitation to the Department to attend its planning committee, this is considered unnecessary and the Department therefore declines this invitation.

The Department's detailed consideration of this application is available via the Planning Register. The application, consultations, representations, *Development Management Report and Notice of Opinion* are available to view publicly and should assist and inform the council in its consideration.

Finally, it would be helpful if, having considered this correspondence, the council could confirm that it is requesting an opportunity of appearing before and being heard by the Planning Appeals Commission or that it is not requesting such an opportunity. The Department will await this confirmation before writing to the Planning Appeals Commission to advise that it makes preparations for a hearing.

Yours sincerely

Regional Planning Policy and Casework



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Regional Planning Policy and Casework

Clarence Court
10-18 Adelaide Street
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Tel: 0300 200 7830

Your reference: LA03/2021/0940/F

10th Aug 2023

Dear Sir / Madam.

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.

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.

Further to your letter dated 26th June 2023 regarding the Department's Notice of Opinion to approve the above proposal, in the absence of further clarification from the Department, the Council members at its meeting held on the 1st Aug 2023 determined that the Council would need to ask for an opportunity for their concerns to be heard by Planning Appeals Commission at a Hearing.

Their concerns are as follows:

- That the permission was granted in order to control the extent and pace of mineral extraction on the lough and the conditions and planning agreement were required in order to do this.

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- These changes could lead to an increase in the rate of extraction activities in the lough and the Council is not satisfied that the impact of this substantial activity has been properly examined.
- It appears there has not been adequate consideration to the scaring on the lough bed and the impact on fish and aquatic life.
- It also appears that there has been insufficient survey work conducted in relation to the nocturnal activities of terrestrial life including birds and the insects on which they feed.
- There has been inadequate consideration of the multiple impacts and threats facing the lough such as water quality the growth of algae and invasive species, impact of ammonia nitrate in conjunction with the impact of more intensive extraction activities, the growth of algae which may be linked to nitrates impacting on water quality.
- Insufficient consideration has been given to the enforceability of the conditions on the permission if night time extraction were to occur. There are already allegations and evidence that extraction is taking place in restricted areas. Furthermore, the Department is not prepared to enforce these conditions and wish to pass this burden to local authorities. To date we are not aware of any conviction being obtained for either prior activities or breaches of the conditions. If night time dredging under the cover of darkness was to be permitted this would be impossible for the conditions to be enforced.

In requesting a Hearing the Council reserve the right to add to its concerns and to bring in expertise to question the adequacy of the environmental appraisal and appropriate assessment of this change to the conditions and it should be born in mind that because the precautionary principal applies the burden will rest with the Department to demonstrate that no harm will occur.

If however the Department chooses to extend the current 8 week deadline for any request for a hearing they will be welcome to attend the planning committee at its next meeting to address the members concerns.

Yours sincerely,

Dr Chris Boomer
Service Director, Planning



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Your reference: LA03/2021/0940/F

15th Sept 2023

Dear Sir / Madam.

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.

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.

Further to your letter dated 29th Aug 2023, whilst the Council note that the Department has attempted to address the Councils concerns as set out in its letter of 10 Aug 2023, you will appreciate that our officer's do not have the level of knowledge or expertise to be able to fully address the issues raised by members, nor have members been able to gain sufficient clarity around the impacts of this proposal from the already available papers referred to in your letter.

In relation to Enforcement matters previously referred to, whilst I acknowledge your comments in relation to ongoing monitoring and compliance action carried out by the Department which of course relates only to 'authorised vessels', the Council is of the view that the Department has been unwilling to work with the Council in proactively investigating alleged breaches relating to extraction from the Lough demonstrated by the fact that the Council is currently investigating such alleged breaches itself.



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

Members would greatly benefit from the attendance at the planning committee by officers from the Department, and upon your acceptance of this offer, will also provide the applicant and other interested parties an opportunity to attend. In an attempt therefore to encourage dialogue, provide assurance, and to facilitate open engagement I would again extend an invitation to the Department to attend the next planning committee meeting due to be held on Tues the 3rd Oct 2023.

In anticipation of the Department's acceptance of this further invitation we intend to add this as an item on the published agenda for that Committee meeting, this agenda will be finalised by **Fri 22 Sept 2023**.

I would therefore respectfully ask that you confirm your attendance before this date.

Yours sincerely,

Dr Chris Boomer
Service Director, Planning

Regional Planning Policy and Casework

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Our reference: LA03/2021/0940/F
DFI PG 280/23

Date: 20 September 2023

Dear Dr Boomer

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.

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.

Thank you for your correspondence in response to the Department's letter of 29 August and for your invitation to address the planning committee of MUDC.

The legislation makes provision for a council to be consulted on an application under section 54 of the Planning Act (NI) 2011 and for a council to request an opportunity of appearing before and being heard by the Planning Appeals Commission. The internal procedures of MUDC appear to afford the planning committee an opportunity to discuss and agree a response to this consultation, informed by advice from officers.

Available to officers and the committee for the present application was an Environmental Statement and a non-technical summary of that ES, along with the Department's professional *Development Management Report* and the responses of third parties and expert consultees. Additionally, in this present matter, the Department subsequently provided clarification to the council on a number of points in our letter of 29 August.

The Department notes that you will accommodate the applicant and other interested parties at the planning committee meeting but regrettably officials from the Department are unable to attend. The Department's assessment of and justification for its planning decision are clearly and openly articulated and recorded in the *Development Management Report* and *Notice of Opinion*.

If, either preceding or following your committee meeting you believe any further clarification would be useful, the Department would invite you to submit those points in writing to the Department where officials may be able to assist.

Following the committee meeting and subject to any further clarification requests, if the council remains of the view that they would like an opportunity to appear before and be heard by the PAC, the Department would be grateful for that clarification.

The Department will await this confirmation before writing to the PAC to make arrangements for the council to be appear before and be heard on any outstanding points. The report prepared by the PAC will be furnished to and considered by the Department before a final decision is issued.

Yours sincerely

Regional Planning Policy and Casework