

Agenda Item	6.3
Report No	PLS-066-21

HIGHLAND COUNCIL

Committee: South Planning Applications Committee

Date: 21 September 2021

Report Title: 21/03635/S42: Tarmac Caledonian Ltd

Dunain Mains Quarry, Inverness

Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Application for non-compliance with Conditions 4 (Operating Hours) and 5 (Extraction Limits) of Planning Permission 17/02899/S42.

Ward: 12 – Aird And Loch Ness

Development category: Major

Reason referred to Committee: Major Development

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **GRANT** the application as set out in section 10 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 (As Amended) and relates to Condition 4 (Operating Hours) and Condition 5 (Extraction Limits) attached to planning permission 17/02899/S42 granted on 19 September 2018 in respect of the Dunain Mains Sand and Gravel Quarry located to the south west of Inverness and accessed from the A82 (T). The previous permission is attached to this report as Appendix 2.
- 1.2 The quarry at Dunain Mains has a remaining reserve of approximately 740,000 tonnes of sand and gravel. The operations on site involve extraction, processing and distribution of the material with restoration of the previously worked areas. Restoration of the site is undertaken concurrently with extraction. It is envisaged that quarrying of the site will take place over the next 20 years with final restoration taking a further 12 months.
- 1.3 The original planning permission was granted in 1997 following a Public Local Inquiry and conclusion of a Section 50 agreement, securing a financial guarantee for the restoration of the site. The site first came into operation in 2007.
- 1.3 This application seeks to reword Condition 4 (Operating Hours) to allow for longer operating hours to allow the loading, dispatch and transportation of materials out of the quarry from 0700hrs, Monday to Saturday, rather than the current condition which only allows these activities to commence at 0800hrs. For reference the existing Condition 4 states:

The following activities shall not take place outwith the hours of 0800-1800 Monday to Friday, 0800-1230 on Saturday without prior written approval of the Planning Authority and in consultation with the Inverness West Community Council:

- *Production or maintenance operations;*
- *Loading of lorries;*
- *Driving of lorries;*
- *Soil stripping;*
- *Bund formation*

Works outlined above may be undertaken if they are required for saving of life or property or for the safety of the works. If works are carried out for this reason, the Planning Authority must be informed within 72 hours of such works.

Reason: *In the interests of amenity due to the potential noise impacts of the above activities on noise sensitive receptors.*

- 1.4 The application also seeks to reword Condition 5 (Extraction Limits) to increase the annual output of the quarry from 100,000 tonnes per calendar year to 120,000 tonnes per calendar year. For reference the existing Condition 5 states:

The development shall be undertaken entirely in accordance with the

submitted application, the mitigation highlighted within the supporting Environmental Statement, and the approved plans as amended by the specific conditions attached to this planning permission or by the prior written approval of the Planning Authority. For the avoidance of doubt: -

1. *The maximum output of the quarry shall not exceed 100,000 tonnes in any calendar year.*
2. *No additional sand and gravel material is to be imported to the site in order to maintain production of plant or sustain the dispatch of materials.*

Reason: *In order to ensure the production capacity of this quarry does not exceed levels considered through Environmental Statement.*

- 1.5 The application was supported by a supporting statement which outlines the reason why the modifications are sought to Conditions 4 and 5.
- 1.6 No variations have been made to the application since its submission. A concurrent application for the modification to the conditions attached to the planning permission for the extension to the quarry is also under consideration. This application is also being reported to South Planning Applications Committee for determination (21/02278/S42).

2. PLANNING HISTORY

2.1	07 May 1997	IN/1994/80 - Winning and Working of Sand and Gravel	Planning Permission Granted
2.2	13 Sept 2002	01/00796/FULIN - Application for non-compliance with conditions 1 and 2 of previous granted permission at Dunain Mains Quarry.	Planning Permission Granted
2.3	19 Sept 2018	17/02899/S42 Non-Compliance with Condition 1 of 01/00796/FULIN	Planning Permission Granted
2.4	19 Sept 2018	17/02898/FUL Extension to Dunain Mains Sand and Gravel Quarry including relocation of site office and weighbridge	Planning Permission Granted
2.5		21/02278/S42 Application for non-compliance with Conditions 4 (Operating Hours) and 5 (Extraction Limits) of Planning Permission 17/02898/FUL	Pending Consideration

3. PUBLIC PARTICIPATION

- 3.1 Advertised: Schedule 3 Development and Unknown Neighbour
Date Advertised: 13.08.2021

Representation deadline: 27.08.2021

Timeous representations: 0

Late representations: 0

4. CONSULTATIONS

4.1 **Inverness West Community Council** did not respond to the consultation

4.2 **Environmental Health Officer** does not object to the application. He notes that there are no noise sensitive properties close to the site entrance and that the applicant has stated that noise from the operations that will take place is significantly lower from other operations in the quarry. He requests that the condition wording proposed by the applicant is attached to any application which may be granted. He also recommends an informative to request that the operator employs best practicable measures at all times to reduce the impact of noise.

4.3 **Contaminated Land** do not object to the application. It does not have any comments regarding contamination from the former use of the site.

4.4 **Transport Planning Team** do not object to the application and have no comments to make.

4.5 **Scottish Environment Protection Agency (SEPA)** do not object to the application. It expects the development should comply with the existing management plan for the site.

4.6 **Transport Scotland** do not object to the application and it does not advise against the granting of planning permission.

5. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

5.1 Highland Wide Local Development Plan 2012

28 - Sustainable Design

29 - Design Quality & Place-making

30 - Physical Constraints

51 - Trees and Development

53 - Minerals

54 - Mineral Wastes

56 - Travel

57 - Natural, Built & Cultural Heritage

58 - Protected Species

59 - Other important Species

60 - Other Importance Habitats

61 - Landscape

62 - Geodiversity

63 - Water Environment

64 - Flood Risk

- 65 - Waste Water Treatment
- 66 - Surface Water Drainage
- 72 - Pollution
- 73 - Air Quality
- 74 - Green Networks
- 77 - Public Access

Inner Moray Firth Local Development Plan 2015

- 5.2 No specific policies apply

Supplementary Guidance

- 5.3 Flood Risk & Drainage Impact Assessment (Jan 2013)
Green Networks (Jan 2013)
Highland Historic Environment Strategy (Jan 2013)
Highland's Statutorily Protected Species (March 2013)
Trees, Woodlands and Development (Jan 2013)
Standards for Archaeological Work (March 2012)
Physical Constraints (March 2013)
Managing Waste in New Developments (March 2013)
Construction Environmental Management Process for Large Scale Projects (August 2010)

6. OTHER MATERIAL CONSIDERATIONS

6.1 Scottish Government Planning Policy and Guidance

- National Planning Framework 3 (2014)
- Scottish Planning Policy (2014)
- PAN 50 - Controlling the Effects of Surface Mineral Workings (1996)
- PAN 51 - Planning, Environmental Protection and Regulation (2006)
- PAN 60 - Planning for Natural Heritage (2000)
- PAN 63 - Waste Management Planning (2002)
- PAN 64 - Reclamation of Surface Mineral Workings (2002)
- PAN 79 - Water and Drainage (2006)
- PAN 1/2011 - Planning and Noise (2011)
- PAN 2/2011 - Planning and Archaeology (2011)
- National Planning Framework 4 Position Statement (2021)

7. PLANNING APPRAISAL

- 7.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

- 7.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

- 7.3 The principle of the development has been established through the previous permission. This is an application to modify conditions. In order to address the determining issues therefore, Committee must consider the extent to which the proposal continues to comply with development plan policy and take into consideration any other material considerations.

Development plan/other planning policy

- 7.4 Development Plan policy has not changed since the time of the determination of the previous application to increase the working life of the quarry. The Highland-wide Local Development Plan (2012) remains in force and as does the Inner Moray Firth Local Development Plan (2015). Given the type of development, there are unlikely to be implications for this development as a result of the review of the Inner Moray Firth Local Development.
- 7.5 While national planning policy has not changed since the decision of the original application, The Scottish Government has published a position statement in relation to National Planning Framework 4. This gives an indication of the direction of future national policy on a range of different development types including mineral developments. The Position Statement holds little weight in the decision making process and makes it clear that until National Planning Framework 4 is published, Scottish Planning Policy and National Planning Framework 3 remain the current national policy documents against which development should be assessed. With that said, the Position Statement indicates that the existing approach to mineral development will be maintained with the safeguarding of workable mineral resources whilst ensuring demand for primary materials, where required, can be met in a safe and acceptable way, including through safeguards to air quality.
- 7.6 The key issue therefore is whether the amendment of the condition applied for would result in the development being incompatible with the Development Plan. The remainder of this report will consider the modifications proposed and assess the compatibility with the Development Plan.

Modification of Condition 4 (Operational Hours)

- 7.7 The applicant has requested that the operational hours of the quarry be modified to allow for the dispatch of materials from the quarry between 0700 Monday to Saturday. These operations are currently restricted to 0800-1800 Monday to Friday, 0800-1230 on Saturday and no operation on a Sunday.
- 7.8 The applicant has set out that many construction sites commence work at 0800 and it would be advantageous for the quarry to be able to dispatch material from

the quarry from 0700 to be able to have material at construction sites at 0800.

- 7.9 There are four of noise sensitive properties in vicinity of the quarry including Loch Ness Country House Hotel. The operational impacts of the quarry had been assessed on these receptors at the time of consideration of the original application and were found to be acceptable subject to noise limits on operations within the quarry being limited by condition.
- 7.10 The loading, dispatch and transportation of materials out of the quarry is the furthest distance from the noise sensitive properties and has limited potential for inappropriate levels of noise generation.
- 7.11 Environmental Health is satisfied with the proposed increase in operational hours subject to the revised operational hours being secured by conditions. The position of Environmental Health is accepted. It is considered appropriate to modify the condition as sufficient safeguards will remain in place to protect amenity via the revised condition and the associated Condition 14 which sets noise limits for those receptors at noise sensitive properties.

Modification of Condition 5 (Extraction Limits)

- 7.12 The applicant has requested that the permitted annual output of the quarry is increased from 100,000 tonnes per calendar year to 120,000 tonnes per calendar year.
- 7.13 The applicant has suggested that the current level of production of 100,000 tonnes per annum is relatively low and that the plant within the site does not need to operate beyond the currently permitted hours to allow for an increased level of extraction from the site. It has also stated that to increase the volume extracted from the plant no additional plant would be required within the site and there would be no increase in intensity of operations on an hourly basis.
- 7.14 Any increase in permitted output would allow the quarry to better meet market demands. No concerns with regard to the very modest increase in output have been raised by consultees including Environmental Health, Transport Scotland, Transport Planning or Scottish Environment Protection Agency. Subject to all other conditions (with the exception of Condition 4 (operating hours)), it is considered that an increased output would not have an increased impact on amenity or the environment.

Other material considerations

- 7.15 The Management of Extractive Waste (Scotland) Regulations 2010 require all quarries to produce a Waste Management Plan. The applicant has previously submitted and had approved a Waste Management Plan for the site. Given there is no change to the works being undertaken within the site, there is no need for the developer to revise this plan.
- 7.16 It is worth highlighting that an application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original

conditions previously applied which it considers necessary to regulate the development proposed. Following consideration of the conditions attached to the extant planning permission, it is considered that the conditions applied to the permission granted in 2018 remain appropriate to manage the development however those conditions which have been discharged can be removed from the permission.

Matters to be secured by Section 75 Agreement

- 7.17 Restoration of the quarry is being undertaken on a phase by phase basis. However, in order to ensure that the restoration is completed to the satisfaction of the Planning Authority and in a timeous manner, a financial guarantee will continue to be required. There is an existing legal agreement for the site which secures a financial guarantee. This comprises full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration measures outlined in the Decommissioning and Restoration Plan approved under Condition 3 of the permission. It also requires the quarry operator to ensure that the bond or other financial provision is maintained throughout the duration of this permission; and pay for the bond or other financial provision to be subject to a review five years after the commencement of development and every five years thereafter until such time as the quarry is decommissioned and the site is fully restored.
- 7.18 To ensure the existing legal agreement is linked to this application. The existing legal agreement requires to be modified. This will be carried out over the course of the coming months with the quarry operator if Members are minded to grant this application for non-compliance with conditions.
- 7.19 The applicant has four months from the date that the Council's solicitor writes to the Applicant/Applicant's solicitor indicating the terms of the modified legal agreement, to deliver to the Council a signed modified legal agreement. Should an agreement not be delivered within four months, the application may be refused under delegated powers.

8. CONCLUSION

- 8.1 The Development Plan is supportive of mineral extraction where the working of a resource can be effectively managed and where potential concerns can be controlled with appropriate mitigation and by planning conditions. The extension of working hours for the quarry and increase in output from the quarry is acceptable and will provide a resource for the delivery of construction schemes across Highland. Subject to the application of appropriate conditions, the development is unlikely to have a significant adverse impact on the environment.
- 8.2 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

9. IMPLICATIONS

- 9.1 Resource: Not applicable
- 9.2 Legal: Not applicable
- 9.3 Community (Equality, Poverty and Rural): Not applicable
- 9.4 Climate Change/Carbon Clever: Not applicable
- 9.5 Risk: Not applicable
- 9.6 Gaelic: Not applicable

10. RECOMMENDATION

Action required before decision issued

Conclusion of Modified Section 75 Y
Obligation

Subject to the above actions, it is recommended to **GRANT** the application subject to the following conditions and reasons:

1. The permission hereby granted shall endure until 20 December 2037 by which time all workings shall have ceased, all plant and equipment removed and the site restored in accordance with the approved plan to agricultural land (pasture) with trees and scrub planting with exposed quarry faces retained for geodiversity value to the satisfaction of the Council.

In the event that working ceases for a period of more than 24 months prior to the expiry of this permission then the site shall be restored to the satisfaction of the Council within 36 months from the cessation of working, or in any case before the expiry of this permission.

Reason: to clarify the terms of the permission and ensure the site is fully restored to an appropriate use.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As Amended), no fixed plant (including any tar making or concrete making plant), other than those specifically approved through this consent, shall be operated on the site without the express grant of planning permission.

Reason: To clarify the terms of the permission and to ensure the amenity impacts of any additional plant are properly assessed.

3. Within 6 months of the grant of this planning permission, a detailed scheme to ensure the decommissioning and phased restoration of the site for the purpose of agriculture with trees and scrub planting with exposed quarry

faces and its aftercare, in line with the approved restoration plans, has been submitted to and subsequently approved in writing by the Planning Authority. The scheme be known at the Decommissioning and Restoration Plan and shall ensure:

- a. The grading of all ground to stable slope angles and the shaping and contouring of the ground such as to be sympathetic to adjacent geological features;
- b. The progressive phasing of restorations works to ensure early restoration of any excavated phase;
- c. The treatment of surfaces prior to and after topsoiling and proposals to establish suitable vegetative cover (including tree and scrub planting);
- d. A programme of after care for each phase or sub-phase of restoration;
- e. A programme of aftercare and maintenance for a minimum of 36 months following the last working of the site.

Reason: To ensure an appropriate scheme is in place for the interim and final restoration of the site.

4. The following activities shall not take place outwith the hours of 0800-1800 Monday to Friday, 0800-1230 on Saturday without prior written approval of the Planning Authority and in consultation with the Inverness West Community Council:

- Production or maintenance operations;
- Soil stripping;
- Bund formation.

The following activities shall not take place outwith the hours of 0700-1800 Monday to Friday, 0700-1230 on Saturday without prior written approval of the Planning Authority and in consultation with the Inverness West Community Council:

- Loading of lorries;
- Driving of lorries;

Works outlined above may be undertaken if they are required to saving of life or property or for the safety of the works. If works are carried out for this reason, the Planning Authority must be informed within 72 hours of such works.

Reason: In the interests of amenity due to the potential noise impacts of the above activities on noise sensitive receptors.

5. The development shall be undertaken entirely in accordance with the

submitted application, the mitigation highlighted within the supporting Environmental Statement, and the approved plans as amended by the specific conditions attached to this planning permission or by the prior written approval of the Planning Authority. For the avoidance of doubt: -

1. The maximum output of the quarry shall not exceed 120,000 tonnes in any calendar year.
2. No additional sand and gravel material is to be imported to the site in order to maintain production of plant or sustain the dispatch of materials.

Reason: In order to ensure the production capacity of this quarry does not exceed levels considered through Environmental Statement.

6. No stockpile of material on the site shall exceed 5 metres in height.

Reason: In the interests of visual amenity.

7. At no time during the operation of the development shall anything obscure visibility between a driver's eye height of 1.05m along the visibility splays of 9m x 215m (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction, positioned at the X dimension and an object height of 0.60m anywhere along the Y dimension.

Reason: In order to ensure the safety and free flow of traffic on the public road.

8. Within 6 months of the grant of this planning permission a site Environmental Management Plan (EMP) shall be submitted to, and approved in writing by, the Planning Authority. The EMP shall include, but will not necessarily be limited to:

- a. Maintenance of a 10m buffer between the extraction area and any watercourse or waterbody;
- b. A site map showing the location of pollution prevention measures such as spill kits, oil interceptors, drainage associated with welfare facilities, recycling and bin storage and vehicle washing areas;
- c. A site log sheet detailing how often the pollution prevention and drainage measures will be checked and maintained which will be kept on site ready for inspection at any time;
- d. An updated site map showing where soils and overburden will be stored including details of the heights and dimensions of each store, how long the material will be stored for and how soils will be kept fit for restoration purposes;
- e. Sections and plans detailing how restoration will be progressed including the phasing, profiles, depths and types of material to

be used;

- f. Details of cut of drains, ensuring that these maximise diversion of water from entering quarry works;
- g. A scheme for monitoring excavations for signs of groundwater ingress and outlining the mitigation which will be undertaken if such an even occurs;
- h. Details of the location of the water recycling sump and associated and associated cut off drains;
- i. Location of any processing plant;
- j. A Silt Management Plan, identifying locations and details of silt management devices and settlement lagoons;
- k. Locations of proposed borehole(s);
- l. Dust management, monitoring and suppression plans for the site and access road (including wheel washing facilities);
- m. Noise management and control plans;
- n. Details of any and all lighting on the site;
- o. Details of the person(s) who will oversee the implementation and adherence to the Environmental Management Plan;
- p. A detailed plan identify all proposed nature conservation mitigation measures, such as: -
 - i. Continued protection for the identified badger sett;
 - ii. Measures for protected species / breeding birds that may be found using the site;
 - iii. Areas of vegetation removal – with timings of work outwith spring / summer months to avoid impact on breeding birds and other wild life interests.

The Environmental Management Plan shall be implemented as approved, ensuring all on site staff are familiar with and adhere to its terms.

The EMP shall be reviewed every 5 years from the date of the approval of the permission to ensure that it remains in line with good practice. The reviewed and updated documents shall be submitted and approved in writing to the Planning Authority by 01 March of any review year.

Reason: In order to enable the Planning Authority to adequately control the development below the water table and to minimise its impact on the nature

conservation and amenities of the local area.

9. From the date of any commencement of this development until completion of the final restoration, a copy of this planning permission, all approved plans and associated documentation together with any approved amendments shall be made available for inspection at the site offices during approved working hours.

Reason: In order to ensure the site operator and visiting officials are aware of the details of the planning permission and any approved amendments.

10. For the avoidance of doubt, chute linings and rubber screen decks shall be applied to any plant and equipment to be used on site.

Reason: In the interests of amenity to reduce noise impacts

11. The noise levels arising from the workings on the site at the nearest noise sensitive receptors at the time of the commencement of this planning permission shall not exceed:

- 49.5 db LAeq 1hr, as measured at Dunain Park Hotel;
- 45.0 db LAeq 1hr, as measured at Dunain Mains Farm;
- 45.0 db LAeq 1hr, as measured at Lower Dunain;
- 50.0 db LAeq 1hr, as measured at Dunaincroy;

For the avoidance of doubt 1hr means any one hour period during the defined working day.

Noise monitoring must be carried out at the start of each new phase of workings and a report of the monitoring thereafter to be submitted to the Planning Authority.

Monitoring to be undertaken during typical normal working hours and should avoid meal breaks and periods of plant breakdown. All noise monitoring is to be carried out by a competent person.

Monitoring to be carried out in accordance with BS4142:1997. In the event of a valid complaint in relation to noise, the operator shall at his own expense carry out an investigation into the complaint, including undertaking noise monitoring to assess compliance with the permitted noise levels detailed above, and where necessary cease the operations giving rise to the complaint until such time as appropriate mitigation measures have been implemented.

Reason: In order to ensure the operations cause no adverse impact on amenity of nearby residents.

12. The operator of Dunain Mains Quarry shall submit an annual statement and illustrative drawings to the Planning Authority by 28 February each year following the commencement of this permission. The annual statement will present an audit of the workings undertaken in the preceding calendar year, illustrating: -
 1. The rates of extraction against the projected operations,
 2. Areas of final restoration delivered on site, and
 3. The results of monitoring from the mitigation actions as presented in the application, the Site Environmental Management Plan and or in compliance with the conditions attached to this planning permission.
 4. The results of ongoing groundwater monitoring.

Reason: In order to ensure the planning authority can monitor the workings undertaken and retain effective control over the dry quarry operations.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

FOOTNOTE TO APPLICANT

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks & Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit,

occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species>

Statutory Nuisance

It is expected that the site operator will employ the best practicable measures at all times to reduce the impact of noise. In the unlikely event that noise from the proposed development gives rise to complaints, the Service has powers to investigate in terms of the Statutory Nuisance provisions of the Environmental Protection Act 1990 regardless of Planning Consent

Signature: David Mudie
Designation: Area Planning Manager South
Author: Simon Hindson, Strategic Projects Team Leader
Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 – Site Location Plan (D083-00027-2)
 Plan 2 – Site Location Plan (D086-00027-1)
 Plan 3 – Site Location Plan (D086-00027-3)

Appendix 1 – Letters of Representation

None

Appendix 2 – Previous Planning Permission

To: Tarmac Caledonian Limited
Per: Mr Stephen Cowan
Cambusnethan House
Linnet Way
Bellshill
Scotland
ML4 3NJ

Per: Per:
SLR Consulting Limited
Per: Morag Eaton
No.68 Stirling Business Centre
Wellgreen
Stirling
Scotland
FK8 2DZ

Town and Country Planning (Scotland) Act 1997 (As Amended) Planning Etc. (Scotland) Act 2006

DECISION NOTICE

Application under Section 42 to develop land without compliance with condition 1 previously attached to planning permission ref. 01/00796/FULIN for the variance of conditions 1 and 2 of the previous consent granted at Dunain Mains Quarry, Inverness.

The Highland Council in exercise of its powers under the above Act **grants planning permission to develop land without compliance with condition 1** previously imposed, in accordance with the particulars given in the application and the following conditions and reasons:

1. The permission hereby granted shall endure until 20 December 2037 by which time all workings shall have ceased, all plant and equipment removed and the site restored in accordance with the approved plan to agricultural land (pasture) with trees and scrub planting with exposed quarry faces retained for geodiversity value to the satisfaction of the Council.

In the event that working ceases for a period of more than 24 months prior to the expiry of this permission then the site shall be restored to the satisfaction of the Council within 36 months from the cessation of working, or in any case before the expiry of this permission.

Reason: to clarify the terms of the permission and ensure the site is fully restored to an appropriate use.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As Amended), no fixed plant (including any tar making or concrete making plant), other than those specifically approved through this consent, shall be operated on the site without the express grant of planning permission.

Reason: To clarify the terms of the permission and to ensure the amenity impacts of any additional plant are properly assessed.

3. Within 6 months of the grant of this planning permission, a detailed scheme to ensure the decommissioning and phased restoration of the site for the purpose of agriculture with trees and scrub planting with exposed quarry faces and its aftercare, in line with the approved restoration plans, has been submitted to and subsequently approved in writing by the Planning Authority. The scheme be known at the Decommissioning and Restoration Plan

and shall ensure:

- a. The grading of all ground to stable slope angles and the shaping and contouring of the ground such as to be sympathetic to adjacent geological features;
- b. The progressive phasing of restorations works to ensure early restoration of any excavated phase;
- c. The treatment of surfaces prior to and after topsoiling and proposals to establish suitable vegetative cover (including tree and scrub planting);
- d. A programme of after care for each phase or sub-phase of restoration;
- e. A programme of aftercare and maintenance for a minimum of 36 months following the last working of the site.

Reason: To ensure an appropriate scheme is in place for the interim and final restoration of the site.

4. The following activities shall not take place outwith the hours of 0800-1800 Monday to Friday, 0800-1230 on Saturday without prior written approval of the Planning Authority and in consultation with the Inverness West Community Council:

- Production or maintenance operations;
- Loading of lorries;
- Driving of lorries;
- Soil stripping;
- Bund formation

Works outlined above may be undertaken if they are required for saving of life or property or for the safety of the works. If works are carried out for this reason, the Planning Authority must be informed within 72 hours of such works.

Reason: In the interests of amenity due to the potential noise impacts of the above activities on noise sensitive receptors.

5. The development shall be undertaken entirely in accordance with the submitted application, the mitigation highlighted within the supporting Environmental Statement, and the approved plans as amended by the specific conditions attached to this planning permission or by the prior written approval of the Planning Authority. For the avoidance of doubt: -

1. The maximum output of the quarry shall not exceed 100,000 tonnes in any calendar year.
2. No additional sand and gravel material is to be imported to the site in order to maintain production of plant or sustain the dispatch of materials.

Reason: In order to ensure the production capacity of this quarry does not exceed levels considered through Environmental Statement.

6. No stockpile of material on the site shall exceed 5 metres in height.

Reason: In the interests of visual amenity.

7. Within 6 months of the grant of this planning permission written confirmation that the junction improvements (including signage alterations) at the site access with the A82(T) have been completed in accordance with the details provided in 0209/54B prepared by Fraser Stewart Architect and dated December 2010 shall be provided to the Planning Authority.

Reason: To minimise interference with the safety and free flow of the traffic on the trunk road; ensure drivers of vehicles leaving the site are enabled to see and be seen by vehicles on the trunk road carriage way and join traffic stream safely; and ensure that the standard of access layout complies with current standards and that the safety of traffic on the trunk road is not diminished.

8. Within 6 months of the grant of this planning permission, passing places on the access road shall be completed in accordance with the details, to include exact location and construction specification, that shall be submitted to, and approved in writing by, the Planning Authority in advance of the work commencing.

Reason: In the interests of free flow of the access road and road safety.

9. At no time during the operation of the development shall anything obscure visibility between a driver's eye height of 1.05m along the visibility splays of 9m x 215m (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction, positioned at the X dimension and an object height of 0.60m anywhere along the Y dimension.

Reason: In order to ensure the safety and free flow of traffic on the public road.

10. Within 6 months of the grant of this planning permission a site Environmental Management Plan (EMP) shall be submitted to, and approved in writing by, the Planning Authority. The EMP shall include, but will not necessarily be limited to:

- a. Maintenance of a 10m buffer between the extraction area and any watercourse or waterbody;
- b. A site map showing the location of pollution prevention measures such as spill kits, oil interceptors, drainage associated with welfare facilities, recycling and bin storage and vehicle washing areas;
- c. A site log sheet detailing how often the pollution prevention and drainage measures will be checked and maintained which will be kept on site ready for inspection at any time;
- d. An updated site map showing where soils and overburden will be stored including details of the heights and dimensions of each store, how long the material will be stored for and how soils will be kept fit for restoration purposes;
- e. Sections and plans detailing how restoration will be progressed including the phasing, profiles, depths and types of material to be used;
- f. Details of cut of drains, ensuring that these maximise diversion of water from entering quarry works;
- g. A scheme for monitoring excavations for signs of groundwater ingress and outlining the mitigation which will be undertaken if such an even occurs;

- h. Details of the location of the water recycling sump and associated and associated cut off drains;
- i. Location of any processing plant;
- j. A Silt Management Plan, identifying locations and details of silt management devices and settlement lagoons;
- k. Locations of proposed borehole(s);
- l. Dust management, monitoring and suppression plans for the site and access road (including wheel washing facilities);
- m. Noise management and control plans;
- n. Details of any and all lighting on the site;
- o. Details of the person(s) who will oversee the implementation and adherence to the Environmental Management Plan;
- p. A detailed plan identify all proposed nature conservation mitigation measures, such as: -
 - i. Continued protection for the identified badger sett;
 - ii. Measures for protected species / breeding birds that may be found using the site;
 - iii. Areas of vegetation removal - with timings of work outwith spring/summer months to avoid impact on breeding birds and other wild life interests.

The Environmental Management Plan shall be implemented as approved, ensuring all on site staff are familiar with and adhere to its terms.

The EMP shall be reviewed every 5 years from the date of the approval of the permission to ensure that it remains in line with good practice. The reviewed and updated documents shall be submitted and approved in writing to the Planning Authority by 01 March of any review year.

Reason: In order to enable the Planning Authority to adequately control the development below the water table and to minimise its impact on the nature conservation and amenities of the local area.

- 11. From the date of any commencement of this development until completion of the final restoration, a copy of this planning permission, all approved plans and associated documentation together with any approved amendments shall be made available for inspection at the site offices during approved working hours.

Reason: In order to ensure the site operator and visiting officials are aware of the details of the planning permission and any approved amendments.

- 12. For the avoidance of doubt, chute linings and rubber screen decks shall be applied to any plant and equipment to be used on site.

Reason: In the interests of amenity to reduce noise impacts

- 13. Within 6 months of the grant of this planning permission, an access management statement/plan shall be submitted to, and approved in writing by the Planning Authority.

The access arrangements contained within shall then be implemented as approved.

Reason: In order to make clear the public access rights regarding quarrying activities, sustain existing public access connections away from quarry activities and promote access to the area following restoration.

14. The noise levels arising from the workings on the site at the nearest noise sensitive receptors at the time of the commencement of this planning permission shall not exceed:
- 49.5 db LAeq 1hr, as measured at Dunain Park Hotel;
 - 45.0 db LAeq 1hr, as measured at Dunain Mains Farm;
 - 45.0 db LAeq 1hr, as measured at Lower Dunain;
 - 50.0 db LAeq 1hr, as measured at Dunaincroy;

For the avoidance of doubt 1hr means any one hour period during the defined working day.

Noise monitoring must be carried out at the start of each new phase of workings and a report of the monitoring thereafter to be submitted to the Planning Authority.

Monitoring to be undertaken during typical normal working hours and should avoid meal breaks and periods of plant breakdown. All noise monitoring is to be carried out by a competent person.

Monitoring to be carried out in accordance with BS4142:1997. In the event of a valid complaint in relation to noise, the operator shall at his own expense carry out an investigation into the complaint, including undertaking noise monitoring to assess compliance with the permitted noise levels detailed above, and where necessary cease the operations giving rise to the complaint until such time as appropriate mitigation measures have been implemented.

Reason: In order to ensure the operations cause no adverse impact on amenity of nearby residents.

15. The operator of Dunain Mains Quarry shall submit an annual statement and illustrative drawings to the Planning Authority by 28 February each year following the commencement of this permission. The annual statement will present an audit of the workings undertaken in the preceding calendar year, illustrating: -
1. The rates of extraction against the projected operations,
 2. Areas of final restoration delivered on site, and
 3. The results of monitoring from the mitigation actions as presented in the application, the Site Environmental Management Plan and or in compliance with the conditions attached to this planning permission.
 4. The results of ongoing groundwater monitoring.

Reason: In order to ensure the planning authority can monitor the workings undertaken and retain effective control over the dry quarry operations.

Variations

1. None.

Section 75 Obligation

1. To secure the decommissioning and restoration of the site.

ENVIRONMENTAL IMPACT ASSESSMENT

Regulation 3 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, 'the EIA Regulations', prohibits the granting of permission for EIA development unless an environmental impact assessment has been carried out and that the environmental information has been taken into account when undertaking an assessment of the development proposal.

The Applicant has submitted an Environmental Impact Assessment Report (EIA Report). The environmental information contained within this and the comments made on the application by consultees and representations made by members of the public following advertisement of the application in The Inverness Courier and The Edinburgh Gazette on 28 July 2017 has been taken into account in coming to this decision.

The Council is satisfied that the requirements of the EIA Regulations have been met.

Reasoned conclusion

The Council's assessment of the information presented within the EIA Report and other environmental information in relation to the development is contained within the Report of Handling. No significant effects have been identified as a result of the development.

The Council is satisfied that this reasoned conclusion is still up to date.

The Council is satisfied that other effects/issues can be addressed by way of mitigation. A detailed description of the proposed mitigation is contained within Chapter 14 of the EIA Report and the Report of Handling.

The Council has incorporated the requirement for a schedule of mitigation within the conditions of this permission. Monitoring has been secured through conditions 10, 14 and 15 of this permission.

All documents can be viewed online at <https://wam.highland.gov.uk/wam/> and searching using the case reference number.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

IMPORTANT INFORMATIVES

Please read the following informatives and, where necessary, act upon the requirements specified:

FOOTNOTE TO APPLICANT

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks & Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area

Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud & Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Protected Species - Halting of Work

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Building Regulations

Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at BuildingStandards@highland.gov.uk or on 01349 886608.

Land Ownership/Planning Permission

For the avoidance of doubt, the existence of planning permission does not affect or supersede an individual's ownership or other legal rights. Please be advised that this permission does not entitle you to build on, under or over ground outwith your ownership or to enter private ground to demolish, construct or maintain your property.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

1. If the applicant is aggrieved by the decision to refuse planning permission for, or approval required by a conditions in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may appeal to the Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice. The notice of appeal should be addressed to:

Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

Appeals can also be lodged online via the ePlanning Portal at:

<https://www.eplanning.scot>

2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).