

Agenda Item	6.6
Report No	PLS 044/19

HIGHLAND COUNCIL

Committee: South Planning Applications Committee

Date: 11 June 2019

Report Title: 19/00542/S42: Tarmac Caledonian Ltd
Park Quarry, Nairn

Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Section 42 Planning Application to vary Condition 5 of planning permission 09/00089/FULNA to extend operational life of quarry

Ward: 18 – Nairn and Cawdor

Development category: Major Development

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** planning permission as set out in section 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 The application is made under Section 42 of the Act to extend the time limit which was attached to the most recent approval for the operation of a quarry extracting hard rock at the existing Park Quarry near Nairn. There has been a permission in place since 1989 to extract material from the quarry. The site has not yet exhausted the reserves which have been consented. This has been renewed every 10 years since the initial application. This was most recently approved under 09/00089/FULNA. Condition 5 of this permission specifies:

'Consent for the extraction of pink granite shall expire 10 years from the date of this consent, or on completion of extraction of the consented mineral reserve, whichever is the sooner, by which time, unless agreed in writing by the Planning Authority, all working shall have ceased and the quarry fully restored in accordance with the agreed scheme, including the removal of all plant and buildings from the site.'

The ten year expiry date is 09.10.2009. The applicant is therefore seeking an extension to this and the Planning Authority has the opportunity to review the proposals and amend and update the conditions as necessary.

- 1.2 Pre Application Consultation: None
- 1.3 Supporting Information: Noise Assessment, Supporting Statement
- 1.4 Variations: Submission of Visibility splay plan and restoration plan

2. SITE DESCRIPTION

- 2.1 The site is as an existing, operating, pink granite rock quarry. The site is located to the east side of the A939 where access is taken from. The site is located north of an area of woodland at Laiken Forest, with Nairn located to the north and Auldearn to the east. The face of the quarry faces south with all associated infrastructure sitting within this. There is a bund to the northern side providing screening. All infrastructure is already in place.

3. PLANNING HISTORY

- | | | | |
|-----|------------|---|----------|
| 3.1 | 04.01.2000 | 99/00196/FULNA - Renewal of minerals consent NA/1989/210 for a further period of ten years | Approved |
| 3.2 | 09.10.2009 | 09/00089/FULNA - Renewal of mineral consent 99/00196/FULNA for a further period of 10 years | Approved |

4. PUBLIC PARTICIPATION

- 4.1 Advertised: Unknown Neighbour
Date Advertised: 20.02.2019

Representation deadline: 12.03.2019

Timeous representations: 1

Late representations: 0

4.2 Material considerations raised are summarised as follows:

- a) Access unsuitable and that the A939 is not suitable as there are nearby neighbours.
- b) HGV traffic starts at 06:30 - 07:00 with no notification to neighbours of the blasting which has been taken place as used to be the case.
- c) Question whether there is any monitoring on vibration as a result of blasting on site.

4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam.

5. CONSULTATIONS

5.1 **Auldearn Community Council:** No response received.

5.2 **Environmental Health** advises that there is no record of noise complaints from this site. The consent for the current site has a noise condition based on the relevant guidance. The operating hours are also fixed at 0800-2000 hours Monday to Friday. No objection to the application subject to the existing noise and operating hours conditions being retained.

5.3 **Transport Planning Team:** No objections subject to conditions. Initial comment was that visibility no longer complies with the original planning condition (no. 26) but this was resolved following submission of an access/visibility splay plan which demonstrates visibility of 3m x 150m and 3m x 120m.

5.4 **SEPA:** No objection.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan (2012)

28 - Sustainable Design

53 - Minerals

54 - Mineral Wastes

56 - Travel

57 - Natural, Built & Cultural Heritage

58 - Protected Species

59 - Other important Species

61 - Landscape

63 - Water Environment

65 - Waste Water Treatment

66 - Surface Water Drainage

6.2 **Inner Moray Firth Local Development Plan (2015)**

No relevant site specific policies

6.5 **Highland Council Supplementary Planning Policy Guidance**

Flood Risk & Drainage Impact Assessment (Jan 2013)

7. **OTHER MATERIAL POLICY CONSIDERATIONS**

7.1 **Scottish Government Planning Policy and Guidance**

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)

8. **PLANNING APPRAISAL**

8.1 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

8.2 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

8.3 The key considerations in this case are:

- a) compliance with the development plan and other planning policy
- b) Access and Transport
- c) Noise, Vibrations and Residential Amenity
- d) any other material considerations.

Development plan/other planning policy

8.4 Development Plan policy has changed since the determination of the original application. The Highland Structure Plan (2001) is no longer in force. The policy provisions of this and the Inverness Local Plan (2006) have been superseded by

the Highland-wide Local Development Plan (2012) and the Inner Moray Firth Local Development Plan (2015).

- 8.5 The key issue therefore is whether the amendment of the condition applied for would result in the development being incompatible with current Development Plan. The remainder of this report will consider the modification proposed and assess its compatibility with the Development Plan.

Modification to Condition 5

- 8.6 The applicant has sought to modify the wording of the condition to allow for the working of the quarry for a further 10 years as there are no technical concerns such as stability; impact on the water environment; or landscape impact. In principle, the extension of time for working of the quarry is supported, as is the winning of further minerals from an existing quarry by the relevant policies in the Highland-wide Local Development Plan. However, these modifications to the permission can only be supported if appropriate conditions exist to ensure appropriate environmental mitigation is in place and the site is satisfactorily restored.

- 8.7 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 appropriate to revisit all the conditions attached to the original permission to ensure the wording is in line with current good practice and to ensure the conditions are suitable to regulate the proposed development. This is also reflected in the responses of consultees. In doing so, this has provided an opportunity to strengthen the terms of the conditions and provide greater clarity as to the requirements of these, including the information required to satisfy the conditions.

Access and Transport

- 8.8 The site is operational and there are no known issues in terms of transportation. Transport Planning requested a visibility splay drawing which confirms that there is sufficient visibility in each direction. A condition is recommended to secure these splays in perpetuity. This will ensure that the screening on the road verges will require to be kept maintained.

Noise, Vibration and Residential Amenity

- 8.9 One objection was received which highlighted concerns over noise and vibration from the site. It was noted by Environmental Health that no complaints have been received in respect of the quarry. The nearest property is 350m – 400m away from the site; given the infrequent nature of the rock blasting it is not considered that the development would have a significantly detrimental impact on amenity. As stated, the quarry has been operating since 1989 with no known issues.

Other material considerations

- 8.10 There are no other material considerations.

Non-material considerations

- 8.11 No non-material considerations

Matters to be secured by Section 75 Agreement

- 8.12 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 be required. This will be secured via legal agreement and will comprise:

Full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration measures.

Thereafter, the Quarry Operator will be required to:

- i. Ensure that the bond or other financial provision is maintained throughout the duration of this permission; and
- ii. 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.

- 8.13 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 legal agreement, to deliver to the Council a signed legal agreement. Should an agreement not be delivered within four months, the application shall be refused under delegated powers.

9. CONCLUSION

- 9.1 The extension of time for working the quarry with the originally consented parameters is considered to be acceptable. Subject to the application of appropriate conditions, the development is unlikely to have a significant adverse impact on the environment or residential amenity.

- 9.2 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.

10. IMPLICATIONS

- 10.1 Resource: Not applicable

- 10.2 Legal: Not applicable

- 10.3 Community (Equality, Poverty and Rural): Not applicable

10.4 Climate Change/Carbon Clever: Not applicable

10.5 Risk: Not applicable

10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued Y

Conclusion of Section 75 Obligation Y

Revocation of previous permission N

Subject to the above, it is recommended that planning permission be **GRANTED** subject to the following:

Conditions and Reasons

1. Planning permission is hereby granted for a temporary period only and shall cease to have effect on 28 June 2029 (the 'cessation date') within which time all extractions and working and winning of aggregates shall have ceased, all plant, buildings and machinery shall have been removed and the site shall have been restored to the satisfaction of the Planning Authority. In the event that working ceases for a period of more than 6 months prior to the expiry of this permission then the site shall be restored to the satisfaction of the Council within 12 months from the cessation of working, or in any case before the expiry of this permission.

Reason: In recognition of the temporary nature of the proposed development, to enable the Planning Authority to reassess the impact of the development after a given period of time and secure removal and restoration.

2. Operational activities for which noise is audible at the curtilage of any noise sensitive property shall be restricted to the period between 0800 hours and 2000 hours Monday to Friday. During the above working hours, noise arising from this development shall not exceed 55 dB LAeq, 1h (free field) as measured at the curtilage of any noise sensitive property.

Reason: In the interest of individual and community residential amenity to reduce noise pollution at the site.

3. Visibility splays of 3.0m x 150m to the north and 3.0m x 120m to the south shall be provided and maintained on each side of the access at its junction with the public road as denoted within the approved drawing no. P090_00021-1. For the avoidance of doubt within one month of the date of this permission any vegetation which impedes the above splay shall be cleared and thereafter maintained in perpetuity. Within the visibility splays nothing shall obscure visibility between a drivers eye height of 1.0m in both the northerly and southerly directions. Thereafter the access shall be maintained free from mud and debris

through the duration of the extraction works and subsequent reinstatement of the application site.

Reason: In order to ensure that the visibility splays are maintained to standard in perpetuity in the interest of road safety.

4. Within 3 months of the date of this permission a scheme of progressive restoration shall be submitted to and approved in writing by the Planning Authority in consultation with SEPA. For the avoidance of doubt the plan shall include information on any proposals for phased working and progressive restoration, as well as the effect that any restoration will have on the water environment, including groundwater quality and quantity. The progressive restoration plan shall also include a written assessment of the effect that any backfilling below the water table will have on groundwater. The phased extraction operations shall run concurrently with phased restoration. Once approved the phased restoration shall be undertaken in accordance with the approved scheme unless otherwise approved in exceptional circumstances by the Planning Authority as a non material variation.

Reason: To ensure the satisfactory after-use of the site.

5. Within 12 months of the cessation of working, the reinstatement of the site shall be completed in accordance with the approved scheme of progressive restoration that has previously been agreed in writing by the Planning Authority under condition 4 above.

Reason: To ensure the satisfactory after-use of the site.

6. Except as otherwise provided by the terms of this permission, the developer shall continue to operate the development in accordance with the plans and supporting information approved under 09/00089/FULNA with no deviation therefrom unless otherwise approved in writing by the Planning Authority.

Reason: To clarify and reinforce the terms of the permissions granted at this quarry.

7. Stockpiles of topsoil, subsoil, overburden and stored aggregate shall not exceed 5 metres in height and shall be graded (where necessary) in such a manner as to ensure they do not appear alien features in the landscape.

Reason: To reduce the visual impact of the development.

8. The operator of the quarry hereby approved 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

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

The results of ongoing groundwater monitoring to sufficiently demonstrate a seasonably high ground water level

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

9. Throughout the period of work, restoration and aftercare, the applicant shall protect and maintain or divert any ditch, stream, watercourse or culvert passing through the site so as to not impair the flow, nor render less effective drainage onto and from adjoining land.

Reason: In order to prevent pollution of the water environment.

10. Notwithstanding the provisions of Classes 53, 54, 55, 56, 57 or 63 of the Town & Country Planning (General Permitted Development) (Scotland) Order 1992 (or as amended), the written approval of the Planning Authority shall be required for any development within these Classes.

Reason: To allow the Planning Authority to retain effective control over operations at the site.

11. Any stripped overburden shall require to be stored within the site unless otherwise approved in writing by the Planning Authority.

Reason: To ensure proper reinstatement of the site.

REASON FOR DECISION

The extension of time for working the quarry with the originally consented parameters is acceptable. Subject to the application of appropriate conditions, the development is unlikely to have a significant adverse impact on the environment or residential amenity.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply

represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

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

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.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

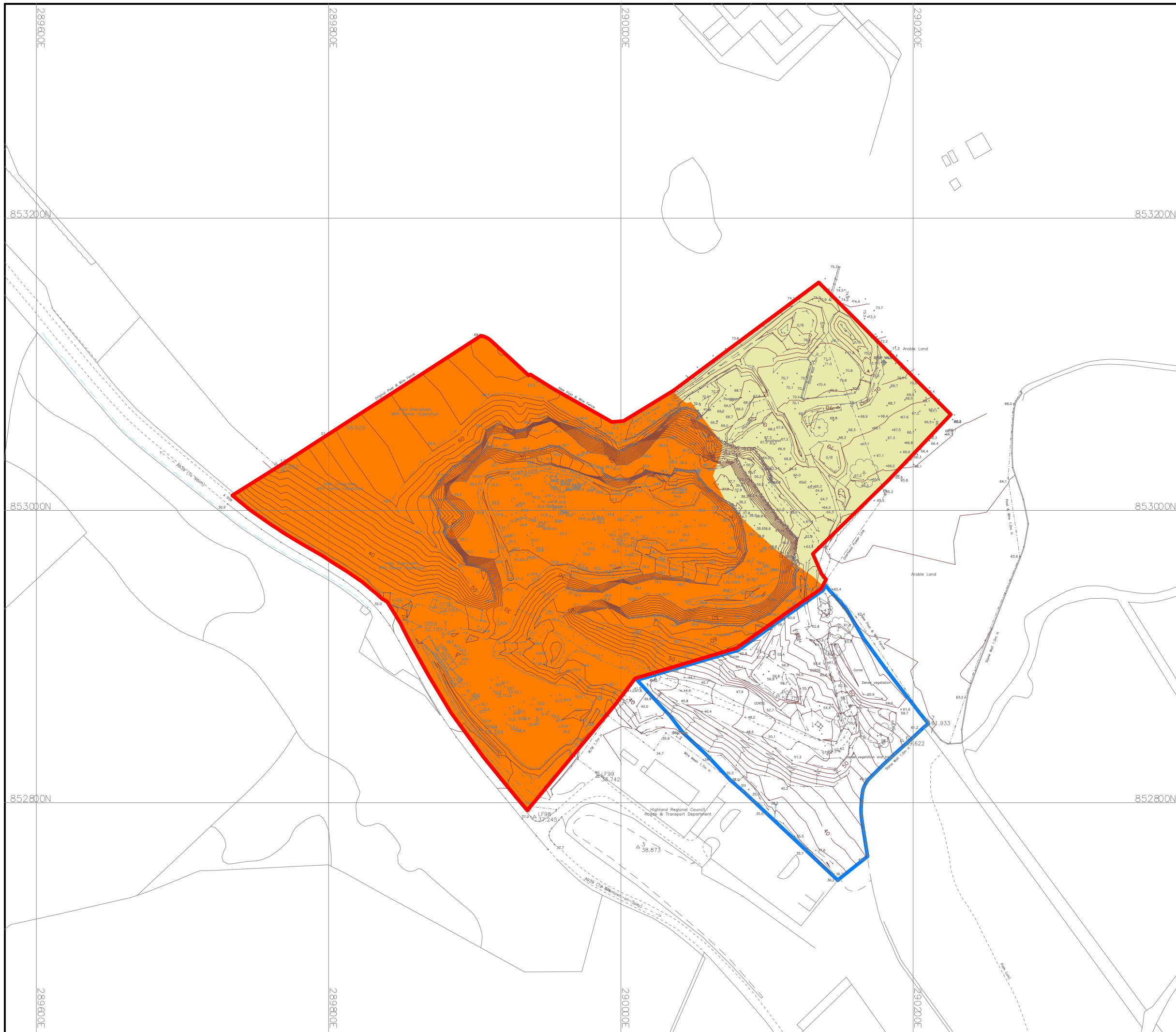
If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

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

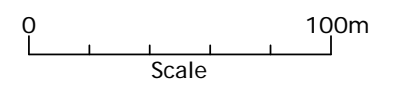
or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Signature: David Mudie
Designation: Area Planning Manager – South
Author: Laura Stewart
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 - Location Plan - P090-00020-2
Plan 2 - Restoration Plan- P090-00020-5
Plan 3 - Site Layout Plan – P090-00020-1



Legend

- Application Boundary**
(Land Within Applicant's Control)
- Tarmac Landownership**
- Additional Land Within Applicant's Control**
- Alexander Landownership**



Site Name:
P090 - Park Quarry (Nairn)





Drawing Name:
Landownership Plan

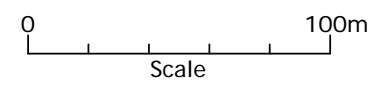
Drawn By: EM	Scale @ A3: 1:2,500
Date: 05/02/2019	Drawing Number: P090-00020-2





Legend

-  Quarry Faces Subject to Natural Regeneration
-  Grassland
-  Scrub
-  Ephemeral Wetland



Site Name:
P090 - Park Quarry (Nairn)

Drawing Name:
Indicative Restoration Plan


Drawn By:
 EM
 Date:
 03/05/2019

Scale @ A3:
 1:2,500
 Drawing Number:
 P090-00020-5







Legend

 Planning Permission Boundary (09/00089/FLLN)

0 500m
Scale


DAL
DALGLEISH ASSOCIATES LIMITED

 **TARMAC**
A CRH COMPANY

Site Name:
P090 - Park Quarry (Nairn)

Drawing Name:
Site Location Plan

Drawn By: EM	Scale @ A3: 1:10,000
Date: 05/02/2019	Drawing Number: P090-00020-1

