



SUPPLEMENTARY GUIDANCE: RESOURCE EXTRACTION

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's agreement to undertake a formal consultation on its proposed 'Resource Extraction' supplementary guidance.

2 BACKGROUND

- 2.1 At its meeting of 7 November 2017 the Council adopted the Midlothian Local Development Plan 2017 (MLDP). The MLDP included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance is required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needs further clarification is with regard Midlothian's Resource Extraction.
- 2.2 Draft **Supplementary Guidance** has to be published to enable interested parties to make comment and for any representations received to be considered prior to finalisation of the guidance. Supplementary Guidance is subject to screening for a Strategic Environmental Assessment (SEA) and Habitats Regulations Appraisal (HRA). Furthermore, the local planning authority must also notify Scottish Ministers of its intention to adopted Supplementary Guidance, who have the opportunity to intervene in its drafting and adoption. Once adopted Supplementary Guidance forms part of the development plan and is given statutory weight. Supplementary Guidance is expected on core topics which are integral to the Council spatial strategy. Supplementary Guidance will be a significant policy consideration in the assessment of planning applications.
- 2.3 Non-statutory **Planning Guidance** does not require prior publication, consultation or notification to Scottish Ministers. Planning Guidance will be a material consideration in the assessment of planning applications but does not form part of the development plan.

3 RESOURCE EXTRACTION SUPPLEMENTARY GUIDANCE

- 3.1 The draft Supplementary Guidance has been screened for SEA in consultation with the environmental agencies. They have concluded that significant environmental effects are not likely as a consequence of the guidance. However it is for the Council to formally determine if a SEA is required. The guidance has also been screened for a HRA and because of the distance between the proposed resource extraction sites and the designated internationally protected sites and because of the protection of sites within the MLDP a HRA is considered not to be required.
- 3.2 The draft Supplementary Guidance is appended to this report and includes:
- operating standards in respect of a number of the key environmental factors, such as noise, dust and vibration;
 - approaches to better ensure the restoration of resource extraction sites; and
 - measures to increase community involvement and oversight of mineral operations, through the use of community liaison committees.
- 3.3 When the MLDP was prepared it was also envisaged that the guidance would provide more detail for MLDP Policy MIN3: Offshore Oil and Gas. However, the Scottish Government has subsequently stated that it will not support the development of unconventional gas extraction activities (including hydraulic fracturing and coal bed methane extraction) in Scotland (Statement of Minister for Business, Innovation and Energy to Scottish Parliament on 3 October 2017). This position was endorsed by the Scottish Parliament on 24 October 2017. The Government's policy is subject to Strategic Environmental Assessment prior to its finalisation. Accordingly, the Supplementary Guidance will provide no further guidance on this topic. This aspect of the Supplementary Guidance could be re-visited if national policy changed.
- 3.4 The draft guidance will be made publically available on the Council's website for a period of at least four weeks. The Community Councils, the Scottish Environment Protection Agency (SEPA), Scottish Water, the Forestry Commission and Scottish Natural Heritage will be notified and invited to make comment. In addition, bodies with a specialist interest or persons/groups who made representations to the resource extraction policies in the plan, will also be notified.

4 RECOMMENDATION

- 4.1 The Committee is recommended to:
- a) approve the draft Resource Extraction Supplementary Guidance for consultation;
 - b) consider a further report on the Resource Extraction Supplementary Guidance following the proposed consultation; and

- c) determine that a Strategic Environmental Assessment is not required.

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Background Papers: MLDP 2017 adopted 7 November 2017 and
Appendix 1: draft Supplementary Guidance for Resource Extraction

Midlothian Local Development Plan



Resource Extraction Supplementary Guidance



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1 Introduction (note text of draft SG Subject to Planning Committee approval for consultation)

Introduction.

This proposed Supplementary Guidance (SG) seeks to secure best practice in resource extraction, and to strike the right balance between protecting our environment and extracting these materials.

The Midlothian Local Development Plan 2017 commits to producing Supplementary Guidance (SG) on Resource Extraction in respect of Policies MIN2 and MIN3. Policy MIN1 is also relevant in terms of establishing areas of search for minerals extraction.

The purpose of the SG is to provide criteria for assessing applications for surface mineral working, setting out further detail on the matters raised in Policy MIN2 Surface Mineral Extraction.

The MLDP requires the Supplementary Guidance to provide further detail on policy MIN3 (Onshore Oil and Gas). The Scottish Government has subsequently reached a settled policy position of not supporting the extraction of unconventional oil and gas. In Midlothian Council's view, this national statement overtakes Policy MIN3, so there is no need to provide further guidance at this time (this position could be revisited if the national policy was revised in future).

2 Policy Context

Policy Context

Construction Minerals. Scottish Planning Policy requires that planning authorities ensure that a landbank of permitted reserves for construction aggregates equivalent to a minimum of 10 years past extraction rates are available at all times in all market areas. Work has been undertaken under the auspices of the Strategic Development Planning Authority for Edinburgh and South East Scotland (SESplan) to establish whether such a landbank is in place. The MLDP was prepared in the context of the first SDP for south east Scotland (SDP1) which pointed to a possible emerging shortage in sand and gravel reserves. Midlothian Council considers that Midlothian on its own does not constitute a market area and that it is reasonable to consider South East Scotland as the relevant market area for hard rock, sand and gravel.

Subsequent SESplan findings in respect of the 2nd Strategic Development Plan (SDP2) are set out in the Proposed Strategic Development Plan Minerals Technical Note [SDP2 Technical Note](#)

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This technical note pointed to adequate reserves, but suggested that there might be emerging longer term supply constraints for sand and gravel. The Scottish Government's 2012 Scottish Aggregates Survey (published in 2015) indicates that there are consented reserves of between 15 and 32 years for hard rock and between 32 to 34 years for sand and gravel.

SESplan will establish a Minerals Working Group (SDP Proposed Plan paragraph 4.18) to monitor the aggregate situation over the SDP2 plan period, and this will be useful in providing further evidence to support implementation of the MLDP. There are limits to the degree to which the supply of minerals can be planned for in a quantitative way. Even where the presence of a construction mineral is indicated on resource maps, the volume, quality and consequent scale of the marketable resource that can be derived from a given land area cannot be precisely calculated by the planning authority. There is no procedure to apportion aggregate requirements to individual authorities.

In Midlothian, the existing Outerston site has seen a slower extraction rate than expected at the time of consent, and an application has been granted to continue until the end of 2025. Given the impact of the 2008/09 financial crisis, which will have reduced recent extraction rates and the likely future demand from increased house-building and major projects in South East Scotland over the life of the Midlothian Local Development Plan (MLDP), it appeared prudent to seek to identify additional reserves. The MLDP proposes an extended area of search for sand and gravel at Dalhousie and confirms the existing area at Outerston.

Policy MIN1 identifies areas of search for Mineral Extraction (for aggregate minerals as well as for coal working), and establishes a presumption against working outwith areas of search.

The MLDP strategy for Mineral Working with respect to aggregate minerals, comprises:

- Temple Quarry (Outerston) on its existing boundaries
- Expansion of sand extraction at Upper Dalhousie, in addition to Temple Quarry.

Policy MIN2 provides criteria against which minerals applications are to be assessed, and establishes the need for Supplementary Guidance to provide further detail.

Energy minerals. Scottish Planning Policy makes clear that the planning system should recognise the national benefit of indigenous coal, oil and gas production in maintaining a diversity and security of supply (paragraph 235). In examining the MLDP, the Reporters concluded that it is reasonable and appropriate for the local plan to identify resources.

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Coal. Combustion of fossil fuels releases greenhouse gases. Policies at European Union (EU) and nation level are designed to meet international commitments to reduce the release of these gases. These policies have had the effect of making coal less attractive over time. A long term future for coal may be secured if carbon capture and storage (CCS) can be developed successfully.

The Electricity Generation Policy Statement (EGPS) 2013 examines the way in which Scotland generates electricity and considers the changes necessary to meet SG targets. The Scottish Government's policy is that renewable generation should operate alongside upgraded and more efficient thermal stations, and that there should be a particularly strong role for CCS.

The National Planning Framework for Scotland 3 (NPF3) identifies proposals for new and replacement generation facilities at sites including Grangemouth, Cockerzie and Longannet using Carbon Capture and Storage (paragraph 3.19). Some of these may be coal fired, and this may provide the basis for a continuing role for the coal industry in Scotland.

The approved Strategic Development Plan (SDP1) for Edinburgh and South East Scotland required LDPs to identify areas of search (or where appropriate individual sites for minerals extraction, including coal. This has been reflected in the MLDP, to which this Supplementary Guidance relates. The Report of the examination into SDP2 recommends that Local Development Plans identify areas of search where coal extraction is most likely to be acceptable over the plan period, to support a diverse energy mix, giving sufficient weight to the avoidance of long term environmental impacts and greenhouse gas emissions from their use.

The MLDP strategy for coal comprises areas of search at

- Cauldhall Moor (a new area of search established in the MLDP)
- Halkerston North (an established area of search carried over from previous adopted plans).

These areas of search for coal are set out in Policy MIN1, which establishes the presumption against working outwith areas of search. Policy MIN2, provides criteria for the assessment of applications and sets the need for and context for this Supplementary Guidance.

The recent decline of the surface coal extraction industry (including liquidation of several large operators) has raised concerns regarding the robustness of restoration arrangements. This matter has been considered by the Scottish Government's opencast coal mines taskforce, and this Supplementary Guidance seeks to reflect best practice in securing site restoration.

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The EU Mining Waste Directive (2006/21/EC) is relevant in relation to site and waste management (for all types of mineral development). The Directive affects extractive waste (that is waste produced by the extraction and processing of mineral resources). The regulations that give effect to the Directive seek to introduce a proportionate and risk based approach to dealing with mining waste, which is to be applied primarily through the planning system. Through supporting an approach of progressive extraction and restoration and dealing with mineral waste locally by re-filling voids on site; the Supplementary Guidance seeks to support implementation of the Directive.

Oil and Gas. The description 'unconventional gas' is applied to cover the range of activities which in Scotland's geology include extraction of coal bed methane and shale gas production. The MLDP policy which relates to this sector is titled 'Onshore Oil and Gas' (the term unconventional gas had not gained the same degree of public usage when the plan was written but the supporting text makes it clear that hydraulic fracturing and coal bed methane extraction are the focus of the policy).

The Scottish Government commissioned an Independent Expert Scientific Panel on Unconventional Oil and Gas Extraction, which reported in 2013. In 2015 the Government introduced a moratorium pending work on planning and environmental regulation, a health impact assessment and a public consultation on unconventional oil and gas. In October 2017 a statement to the effect that the Scottish Government does not support the development of unconventional oil and gas was issued. The Government requires to conclude Strategic Environmental Assessment (SEA) processes before the policy position can be finalised. The letter from the Chief Planner to the Heads of Planning Scotland is included as an Appendix 2. The indefinite moratorium was the subject of a legal challenge, however this was dismissed in June 2018.

Policy MIN3 outlines the principles by which an oil and gas application would have been assessed. The further detail which was to have been provided in this Guidance is now no longer required due to the national policy position.

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Policy MIN1

Areas of Search for Surface Mineral Extraction

The following locations are identified on the Proposals Map as areas of search where future surface mineral extraction may be acceptable in principle:

Sand and Gravel

- Outerston (Temple Quarry)
- Upper Dalhousie

Opencast Coal

- Cauldhall Moor
- Halkerston North

Identification as an area of search does not indicate the Council's acceptance of any particular proposal for the winning and working of a surface mineral resource within any or all of that area of search.

Outwith the areas of search, there is a presumption against surface mineral extraction.

Hard rock quarrying will not be permitted unless it is for an extension to an existing dormant hard rock quarry and it is environmentally acceptable in terms of policy MIN2 and the other policies of the Plan.

Safeguarding of mineral resources

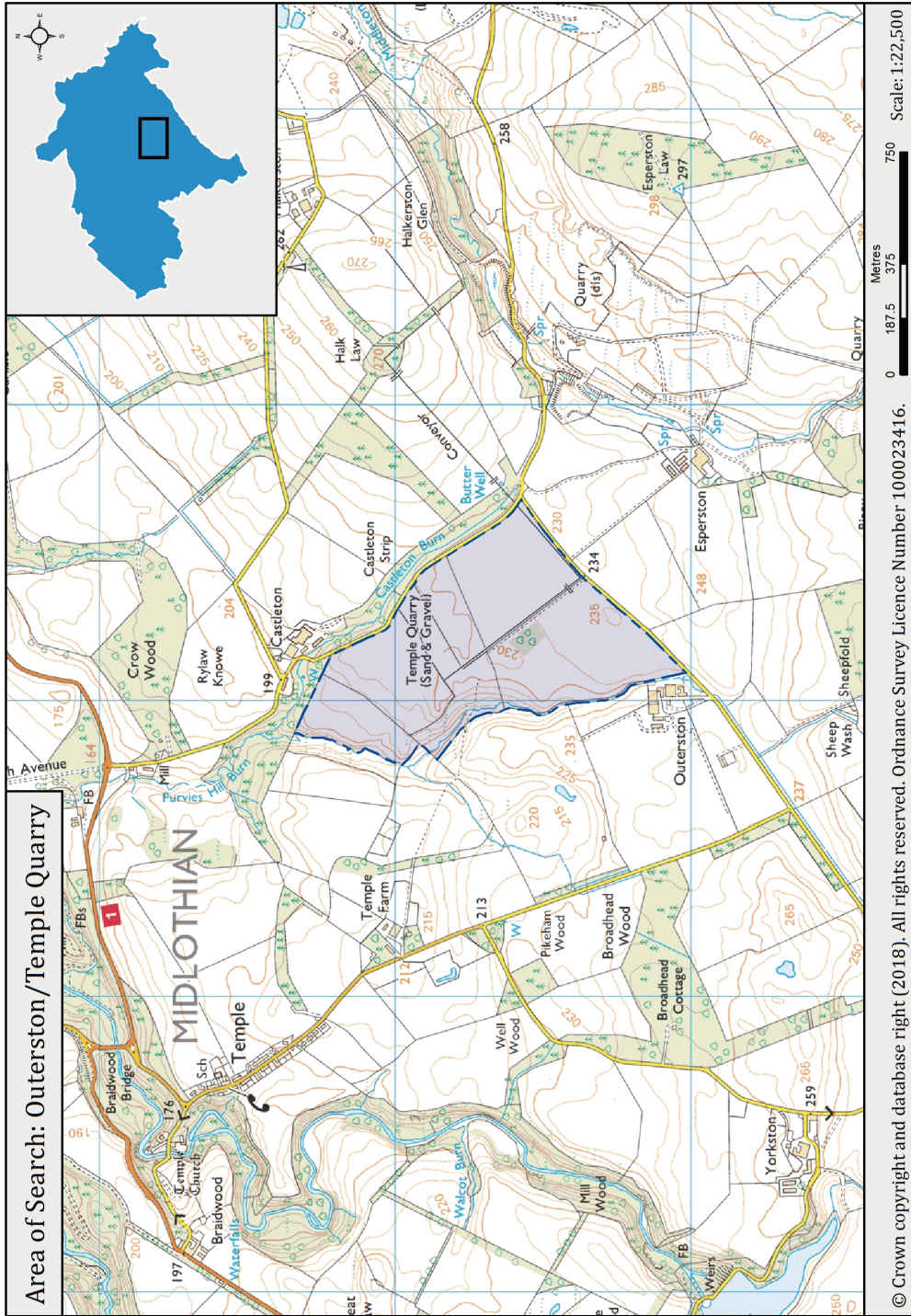
Mineral resources will be safeguarded from sterilisation by other types of development, where the deposits are of sufficient scale or quality to be of commercial interest and their extraction would be environmentally acceptable and would not conflict with the development strategy for the area.

In respect of the safeguarding aspect of this policy, the Areas of Search reflect areas where there has been active interest in developing mineral resources. The reserves in these areas will be the main focus of protection from sterilisation. In the case of coal reserves, the Council will take into account the recommended 500m buffer in Scottish Planning Policy between

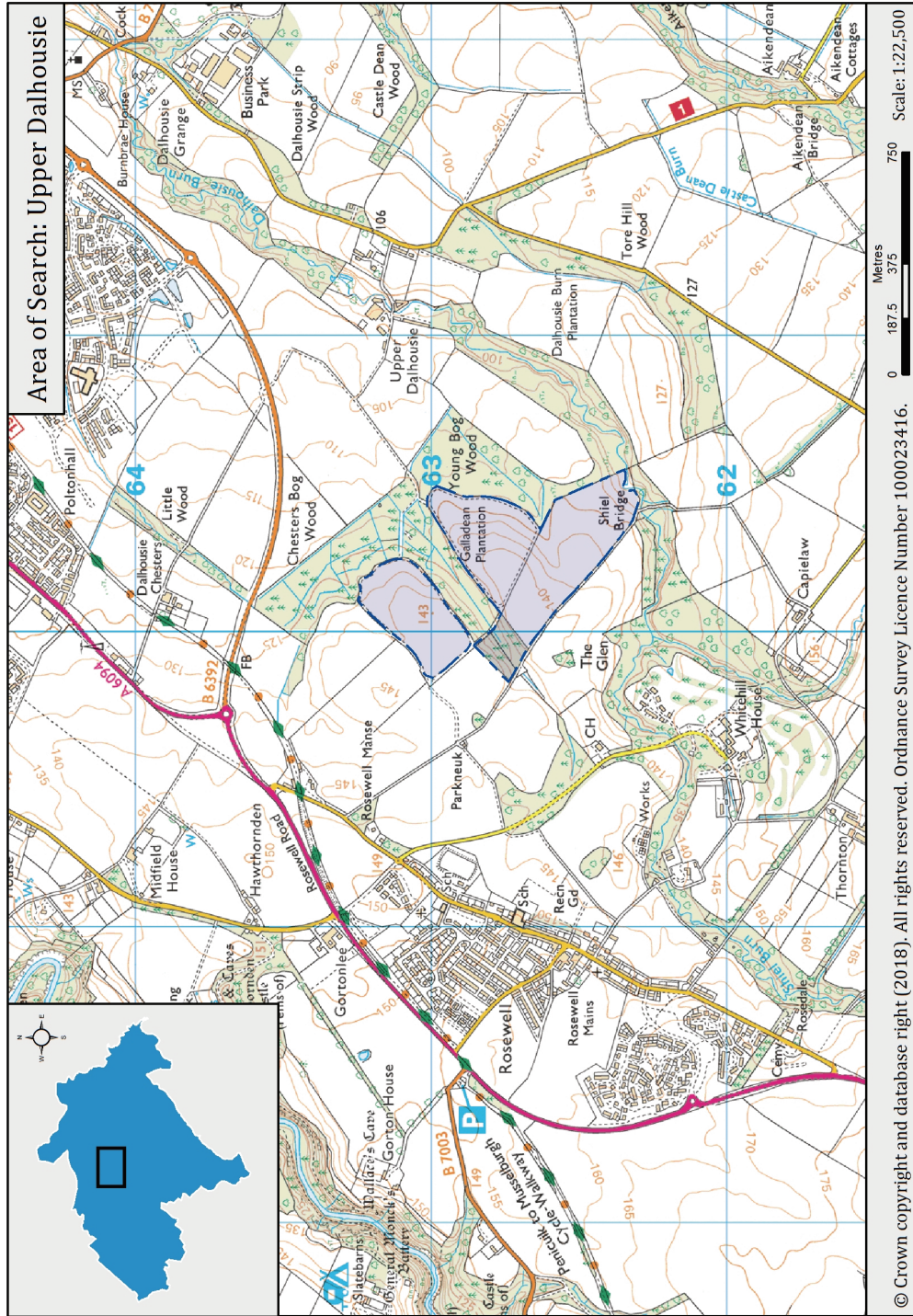
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site boundaries and settlements (recognising that it is unlikely that coal would be worked at the very edge of an area of search) in determining the potential of development proposals to sterilise the resource. The Council will come to a judgement in other cases outwith the area of search, where a valuable resource is brought to its attention.

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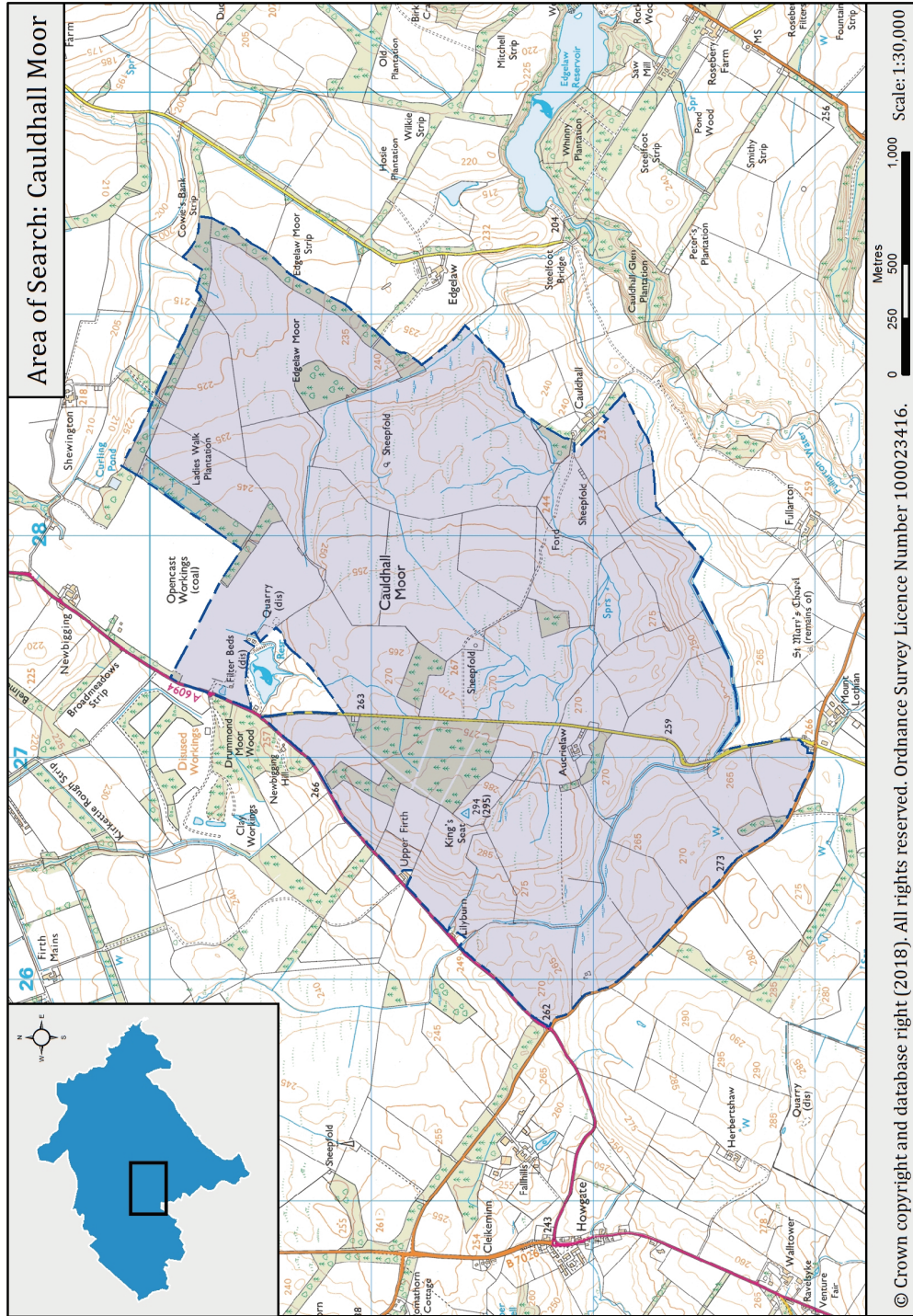


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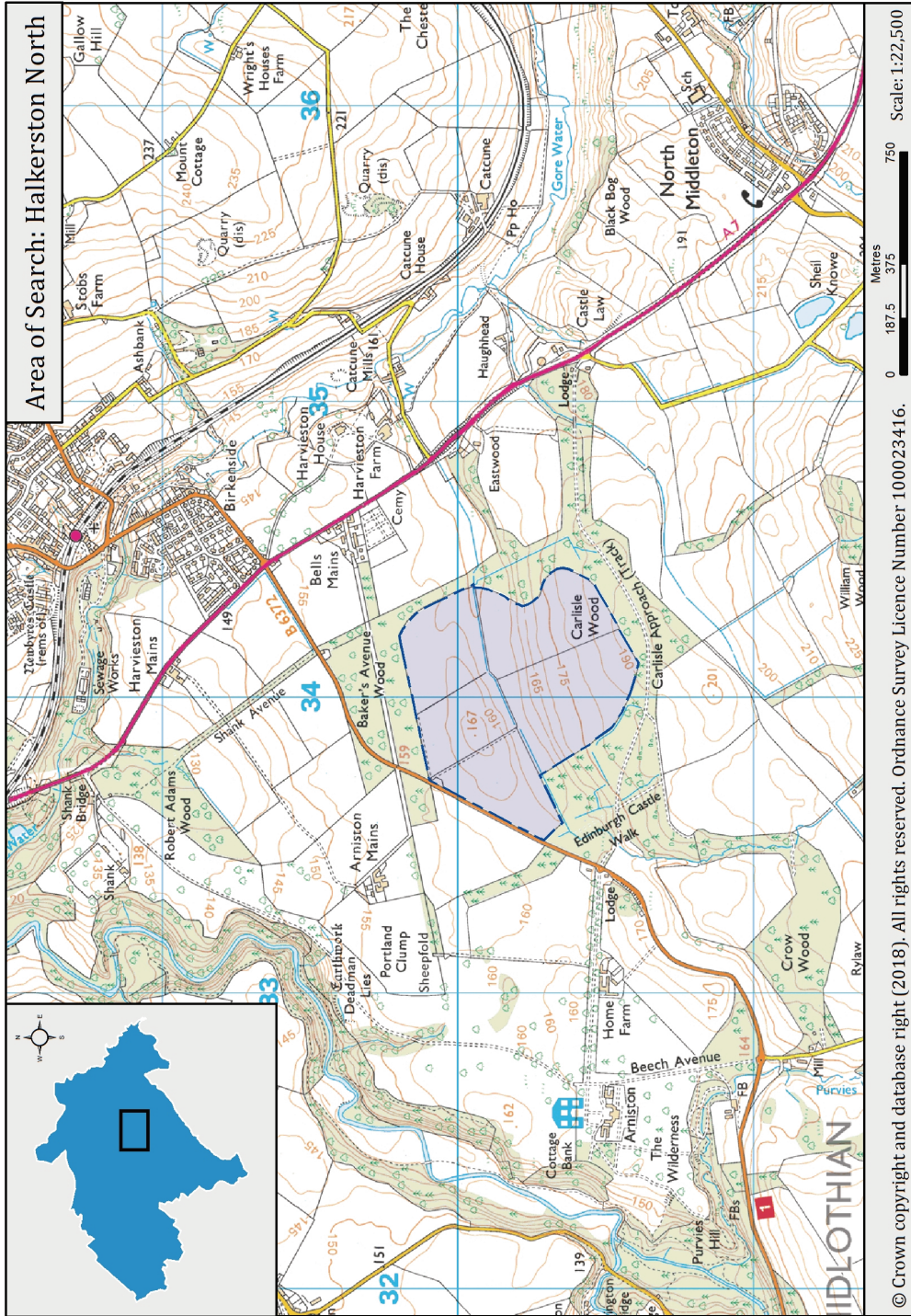
Policy MIN1 Area of Search - Upper Dalhousie

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Policy MIN1 Areas of Search - Caudhall Moor

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Policy MIN1 Area of Search - Halkerston North

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Policy MIN2

Surface Mineral Extraction

Proposals for mineral extraction are required to meet the criteria set out in the Supplementary Guidance on *Resource Extraction*. They will not be permitted where they would have a significant adverse effect on communities, sensitive uses or the environment and will only be supported if the Council is satisfied that they are acceptable in relation to the following matters, as detailed in the Supplementary Guidance:

- effect on the health and amenity of settlements, communities and housing groups or other sensitive uses;
- effect on the landscape, in particular that of the Green Belt, Pentland Hills Regional Park, and Special Landscape Areas;
- effect on soils, in particular prime agricultural land, and peatland;
- effect on the water environment;
- effect on nature conservation and biodiversity, in particular sites of international, national or local nature conservation value;
- effect on the historic environment, in particular: Conservation areas, scheduled monuments, listed buildings, historic gardens and designed landscapes, historic battlefields, significant archaeological sites (and, where relevant, the settings of the aforementioned designated areas or buildings);
- effect on the road network, particularly local roads;
- cumulative effects of the proposal when combined with other consented or operational mineral extraction or landfill activities;
- effect on the local economy in terms of tourism, leisure or recreation; and
- robustness and suitability of proposals for restoration and aftercare.

In determining applications for surface coal extraction, the Council will also consider any beneficial impacts from extraction in terms of site remediation and stabilisation, or other permanent physical benefits to the community.

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The extraction of a secondary material (for example, fireclay from a coal extraction site) is supported provided that its removal does not detract from high quality restoration, or have unacceptable environmental effects (including from cumulative vehicle movements).

In order that the supply and demand for aggregates can be monitored, operators of new aggregates sites will be required to supply annual statements of production and remaining reserves.

Policy MIN 3

Onshore Oil and Gas

Proposals for oil and gas extraction will not be permitted where they would have a significant adverse effect on communities, sensitive uses or the environment. Proposals will be assessed with reference to the Supplementary Guidance on Resource Extraction. All proposals for appraisal, exploration or production must demonstrate proposals for suitable restoration and aftercare should development cease at any phase of extraction.

3 Detailed Criteria for Mineral Extraction

This proposed Supplementary Guidance is for consultation. There are questions throughout on particular matters where we would like to hear your view. You may answer as many of these questions as you wish. The last question is 'open', allowing you to make further comments about the SG.

Planning Process matters

Under The Town and Country Planning (Environmental Assessment) (Scotland) Regulations 2017, proposed quarries and open cast mining (where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares) shall require Environmental Impact Assessment (EIA), as part of the planning application process. Smaller quarrying or mining operations require to be screened for EIA based on the characteristics of the development, its location and impacts.

The EIA process includes scoping, whereby the required scope of the assessment is established, through a dialogue between the planning authority, the applicant and other stakeholders.

Midlothian Council recommends that promoters of mineral applications engage in pre-application discussions in order to shape proposals ahead of statutory pre-application consultation, environmental assessment and application phases. In some complex cases the Council and applicant will enter into a processing agreement, as a means of managing a complicated application. Such an agreement may recognise that some applications will take longer than the statutory period to determine. The need for such an agreement and its scope should be determined at pre-application stage.

There are statutory requirements for Pre-Application Consultation (PAC) between a prospective applicant and communities. Minerals developments of more than 2 hectares surface area are classed as 'major' development within the meaning of the regulations and are required to carry out a PAC: Scottish Government Circular 3/2013 Development Management Procedures (revision 1.0) provides further information) <http://www.gov.scot/Publications/2013/12/9882/0>

For larger minerals developments (those requiring EIA), Midlothian Council recommends the establishment of Community Liaison Committees to involve communities and ensure their voice is heard as a minerals site is worked and restored. These should include representatives of the community, developer and planning authority, and meet at appropriate intervals (to be determined in the circumstances of the development) over the duration of the project.

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Question 1

Should a stronger requirement for the establishment of Community Liaison committees be included?

Question 2

Should the guidance be more prescriptive on how Community Liaison committees operate?

Policy MIN2 - detailed criteria.

Policy MIN1 of the MLDP presumes against surface mineral extraction outwith Areas of Search. Policy MIN2 does not permit proposals for mineral extraction where they would have a significant adverse effect on communities, sensitive uses or the environment, and will only be supported if the Council is satisfied that they are acceptable in relation to a number of matters outlined in the policy, to be detailed in supplementary guidance.

The bullet points established in the policy are numbered below, with further detail as appropriate.

1. Effect on the health and amenity of settlements, communities and housing groups or other sensitive uses

Extraction involving surface coal extraction or other extraction involving blasting is very unlikely to be acceptable if the site is within 500 metres of an existing settlement or a proposed expansion allocated through the MLDP. In some cases the Council may accept a case for the separation distance to be adjusted, depending on the local circumstances of the proposal (for example the location of engineering operations or working faces): this will have to be fully justified and ensure protection of any sensitive nearby uses.

Extraction is very unlikely to be acceptable where environmental impact assessment indicates that significant adverse impacts would be experienced at an individual dwellinghouse or sensitive establishment (including residential institutions) which cannot be mitigated satisfactorily.

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Where environmental impact assessment indicates that unacceptable impacts would be experienced at an individual property, and the applicant proposes to address this by relocating affected residents for the duration of the works, the Council must be satisfied that this is achievable and that there is no resident left at unacceptable environmental exposure.

Proposals must meet acceptable standards for levels of ground or airborne vibration and levels of dust and noise emissions set out in PAN50 and its annexes, or at more demanding levels where specified in this SG (whichever provides the highest environmental standard), or at a more demanding level if future revised national guidance indicates that this is appropriate. At scoping stage the Council and applicant will agree the locations to be assessed and the target values which must be achieved.

The Council will seek adherence to the following environmental standards.

Air Quality and Dust. The Council will require air quality and dust matters to be addressed in minerals planning applications. The proposed activities over the life of the development, wind speeds and direction, sensitive receptors, topography and other factors likely to exacerbate or screen dust, should be considered.

The primary health concern is from fine dust particulates. In the case of fine dust particles (PM_{10} or less) consideration of sensitive receptors may extend up to 1km from the site. At the scoping stage the Council may require a dust assessment study (as part of EIA, or separately if the scheme does not trigger EIA) which may generate minimum stand off distances to sensitive receptors.

The Council will require applicants to demonstrate good environmental practice with respect to dust. This should include appropriate mitigation and control measures, including but not limited to: location of dust generating activities so that as far as possible they are located away from or screened from sensitive neighbours; provision of screening (whether in the form of bunding or planting) to reduce connectivity between source and receptor, mitigation through water sprays, establishment of working methods that take account of weather conditions, planting/seeding on earth mounds to bind soils, and sheeting/ wheel washing of haulage vehicles leaving the site.

The Council will require a detailed scheme of monitoring to be carried out by site operators, with results to be reported to the planning authority (and also to Community Liaison Committees, where established) to ensure compliance with planning conditions.

The release of fine particulate material is a matter which affects public health and is covered by limits set by EU directives and Scottish Government guidelines. For particulate matter (PM_{10}) exposure at any sensitive receptor must not exceed 50 microgrammes per cubic metre over any 24 hour period or 18 microgrammes per cubic metre averaged across

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a year. Very fine particulate matter ($PM_{2.5}$) should not exceed 10 microgrammes per cubic metre averaged across a year. These target values shall apply at all locations where members of the public might be regularly exposed.

PM_{10} and $PM_{2.5}$ emissions are also associated with road traffic emissions (and are more likely to be problematic in heavily congested areas). This is a matter to be addressed by the Transport Assessment element of any EIA, which will consider the effect of haulage traffic on congestion. The Council may require further evidence how this interacts with any Air Quality Management Areas (AQMA) extant at the time of the application. The Council will wish to be satisfied that minerals applications in all cases do not give rise to conditions that would necessitate the establishment of further AQMAs.

In assessing air quality the Council will require to be satisfied that the standards set out above are not breached by the combination of the process contribution of the minerals operation and background particulate levels.

Dust deposition should not exceed more than 200 milligrams per square metre per day, at any sensitive location.

Question 3

The Council has chosen the most demanding of the range of acceptable deposition rates quoted in Scottish Government guidance to reflect rising environmental expectations. Do you agree with this approach?

Noise. The Council will require noise matters to be addressed in minerals planning applications. Irrespective of the maximum noise values set out below, the Council shall seek and require best practice so that noise is reduced and contained as much as possible. The Council will consider the range of operations on the site, their potential to cause noise, and the need to restrict operating hours (see provisions elsewhere in this SG on blasting and HGV access).

Noise assessment (which may form part of an EIA) should establish the baseline conditions, and estimate likely noise arising from each aspect of the development at source and at sensitive receptors identified through scoping of the application. The Council will require noise standards that reflect the existing noise regime in a locality. In a quiet rural area, where the background noise level is 35dB (A) or less, noise limits will be set at 45dB L_{Aeq} (1 hour) (free field) at an identified sensitive location such as a residential property. In areas of higher background noise, limits of up to a maximum 55dB L_{Aeq} (1 hour) (free field) may be

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acceptable at sensitive locations, but in each case the Council will come to a judgement based on background conditions and the advice of Environmental Health professionals (see the glossary for explanation of noise terminology).

The Council will require a detailed scheme of monitoring to be implemented by site operators, with results to be reported to the planning authority, to ensure compliance with planning conditions and remedy of any problems that may occur. Where Community liaison committees have been established, results of monitoring will also be shared with them.

Temporary noisy uses: Higher noise levels for temporary operations (no more than 8 weeks in a year) of up to 70dB $L_{Aeq, (1 \text{ hour})}$ (free field) may be acceptable. The Council would need to be satisfied that these temporary operations were necessary, were for as short a period of time as possible, and could be accomplished within 8 weeks in a given year. At very sensitive locations the Council may require the provision of temporary noise screening in advance of commencement of temporary noisy operations.

Question 4

Is the approach to noise, including suggested noise limit values appropriate?

Vibration. In assessing applications the Council will wish to be satisfied that the proposals represent the best current practice in respect of any blasting proposals. In cases where blasting is used (likely only to arise in the case of hard rock quarrying, or where a rock overburden covering the mineral is to be removed) times of blasting should be agreed with the planning authority in advance. The Council will require blasting to be restricted to set days of the week and times that minimise the impact on the locality. Efforts should be made to inform the community prior to any blasting (including through a community liaison committee, where established).

Ground vibration as a result of blasting experienced at any sensitive receptor must not exceed a peak particle velocity (PPV) of 12 millimetres per second (mm/s), average levels should not exceed 10mm/s, and 95% of all blasts shall not exceed a PPV value of 6mm/s. The Council will also wish to be satisfied that transfer values (or magnification levels) have been taken into account, reflecting that vibration may be higher at upper levels in a building than at ground level. The Council may impose lower PPV levels in cases where there is particular sensitivity such as vibration sensitive industry, a Category A listed building or Scheduled Ancient Monument, or an area prone to subsidence through historic mining activities (the Council will require to be satisfied that an applicant has explored this thoroughly, particularly so that the presence of traditional 'stoop and room' mining areas, which have been prone to collapse, is identified).

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Question 5

Is the approach to vibration, including the values for PPV appropriate?

Operating hours (including heavy goods vehicles arriving or leaving the site) should be restricted to daytime Monday to Friday (0800 to 1900) and half day Saturday (0800 to 1300) and excluding main public holidays (Easter, Christmas and New Year), unless justified in relation to the specific circumstances of the application. Some essential and low impact activities, to be agreed in conditions, may be permitted outwith these hours. There are particular controls on when blasting may occur (see matters on vibration, above).

Question 6

Do you agree with the proposed controls on operating hours?

2. Effect on the landscape

Operations should avoid permanent adverse effects on the landscape and seek to avoid significant short term effects. For developments requiring EIA, the Council will establish viewpoints for the assessment of the proposal at scoping stage. For non-EIA development the Council will seek early discussion on landscape matters. Proposals must minimise the visual impact of the operations on the surrounding landscape through the careful design and phasing of the workings and overburden mounds, together with the provision of screening bunds where appropriate. Where mineral workings are likely to be of prolonged duration, the proposal should commence reinstatement as part of a phased restoration (reference should be made to the section on Restoration and Aftercare for guidance on long term reinstatement of sites).

The Green Belt and Pentland Hills Regional Park are particularly sensitive landscapes and have specific support in other policies of the MLDP. The Council is unlikely to support extraction in these areas (in addition to the presumption against extraction outside Areas of Search). The Council is unlikely to support extraction in Special Landscape Areas other than at the established Area of Search at Halkerston North - development here will be required to demonstrate a particularly careful plan of working and high restoration quality, to reflect the sensitivity of the locality.

The Council wishes to see the long term enhancement of landscape quality at minerals sites. The restoration should reflect the local landscape character.

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3. Effect on soils, in particular prime agricultural land, and peatland

Development involving loss of prime agricultural land and peatland will only be acceptable subject to the Council being satisfied that adequate provision for restoration has been made (see restoration matters below). This will require applicants to set out arrangements for soil removal, storage and reinstatement. In most cases reinstatement should be on site, although in very limited circumstances set out in 'Restoration Matters' high quality agricultural soils may be removed from a site and used in restoration elsewhere.

For peat deposits left in situ, the Council will require to be satisfied that developers can maintain a site hydrology that preserves the peat formation, as the site is developed around the deposit. Where extraction of peat itself is the object of the extraction, related Policy ENV5 Peat and Carbon Rich Soils gives significant protection to Peatland, and extraction of peat is only acceptable in very specific circumstances outlined in Policy ENV5.

The Council will require any Regionally Important Geological and Geomorphological Sites (RIGS) to be protected.

4. Effect on the water environment

The River Basin Management Plan (RBMP) for Scotland considers the current status and pressures on the water environment, and sets objectives to be achieved. The aim of the RBMP is to (i) ensure no worsening in water body status and (ii) to bring about the progressive improvement of all water bodies to good status over time. The Scottish Environment Protection Agency (SEPA) water environment hub <https://www.sepa.org.uk/data-visualisation/water-environment-hub/> provides details on the status and objectives of each water body.

The Council will require to be satisfied that negative effects, which would cause the status of a water body to be lowered, or which would have a deleterious effect on the attainment of the environmental objectives for a water body as set out in the River Basin Management Plan, are avoided. Water quality, the physical condition of a water body and maintenance of flow and recharge rates to surface and ground waters will be key matters for consideration.

Where there are private water supplies likely to be impacted by the proposal, the Council shall require to be satisfied that a safe and wholesome supply is maintained or require an alternative mains supply to be provided at the developer's expense.

SEPA regulate a number of activities in relation to the water environment under the Controlled Activities Regulations (CAR). [SEPA CAR regulations guide](#)

Midlothian Council will work closely with SEPA in considering water environment effects of resource extraction proposals, to ensure that planning conditions support the standards required by CAR, but also to reduce any duplication of effort in monitoring.

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5. Effect on nature conservation and biodiversity

Development proposals will be expected to be compatible with the aims and objectives of the Midlothian Local Biodiversity Plan. This means compensating for any losses, ensuring maintenance of green networks and connectivity and seeking to leave a legacy of improved networks as part of the restoration. Reference should be made to the Supplementary Guidance on Green Networks and the planning guidance on Nature Conservation in the formulation of any proposals.

Nature conservation sites are classified by importance, with varying levels of protection afforded to them. The Council will require to be satisfied that the provisions of MLDP policies in respect of Internationally Important Nature Conservation Sites (ENV12), Nationally Important Nature Conservation Sites, Regionally and Locally Important Nature Conservation Sites (ENV14) and Species Protection and Enhancement (ENV15) are met.

6. Effect on the historic environment

The Council will require to be satisfied that the provisions of MLDP policies in respect of Conservation Areas (ENV19), Nationally Important Gardens and Designed Landscapes (ENV20), Nationally Important Historic Battlefields (ENV21), Listed Buildings (ENV22), Scheduled Monuments (ENV23), Other Important Archaeological or Historic Sites (ENV24) are met.

In the case of a site affecting an identified site of archaeological importance the provisions of Policy ENV25 (Site Assessment, Evaluation and Recording will apply).

The Council may also require archaeological evaluation where its archaeological advisors or scoping for an Environmental Impact Assessment of a site indicate that this is requisite.

7. Effect on the road network; particularly local roads

The Council will require to be satisfied that the proposal can be accessed acceptably with regard to safety, amenity and congestion. Where development requires EIA, this should include an appropriate Transport Assessment (although depending on circumstances the Council may require stand alone TA for smaller developments). The cumulative impact of the proposal together when taken together with committed projects will be considered. Network improvements may be sought prior to commencement of operations. The Council may require use of a specified haul route.

The Council may require a roads condition assessment prior to use of the haul route, with a follow up assessment following cessation of operations and recharge to remedy any damage.

Lorries should be sheeted and their wheels cleaned before leaving the site.

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8. Cumulative effects of the proposal when combined with other consented or operational development, including other mineral extraction or landfill activities

The Council will require to be satisfied that there are no unacceptable adverse impacts at a sensitive receptor as a result of cumulative effects. In cases where EIA is required these will be identified at scoping stage.

Proposals must minimise environmental disturbance through the removal of all minerals in a single operation from any site where this is economically feasible. Proposals must include, as far as is practicable, supporting information indicating the operator's understanding of the availability of mineral reserves in adjoining land and their interest in any likely future extensions to their proposed workings. The Council will seek to ensure that no community or individual sensitive receptor is subject to more than 10 years of continuous extraction.

9. Effect on the local economy in terms of tourism, leisure or recreation

The Council will not support minerals proposals where it considers negative effects on the economy outweigh the benefits of the proposal. The Council may require this matter to be considered further through assessment of socio-economic effects (this may be part of an Environmental Impact Assessment).

Through site restoration the Council may support improvements to the local path network (depending on the circumstances of the site), in particular links that support the objectives of the Green Network Supplementary Guidance.

Question 7

Do you have any views on the other detailed criteria with respect to site implementation?
Please enter your comments in the box below.

10. Robustness and Suitability of proposals for restoration and aftercare

This aspect of minerals operations is particularly important, to avoid a repetition of past problems in the coal sector, and potentially in other mineral operations as well. There has been much recent work in this area by the Scottish Opencast Coal Task Force, resulting in the report 'Surface Coal Mine Restoration: Towards Better Regulation.'

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Statement 1**Objectives of site restoration and aftercare.**

To promote safety. Dangerous voids, potential falls and drowning hazards must be avoided.

To ensure that the environment and any other important features of the site are restored to the previous or better condition.

Monitoring. At the planning application stage the Council will determine monitoring points and the frequency of monitoring, and the reporting arrangements. For very large applications the Council will support use of a Compliance Assessor or 'Environmental Clerk of Works' approach - a monitoring service funded by but independent of the applicant to ensure that environmental standards are complied with. The Council encourages the setting up of Community Liaison Committees as a way to increase community oversight of an operation and increase mutual understanding between the community, operators and regulators.

Question 8

Do you support the approach to monitoring?

Question 9

Should the supplementary guidance with respect to restoration matters be split to recognise opencast coal extraction as an activity distinct from other types of minerals extraction, requiring a different approach?

Proposals must include schemes for both restoration and any required aftercare of the site.

At large sites operators should adopt progressive restoration to limit the impact of the development, minimise waste and reduce their exposure to restoration costs.

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The Council supports the drawing up of a Mine or Quarry Progress Plan (MQPP) as part of a planning application. The purpose of the plan is to provide transparency and oversight to ensure projects are developed and restored as intended. The MQPP would form the basis of the agreed working and restoration programme, and be secured by condition. The planning authority (and where appropriate the community liaison committee as well) would monitor implementation of the Progress Plan.

Question 10

Should the support for mine and quarry progress plans be strengthened to a requirement?

Question 11

Is it appropriate to require progress plans for aggregates quarries as well as coal mines?

Following a consultation in 2017, the Scottish Government introduced a new fees regime for monitoring surface coal mines (Circular 2/2017 fees for monitoring surface coal Mining Sites (Scotland) regulations 2017). For mineral operations other than coal, Midlothian Council may seek a legal agreement to support monitoring arrangements (the scale of the monitoring to be determined as proportionate on the basis of the sensitivity and scale of the proposals).

Restoration and Aftercare. The Council will require to be satisfied that there are adequate funds in place to restore the site at all phases of operations, including a margin for risks and uncertainty. The Council may seek independent advice to determine these sums.

The Council considers that a ring-fenced fund secured through legal agreement is the best form of financial instrument to effect restoration and aftercare. This would be a fund expressly set aside for this purpose. Depending on the site characteristics, the amount of money in the fund might be linked to the sequence of activities in the MQPP and 'profiled' so that the amount in the fund steps up as each stage of extraction proceeds, then steps down again as liabilities are reduced by sequential restoration. The fund would have to be topped up to exceed inflation, and to include allowance for risk. The fund would be set aside from other creditors in the event of a company liquidation, and be available in the event of such a failure to the Council and other agencies carrying out restoration work.

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This approach builds on the accepted practice in Midlothian of using Section 75 agreements to fund essential infrastructure; where the requirements for funds are agreed in advance by the parties in a legally binding agreement, release of funds is triggered at different stages of development, and funds are clearly ring fenced for a specific purpose.

Question 12

Do you support this approach to securing site restoration?

In determining ring fenced funds for restoration, the Council is concerned to ensure that adequate provision is made for restoration that may happen several years after the proposal is granted. Aside from general inflation costs factors such as (for example) labour or plant hire may increase at a greater rate, or a site specific factor may emerge which could increase costs beyond what was envisaged.

Question 13

Do you have any views on the best way to account for uncertainties and risk in restoration? Please enter your comments in the box below.

Where coal measures are extracted, the landscape should be restored to one closely resembling the original landform by the retention and reinstatement of overburden material, following removal of the coal seams. The scheme of planting should seek to restore or if possible enhance what was there before. Where mineral aggregates are extracted the Council accepts that restoration of the former landscape may not be possible, but will seek the creation of a functionally useful and attractive landscape solution which reflects the local landscape character.

The establishment of a new landscape may take many years after the cessation of extraction. The role of aftercare and restoration is to carry out an agreed 'active' phase, after which the land can be handed on new stewardship, and the active monitoring of the planning service can cease. In respect of coal sites only, the regulations in Circular 2/2017 allow for site visits of dormant and inactive sites, with provision for monitoring fees to be recovered from the operator. Midlothian Council generally seeks the restoration of mineral sites to closely follow the extraction phase as part of one operation and does not wish to see the creation of new dormant or inactive sites.

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It should be remembered that there are underlying responsibilities and liabilities which fall to owners of land: the December 2013 Court of Session case (SEPA and others vs liquidators of the Scottish Coal Company) was useful in clarifying that a liquidator could not disclaim ownership and thus liabilities associated with land. In such 'worst case' scenarios however, Midlothian Council wishes to ensure that restoration funds are held apart from any liquidation process, through the establishment of ring-fenced funds. The Scottish Mines Restoration Trust can provide support for restoration of coal sites, but the objective of this guidance is to avoid adding to the stock of such legacy sites.

Question 14

Is it necessary for the supplementary guidance to provide a framework for long term monitoring beyond the active restoration stage?

Where prime agricultural land (particularly classes 1 or 2) is found on site, the Council expects valuable soils to be stored and reinstated on site. In exceptional circumstances the soils might be removed from the site and employed at another location where they may be of continuing value (for example in a bing restoration scheme). This would have to be justified to the satisfaction of the Council (for example where the site was to be developed for another use following extraction).

In the case of extraction under or alongside peatland, the Council expects peat to be stored and reinstated. This will require careful attention to the hydrology of the restored site; the aim should be to propagate the formation of new peat as time goes on, which might be a long term benefit in a location where the hydrology and the peat resource has been damaged by previous human intervention. The Council may require some peat deposits to be left in situ, and will be guided by advice received in the development management process from SNH and SEPA. Cases where the extraction of peat itself is the objective are addressed below in related policy MLDP Policy ENV5 (Peat and Carbon Rich Soils).

In respect of water environment monitoring and restoration matters, the Council will wish to be satisfied that proposals demonstrate that they have identified best practice at design, extraction and restoration phase. The Council may require monitoring of water quality and flow volumes sufficient to determine that the water environment has not been adversely affected. The interaction between mining operations and the water environment is also likely to be subject of the Controlled Activities Regulations (CAR) managed by SEPA. The Council will establish provision through conditions and use of ring fenced restoration funds, such that where monitoring results suggest that a change in the operating method or additional measures are necessary, the requisite amelioration can be made. SEPA CAR enforcement

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procedures may also provide regulation in this respect. The objective is that post restoration, the level of monitoring required at a water body potentially affected by mineral development, should be no more than was necessary in its pre-development condition.

Other Matters

Secondary minerals: The extraction of a secondary material (for example fireclay from a coal extraction site) is supported provided that its removal does not detract from high quality restoration, or have unacceptable environmental effects (including from cumulative vehicle movements).

Information for aggregates supply monitoring. So that the supply and demand for aggregates can be monitored, and to measure compliance with the required 10 years landbank in SPP, operators of new aggregates sites will be required to supply annual statements of production and remaining reserves.

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4 Onshore Oil and Gas

Onshore Oil and Gas.

The activities of coal bed methane extraction and oil and gas extraction through hydraulic fracturing (also known as unconventional gas extraction) were subject to a moratorium in Scotland at the time of the preparation of the Midlothian Local Development Plan, as the Scottish Government conducted further assessment and consultation. The Scottish Government has subsequently settled on a policy position of not supporting the development of unconventional oil and gas (the letter of October 3rd 2017 from the Chief Planner to the Heads of Planning Scotland refers, see Appendix 2). The final Scottish Government position is subject to Strategic Environmental Assessment, and is likely to be formalised in Summer 2018. A legal challenge to this position was heard in the Court of Session and dismissed in June 2018.

This new national policy position overtakes Policy MIN3, and the Council does not propose to set out further guidance on the assessment of oil and gas applications. Should the national policy position be changed (in which case the Scottish Government may wish to issue additional environmental and regulatory guidance), this aspect of the SG may be revisited.

Question 15

Please provide any comments you wish to make about any part of the Supplementary Guidance on Resource Extraction not addressed by the other questions.

5 Glossary

Aggregates landbank - a measure of the consented reserves that could come forward, usually expressed as a years equivalent supply based on recent extraction rates.

Coal Bed Methane (CBM) extraction. Process of de-watering old coal workings to allow trapped gas to be collected.

dB (A) - Measure of sound level weighted to reflect those frequencies audible by the human ear.

Environmental Impact Assessment (EIA) - Process of assessment required for certain applications. This may be required either without screening (known as Schedule 1 of EIA, in the case of mining sites with area 25ha or greater); or found to be required for other applications after screening and consideration of the characteristics of the development and its location (known as Schedule 2 development). EIA requires environmental factors to be considered and outlined, including consideration of the methodologies to be adopted (process known as scoping). Environmental Assessment can then take place, considering the significance of the environmental effects, and potential to mitigate negative/ accenuate any postive factors.

Free Field - a sound measuring location, typically a few metres from the facade of the sensitive location being assessed, away from reflective sound surfaces.

Hydraulic Fracturing - use of high pressure water and sand proppant to break open and collect oil and gas from shale deposits.

$L_{Aeq, T}$ - Equivalent Continuous Sound Level, this measure takes all of the sound events experienced over a specified time period (T), and expresses these as an average or as if experienced as a continuous sound level.

L_{A90T} - Measure of background noise levels. Noise level (adjusted for amplitudes heard by the human ear - the A rating), exceeded for 90% of the time over a time period (T).

Peak Particle Velocity - measure of ground vibration, the maximum velocity experienced by a particle as the wave propagatged by (for example) blasting or traffic passes through. Usually expressed in millimetre per second (mm/s), representing the highest value measured in one of three mutually perpendicular planes.

PM_{10} and $PM_{2.5}$ - These are measures of small dust particulates (PM_{10} refers to average diameter between 2.5 and 10 micrometres, $PM_{2.5}$ refers to average diameter of less than 2.5 micrometres. These small particles are a particular focus of Scottish air quality policy due their health effects (larger dust particles and grit are more of a nuisance and amenity factor as they are too large to enter the respiratory system).

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River Basin Management Plan (RBMP) - a system of plans actuated by the EU Water Framework Directive, involving assessment of water body quality (water bodies including groundwaters, and 'quality' also considering water body morphology and quantity), with the requirement not to let a water body fall in quality status, with all water bodies expected to achieve good status over time.

Sensitive Receptor - terminology used in Environmental Impact Assessment referring to an entity that is sensitive (for example a dwellinghouse, or a natural habitat) and which may receive environmental impact from a development. A goal of EIA is to identify these in relation to each of the environmental factors and then test to see whether resulting impacts on them are or can be made acceptable.

Unconventional Gas - collective term for extraction of hydraulic fracturing for shale oil and gas and coal bed methane extraction.

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6 Appendix 1 - list of questions

Question 1. Should a stronger requirement for the establishment of Community Liaison committees be included?

Question 2. Should the guidance be more prescriptive on how Community Liaison committees operate?

Question 3. The Council has chosen the most demanding of the range of acceptable deposition rates quoted in Scottish Government guidance to reflect rising environmental expectations. Do you agree with this approach?

Question 4. Is the approach to noise, including suggested noise limit values appropriate?

Question 5. Is the approach to vibration, including the values for PPV appropriate?

Question 6. Do you agree with the proposed controls on operating hours?

Question 7. Do you have any views on the other detailed criteria with respect to site implementation?

Question 8. Do you support the approach to monitoring?

Question 9. Should the supplementary guidance with respect to restoration matters be split to recognise opencast coal extraction as an activity distinct from other types of minerals extraction, requiring a different approach?

Question 10. Should the support for mine progress plans be strengthened to a requirement?

Question 11. Is it appropriate to require progress plans for aggregates quarries as well as coal mines?

Question 12. Do you support the approach to securing site restoration?

Question 13. Do you have any views on the best way to account for uncertainties and risk in restoration?

Question 14. Is it necessary for the supplementary guidance to provide a framework for long term monitoring beyond the active restoration stage?

Question 15. Please provide any comments you wish to make about any part of the Supplementary Guidance on Resource Extraction not addressed by the other questions.

7 Appendix 2 - Letter from Scottish Government

Local Government and Communities Directorate
Planning and Architecture Division



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0131-244 7528
E: chief.planner@gov.scot

Heads of Planning

03 October 2017

Dear Sir/Madam,

CONTROL OF UNCONVENTIONAL OIL AND GAS DEVELOPMENTS

The Scottish Government has today announced that, on the basis of available evidence, the Scottish Government does not support the development of unconventional oil and gas in Scotland.

The Scottish Government will continue to use planning powers to give effect to this policy. THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS) (UNCONVENTIONAL OIL OR GAS) (SCOTLAND) (NUMBER 2) DIRECTION 2015, which gave effect to the moratorium on unconventional oil and gas, will continue to remain in force.

The notification arrangements are on the same basis as the Direction issued on 28 January 2015.

As required under the Environmental Assessment (Scotland) Act 2005, the Scottish Government will shortly commission a Strategic Environmental Assessment of our preferred position on unconventional oil and gas.

Regards

John McNairney
Chief Planner

Victoria Quay, Edinburgh EH6 6QQ
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COMMUNICATING CLEARLY

We are happy to translate on request and provide information and publications in other formats, including Braille, tape or large print.

如有需要我們樂意提供翻譯本，和其他版本的資訊與刊物，包括盲人點字、錄音帶或大字體。

Zapewnimy tłumaczenie na żądanie oraz dostarczymy informacje i publikacje w innych formatach, w tym Braillem, na kasecie magnetofonowej lub dużym drukiem.

ਅਸੀਂ ਮੰਗ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪਾਂ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyarız.

اگر آپ چاہیں تو ہم خوشی سے آپ کو ترجمہ فراہم کر سکتے ہیں اور معلومات اور دستاویزات دیگر شکلوں میں مثلاً بریل (تایپا افراد کے لیے) بھرے ہوئے حروف کی لکھائی میں، ٹیپ پر یا بڑے حروف کی لکھائی میں فراہم کر سکتے ہیں۔