



SUPPLEMENTARY GUIDANCE: RESOURCE EXTRACTION

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek agreement to the adoption of the 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 detail is with regard Resource Extraction.
- 2.2 At its meeting of 28 August 2018 the Committee approved the draft Resource Extraction Supplementary Guidance for consultation and agreed to consider a further report on the Guidance following the proposed consultation.
- 2.3 The consultation period ran for five weeks from 7 September to 12 October 2018.
- 2.4 The draft Resource Extraction Supplementary Guidance was published on the Council's website and available for inspection at Fairfield House and in all Midlothian Council libraries. All Midlothian Community Councils were consulted, as were a variety of other Midlothian community groups, those who had commented on the Resource Extraction section of the Proposed Midlothian Local Development Plan and other known parties considered to have an interest in the document. This included Midlothian residents, adjoining local authorities, Government agencies, third sector organisations, representatives of the development industry and developers with a known interest in sites identified in the Local Development Plan with Resource Extraction implications from the draft supplementary guidance and the adopted Midlothian Local Development (2017).

3 REPRESENTATIONS

3.1 As part of the consultation process responses from eight parties were received. Responses were received from a spread of consultees including; community councils, the quarrying industry and Government agencies.

3.2 A summary of the consultation responses received with the proposed officer response and a track change copy of the draft Resource Extraction Supplementary Guidance document showing proposed deletions and additions to the document arising from the consultation is attached to this report. New text within the Guidance document is shown in red.

3.3 The responses received comprised:

- The Coal Authority emphasised the need for restoration of sites to enhance the biodiversity and environmental value of sites;
- Dalgleish Associates consider that there may be a need in some cases for a more flexible approach to operating hours. They also note the difference in scale of restoration liabilities between coal and aggregates operations;
- The Mineral Products Association states that the industry would prefer the use of planning conditions rather than Section 75 agreements as a means of securing financial provision for site restoration. They also wish to avoid duplication of monitoring between the Council and other regulatory agencies;
- Moorfoot Community Council (MCC) considers that the Guidance should be delayed to reflect the Scottish Government's pending policy clarification on climate change. Furthermore MCC request that there should be provision for longer term aftercare and note that non Scottish companies are able to disclaim restoration responsibilities;
- Roslin and Bilston Community Council requests that advanced surveys of properties which are likely to be affected by works in terms of structural damage, are undertaken at the operators expense;
- Scottish Environment Protection Agency (SEPA) advised that monitoring, restoration and aftercare should take into account the time required for water levels to recover fully post extraction operations and the potential for pollution discharges to emerge after restoration. Furthermore SEPA encourages operators and regulators to use their guidance and to develop Watercare Environment Monitoring and Mitigation Plans covering the full life of the site, with the use of Technical Review Panels for more complex sites;
- Scottish Natural Heritage advised on the need to monitor extraction sites over the long term, with a focus on securing funds towards restoration as well as the use of conditions for site restoration.

Applicants should undertake appropriate wildlife surveys in advance of any blasting operations; and

- Scottish Water request reference is made to the need to contact them regarding protection of assets and Drinking Water Protection Areas.

4 STRATEGIC ENVIRONMENTAL ASSESSMENT

- 4.1 All Scottish public bodies and a few private companies operating in a 'public character' (e.g. utility companies) within Scotland are required to assess, consult and monitor the likely impacts of their plans, programmes and strategies on the environment. This process is known as Strategic Environmental Assessment (SEA).
- 4.2 As required by the Environmental Assessment (Scotland) Act 2005, screening for likely significant environmental effects from the draft supplementary guidance has been undertaken with the Consultation Authorities - SEPA, Scottish Natural Heritage and Historic Environment Scotland. The Consultation Authorities agree with the Council's opinion that no such effects are likely.
- 4.3 The Council is now in a position to make a formal determination that no such effects are likely, thereby exempting the supplementary guidance from any requirement for Strategic Environmental Assessment ('SEA'). The supplementary guidance cannot be considered adopted until such a determination has taken place. The determination requires to be advertised in a local paper within 14 days and copied to the consultation authorities.
- 4.4 The guidance has also been screened for a Habitats Regulations Appraisal (HRA) and because of the protection of sites within the MLDP a HRA is considered not to be required.

5 RESOURCE EXTRACTION SUPPLEMENTARY GUIDANCE

- 5.1 The Midlothian Local Development Plan (2017) has a commitment to prepare supplementary guidance on Resource Extraction. Not adopting this supplementary guidance would weaken the Council's position in managing resource extraction sites and their restoration and aftercare. It would also result in less information being available for preparing and assessing development proposals.
- 5.2 The supplementary guidance 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.

5.3 Section 22 of the Planning etc. (Scotland) Act 2006 requires the Council to send Scottish Ministers a copy of the Resource Extraction Supplementary Guidance intended for adoption, together with a statement setting out the publicity measures undertaken for the consultation, the comments received and how comments submitted were taken into account. Unless Scottish Ministers have directed otherwise, after at least 28 days have elapsed the Council may adopt the Supplementary Guidance,

6 RECOMMENDATION

6.1 The Committee is recommended to:

- a) adopt the Resource Extraction Supplementary Guidance (as amended following the consultation process);
- b) agree that the Resource Extraction Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
- c) instruct the Planning Manager to undertake the required notification/advertisement advising that the Resource Extraction Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
- d) instruct the Planning Manager to notify the Scottish Ministers of the Council's intention to adopt the Resource Extraction Supplementary Guidance; and
- e) be advised of the outcome of the notification to the Scottish Ministers.

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Background Papers: MLDP 2017 adopted 7 November 2017.

Resource Extraction Supplementary Guidance (SG) - Schedule of comments received and Midlothian Council proposed response

Consultee	Summary of Consultation response	Proposed Midlothian Council Response
<p>Question 1 <i>Should a stronger requirement for the establishment of Community Liaison committees be included?</i></p>		
<p>Moorfoot Community Council</p>	<p>Yes. Supports a stronger requirement for CLCs, considers that this should be a requirement for all developments requiring EIA.</p>	<p><u>Change proposed.</u> The Council does consider that the circumstances where a community liaison committee is required should be further defined, but not in the way suggested by the respondent. EIA can be triggered by a number of factors, some of these may be distant from human population with little community interest in the operation; conversely there may also be developments which do not require EIA but where human population and communities are in closer proximity.</p> <p>Proposed revised text will define need for CLC at large developments (>25ha) and additional text shall clarify potential need for CLCs in other circumstances.</p>
<p>Roslin and Bilston Community Council</p>	<p>At pre application stage detailed negotiation should take place between applicant, Midlothian Council and communities affected (including places on transport routes).</p> <p>Legal obligation requiring restoration of the land and clear time limit of two years.</p> <p>Should be express obligation on developer to repair all damage to local roads and ensure that local residents to not suffer unnecessary and prolonged road closures.</p>	<p><u>No change proposed</u> in respect of this representation, Council considers that CLCs should only be established for projects granted planning permission and that there are sufficient statutory pre-application measures in place to involve the community at this stage.</p> <p><u>No change proposed</u> in respect of this representation, matters relating to restoration matters are addressed below in relation to questions 8-14.</p> <p><u>No change proposed</u> in respect of this representation, Midlothian Council considers that the guidance makes sufficient provision in this</p>

	<p>Clear programme required as to how development will take place, what phases will be and when completion expected.</p> <p>Clear information about how leachate will be prevented at later stage.</p> <p>Absolute necessity for CLCs to be appointed and maintained.</p>	<p>respect, under point 7 of the guidance 'Effect on the road network'</p> <p><u>No change proposed</u> in respect of this representation, the Council considers that the provisions it has made for mine and quarry progress plans provide the necessary framework for monitoring the progress of development.</p> <p><u>No change proposed</u> in respect of this representation: with regard to leachate the Council does not expect any further landfill developments generating leachate (any proposals that do emerge would require a separate application and be handled under MLDP policy WAST3).</p> <p><u>Change proposed</u>, the Council does consider that the circumstances where a community liaison committee is required should be further refined, see proposed text set out below.</p>
<p>Changes proposed in respect of responses to Question 1.</p> <p>Remove reference to '...those requiring EIA...' and replace with '...those where site area is greater than 25ha...'</p> <p>Insert additional text; 'The Council will come to a judgement on the need for CLCs at other minerals developments based on the nature of the proposal and the proximity of human population and communities.'</p>		
<p>Question 2 <i>Should the guidance be more prescriptive on how Community Liaison committees operate?</i></p>		
<p>Moorfoot Community Council</p>	<p>Yes. Considers that through SG the planning authority should be committed to taking part in any CLC established, and should be committed to providing CLC with any necessary documents.</p>	<p><u>No change proposed</u> in respect of this representation; the nature of the community and the operations will vary from place to place. To maintain flexibility, it is not proposed to define the operation of the CLC further than it already is in the guidance.</p>

<p>Roslin and Bilston Community Council</p>	<p>CLCs should be provided with detailed guidance in respect of matters raised in RBCC reply to question 1.</p> <p>CLCs should be advised to seek dilapidation surveys on properties likely to be affected, and advising them how to proceed in relation to any structural damage or rodent infestation. CLCs need to be advised how to proceed with regard to contacting development site managers.</p> <p>Matters to be discussed should include light, vibration, dust and noise nuisance.</p> <p>Working hours should be restricted to 0800-1800 weekdays, and 0800-1300 on Saturdays. There should be no moving of heavy machinery outside these hours.</p>	<p><u>No change proposed</u> in respect of this representation; the nature of the community and the operations will vary from place to place. To maintain flexibility, it is not proposed to define the operation of the CLC further than it already is in the guidance.</p> <p><u>Change Proposed.</u> The Council considers that the SG has made adequate provision in respect of preventing structural damage, and that community and developer representation on the CLC would allow for dialogue in the manner suggested: however in relation to rodent infestation some additional text is proposed in the context of maintaining agricultural efficiency.</p> <p><u>No change proposed</u>, these may be matters raised at a CLC meeting, but it is not proposed to be more prescriptive at the matters to be addressed.</p> <p>Operating hours matters are addressed below in relation to Question 6 on operating hours.</p>
<p>Changes proposed in respect of responses to Question 2.</p> <p>Insert additional text in section referring to prime agricultural land; 'So that agricultural efficiency is preserved, site operators shall be required to control weeds and vermin'.</p>		
<p>Question 3 <i>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?</i></p>		
<p>Moorfoot Community Council</p>	<p>Yes. However considers that SG should allow for the Council to apply more stringent criteria in future.</p>	<p><u>Change proposed</u> in respect of this representation; SG would have to be revised, consulted upon and approved if any material change were made.</p> <p>However, additional text is proposed in the introductory</p>

		<p>paragraphs to relate the SG where new national standards are introduced. Express reference is made elsewhere in the Guidance to particular aspects of environmental protection where reviews are known to be underway (for example review of Clean Air policy).</p>
<p>Roslin and Bilston Community Council</p>	<p>Supports approach on deposition standards, but considers 500m separation from housing not enough to protect housing.</p> <p>Considers that it should be compulsory to provide bunds, tree belts and other screening where long term extraction proposed.</p> <p>Consideration should be given to people living on route taken by construction traffic.</p>	<p><u>No change proposed</u> in respect of this representation, environmental criteria in SG and in MLDP provide framework to protect housing and other sensitive places.</p> <p><u>Change proposed.</u> The SG refers to the uses of screening bunds in relation to protecting landscape, but it is recognised that screening has multiple benefits in containing noise and dust. Additional text references are to be made in the SG to secure provision of such screening at an appropriate stage.</p> <p><u>No change proposed</u> in respect of this representation, the Council considers that this matter is adequately addressed by the SG.</p>
<p>SNH</p>	<p>Supports proposed adoption of dust deposition rates that offer the highest degree of environmental protection, considers that the following should be identified as sensitive locations: any site protected by international, national or local natural heritage designations (biodiversity, geodiversity or landscape); Water courses and adjacent bankside habitats (extending a suitable distance to either side of the water course); and Peatlands – as identified on the Carbon and peatland 2016 map. (http://soils.environment.gov.scot/maps/thematic-maps/carbon-and-peatland-2016-map/)</p>	<p><u>Change proposed.</u> Additional text proposed to define these, using SNH definitions as well as schools, dwellinghouses and residential institutions.</p>
<p>Changes proposed in respect of responses to Question 3.</p> <p>Additional text in introduction. 'If new standards are adopted at national level in the period in which this SG is in force which relate to the environmental performance of minerals operations, then Council is likely to treat these as material considerations for the planning system.'</p>		

Insert additional text in sentence on bunding and planting; ‘..at an appropriate stage of the development...’

Insert additional text to last sentence in relation to dust, viz:

‘..including schools, dwellinghouses, residential institutions, sites protected by international, national or local natural heritage designations, water courses and adjacent bankside habitats, peatlands (as identified on the Carbon and peatland 2016 map or successor documents).’

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

Moorfoot Community Council	Yes. Welcomes commitment to best practice, irrespective of maximum noise values.	<u>No change proposed</u> in respect of this representation.
Roslin and Bilston Community Council	As well as monitoring by Community Liaison Committee site manager should be available to field complaints. Noise screening should be routinely required.	<u>No change proposed</u> in respect of this representation, it is likely that discussion of any concerns over noise shall be a main concern of a CLC, but the Council do not consider it necessary to make further express reference to this.

Changes proposed in respect of responses to Question 4.

No changes proposed.

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

Mineral Products Association Scotland	States that it is sometimes problematic for operators to agree set blasting times in advance due to production requirements, weather conditions and other factors – and so a degree of flexibility is required. The distance between blasting areas and sensitive receptors may negate need for pre-blasting notification.	<u>No change proposed</u> in respect of this representation, the Council considers that the guidance as written provides the appropriate level of flexibility for different site circumstances.
Moorfoot Community Council	No. States that as currently proposed, the section on vibration deals only with blasting. There should also be limits on vibration generated by drilling and other activities. Considers that SG in respect of consulting/ informing the local community should be strengthened. The timing and frequency of	<u>Change proposed.</u> Vibration is predominantly associated with blasting and there is extensive literature and guidance on this subject – it is unlikely that any other activity would exceed the vibration guidelines set in the SG. However, the Council considers that it would be appropriate to make provision for other vibration sources, and additional text is proposed below. <u>No change proposed</u> in respect of this representation, it is difficult to be more

	blasting should only be decided after consultation with the local community, and the SG should be more specific about “efforts to inform the community” prior to blasting.	specific as circumstances will vary from site to site, and not all developments will have a community liaison committee.
Roslin and Bilston Community Council	<p>Dilapidation surveys must be obligatory before work begins on site, nearby properties must receive a letter advising them as to procedure if damage suspected, site manager must be available to discuss. Community must be clearly warned in advance of any blasting.</p> <p>If Council is prepared to impose lower PPV levels in special cases mentioned, these should be imposed across board.</p>	<p><u>No change proposed</u> in respect of this representation, the Council considers that the SG has made adequate provision in respect of preventing structural damage, and that community and developer representation on the CLC would allow for dialogue in the manner suggested.</p> <p><u>No change proposed</u> in respect of this representation, the standard values chosen represent best current practice and the Council does not think there is a justification for a blanket imposition of higher standards.</p>
Scottish Natural Heritage (SNH)	Suggests that as part of development management process appropriate wildlife surveys are carried out prior to commencement of any blasting programme. This would allow SNH to advise planning authority on any measures or mitigation required to avoid impacts on wildlife.	<u>Change proposed.</u> Propose inserting additional text in Section 5 in respect of this comment, to address the need for wildlife surveys.
<p>Changes proposed in respect of responses to Question 5.</p> <p>Insert additional text; ‘It should be demonstrated to the Council’s satisfaction that activities other than blasting cause no significant vibration effects at a dwellinghouse, residential institution, school or at another sensitive building. Depending on the nature of the site and the proposals, the Council may require appropriate wildlife surveys to be carried out. These will be necessary prior to the commencement of any blasting programme and will inform the Council about any measures required to avoid impacts on wildlife’.</p>		
<p>Question 6 <i>Do you agree with the proposed controls on operating hours?</i></p>		
Dagleish Associates	Refers to PAN 50 Annex A normal working hours 0700-1900, and considers that in some local circumstances appropriate to have longer hours. Considers that there could be particular reasons (for example dispatching ready mix concrete or asphalt) for longer hours. Considers that operational needs and amenity impacts should be taken into account rather than imposing standard hours.	<u>Change proposed.</u> In respect of his representation the Council considers that it is reasonable to allow for longer hours where there are no or minimal impacts on sensitive receptors. Revised text proposed.

Mineral Products Association Scotland	States that many quarries begin operations between from 0700 to make best use of daylight hours- suggested that hours of operation should be discussed on site by site basis, depending on topography and siting of sensitive receptors.	<u>Change proposed</u> , see response above to Dalgleish Associates.
Moorfoot Community Council	Yes, considers these to be standard operating hours for minerals operations.	<u>No change proposed in respect of this representation.</u> Noted, however the Council considers that it is reasonable to amend the SG as proposed by industry representatives.
Roslin and Bilston Community Council	Acceptable operating hours should be weekdays 0800 to 1800 and Sat 0800 to 1300. Low impact activities should be raised through CLC and discontinued if residents object.	<u>No change proposed in respect of this representation.</u> Noted, however the Council considers that it is reasonable to amend the SG as proposed by industry representatives. <u>No change proposed</u> , the Council does not consider it necessary to provide further guidance for the working of a CLC.

Changes proposed in respect of responses to Question 6.

Revised text proposed in respect of operating hours, viz. 'Starting hours of 7.00 may be permissible where it is demonstrated to the Council's satisfaction that the noise and amenity impact on communities and dwelling places is minimal.'

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

Dalgleish Associates	Effect on landscape. Acknowledged that hard rock extraction will often have permanent adverse impact on landscape, but not necessarily significant or unacceptable. Although Pentland Hills RP and SLAs are more sensitive this doesn't mean that minerals development should automatically be seen as unacceptable. Considers that to have a presumption against minerals development in these areas is unreasonable. Considers that presumption against development outwith areas of search is unreasonable due to limited range of areas. In respect of roads, EIA may be triggered for a number of reasons, and need for Transport Assessment (TA) might not fall within scope of the EIA. Considers that in respect of cumulative impacts many aggregates quarries operate for longer	<u>No change proposed</u> , policy context set by approved LDP <u>No change proposed</u> , policy context set by approved LDP <u>Change proposed</u> , text change to clarify requirements around transport assessment. <u>Change proposed</u> . The Council considers that
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	<p>than 10 years without any significant impact on environment. Acceptable duration for operations should be considered on an individual basis.</p>	<p>amended text is appropriate, to make allowance for sites without impacts on human receptors.</p>
<p>Mineral Products Association Scotland</p>	<p>Does not consider that green belt is particularly sensitive landscape and that it is a tool for control of coalescence.</p> <p>The MPA Scotland is supportive of the statement that development proposals will be expected to be compatible the Midlothian LBAP. Evidence provided on the SSSIs hosted on UK mineral sites, potential to support priority habitats and reference made to UK Mineral Strategy viz. ‘The industry will continue to deliver net gain in environmental assets, and will increasingly measure this in terms of natural capital and ecosystem services provided, such as biodiversity, water and flood management, recreation, and carbon sequestration.’</p>	<p><u>No change proposed</u>, the landscape value of the green belt is the separation between settlements and the setting it affords to the City of Edinburgh.</p> <p><u>No change proposed</u>, comment noted.</p>
<p>Moorfoot Community Council</p>	<p>Considers that, with reference to Middleton Quarry in-fill, there should be more stringent criteria in relation to impacts on roads and other road users. This could include a requirement for shaker bars and/or a wheelwash, with a minimum length of surfaced road between those facilities and the public road.</p>	<p><u>No change proposed</u>, provision made to reduce mud on roads and spillage in the guidance.</p>
<p>Roslin and Bilston Community Council</p>	<p>Site implementation – restoration should be enforced</p> <ul style="list-style-type: none"> - Green belt and park areas excluded from development - Prime agricultural land should not be used <ul style="list-style-type: none"> – wishes SEPA involved at every stage and constant monitoring - Detailed consultations at start with bodies involved in biodiversity and green network plan - No excavation at or close to authenticated archaeological site - Routes lorries take must be clearly defined and developer responsible for any wear and tear or inconvenience. Certain roads excluded (such as Roslin Glen), wheel washers obligatory. - Cumulative effects considered, routes such as B6094, B7003 and A701. - Negative effects in a sensitive area best avoided through not developing there 	<p><u>No change proposed</u>, many of these matters are covered in the policy context established in the LDP, in respect of presumption against development outwith Areas of Search.</p>
<p>Scottish Environment</p>	<p>States that SEPA will be moving towards a new Integrated Authorisation Framework. The</p>	<p><u>Change proposed</u>. Insert (alongside reference to</p>

Protection Agency (SEPA)	activities that SEPA regulates in relation to the water environment are anticipated to remain the same.	CARS) reference to future change in SEPA regulatory framework.
Scottish Water	Points out in respect of section in SG seeking to protect the Water Environment that Scottish Water (SW) required to ensure that any proposed activity does not impact upon ability of SW to meet regulatory requirements. Under Article 7 of Water Framework Directive, waters used for drinking water are designated as Drinking Water Protection Areas (DWPA). The WFD has the objective of ensuring that the activity does not result in the deterioration of waters within the DWPA. Requests that any proposals or applications for mineral extraction are submitted to SW for review to assess for impact on drinking water quality and quantity, and below ground assets	<u>Change Proposed</u> . Insert additional text in Section 4 in respect of this comment.
<p>Changes proposed in respect of responses to Question 7.</p> <p>Additional text inserted in Section 4; ‘Midlothian Council will require to be satisfied that public water and sewerage infrastructure and Drinking Water Protection Areas are adequately protected. Applicants are advised to liaise with Scottish Water at an early stage of project design.’</p> <p>Amend text in respect of Section 7; Effect on the road network, to make reference to role of scoping in determining need for EIA to consider transport, and potential for stand-alone transport assessments at developments that do not require EIA: insert words ‘...scoping may determine a need for...’ and delete text reading ‘...this should include...’ and delete reference in brackets to ‘...depending on circumstances...’ and replace with freestanding sentence stating that Council may require stand alone Transport Assessment for smaller developments.</p> <p>Transport Assessment spelled out in full on all occasions (not using initials TA)</p> <p>Replace last sentence in respect of cumulative impacts with new text. ‘The SG seeks to avoid environmental effects on sensitive receptors. The Council is mindful of the potential effects of moderate impacts on a long term basis. Where such impacts are predicted on a community or individual dwellinghouse, the Council will require to be satisfied that the operators have minimised the duration of these, and that the overall impact in terms of intensity and duration of exposure is acceptable.’</p> <p>Insert additional text in Section 4 in respect of SEPA comments viz. ‘SEPA are moving towards a new Integrated Authorisation Framework, but the activities that SEPA regulates in respect of the water environment are anticipated to remain the same’.</p>		
<p>Question 8 <i>Do you support the approach to monitoring?</i></p>		
Dagleish Associates	While setting up of CLC is good practice and should be encouraged, it should not be seen as a regulator	<u>Change proposed</u> . Extra text proposed to clarify role of the CLC.
Mineral Products	Respondent considers that it is implied that issues associated with opencast coal sector may be duplicated in quarry sector - little evidence to	<u>Change proposed</u> . Not intention of SG to imply commonality of problems,

Association Scotland	support this. Industry accepts that monitoring is a necessary requirement – this should have been undertaken throughout the operational lives of opencast coal workings to avoid the issues that have arisen.	have included text referring to matters specific to coal mines. Changes in wording proposed to section 10. on 'Robustness of restoration proposals' to remove focus on coal operations
Moorfoot Community Council	<p>Considers that there should be a clearer commitment to devoting Council resources to monitoring. Burden of monitoring should not be left to the community.</p> <p>Welcomes the developer funded compliance assessor approach, but considers that this leaves open question of what will happen at schemes which are not very large (which might be the only projects in Midlothian).</p>	<p><u>Change proposed.</u> Extra text proposed to clarify CLC role, and role of environmental agencies role.</p> <p><u>Change proposed,</u> Council considers that question of appropriate monitoring at small sites should be addressed flexibly, depending on nature of the proposal. Text changes make clear ongoing Council and other agency regulatory role.</p>
Roslin and Bilston Community Council	Supports approach to monitoring	<u>No change proposed</u> in respect of this representation.
Scottish Environment Protection Agency (SEPA)	Supports approach to monitoring, provided that a Watercare Environment Monitoring and Mitigation Plan covering the full life of the site, from operational through to closure and aftercare is required. Notes importance of link between monitoring and mitigation, and supports use of Technical Review Panels for more complex sites – where monitoring is reported and action taken where necessary.	<u>Change proposed (in part),</u> to make express reference to need for Watercare Environment Monitoring and Mitigation Plan in some cases (to be decided in consultation with SEPA).
SNH	Support proposed approaches of using existing development management processes; or - Compliance Assessor or 'Environmental Clerk of Works' for large projects.	<u>No change proposed</u> in respect of this representation.

Changes proposed in respect of responses to Question 8.

Insert additional text in Section 4, viz: 'In consultation with SEPA, The Council may require preparation of a Watercare Environment Monitoring and Mitigation Plan, covering the full life of the site (including operations and aftercare). At more complex sites, Technical Review Panels may be necessary (these panels will review the results of monitoring and take action where required).

Delete current text at start of section 10 (Robustness of proposals for restoration and aftercare) referring to coal industry task force. Replace with text 'The Council will seek high quality restoration which should at least restore the previous usefulness of the site, and shall seek enhancement of a sites environmental and biodiversity value where possible'

Insert text to make clear a CLC is not a regulator viz. 'This will not replace the regulatory activity carried out by the Council in respect of planning and other statutory functions, and the work of other environmental agencies.'

Insert text under section 10, monitoring sub point, viz. 'At smaller sites the Council will come to a judgement on the appropriate level of monitoring and oversight'.

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?*

Coal Authority	No strong view on whether or not separate policy is required in respect of restoration for coal extraction. All works should be of the highest quality and be carried out in a timely manner and should seek where possible to enhance biodiversity and environmental value of the site.	<u>Change proposed</u> in respect of comments on site restoration and seeking enhanced biodiversity and environmental value
Dalglish Associates	Considers opencast coal and aggregates sites very different in terms of size and restoration liabilities re requirement to excavate and replace large quantities of overburden.	<u>No change proposed.</u> The Council proposes no intrinsic difference in treatment between aggregates quarries and coal mining, and proposes to treat them consistently (although the different nature of the development types may mean different approaches are taken, as the SG is applied).
Mineral Products Association Scotland	MPA Scotland consider that the guidance on restoration should differentiate between opencast coal and quarry operations as they differ considerably both in terms of scale of operations and their potential environmental risks and impacts.	<u>No change proposed.</u> The Council proposes no intrinsic difference in treatment between aggregates quarries and coal mining, and proposes to treat them consistently (although the different nature of the development types may mean different approaches are taken, as the SG is applied).
Moorfoot Community Council	Yes. Separate approaches needed.	<u>No change proposed.</u> The Council proposes no intrinsic difference in treatment between aggregates quarries and coal mining, and proposes to treat them consistently (although the different nature of the development types may mean different approaches are taken, as the SG is applied).
Roslin and Bilston Community Council	Considers that there is limited justification for additional coal extraction.	<u>No change proposed.</u> Position in respect of coal in the SG is governed by LDP, SDP and SPP.

Scottish Environment Protection Agency (SEPA)	Considers that issue is one of scale, adequate bonds need to be put in place to address restoration particularly at large surface coal mines where restoration issues can be complex.	<u>No change proposed</u> . MC notes SEPA response, restoration matters addressed later in SG.
SNH	Seeks coherent and consistent advice and requirements that applies to all extractive industries rather than split across types. Wishes approach to restoration which fits local landscape character, delivers enhancement for biodiversity and improved access for local communities. Long term management key part of restoration, encourages clarity on long term expectations.	<u>No change proposed</u> . The Council proposes no intrinsic difference in treatment between aggregates quarries and coal mining, and proposes to treat them consistently (although the different nature of the development types may mean different approaches are taken, as the SG is applied).
<p>Changes proposed in respect of responses to Question 9.</p> <p>Insert additional text after comment on restoring to previous function viz: 'The Council will seek to secure restoration proposals which enhance the sites biodiversity and landscape value, as a long term benefit of the development'.</p>		
<p>Question 10. <i>Should the support for mine and quarry progress plans be strengthened to a requirement?</i></p>		
Coal Authority	No objection to introducing a requirement for Mine and Quarry Progress Plans (MQPP).	<u>Change proposed</u> . The Council considers that there may be some proposals (particularly those of short duration or one phase only) where such an approach would be superfluous, so propose to keep the current degree of flexibility in the draft SG. Propose extra text to clarify the situation where they are applicable.
Moorfoot Community Council	Yes, supports making MQPP a requirement.	<u>Change proposed</u> (but not in manner requested in representation). The Council considers that there may be some proposals (particularly those of short duration or one phase only) where such an approach would be superfluous, so propose to keep the current degree of flexibility in the draft SG. Propose extra text to clarify the situation where they are applicable.
Roslin and Bilston	Support for MQPP strengthened to a requirement	<u>Change proposed</u> (but not in manner requested in representation). The Council

Community Council		considers that there may be some proposals (particularly those of short duration or one phase only) where such an approach would be superfluous, so propose to keep the current degree of flexibility in the draft SG. Propose extra text to clarify the situation where they are applicable.
Scottish Environment Protection Agency (SEPA)	Considers that progress plans should be a requirement. States that this is particularly important at surface coal mines where a treatment scheme forms part of the restoration and needs to be in place within a defined timescale.	<u>Change proposed</u> (but not in manner requested in representation). The Council considers that there may be some proposals (particularly those of short duration or one phase only) where such an approach would be superfluous, so propose to keep the current degree of flexibility in the draft SG. Propose extra text to clarify the situation where they are applicable.
SNH	Considers that reference to Mine and Quarry Progress plans in SG suggests that they are a requirement	<u>Change proposed.</u> The Council considers that there may be some proposals (particularly those of short duration or one phase only) where such an approach would be superfluous, so propose to keep the current degree of flexibility in the draft SG. Propose extra text to clarify the situation where they are applicable.
<p>Changes proposed in respect of responses to Question 10.</p> <p>Insert text in section referring to Mine and Quarry Progress plans viz. ‘These, or another approved mechanism to document the phasing of the work and the planned progress towards environmental and site restoration, are necessary in large developments involving multiple phases.’</p>		
<p>Question 11 <i>Is it appropriate to require progress plans for aggregates quarries as well as coal mines?</i></p>		
Moorfoot Community Council	Yes. If this is now best practice, it is sensible to apply the approach to aggregates quarries too.	<u>No change proposed.</u> Noted, as written the SG supports the use of such plans for all types of mining and quarrying and it is proposed to retain this approach.

Roslin and Bilston Community Council	Yes approach should apply to aggregates quarries as well as coal mines	<u>No change proposed.</u> Noted, as written the SG supports the use of such plans for all types of mining and quarrying and it is proposed to retain this approach.
SNH	Considers that proportionate updating of actual resource extraction against planned extraction is important in order to accurately document the phasing of work and the planned progress towards environmental and site restoration.	<u>No change proposed.</u> Noted, as written the SG supports the use of such plans for all types of mining and quarrying and it is proposed to retain this approach.
Changes proposed in respect of responses to Question 11.		
No changes proposed.		
Question 12 <i>Do you support the approach set out in the SG with respect to securing site restoration?</i>		
Coal Authority	No objection to proposed method of securing site restoration.	<u>No change proposed.</u>
Dalgleish Associates	Scottish Government guidance advises that legal agreements should not be used when planning conditions will suffice. In this respect it should be noted that restoration bonds can be secured by planning condition.	<u>Change proposed.</u> Approach to monitoring has been informed by work of the Scottish Opencast Coal Task Force, resulting in the report ('Surface Coal Mine Restoration: Towards Better Regulation.' Historically legal agreements have covered the financial guarantee and other matters that cannot be conditioned. There is a possibility that simpler systems of guarantee can be achieved: whether it is a legal agreement or a condition, it is simply acting as a framework to secure the funding. Additional sentence proposed below, and some slight textual changes are proposed to allow for different approaches to the same end.
Mineral Products Association Scotland	The industry would prefer use of planning conditions rather than Section 75 agreements as a means of securing financial provision for site restoration. States that this is supported by Scottish Government.	<u>Change proposed,</u> see response in respect of Dalgleish Associates above.
Moorfoot Community Council	Yes. Phased restoration using escrow funds, substantially reduces the risk of abandonment.	<u>No change proposed</u> in respect of this representation, although text change proposed to permit

		consideration of other approaches.
Roslin and Bilston Community Council	Supports approach to site restoration.	<u>No change proposed</u> in respect of this representation, although text change proposed to permit consideration of other approaches.
Scottish Environment Protection Agency (SEPA)	Considers that the money could be profiled but the water environment at surface coal mines can be complex. The greatest risks might be after restoration, when water levels recover fully, with the potential for polluting discharges at the surface. The funding arrangements need to reflect this.	<u>Change proposed</u> , to reflect need for monies to be available at all stages, and potential for additional demand to fall after restoration.
SNH	Supports the proposed approach to securing site restoration. Refers to the recommendations made by SEPA/SNH in respect of setting up site restoration plan for Auchencorth Moss – focus should be on securing restoration funds as opposed to merely setting up site conditions suitable for restoration.	<u>No change proposed</u> in respect of this representation, although text change proposed to permit consideration of other approaches.

Changes proposed in respect of responses to Question 12.

Revise text at start of this section to read 'The Council supports the use of ring-fenced funds secured through legal agreement to provide a robust financial instrument to effect restoration and aftercare'

Insert additional text viz: Depending on the circumstances, the Council will consider other simpler approaches to securing site restoration, but it must at all times be demonstrated to the Council's satisfaction that there is no risk of a site being left in un-remediated condition.

Insert additional text viz: 'In the case of surface coal mines, funding arrangements must make allowance for handling any polluting discharges at the surface, post restoration when water levels have recovered fully'.

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

Dalglish Associates	Council makes reference to the compliance assessor. The regular assessment of the site will ensure that no site specific factors occur that will significantly increase restoration liability. The restoration liability could also be reviewed periodically by the assessor to ensure that any restoration funds are uplifted as required (or reduced if sufficient restoration has occurred).	<u>Change proposed (although not in manner requested by respondent)</u> . Midlothian Council would wish to avoid periodic review once a project has commenced in case additional monies cannot be raised. However, a small text change is proposed to provide greater clarity and readability.
Mineral Products Association Scotland	States that it may be appropriate to periodically review costs subject to a mutually acceptable timetable as they may decrease as well as increase.	<u>Change proposed (although not in manner requested by respondent)</u> . Midlothian Council would wish to avoid periodic review once a project

		has commenced in case additional monies cannot be raised. However, a small text change is proposed to provide greater clarity and readability.
Moorfoot Community Council	Considers that there should be provision for a suitably qualified person to be employed to assess the adequacy of the proposed funds, and their phasing, to inform the Council's approval of any schemes.	<u>No change proposed</u> , the SG refers to the potential for independent advice to determine sums required for restoration.
Roslin and Bilston Community Council	Considers that full EIA initially, with ring fenced funds for re-instatement including repair of roads is best approach	<u>No change proposed</u> . The Council considers that these matters are addressed adequately by the SG as written.
<p>Changes proposed in respect of responses to Question 13.</p> <p>Change sentence that reads 'In determining ring fenced funds for restoration, the Council is concerned that adequate provision is made for restoration that may happen several years after the proposal is granted' to replace 'concerned' with 'must be assured'.</p>		
<p>Question 14. <i>Is it necessary for the supplementary guidance to provide a framework for long term monitoring beyond the active restoration stage?</i></p>		
Coal Authority	Useful to have a framework in place to guide long term monitoring following restoration	<u>Change proposed</u> . Additional text to provide further guidance on long term monitoring framework.
Mineral Products Association Scotland	Wishes all references to environmental monitoring that are within SEPA's remit to be removed from SG, as this would add duplication and potential complication, as would go against the principle that 'The planning system should not be used to secure objectives that are more properly achieved under other legislation', and that would be contrary to the principles of the Regulatory Reform (Scotland) Act 2014 and to Scottish Government policy and guidance.	<u>Change proposed</u> . Additional text to provide further guidance on long term monitoring framework (includes note to effect that planning system shall not duplicate regulation carried out by other bodies).
Moorfoot Community Council	<p>Yes. States that experience from coal industry shows that negative environmental impacts can occur long after a site is closed and restored. This is especially true when the restoration includes ongoing maintenance of drainage systems and water quality.</p> <p>Wishes to point out that Court of Session case determining "that a liquidator could not disclaim ownership" applied only to Scottish-registered companies. Abandoned sites that were in the ownership of non-Scottish companies were able to disclaim their restoration responsibilities.</p>	<p><u>Change proposed</u>. Additional text to provide further guidance on long term monitoring framework.</p> <p><u>Change proposed</u>. Additional text with regard to disclaiming land by non-Scottish companies.</p>
Roslin and Bilston	Considers it necessary to provide framework for monitoring beyond active restoration phase.	<u>Change proposed</u> . Additional text to provide further

Community Council		guidance on long term monitoring framework.
Scottish Environment Protection Agency (SEPA)	Long term monitoring of the water environment beyond the restoration stage is essential. Groundwater levels that have been lowered to enable operation can take a considerable period of time to recover. The aftercare period needs to reflect this and sufficient funding should be in place to mitigate any water environment issues, such as providing treatment where necessary.	<u>Change proposed.</u> Additional text to provide further guidance on long term monitoring framework.
SNH	States that it has been demonstrated through the open cast review and other evidential cases that it is important to monitor extraction sites over the long term. SEPA advice in terms of peat extraction for recent casework in Midlothian was that the best measure of successful restoration is how much of the site is actually restored. This requires yearly survey, reporting and maintenance action for a period of at least 10 years if the best available methods are used, but this can be significantly longer if alternative methods are used.	<u>Change proposed.</u> Additional text to provide further guidance on long term monitoring framework.

Changes proposed in respect of responses to Question 14.

Additional text proposed to provide further guidance on long term monitoring framework, Viz;

‘Depending on the nature of the proposal, long term monitoring of the water environment beyond the restoration stage may be required. The aftercare period should ensure that where groundwater levels have been lowered, their recovery is assessed, and that any identified water environment matters are addressed.

‘The duration of the ongoing monitoring will depend on the nature of the site and the features that are being restored, so the monitoring periods indicated below may be adjusted in particular circumstances.

‘Trees, planting and landscaping, fences, walls, boundaries, and other features identified in restoration plans shall be maintained for a period of 5 years from the time of completion (including replacement of any trees or plants which die or are damaged within that period).

Water features, including ditches and watercourses should also be maintained for 5 years. Longer term monitoring of the water environment may be required. Scotland’s environmental agencies already carry out monitoring of the water environment, and the nature of this is to be determined in conjunction with them to avoid regulatory duplication.’

Additional text proposed with regard to peat, viz ‘The LDP policy framework means that other than 'Review of Old Mineral Application (ROMP) cases, no new development where peat itself is the target of the extraction is likely to be acceptable. Extraction of another mineral in an area where peat is present may be permissible if the restoration creates a long term environment conducive to the preservation and formation of additional peat reserves. Such restoration is likely to require a particular long term monitoring and aftercare solution.’

Additional text proposed with regard to disclaiming land by non-Scottish companies, may require a test case involving such a company or further legislation to resolve. In view of the ambiguity, and as the reference does not relate to an active provision of the SG, this reference (viz. ‘was

useful in clarifying that a liquidator could not disclaim ownership and thus liabilities associated with land' shall be deleted, and replaced by 'provided some additional clarity in cases of liquidation.'

In paragraph referring to long term objectives post restoration, replace 'post-restoration' with 'ultimately', to better reflect ongoing nature of aftercare duties beyond immediate restoration phase.

To focus landscape works on required goals, Remove reference to 'functionally useful' in respect of the landscape solution.

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.*

<p>Moorfoot Community Council</p>	<p>Q15. Expresses concern that the policy context is out of date and dysfunctional in light of evidence on climate change.</p> <p>Although understanding that the role of SG is limited, considers that the introduction and policy context sections should make reference to the changing scientific and policy context on fossil fuels.</p> <p>Considers that SG should make reference to the Strategic Aim set out in section 1.3 of the MLDP: viz "To respond robustly to the challenges of mitigating climate change and adapting to its impacts".</p> <p>Considers that giving "sufficient weight to the avoidance of long term environmental impacts and greenhouse gas emissions" from coal extraction means stopping the use of coal all together, and that this should be reflected in the guidance.</p> <p>Considers that the SG has already noted that the national policy on unconventional gas overrides Policy MIN3 of the MLDP, suggests that finalisation of SG should be delayed until the Scottish Government's position on other fossil fuel extraction, notably coal, is clarified in the context of responses to the IPCC Report.</p>	<p><u>No change proposed</u> in respect of these representations. Scottish Government has not imposed moratorium on opencast coal, and SPP provisions remain in place.</p>
<p>Roslin and Bilston Community Council</p>	<p>Strongly wishes to stress that opposed to any future unconventional oil and gas extraction.</p>	<p><u>No change proposed.</u> Opposition to oil and gas extraction noted, but no requirement to change text of SG further, as it reflects the Scottish Government moratorium:</p>

	Other matters: opposes any quarrying in the Roslin and Bilston CC area. Opposes unconventional oil and gas extraction in Roslin and Bilston Community.	<u>No change proposed.</u> Note opposition to quarrying in Roslin and Bilston area. There are no areas of search identified there, so the policy does not support quarrying there:
Scottish Environment Protection Agency (SEPA)	Wishes to point out in relation to surface coal mining, the useful SEPA guidance on mineralogical assessment, water environment monitoring, contingency planning and post closure monitoring. Considers the proposed approach to onshore oil and gas appropriate, but considers that timetable for government coming to decision may need updating.	<u>Change proposed.</u> Note the guidance, do not consider it necessary to replicate in this Guidance, but propose to insert link to introduce it. <u>Change proposed</u> to reflect progress with SEA process on government's policy review: consultation launched in October 2018, Ministers will inform Parliament of Finalised Policy on the development of unconventional oil and gas in first quarter of 2019.
Scottish Water	Scottish Water wishes to highlight need for early contact with SW to ensure that assets are protected viz. multiple strategic assets at Cauldhall Moor, 3" cast iron water distribution main at Outerston, 5" cast iron water distribution main at Halkerston North and strategic assets following the B6372.	<u>Change proposed</u> to reflect need to liaise with SW and protect assets.
Changes proposed in respect of responses to Question 15.		
<p>Insert additional paragraph into section 4, viz. 'Midlothian Council will require to be satisfied that public water and sewerage infrastructure and Drinking Water Protection Areas are adequately protected. Applicants are advised to liaise with Scottish Water at an early stage of project design.'</p> <p>In respect of text on onshore oil and gas, reflect current understanding of timetable by deleting word 'formalised' and replace with 'set out to the Scottish Parliament' and delete reference to 'summer 2018' and replace with 'the first quarter of 2019.' Amend introduction to insert addition to 2nd sentence in last paragraph of introduction, viz: 'subject to Strategic Environmental Assessment and further consideration by the Scottish Parliament in 2019'. Amend last sentence of introduction so that reference to revisiting approach if national policy changed is taken out of brackets and put in sentence of its own.</p> <p>Insert additional text, 'Where surface coal mining is proposed, applicants are advised to consider SEPA's assessment framework for evaluating the potential impact of opencast coal mining on water quality.'</p>		
Additional changes that Midlothian Council (Planning) consider requisite.		
Midlothian Council	Alter reference to processing agreement to use words 'may wish to enter' rather than will enter'	<u>Change proposed</u>

	to reflect that these agreements are voluntary for both parties.	
Midlothian Council	<p>Ensure reference made to Management of Extractive Waste (Scotland) Regulations 2010 and potential need for Waste Management Plan, through following additional text:</p> <p>‘The Management of Extractive Waste (Scotland) Regulations 2010 places consenting requirements for applications involving extractive waste upon the planning system. Applications are required to submit a Waste Management Plan to demonstrate compliance with the regulations. The Council is required to ensure that the management of extractive waste complies with the Regulations.</p> <p>‘The nature of aggregates development in Midlothian to date, has been such that the sites have generated low risk inert waste - unpolluted soils covering the mineral. The backfilling of such waste into voids created on site, following extraction of the target mineral, will usually be the least intrusive and lowest risk approach to handling the waste. The Council will require to be satisfied that all mineral waste is stored safely and appropriately, pending backfilling. In any cases involving non-hazardous non-inert waste or hazardous waste the Council will liaise with the appropriate agencies (including SEPA and the Health and Safety Executive) to determine whether or not the proposal is acceptable, and to consider the appropriateness of the waste handling arrangements.’</p>	<u>Change proposed</u>
Midlothian Council	To make the guidance more user friendly, seek to remove abbreviations not in common use: references to MQPP to be spelled out in full each time and written in lower case.	<u>Change proposed</u>
Midlothian Council	<p>Insert additional sentence in introduction to provide additional context, and relationship with other guidance, viz:</p> <p>‘The Scottish Government guidance PAN50 and its annexes provide detail on good practice in mineral extraction: it is not the purpose of the SG to replicate these, but this guidance reflects further development since these were published, particularly in the fields of community involvement, site restoration, handling mineral waste and air quality; as well as approaches which seem to be most appropriate in the context of Midlothian.’</p>	<u>Change proposed</u>

Midlothian Council	<p>Insert additional text to provide for higher standards based on evolving air quality strategy, viz:</p> <p>'The Scottish Government is reviewing Cleaner Air for Scotland (CAFS) and if more stringent national standards are adopted, then it must be demonstrated to the satisfaction of the Council, that these can be met in the minerals application.'</p>	<u>Change proposed</u>
Midlothian Council	In Section 7 Transport, replace reference to 'the site' with 'operational sites'. Reason: for clarity.	<u>Change proposed</u>

Midlothian Local Development Plan



Resource Extraction Supplementary Guidance



Contents

1 Introduction	2
2 Policy Context	2
3 Detailed Criteria for Mineral Extraction	14
4 Onshore Oil and Gas	30
5 Glossary	31
6 Appendix 1 - list of questions	33
7 Appendix 2 - Letter from Scottish Government	34

TRACK CHANGE November Committee RE SG

1. Introduction

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 Scottish Government guidance PAN50 and its annexes provide detail on good practice in mineral extraction: it is not the purpose of the SG to replicate these, but this guidance reflects further understanding since these were published, particularly in the fields of community involvement, site restoration, handling mineral waste and air quality; as well as approaches which seem to be most appropriate in the context of Midlothian.**

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.

TRACK CHANGE November Committee RE SG

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](#)

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.

TRACK CHANGE November Committee RE SG

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.

TRACK CHANGE November Committee RE SG

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.

TRACK CHANGE November Committee RE SG

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

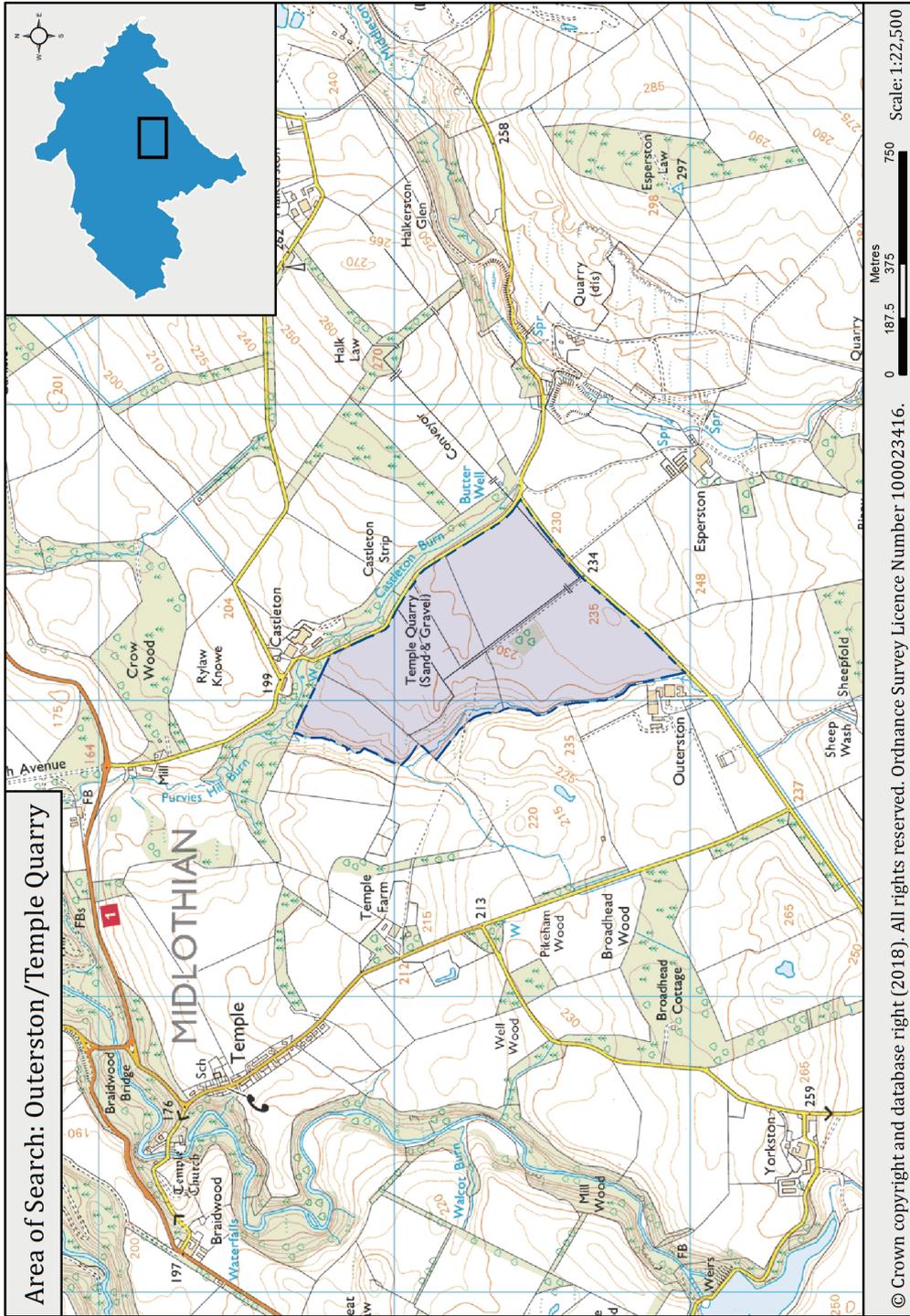
Mineral resources will be safeguarded from sterilisation by other types of development, where the deposits are of sufficient scale or quality to be of commercial interest and their extraction would be environmentally acceptable and would not conflict with the development strategy for the area.

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

TRACK CHANGE November Committee RE SG

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.

TRACK CHANGE November Committee RE SG

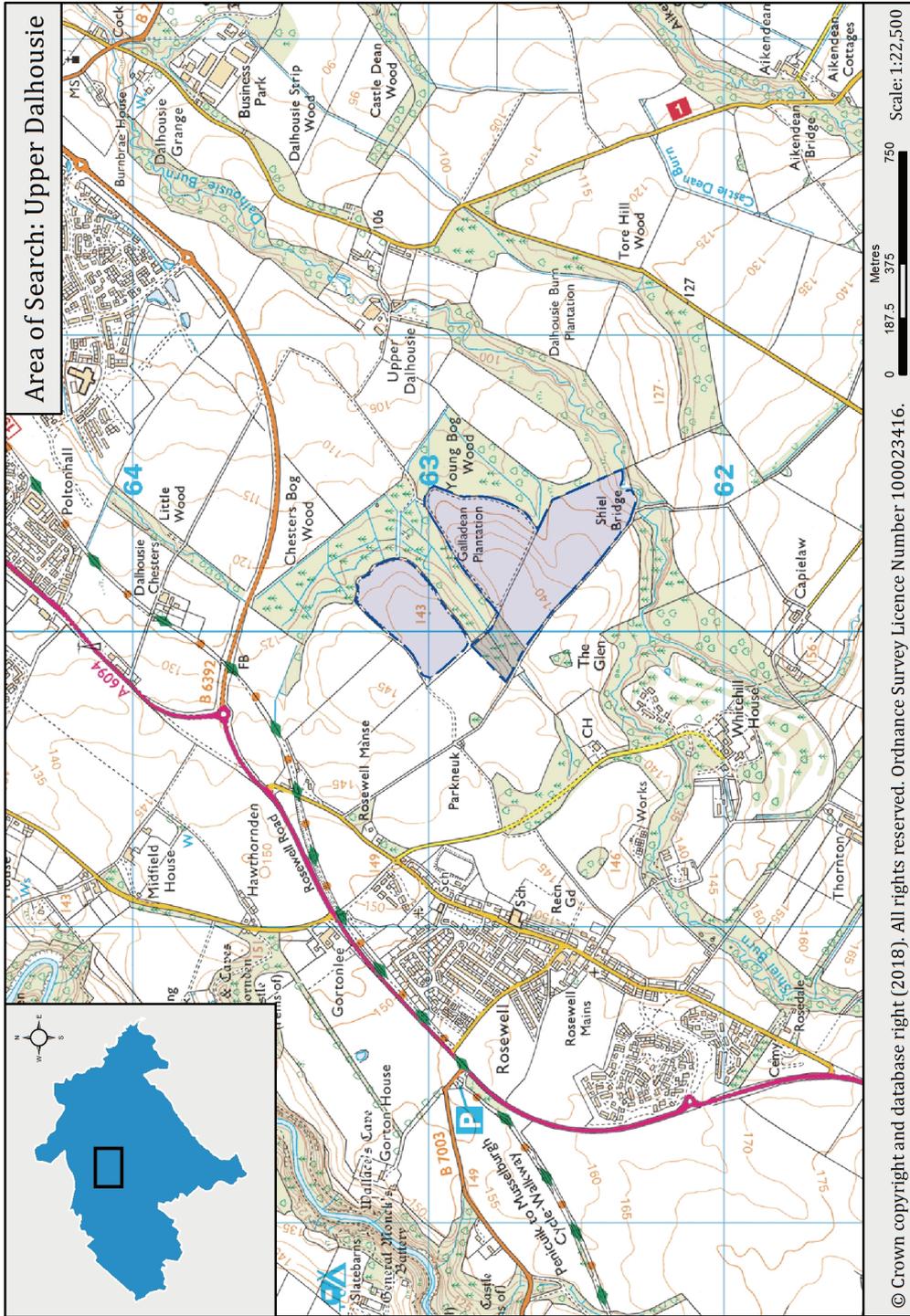


Area of Search: Outerston/Temple Quarry

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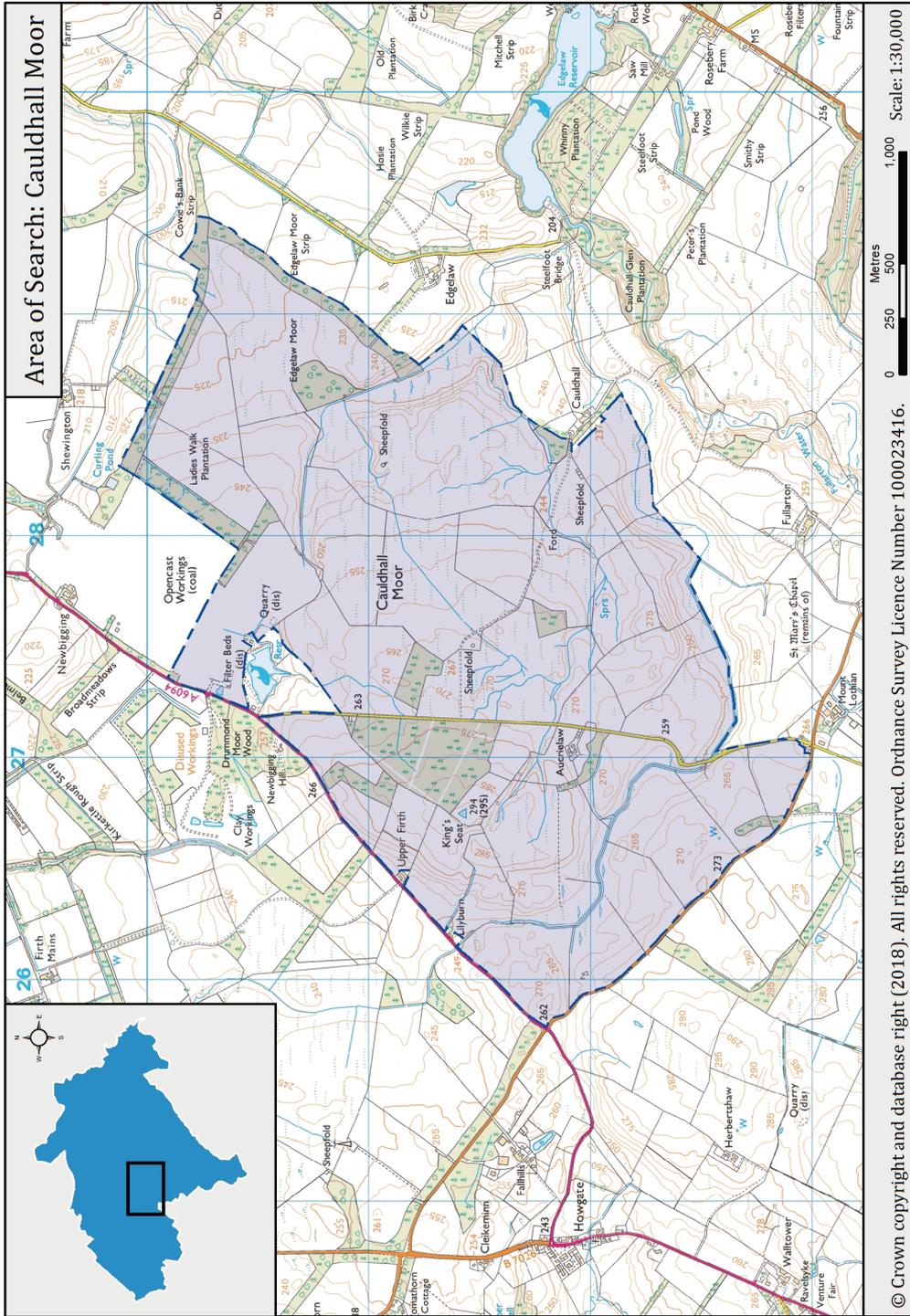
Policy MIN1 Area of Search - Outerston

TRACK CHANGE November Committee RE SG



Policy MIN1 Area of Search - Upper Dalhousie

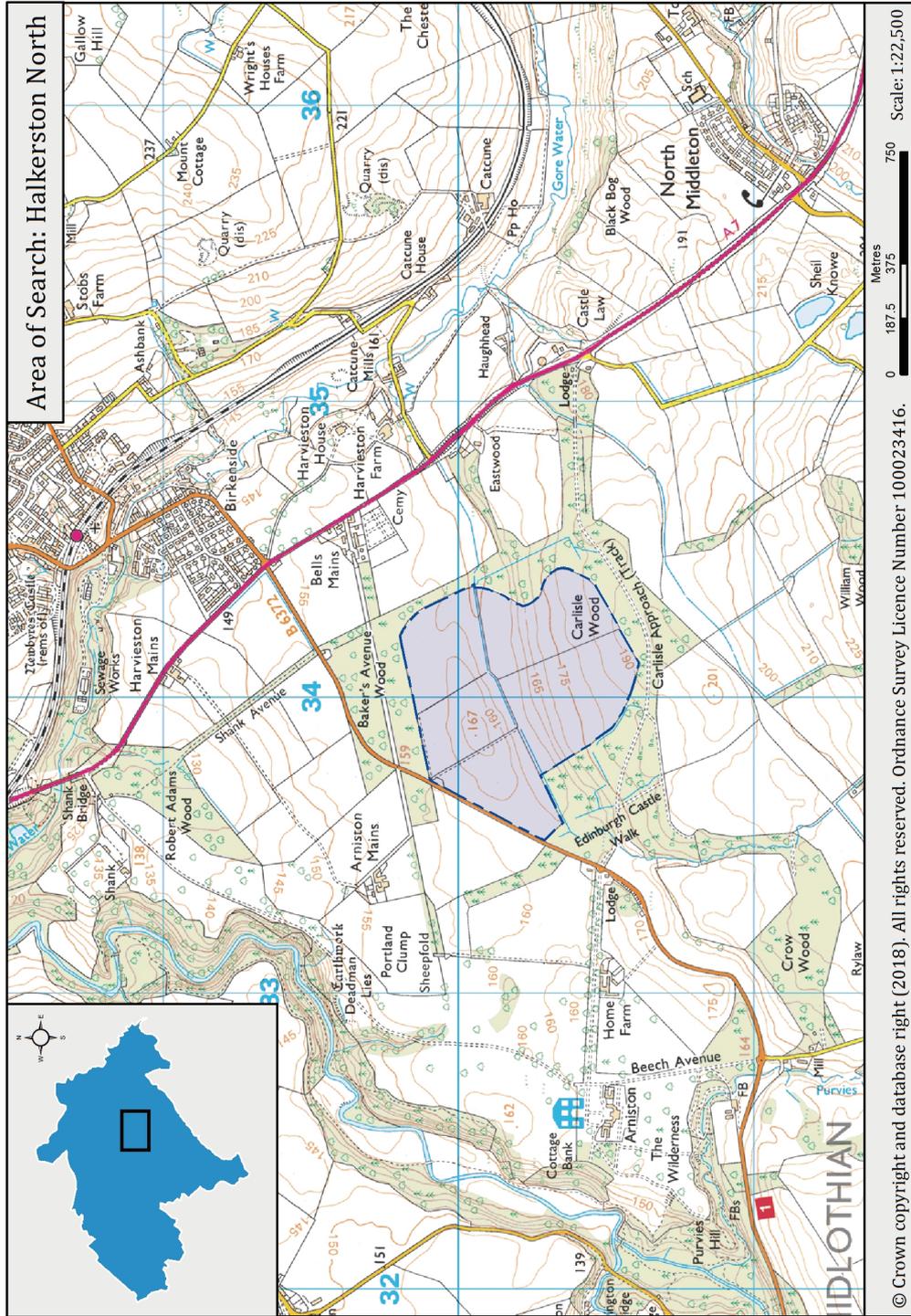
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Policy MIN1 Areas of Search - Caudhall Moor

TRACK CHANGE November Committee RE SG



Policy MIN1 Area of Search - Halkerston North

TRACK CHANGE November Committee RE SG

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.

TRACK CHANGE November Committee RE SG

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~~ **may wish to** 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 **where site area is greater than 25ha** 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. **The Council will come to a judgement on the need for CLCs at other minerals developments based on the nature of the proposal and the proximity of human population and communities.**

TRACK CHANGE November Committee RE SG

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.

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.

TRACK CHANGE November Committee RE SG

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.

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 (PM₁₀ 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) **at an appropriate stage of the development** 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.

TRACK CHANGE November Committee RE SG

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 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—, including schools, dwellinghouses, residential institutions, sites protected by international, national or local heritage designations, water courses and adjacent bankside habitats, and peatlands (as identified on the carbon and peatland 2016 map or successor documents).

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).

TRACK CHANGE November Committee RE SG

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 $L_{Aeq(1 \text{ hour})}$ (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 $L_{Aeq(1 \text{ hour})}$ (free field) may be 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

TRACK CHANGE November Committee RE SG

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).

It should be demonstrated to the Council's satisfaction, that activities other than blasting cause no significant vibration effects at a dwellinghouse, residential institution, school or at another sensitive building. Depending on the nature of the site and the proposals, the Council may require appropriate wildlife surveys to be carried out. These will be necessary prior to the commencement of any blasting programme and will inform the Council about any measures required to avoid impacts on wildlife.

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: **starting hours of 0700 may be permissible where it is demonstrated to the Council's satisfaction that the noise and amenity impact on communities and dwelling places is minimal.** 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

TRACK CHANGE November Committee RE SG

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.

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. **So that agricultural efficiency is preserved the Council will require site operators to control weeds and vermin.**

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

TRACK CHANGE November Committee RE SG

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.

Midlothian Council will require to be satisfied that public water and sewerage infrastructure and Drinking Water Protection Areas are adequately protected. Applicants are advised to liaise with Scottish Water at an early stage of project design.

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.

Depending on the nature of the site and the proposals, the Council may require appropriate wildlife surveys to be carried out. These will be necessary prior to the commencement of any blasting programme and will inform the Council about any measures required to avoid impacts on wildlife.

TRACK CHANGE November Committee RE SG

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, **scoping may determine a need for this should include** an appropriate Transport Assessment (~~although depending on circumstances~~ **the Council may require stand alone Transport Assessment** 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.

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.~~

TRACK CHANGE November Committee RE SG

The SG seeks to avoid environmental effects on sensitive receptors. The Council is mindful of the potential effects of moderate impacts on a long term basis. Where such impacts are predicted on a community or individual dwellinghouse, the Council will require to be satisfied that the operators have minimised the duration of these, and that the overall impact in terms of intensity and duration of exposure is acceptable.

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 affects (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?

10. Robustness and Suitability of proposals for restoration and aftercare

The Council will seek high quality restoration which should at least restore the previous usefulness of the site. ~~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 In respect of coal mining, the work in this area by the Scottish Opencast Coal Task Force, resulting in the report ('Surface Coal Mine Restoration: Towards Better Regulation.'~~ The Council will seek to secure restoration proposals which enhance the sites biodiversity and landscape value, as a long term benefit of the development.

TRACK CHANGE November Committee RE SG

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. **At smaller sites the Council will come to a judgement on the appropriate level of monitoring and oversight.** 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. **This will not replace the regulatory activity carried out by the Council in respect of planning and other statutory functions, and the work of other environmental agencies.**

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.

TRACK CHANGE November Committee RE SG

The Council supports the drawing up of a Mine or Quarry Progress Plan (MQPP) as part of a planning application. **These, or another approved mechanism to document the phasing of the work and the planned progress towards environmental and site restoration, are necessary in large developments involving multiple phases.** The purpose of the plan is to provide transparency and oversight to ensure projects are developed and restored as intended. The **mine or quarry progress plan 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 **supports the use of** ~~considers that a~~ ring-fenced funds secured through legal agreement ~~is the best form of~~ to **provide a robust** 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

TRACK CHANGE November Committee RE SG

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.

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.

Depending on the circumstances, the Council will consider other simpler approaches to securing site restoration, but it must at all times be demonstrated to the Council's satisfaction that there is no risk of a site being left in un-remediated condition.

Question 12

Do you support the approach set out in the SG with respect to securing site restoration?

In determining ring fenced funds for restoration, the Council ~~is concerned~~ **must be assured** 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?

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 ~~an functionally useful and~~ attractive landscape solution which reflects the local landscape character.

TRACK CHANGE November Committee RE SG

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.

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) **provided some additional clarity in cases of liquidation.** ~~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?

The duration of the ongoing monitoring will depend on the nature of the site and the features that are being restored, so the monitoring periods indicated below may be adjusted in particular circumstances.

Trees, planting and landscaping, fences, walls, boundaries, and other features identified in restoration plans shall be maintained for a period of 5 years from the time of completion (including replacement of any trees or plants which die or are damaged within that period).

Water features, including ditches and watercourses, should also be maintained for 5 years. Longer term monitoring of the water environment may be required. Scotland's environmental agencies already carry out monitoring of the water environment and the nature of this is to be determined in conjunction with them to avoid regulatory duplication.

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

TRACK CHANGE November Committee RE SG

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). **The LDP policy framework means that other than 'Review of Old Mineral Application (ROMP) cases, no new development where peat itself is the target of the extraction is likely to be acceptable. Extraction of another mineral in an area where peat is present may be permissible if the restoration creates a long term environment conducive to the preservation and formation of additional peat reserves. Such restoration is likely to require a particular long term monitoring and aftercare solution.**

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 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.

The Management of Extractive Waste (Scotland) Regulations 2010 places consenting requirements for applications involving extractive waste upon the planning system. Applications are required to submit a Waste Management Plan to demonstrate compliance with the regulations (in some cases the nature of the waste may be such that it is possible to waive the requirement). The Council is required to ensure that the management of extractive waste complies with the Regulations.

The nature of aggregates extraction in Midlothian to date has been such that the sites have generated low risk inert waste - unpolluted soils covering the mineral. The backfilling of such waste into voids created on site, following extraction of the target mineral, will usually be the least intrusive and lowest risk approach to handling the waste. The Council will require

TRACK CHANGE November Committee RE SG

to be satisfied that all mineral waste is stored safely and appropriately, pending backfilling. In any cases involving non-hazardous non-inert waste or hazardous waste the Council will liaise with the appropriate agencies (including SEPA and the Health and Safety Executive) to determine whether or not the proposal is acceptable, and to consider the appropriateness of the waste handling arrangements.

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.

TRACK CHANGE November Committee RE SG

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.

TRACK CHANGE November Committee RE SG

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).

TRACK CHANGE November Committee RE SG

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.

TRACK CHANGE November Committee RE SG

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 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?

Question 12. Do you support the approach set out in the SG with respect 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.

TRACK CHANGE November Committee RE SG

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 duyuyoruz.

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۔