

East Ayrshire Minerals Local Development Plan 2020

Non Statutory Guidance Community Benefits from Minerals Extraction



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1. Introduction and background

- 1.1. Community benefits present an opportunity for communities to share in the benefits of minerals extraction in their area. They also represent an opportunity to offset residual impacts of minerals extraction on local communities, which even with appropriate mitigation, cannot always be completely avoided, such as heavy vehicle movements through communities, dust, noise and impacts on their surrounding landscape. Community benefits are a voluntary non-mandatory contribution given to the community by operators and are completely separate from the planning process. Community benefits can be wide ranging and can deliver a variety of projects, such as improved infrastructure, new community facilities, job creation schemes and environmental education projects.
- 1.2. **There is no statutory requirement or obligation for community benefits to be offered**, however coal operators in East Ayrshire have a long record of contributing to the Cumnock and Doon Valley Minerals Trust Fund. Significant amounts of money have been gathered and then distributed by the Minerals Trust, supporting a range of community organisations, events and projects. Separate from the Minerals Trust Fund, quarry operators in most cases, agree a community benefits arrangement directly with the nearby community, on a site by site basis. Going forward, the Council is aware of clear community support for a refocus from small scale short term projects to legacy projects and ensuring there are long term outcomes from the funds communities receive. At the same time, there is a desire for contributions to remain targeted at those communities who are impacted by the extraction activities. This is why the Council has decided to provide the alternative option of the East Ayrshire Minerals Fund (EAMF).
- 1.3. Scottish Planning Policy (SPP) (2020) supports the delivery of community benefits, associated with development proposals that are acceptable in land use terms (para 173). Associated good practice guidance has been prepared by Scottish Government 'Good Practice principles for Community Benefits from Onshore Renewable Energy Developments'. This document outlines the good practice principles and procedures promoted by Scottish Government for developers, operators, councils and communities. It is intended as a practical guide to the process and reaffirms Scottish Government's ongoing commitment to community involvement in renewable energy. Whilst this document is geared at wind energy developments, many of the principles are applicable to community benefits for other developments.
- 1.4. The East Ayrshire Minerals Local Development Plan (MLDP) (2020) encourages the provision of community benefits and sets out the Council's preferred mechanism for delivery, a combination of (i) a contribution direct to the community and (ii) a contribution to the Council managed Minerals Fund. The Council's preferred approach is voluntary, therefore an applicant may wish to take forward alternative arrangements, which are in line with the Scottish Government's best practice and have the support of the community. This approach mirrors the framework put in place by the Council in relation to Renewable Energy developments.
- 1.5. The purpose of this guidance is to provide more detail on community benefits and assist those involved in the community benefits process. It has been prepared particularly to help communities understand their role in the process and how to maximise the opportunities provided by community benefits. This guidance also helps those involved to understand the advantages of the Minerals Fund.

2. Community Benefits in East Ayrshire

- 2.1. The MLDP states that all developers of minerals developments could provide community benefits. The Council recommends that, if a developer is minded to provide these benefits, the voluntary contribution amount should be based on the volume of minerals extracted from the ground.
- 2.2. **Community benefits do not form part of the assessment of planning applications and are not a material consideration in the planning process.** Planning permission for minerals development will be assessed against the provisions of the Minerals Local Development Plan for all matters relating to minerals, as well as any other material planning considerations. The Council, if mindful to grant planning permission for a minerals extraction development, alerts applicants that they could provide a community benefit payment. Community benefits should not be confused with developer contributions, which are directly related to the impact of the development, and are secured through a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 or other form of agreement.
- 2.3. The Council recognises that there are a range of mechanisms (e.g. funds, training schemes etc) available for community benefits, which sit outwith the remit of this guidance, and that the choice of whether and how to deliver community benefits lies with the developer. The Council also recognises that the aggregates levy is an additional cost, unique to aggregates extraction, which impacts upon aggregates developers. With that said, many operators in East Ayrshire do choose to pay community benefits, and the East Ayrshire Minerals Fund represents one option available to do so. This guidance provides information on this option in this context.
- 2.4. For surface coal extraction, the suggested minimum rate is 30 pence per tonne of coal extracted from the ground, index linked to the date on which development on-site commences; 15 pence going to the Council-managed Minerals Fund and 15 pence directly to communities. The Council recognises that the price per tonne of coal fluctuates significantly depending on the supply and demand for coal at any given time. Looking at the price of coal per ton between Q1 2013 to Q3 2019, 30 pence per ton represents around 0.5% of the average price paid by the major power generators in the UK. This covers the lowest value of £37.20 in Q2 2016 and a high of £82.06 per ton in Q3 2018. Since the MLDP was published, the price has been around £55 per ton. As such, 30p per ton is still deemed to be a reasonable amount and is not considered unduly onerous on applicants operating in a volatile market. It is recommended that the contribution be based on coal extracted from the ground, rather than the coal that leaves the site. In most cases, it is the extraction process itself that can impact in communities, therefore it is appropriate that the contribution rate be clearly connected to extraction.
- 2.5. For non-coal extraction, the Council suggests applicants make a community contribution to help offset any impact on local communities. It is recognised that in general, sand and gravel quarries have a lesser impact on local communities given that they generally require less land and less extensive operations to access the minerals. Community contributions could therefore comprise an annual contribution, based on an appropriate rate per tonne of minerals worked, taking account of the particular site specific circumstances of the development. To align with coal extraction, it is suggested that 0.5% of the purchase price paid for the mineral should be set aside for community benefits. Again, any contribution should be halved; 50% going to the

Council-managed Minerals Fund and 50% going directly to an appropriately constituted community group.

- 2.6. **A developer may choose to provide a higher or lower amount and/ or use a different calculation method and still contribute to the fund.**

3. The East Ayrshire Minerals Fund

Why have a Minerals Fund?

- 3.1. The East Ayrshire Minerals Fund (EAMF) was established by the Council in 2020 to distribute community benefit funds from minerals extraction developments within East Ayrshire. The purpose of the EAMF is to support a wide range of community projects that can benefit the local community and, if appropriate, cross boundary projects with a view to providing greater opportunity for communities within East Ayrshire to benefit. The focus of this fund is *entirely* on legacy projects, i.e. projects that have a long term impact; that is the difference between this fund and existing minerals related funds in East Ayrshire. Legacy projects can be of a relatively small scale; the key is that the benefits of them will be maintained in the long term.
- 3.2. Having the Council administer, distribute and manage community benefit funds can be advantageous to communities. It gives the Council the ability to work in partnership with community groups, offering advice and guidance at different stages in the community benefit process. Where possible the Council can assist communities in identifying and securing match funding from other funding sources helping to maximise the benefits of the mineral extraction monies.
- 3.3. This structure mirrors that of the East Ayrshire Renewable Energy Fund established by the Council in 2010 to distribute community benefit funds from wind energy developments within East Ayrshire. To date the Renewable Energy Fund has been successful and has ensured that the monies are invested in valuable projects benefitting local communities.

Who can access the Minerals Fund?

- 3.4. Contributions paid into the Council's Minerals Fund will be ring fenced for those communities affected by the particular minerals extraction site. Communities affected will be identified on a site by site basis, based on the nature of the extraction activity, duration, location and topography.
- 3.5. The following groups are eligible to apply for EAMF funds:
 - Constituted Voluntary and Community Organisations including community councils, community led action plan steering groups, trusts and organisations with charitable status where the project can demonstrate wider community benefit.
 - Social Economy or Social Enterprise projects where the project may be a Company Limited by Guarantee and/or have charitable status. Any profits made by the project are reinvested in the project.
 - Local Authority or other agencies where the project is led or supported by the community, is new and **does not** represent a substitution of core Council business activities.

Note: the EAMF will not be used to benefit specific individuals or to promote any political purpose. In all cases the benefits to communities and groups in East Ayrshire must be demonstrated.

What will the Minerals Fund monies be spent on?

- 3.6. The money will be available to carry out a wide range of projects that will benefit local communities. It seeks to support projects in relation to environmental enhancement, environmental education, employability and training, community based social enterprises, community led service provision, community led sports and leisure, and community income generating projects. The EAMF will not be used for projects that are the statutory responsibility of the Council.
- 3.7. In more recent years, for comparison, the Renewable Energy Fund has provided funding to a wide range of projects, including the refurbishment of gardens in Dunlop by the Wee Gardens Projects, the installation of mains water supply at Annanhill Walled Gardens Project, the provision of a solar mounted management system for Darvel Skateboard Club and the creation of an arts hub at Kilmarnock Railway Station to be managed by the Kilmarnock Railway Station Heritage Trust.
- 3.8. The East Ayrshire LDP emphasises the importance of placemaking (see Volume 1, Section 3) and has identified a number of strategic and deliverable projects via placemaking maps. These are being produced as set out in the Action Programme and will be adopted as supplementary guidance, forming part of the LDP. Projects that form part of the placemaking maps will, in principle, be suitable for EAMF funding.
- 3.9. Several East Ayrshire communities have or are in the process of preparing Community-Led Action Plans. These plans contain a number of priorities for action as well as specific projects that communities would like to see implemented. The Council would particularly encourage the use of community benefit funding to assist in the delivery of those projects that are consistent with this guidance.
- 3.10. Other projects which would benefit a number of communities and that are of a strategic nature (e.g. community transport initiatives) will also be particularly supported. This would ensure the deliverability of the projects identified but also help focus funding on projects that will benefit communities in the long term.
- 3.11. Project eligibility criteria has been developed to ensure there is a fair and transparent approach to distributing EAMF funding. The following types of projects are eligible to be considered for funding through the EAMF, both in terms of the creation of new projects and extensions or improvements to projects already in existence:
 - **Environmental projects:** for example, habitat restoration and management, woodland planting and maintenance, streetscape projects, community allotments and gardens and environmental arts projects.
 - **Environmental education projects:** for example, school sensory gardens and habitat creation areas, weather stations and environmental education packs.
 - **Employability and training programmes:** employability support and small business up-skilling programmes coordinated by East Ayrshire Employability Forum to enable members of the local community to access jobs in sectors of the economy where there are local job opportunities.
 - **Community based social enterprises:** capital and revenue support is available for new or existing social enterprises to develop their project or expand their operation/geographical area of operations to the benefits of communities in East Ayrshire.
 - **Community led service provision:** for example, new initiatives that help improve the environment such as rural community transport initiatives where

there is demonstrable case that the project will reduce carbon footprint and/or improve the environment.

- **Community led sports and leisure:** for example, capital projects, such as improvements to sports/community land or buildings, pitch improvements, floodlighting, cycle tracks and path networks.
- **Community income-generating projects:** support for projects whose main focus is income generation to support community activity.

3.12. There are a number of general considerations that apply to all eligible categories of projects that should be taken account of when exploring potential EAMF projects.

- **Council Owned Assets:** EAMF monies cannot be used for improvements to/refurbishment of Council assets unless the asset is leased, managed and maintained by a local community group or social enterprise.
- **Acquisition Costs:** These may be considered as eligible for consideration only in very exceptional circumstances, such as where all other avenues have been explored and where the land/property values have been independently verified. Projects must also fall within the broader eligible EAMF criteria.
- **Capital and Revenue Costs:** The EAMF can provide both capital and revenue support if considered appropriate. Revenue funding will be for a maximum period of three years and will only be awarded where the need is clearly demonstrated in a Business Plan or other appropriate justifications accompanying the application. In addition, each project must consider how revenue costs can be met beyond the maximum three year period and be able to demonstrate longer term sustainability measures.
- **Recognition of Grant Support:** Applicants will be required to give appropriate recognition to the fund by all or some of the following methods:
 - Prominent signage during works
 - Permanent plaque on premises
 - Acknowledgement in all press and media releases
 - Acknowledgement in all project documentation
 - Acknowledgement on applicant's website

What level of support will the Minerals Fund offer?

3.13. There is no cap on the level of funding that can be sought from the EAMF, although the amount we are able to award will depend on the amount available within the fund, and within that, sums will be ring fenced for particular areas depending upon which development they are associated with i.e. monies associated with a quarry near Fenwick would not be available to applicants in the Cumnock and Doon areas. Prospective applicants should enquire as to available funds in advance of preparing any application, and as to whether they are eligible for available funds geographically. If applicable in terms of geographical remit, applications can be made at the same time to both the EAMF and REF Fund, however, these applications will be assessed separately. Award from one fund does not preclude award from the other.

3.14. Applicants to the EAMF are required to demonstrate that they have also applied for project funding from other sources. The EAMF will not routinely provide 100% grant funding to any project, although the Council's Grants Committee does have discretion

to consider a higher intervention rate for appropriate projects in exceptional circumstances, for example, projects which are of strategic importance and where there is evidence that match funding from other sources has been unsuccessful or there is a valid reason why it has not been sought.

- 3.15. Strategic long term projects that result in a sustainable legacy for the funding contributions may include projects that are delivered by multiple funding sources, including the Council's Renewable Energy Fund.
- 3.16. As the EAMF seeks to support projects of a scale that can make a lasting difference to communities, the fund will not support projects with a value less than £1,000, although it is open to applications for any proportion of this amount, provided it is less than 100%.

How will applications for the Fund be assessed?

- 3.17. Applications to the EAMF can be submitted and considered by the Council on a twice yearly basis, subject to there being sufficient monies in the fund. Applications can be submitted no later than 31st January each year to be considered by the appropriate Council Committee in May, and no later than 31st May each year to be considered by the appropriate Council Committee in September.
- 3.18. Applicants will be required to have completed the preparatory and investigatory works prior to submitting an application to the fund. This is to ensure that monies awarded are not unduly ring-fenced to the detriment of more project-ready applications. Accordingly, all awards will be subject to the following conditions:
- All projects must commence within 12 months of the date of funding award.
 - A progress report must be provided on all outstanding awards prior to the next scheduled EAMF Grants Committee meeting following the grant award.

How will the Minerals Fund projects be monitored?

- 3.19. The Council will regularly monitor the distribution of community benefit funds acquired through the EAMF, to ensure that the projects achieve what they set out to achieve as detailed in the application form. Whilst there will be a focus on more significant projects all approved projects will be liable to be monitored. At present, the Council monitors grant awarded projects on a quarterly basis. These quarterly cycles cover the following:
- Project performance to date, to include progress against the agreed targets and outcomes
 - Project and finance, to include consideration of any Council grant funding expenditure and also the organisation's overall financial position
 - An update on any organisational change within the project, to take account of any changes to the organisation's staffing and governance arrangements
 - A sustainability update, in respect of future project development and funding beyond the lifetime of the current grant award.
- 3.20. In addition, site visits are carried out by the Council to see what progress is being made on a project. There is also a requirement for an organisation to submit relevant receipts to support the project. The monitoring information is regularly submitted to the

appropriate Council Committee (the Grants Committee in the first instance) for consideration on a regular basis.

4. Community Benefits Direct to Communities

What is being sought?

- 4.1. It is requested that those developers seeking planning permission for minerals extraction development provide a minimum contribution of 15 pence per tonne of coal extracted in the case of surface coal extraction, and 0.5% of the sale price per tonne of minerals worked in the case of non-coal extraction that should match the contribution directed to the Council-managed EAMF, per annum direct to the affected communities. This should be directed through an appropriate community fund specifically established to manage the funds received from the minerals extraction development. This contribution should be index linked to and payable from the date on which on-site development starts.

What are the advantages?

- 4.2. Having community benefit payments being made direct to communities can empower communities, in terms of having the ability to use the skills and expertise of community members to maximise the benefits of the finding for the good of the local area. It also means that local residents are actively involved in the future of their community and area. It provides the opportunity to acquire funds in a variety of different ways and effectively manage timescales and influence how the funding is administered and spent. With this comes responsibility for the administration, governance, management and monitoring of community benefit monies.

Community Structure Required

- 4.3. An appropriate Community Structure and Fund must be established prior to any community benefits being acquired, administered and distributed. There are a variety of community structures available and the type of structure agreed upon will depend on what best suits the operations a community wish to undertake and what goals they want to achieve. A process also needs to be established to ensure that the community benefit monies are managed in an effective manner. Many of the community led action plans that have been produced by East Ayrshire are now being taken forward by associated community groups with their on governance arrangements. These groups could be one mechanism for managing any community benefit in the area.

Legal and Financial Responsibilities

- 4.4. It should be ensured that existing or new community groups specifically dealing with community benefit monies have the legal power to administer, set a constitution, and manage where the funds will be held and overall maintain and manage the community benefits money. If the community group take the decision to negotiate with the developer/operator and manage the community benefit monies themselves then it is their full responsibility in how this is taken forward.

Governance

- 4.5. A good robust governance structure is fundamental to the success of a representative community organisation. The term 'governance' is used to refer to general good practice in running an organisation. Failure to maintain good governance can result in tension within a community, legal or financial difficulties and tensions with the developer. Any tensions can be easily avoided if a community group set out a clear and transparent process and knowledge of what is required. It is the full responsibility

of the developer to ensure that a satisfactory governance structure is established prior to community benefit funds being released to communities.

Administration

- 4.6. There will be a level of work involved in processing a community benefit fund, fulfilling legal requirements, demonstrating accountability and ensuring resources are available. Effective administration is essential to the success of a community organisation. It requires the organisation to have ongoing functionality to manage, audit and distribute funds successfully. The administration of community benefit funds is closely related to the governance structure under which a fund is delivered and the work required will vary:
- Where a new legal entity is established to hold and manage the fund, there will be a level of administrative work around processing the fund, fulfilling legal requirements, ensuring it is resourced and demonstrating accountability
 - Where an existing community structure or vehicle is used, that body must be aware of the additional work required to administer the fund
 - Where the fund is managed through a third party or directly by a developer, the administration will be undertaken by that third party or developer, while all decision making should be kept local.
- 4.7. There are a variety of ways to administer a community benefit income and a community group will need to explore what approach is best for them. Although not directly related, the Scottish Government document 'Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments' outlines a number of different administration options that can also be applied to the case of administering community benefits from minerals extraction developments.
- 4.8. The Scottish Government encourages a review of the fund process, spend and purpose every 3 to 5 years. This measures the benefits to the community and ensures that the governance arrangement and administration structure is adequate and allows the community to achieve their goals.
- 4.9. If there is not an appropriate structure in place to manage community benefit monies but the community are committed to managing the fund themselves then there are other options available, such as obtaining the assistance of organisations, for instance, Foundation Scotland who can assist in setting up and administering community benefit monies on behalf of communities. It should be noted that depending on the nature of what is being sought from a community group some organisations might charge for offering support and this should be factored into the spending of community benefit monies. East Ayrshire Council's Vibrant Communities team can also provide support and assistance in establishing a community structure ranging from obtaining the right skills and training to having the right financial structure in place.

Role of the Council

- 4.10. When community benefit monies are directly managed by communities the Council can, where appropriate, play a supportive role. Officers from key services within the Council can offer advice and assistance in relation to community benefit funding and the implementation of certain projects. For example, Vibrant Communities may be of particular assistance with obtaining funding for projects identified through Community

Led Action Plans. Vibrant Communities can also provide support and assistance for community groups in terms of, for example, skills, training, finance and marketing.

- 4.11. In addition, if a community does not have a structure, governance and administration process in place at the time of the community benefit monies being distributed, East Ayrshire Council can establish a fund to hold the monies until arrangements are in place. Once a constituted community structure is in place and the group can demonstrate that there are also appropriate governance and administration mechanisms in place then the funds can be released to the community group to administer.

Delivering Funds Effectively

- 4.12. There is a need to ensure that community benefit funds being managed directly by community groups are used to benefit projects that will support sustainable development and maximise opportunities and benefit in the long term. The use of community led action plans which have identified local priorities for action could be used as well as projects identified in existing and emerging placemaking maps through the East Ayrshire Local Development Plan, the Minerals Local Development Plan, Supplementary Guidance and the LDP Action Programme. Communities will have the responsibility to make important decisions on what the funding is invested in. It is imperative that a community structure is set up and that an eligibility criteria is in place to focus the funds on specific types of projects and that value for money is obtained.

Participatory Budgeting

- 4.13. Participatory budgeting (PB) is a process which directly involves local people in the decision making about how funding, which may include public funding, is spent in their community. PB will work in different ways in different communities and there are various ways in which it can be implemented. There are however basic values and principles that should be met, in terms of transparency, local ownership, deliberation around budget decisions and shared responsibility from all those involved. The PB approach is supported by the Scottish Government.
- 4.14. PB involves an individual or group presenting their ideas and the funds needed to progress, to the community. It is then for the members of the local community to vote and decide on what should be supported. Therefore, it is an approach that could easily be adopted by communities to manage community benefit funds and engage the whole community in the decision making process. East Ayrshire Council has been working with communities and partners to pilot the approach locally. Support and assistance could be given to local communities to develop a PB model for their areas by Vibrant Communities and partners.

Monitoring of Community Benefit Monies

- 4.15. A monitoring process will be required to be put in place and managed by a community group to regularly review what the funds are being spent on, by who and when. Annual reports, including an independent audit, relating to a community structure's finances will be required. The report should also outline the projects that have been funded in the previous financial year and those projects to be funded for the forthcoming year. The annual report should also emphasise any issues and/or the need for any assistance on the spending funds. This report will provide information for the local community and the developer and ensure the community group are operating in a clear and transparent manner. Minerals extraction operators may have their own monitoring

procedures in place and community groups should work with them, in terms of monitoring accordingly.

Relationship between the Developer and the Community

- 4.16. It is fundamental that there is a good relationship between the community group and the minerals extraction developer/operator. The community group and developer/operator should engage with each other at the earliest opportunity in the community benefit process. It is important that discussions and consultations regarding community benefit are held separately to any engagement in relation to the development process.
- 4.17. The role of the community group is to ensure that the right community benefit scheme is established and that the monies acquired from the developer/operator are managed and monitored in an effective manner. From an early stage, community groups should seek clarification from the developer on, for example, the different models of community benefit being offered, the amount to be paid to the community per annum, how the payments will be calculated, whether the payment will be related to profit and whether there is flexibility with when the money can be spent. In terms of the community group itself, the right structure of the group needs to be established as well as what role people will play in the process, such as community members, local authority officers etc. and a plan will need to be prepared to determine the long term planning, management and monitoring of the community benefit scheme.
- 4.18. In addition to effectively engaging with the community, the role of the developer/operator in the community benefit process includes operating procedures and arrangements that align with the Scottish Government's Good Practice Principles or Community Benefits; providing a legally binding contract with the fund administrator for the lifetime of the project; requesting an annual report and audit which should outline what projects have been funded in the previous financial year and what is to be funded over the forthcoming year; and encourage community groups to submit recipient details. As stated previously, it is the full responsibility of the developer to ensure that, prior to community benefit funds being released to communities, there is a satisfactory community and governance structure and administration procedures in place.

5. **Useful Contacts**

Planning Policy

- Tel: 01563 576790
- Email: <mailto:localdevelopmentplans@east-ayrshire.gov.uk>

Development Management

- Tel: 01563 576790
- Email: <mailto:submittoplanning@east-ayrshire.gov.uk>

Democratic Services

- Tel: 01563 576137
- Email: <mailto:Admin@east-ayrshire.gov.uk>

Vibrant Communities

- Tel: 01563 576705
- Email: <mailto:mvibrantcommunities@east-ayrshire.gov.uk>

6. **Useful Links**

Scottish Government Good Practice Principles for Community Benefits for Onshore Renewable Energy Developments:

<http://www.localenergyscotland.org/goodpractice/onshore-community-benefit/>

Foundation Scotland: www.foundationscotland.org.uk

Participatory Budgeting Information: www.pbnetwork.org.uk