

**REPORT TO EAST AYRSHIRE COUNCIL
ON THE
PROPOSED EAST AYRSHIRE MINERALS
LOCAL DEVELOPMENT PLAN EXAMINATION**

Reporter: J Alasdair Edwards MA(Hons) MRTPI

Date of Report: 27 June 2019

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Examination of conformity with the participation statement

1. Section 19(4) of the Town and Country Planning (Scotland) Act 1997 (as amended) firstly requires an examination by the appointed person (reporter) of whether the planning authority has consulted on the proposed local development plan and involved the public in the way it said it would in its participation statement.
2. Section 20B of the Act requires each planning authority to prepare a development plan scheme at least annually. The scheme should set out the authority's programme for preparing and reviewing its development plan, and must include a participation statement. This publication should state when, how and with whom consultation on the plan will take place, and the authority's proposals for public involvement in the plan preparation process.
3. Scottish Government Circular 6/2013 on 'development planning' states that "The Act restricts the Examination to the actions of the authority concerning consultation and public engagement in respect of the Proposed Plan, rather than the extended plan preparation process. In carrying out this assessment, Scottish Ministers envisage that the reporter will only refer to existing published documents such as the Participation Statement itself, the authority's statement of conformity with this, and any representations relating to the authority's consultation and public involvement activities".

The participation statement

4. The proposed East Ayrshire Minerals Local Development Plan (LDP) was placed on public deposit for six weeks between 27 July 2018 and 14 September 2018. During this period the East Ayrshire LDP Development Plan Scheme February 2018 (approved by committee March 2018) was current.
5. The scheme confirmed that a single minerals plan would be prepared covering the entire of East Ayrshire. A participation statement contained within the scheme advises that considerable engagement had been undertaken prior to the proposed plan stage including an additional stage of consultation on a draft main issues report (MIR) on minerals. This enabled the production of a MIR that focussed on the key matters. A range of consultation events were carried out with respect to the draft MIR and MIR including community workshops; drop-in sessions; public displays; and advertisements.
6. With respect to the proposed plan the participation statement identified the following methods to encourage public involvement:
 - Notification in the Edinburgh Gazette, local press and the council's website.
 - Consultation with all parties who participated in the MIR.
 - Staging of three information events in Kilmarnock, Cumnock and the Doon Valley during the consultation period.
 - Formal neighbour notification where a proposal is likely to have a significant effect on the use or amenity of that site or neighbouring land.

The report of conformity

7. Together with the proposed local development plan, section 18(4)(a)(i) of the Act requires an authority to submit a report to Scottish Ministers demonstrating the extent that the authority has met the needs of section 19(4). On this basis, East Ayrshire Council has submitted a 'Report of Conformity with Participation Statement'.

8. The report of conformity confirms that the council ran a representation period from July to September 2018 to allow for the submission of comments to the proposed plan. The following actions were undertaken during this period:

- Notices were advertised in the Edinburgh Gazette, the Kilmarnock Standard and the Cumnock Chronicle identifying the consultation and information events.
- The proposed plan and associated documents were made available on the council's website.
- Correspondence was sent to all contacts in the council's consultation database – those who responded to the MIR and who commented on the separate proposed East Ayrshire LDP; key agencies; and a wide range of interested national and local organisations.
- Information events were held in Kilmarnock; Auchinleck and Dalmellington (low attendance at these events was recorded which the council suggest was due to extensive prior engagement).
- Neighbour notification was carried out in accordance with relevant regulations with over 100 letters being sent to affected owners, lessees and occupiers.

9. During the representation period a total of 125 representations were received to the proposed plan from 27 individuals or organisations.

Conclusions

10. East Ayrshire Council has successfully published and promoted the proposed plan providing the required period for representations required by statute. The council has met the statutory obligations in relation to the period for representations, neighbour notification and newspaper notification.

11. No representations submitted to the examination suggest that the council has not conformed with its participation statement. Having considered all the evidence, I find that the planning authority has consulted on the proposed plan and involved the public in the way it said it would in its participation statement. Being satisfied, the examination of the proposed plan can commence.

J Alasdair Edwards
Reporter

Issue 1	Format and period of the Plan	
Development plan reference:	The whole plan	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
J Mulders (10) Hargreaves (24)		
Provision of the development plan to which the issue relates:	The length of the document, the plan period and its relationship with the Environmental Report.	
Planning authority's summary of the representation(s):		
<p><u>J Mulders (10)</u></p> <p>J Mulders states that it would be helpful if there was confirmation of the duration of the proposed Plan.</p> <p><u>Hargreaves (24)</u></p> <p>Hargreaves raises several issues regarding the overall format and approach to the Plan, specifically:</p> <p>(i) The Proposed Minerals Local Development Plan (MLDP) (CD11) is not a 'succinct and map-based' document. It is too lengthy and confusing in parts. Consideration should be given to reducing the size of the document where possible;</p> <p>(ii) Use of the MLDP is not assisted by having cross references to the MLDP Environmental Report (CD17); and</p> <p>(iii) It is not clear how long the MLDP is intended to run. A plan period of '10 to 20 years' is too long. Over that period there will no doubt be various factors of change that require to be accommodated in up to date policy. Having such a long MLDP plan period means that there is a real risk that its policy will become out of date.</p>		
Modifications sought by those submitting representations:		
<p>J Mulders seeks the following clarification be made: Confirmation should be provided as to the duration of the proposed plan.</p> <p>Hargreaves seeks the following modifications:</p> <p>(i) Make the Plan shorter and more succinct with greater use of maps; (ii) Remove cross referencing with the Environmental Report; and (iii) Reduce the intended lifetime of the Plan.</p>		

Summary of responses (including reasons) by planning authority:Duration of the Plan (10, 24)

The Council prepares a development plan scheme (CD27) on an annual basis. This sets out its programme and timetable for the preparation of Local Development Plans in the future. In addition, paragraph 4.25 of the Proposed MLDP indicates that the East Ayrshire Minerals LDP and the East Ayrshire LDP 2017 (CD22) will merge to become one LDP in the form of the East Ayrshire LDP2.

In accordance with Scottish Planning Policy (SPP) (CD06), it is noted that Local Development Plans should support the maintenance of a land bank of permitted reserves for construction aggregates of at least 10 years, should review mineral permissions every 15 years, and safeguard workable resources and ensure that an adequate and steady supply is available to meet the needs of the construction, energy and other sectors. SPP also requires that Local Authorities, through Local Development Plans, secure the sustainable restoration of sites to beneficial after use after mineral extraction and related working has ceased.

As such, in respect of the historic, current and potential future extraction of minerals and current and subsequent restoration and aftercare activities, it is important that the Plan timeframe reflects the potential lifetimes of current operational sites, and realistically reflects the periods of time associated with restoration of worked out sites and often lengthy aftercare requirements. The Council regards the 10-20 year time frame as appropriate and fully in accord with SPP. Within this timeframe potential plan reviews provide scope for policy development in light of changing circumstances. Should the reporter be minded, the Council has no objection to the plan period of the spatial strategy being clarified as 2018-2030 with the vision statement pertaining to 2018-2038 as per para 41 of SPP.

Succinct and map based (24)

The Council is of the view that:

The MLDP has a total of 10 infold maps which help to illustrate all policy areas of the Plan by identifying sites, land uses and key designations; numerous tables are also employed to summarise data. Policies are clearly identified, written in a straight forward and succinct manner and utilising bullet points where possible.

The MLDP covers a wide remit of policy areas. In addition to providing policy guidance for existing operational sites, considerable policy emphasis is placed on site restoration, aftercare and amenity after use. The plan is 89 pages long and contains 41 policies. The Council considers that every policy in the MLDP is necessary and has an important role to play, whilst the supporting text is relevant and proportionate. In this context, the length of the MLDP is deemed appropriate given the wide ranging nature of policy coverage required.

It should also be borne in mind that once adopted the MLDP will mean the following Plans no longer form part of the Development Plan:

- Ayrshire Joint Structure Plan 2007 (CD21);
- East Ayrshire Local Plan (EALP) 2010 (CD19);
- East Ayrshire Opencast Coal Subject Plan (EA OCCSP) 2003 (CD20).

This will provide a far more simplified and concise minerals policy coverage than is currently the case.

References to the Environmental Report (24)

The production of an Environmental Report (SEA) is a statutory requirement which follows a systematic and thorough process enabling environmental considerations to be integrated into the MLDP. SEA assesses and evaluates the likely significant impacts that the MLDP will have on the environment. In order to clearly link the findings of the Environmental Report with the Plan policies, cross referencing is necessary and is considered entirely appropriate. To do otherwise, for instance to include mitigation strategies within the Plan itself, would make the Plan longer and potentially less clear.

Aside from the clarification of the plan period in date format should it be deemed necessary, the Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Duration of the plan

1. The Town and Country Planning (Scotland) Act 1997 (as amended) requires local development plans to contain a vision statement and a spatial strategy. Scottish Government Planning Circular 6/2013 on ‘development planning’ confirms that the vision statement is expected to cover some 20 years while the spatial strategy should focus on the period up to year 10 from adoption.
2. I note that the proposed plan states that it “sets out what we want to East Ayrshire to be like in 20 years’ time” (paragraph 1.1); that the plan “represents the Council’s settled view on how, in relation to minerals, East Ayrshire should be developed over the next 10-20 years (paragraph 1.3); and that “the vision looks forward 20 years and sets out how East Ayrshire will appear in the future” (paragraph 1.9). Therefore, following the advice in the circular, I find that the plan identifies that it relates to a period 10-20 years in the future. However, it would be clearer if the vision statement (section 2) and the spatial strategy (section 4) in the plan stipulated the periods covered as promoted by the council. A change is therefore recommended on this basis.
3. Insertion of the time periods within the vision statement and spatial strategy would not prohibit the review of the plan, or parts of the plan, at an earlier stage. Indeed, the proposed plan states at paragraph 4.25 that the council intend to incorporate the content of the minerals local development plan into the future East Ayrshire Local Development Plan 2 (which is, according to the development plan scheme, due for adoption in 2021). On this basis, I find that there is reasonable prospect of regular review of provisions related to minerals without any modification required to the proposed plan.

Format of the plan

4. The aforementioned Act directs what local development plans should contain at section 15 but provides no direction in relation to the length of the document. The development planning circular states that “Scottish Ministers expect LDPs to be concise, map-based documents, making use of plain language and a range of graphical techniques to convey the strategy and individual policies and proposals in an accessible

way”.

5. I agree with Hargreaves that at 89 pages the proposed plan may be perceived as being long. However, as expressed by the council, the plan will replace three extant plans. As a subject plan it is focussed; provides detailed policies and proposals; and has ten inset maps. In this context, I find that the format of the plan is relatively concise and conveys the strategy, policies and proposals in an accessible manner. Furthermore, Hargreaves has provided no specific suggestions of how the proposed plan could be modified to make it more concise. Consequently, I find that no changes are required to the format of the plan.

References to the environmental report

6. The accompanying environmental report is a statutory requirement in plan preparation and provides mitigation measures. The provisions and findings of the environmental report would have influenced the plan and would likely be material to any future determinations. I agree with the council that it is reasonable and appropriate for the plan to cross-refer to the environmental report, its findings and mitigation measures. While this may require an interested party to consider more than one document in relation to minerals I do not consider this to be a serious difficulty. The references should remain.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Inserting “for the period 2018 to 2038” between “(MLDP)” and “links” in paragraph 2.1 of the vision on page 10.
2. Adding “for the period 2018 to 2030.” at the end of paragraph 4.2 of the spatial strategy on page 12.

Issue 2	Terminology and Clarity	
Development plan reference:	The whole Plan	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>J Young (4) J Mulders (10) G Roberts (26)</p>		
Provision of the development plan to which the issue relates:	<p>The use of subjective terminology throughout the Plan: MIN SS1 (viii), Paragraphs 4.4, 4.5 (i); 4.7; 4.10; 4.11; 4.12, MIN SS2, MIN SS7; MIN SS8; 4.42; 5.10; MIN ENV9(iii); MIN ENV12; MIN ENV13; 6.2; MIN PPL1; MIN PPL2; MIN PPL3; MIN PPL4; 6.13; MIN PPL5, MIN PPL6; 7.11; MIN T3; 9.2; 9.5; MIN WP1 and the Glossary.</p>	
Planning authority's summary of the representation(s):		
<p><u>J Young (4)</u></p> <p>J Young refers to the definition of the word “restoration”.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders has highlighted instances throughout the Plan (CD11) where subjective wording which is open to interpretation is used. In these instances the wording should be replaced with more precise wording. In most, but not all cases, the respondent has suggested the wording that should be inserted.</p> <p>In some instances the suggested changes alter the meaning of the particular sentence and the Council has responded directly to these suggested changes below.</p> <p><u>G Roberts (26)</u></p> <p>G Roberts is concerned over the subjectivity of the Plan and asserts that it contains too many vague descriptions e.g. reasonable, appropriate, highest possible standard, where practicable. In particular, the respondent is concerned with the definition of restoration in the glossary and who appraises the acceptability of restoration. It is suggested by the respondent that sustainability should form part of restoration.</p>		
Modifications sought by those submitting representations:		
<p>J Young has not requested specific modifications.</p> <p>J Mulders requests the following modifications:</p> <p>The word ‘unacceptable’ is subjective and lacks precision. It should be clarified in each instance or defined in the glossary of terms. This occurs in Policies MIN SS1, MIN ENV12, MIN PPL2, MIN PPL4 and MIN PPL5.</p>		

The word '**minimise**' is subjective and lacks precision. This occurs in paragraphs 4.7, 4.42 and policy MIN PPL1. In each of these instances it should be replaced with '**To reduce the adverse impact by setting the separation distance with the agreement of directly affected dwellings**'.

The terms '**should**' and '**could**' are too vague to be deemed acceptable. This occurs in paragraphs 4.10 and 4.12 and in policies MIN ENV12, MIN T3 and MIN WP1. In each of these instances, the terms should be replaced with '**must**' '**if**' or '**be required**'.

The word '**reasonable**' lacks precision and clarity. At paragraph 4.10 this should be replaced with '**to deliver an alternative, publicly agreed, restoration.**'

The word '**appropriate**' lacks precision and clarity. At paragraph 4.11 this should be replaced with '**to deliver an alternative, public consultation based development**'. At paragraph 6.2 this should be replaced with '**that separation distances are set with the agreement of directly affected community, and dwellings**'. In Policy MIN PPL2 (the aim of the policy), it is pointed out that '**appropriate**' lacks certainty. No specific alternative wording is suggested.

The word '**practicable**' lacks precision and clarity. At policy MIN SS2, it should be replaced with '**there is clear, public demand and community support.**' At policies MIN PPL3 and MIN PPL4 '**as far as practicable**' is open to interpretation. Thought should be given to inserting a percentage figure e.g. minimum 90% site completion.

In policy MIN SS2, the word '**placemaking**' should be inserted in the final sentence, to read, 'These principles will provide the foundation to provide appropriate future development and encourage **placemaking** growth within the area'.

At policy MIN SS7, the terms 'national benefit' within the aim should be clarified to confirm whether it means Scottish or British.

At paragraph 5.10, the word '**reclamation**' should be replaced with '**restoration**' to avoid introducing another definition.

At policy MIN ENV9, '**As far as possible**' is aspirational, unless linked to a specific standard or outcome. It should be replaced with '**to a recognised standard**'. At MIN ENV13 the word '**possible**' should be deleted.

The phrase '**highest possible standard**' is aspirational unless linked to a specific standard. At paragraph 4.12 and policy MIN SS2 the word '**possible**' should be removed and the actual standard defined.

The word '**adequate**' at policy MIN PPL1 lacks precision. It should be replaced with the phrase '**to reduce the adverse impact by setting the separation distance with the agreement of directly affected dwellings.**'

At paragraph 6.13 the word '**may**' should be replaced with the word '**will**'. At paragraphs 9.2 (part D) and 9.6 the word '**can**' should be replaced with '**will**'.

The word '**robust**' lacks precision. It should be replaced with the word '**achievable**' at paragraph 9.2 (part D) and the phrase '**realistically achievable**' at paragraph 4.5 (part i) or else a definition of '**robust restoration proposals**' should be added to the glossary.

The use of '**significant**' in Policy MIN PPL6 and paragraph 9.2 (part E) lacks precision, clarity and certainty. It should be clarified or formally defined in the glossary.

The phrase '**More or less**' should be removed from paragraph 7.11

At paragraph 9.5 the word '**certain**' should be replaced with '**guaranteed**'.

A number of suggestions are made to improve the clarity of the glossary:

Aftercare – the word '**required**' should be replaced with '**agreed**' and '**intended**' should be deleted.

Bonds – the word '**money**' should be replaced with '**funding**'.

Former minerals opportunities sites – add in the phrase '**unrestored or**' before '**abandoned**'

Restoration – the word '**reused**' should be replaced with '**repaired**' and the word '**heal**' should be replaced with '**repair**'.

Sewage sludge – the word '**by-product**' should be replaced with '**waste product**'.

South West Scotland Connections Project – insert the word '**which**' between '**network**' and '**will**'

Spoil – the word '**waste**' should be deleted

Sterilisation – the phrase '**in the foreseeable future**' should be replaced with '**for the duration of the consented development**'.

G Roberts does not request specific modifications, but questions the subjectivity of the Plan and the definition of restoration, which is suggested should include sustainability.

Summary of responses (including reasons) by planning authority:

Alternative wording (10, 26)

The Council has reviewed the suggestions and comments put forward by the respondents which will, in the view of the respondents, improve the overall clarity of the Plan, removing any ambiguity or confusion in its use.

In most cases, the suggestions do not change the direction or meaning of the text, they are instead an attempt to increase the clarity of the text and make the wording clearer for the reader. The Council disagrees that these changes are necessary. Having reviewed the text of the Plan, the Council considers it to be entirely acceptable in terms of tone, transparency and certainty of language. The numerous terms that the respondents consider to be subjective are, in the Council's view, perfectly legitimate and reasonable terms to be used in a development plan and are, in most instances, included within the EALDP2017 (CD22). Notwithstanding, using SPP (CD06) as a marker, terms including '**reasonable**', '**unacceptable**', '**significant**', '**as far as possible**', '**minimise**' and '**appropriate**' are used in numerous instances throughout SPP, suggesting to the Council that the use of such terminology is standard practice within a planning policy context.

Further, some of the suggested amendments would result in the Plan being less flexible in its approach. Based on the Council's experience of securing appropriate restoration, particularly over the last 5 years, it is the Council's view that although strong policies and guidance are essential, sometimes there is a need for projects and plans to adapt and evolve to ensure that restoration on the ground is delivered. Inflexibility may reduce the ability of the Council to obtain acceptable amendments, which could result in no restoration being achieved. There is a value, therefore in having some flexibility.

In terms of the suggested amendments that do change the meaning of the text, the Council would respond as follows:

Policy MIN SS2 – the suggested inclusion of 'placemaking' within the final sentence. The Council is of the view that the word "placemaking" does not fit with the wording of the last sentence of Policy MIN SS2. The sentence as currently written requires that the principles outlined in Policy MIN SS2 will provide the foundation to provide appropriate future development and encourage growth. This sentence is intentionally general in nature and ensures that the policy is not restrictive in the type of growth which the Council would like to see on minerals sites. The addition of placemaking would increase ambiguity in terms of how placemaking growth should be defined. The Council is not clear what 'placemaking growth' would comprise of. The Council is of the view that the importance of placemaking is adequately embedded and expressed within the Plan, particularly through paragraphs 4.13 to 4.15 and that within Policy MIN SS2, the requirement to 'restore land to the highest possible standard' and 'identify opportunities for environmental improvement' will contribute to placemaking.

Paragraph 5.10 – the suggested change from reclamation to restoration. The Council accepts that although reclamation is an entirely appropriate term to use in the context of paragraph 5.10, it is not defined in the glossary and its meaning may not therefore be clear to the reader. Rather than using restoration in this sentence, the Council would suggest that if the Reporter is minded to modify the wording, a clear and simple alternative sentence would be:

'As such, the mismanagement of soils can affect **how land is used now and in the future.**'

Definition of Restoration (4,26)

In terms of the definition of restoration which was raised by J Young and G Roberts, the Glossary sets out the Council's definition as:

"a process in which a damaged natural resource/area is reinstated, partially reinstated or reused after a period of mineral extraction. Restoration need not replicate exactly what has gone before and may involve "innovation" as well as new ways of doing things to help heal the landscape and environment. It is understood that the term restoration can be subjective."

This definition and the use of the word "restoration" has not changed since the Main Issues Report. The Council are of the opinion that, whilst the subjectivity of the term in general usage is acknowledged (which is why it is clearly defined in the glossary to remove subjectivity), this is a valid definition and there is no demonstrated need to include sustainability within the term.

It is also suggested by J Mulders that 're-used' should be replaced with 'repaired.' The

Council maintains that ‘re-used’ is more appropriate in this instance. The re-use of the landscape is central to restoration – the use may be different to its original use, but this still comprises restoration. The restored landscape should be capable of productive re-use. To substitute for ‘repair’ would increase ambiguity, as the meaning of ‘repair’ in a landscape term is less clear, but implies fixing the landscape to what was there before, which is not the intent of ‘re-used’.

Glossary – in terms of sewage sludge, it is suggested that the definition incorporate ‘waste-product’ instead of ‘by-product’. The Council does not agree that this amendment should be made. The Council maintains that sewage sludge is a ‘by-product’ of the waste water treatment process. This is consistent with the description of sewage sludge contained in the Scottish Government publication ‘Review of the Storage and Spreading of Sewage Sludge on Land in Scotland (The Sludge Review), 2016’ (CD32).

Reporter’s conclusions:

General terminology used throughout the proposed plan

1. The Scottish planning system is discretionary where, as stated in Scottish Planning Policy (2014), the costs and benefits of proposals are balanced over the longer term with the aim of achieving the right development in the right place. Following this, the proposed plan reasonably includes terminology which allows for interpretation in decision-making. To do otherwise would limit the ability of plan to support development proposals as many, particularly mineral proposals, would likely include some impacts/effects.

2. While I acknowledge that terms including “unacceptable”; “minimise”; “reasonable”; “appropriate”; “practicable”; “as far as possible”; “possible”; “highest possible standard”; “adequate”; and “significant” can be open to interpretation they allow a degree of flexibility and discretion in decision-making. I find that the use of these terms in the proposed plan is reasonable and appropriate without the need for revision.

“Should” and “could”

3. The reference to “could” in paragraph 4.10 is appropriate as it relates to an assessment of a range of alternative restoration schemes and should remain.

4. As referred to in Scottish Planning Policy, the term “should” relates to an expectation whereas the term “must” reflects a legislative requirement to take action. In this context, I find that the term “should” in paragraph 4.12 and within proposed policies MIN ENV 12 (assessing landscape and visual impact); MIN T3 (restoration and access); and MIN WP1 (financial guarantees) is appropriate. No change to the plan is required on this basis.

“Placemaking”

5. Proposed policy MIN SS2 (minerals restoration and placemaking) states that progressive restoration and environmental improvement would “provide the foundation for appropriate future development and encourage growth in the area” but does not refer, other than in the title, to “placemaking. This is despite the fact that the reasoned justification at paragraphs 4.13 and 4.14 describe the importance of placemaking. Consequently, I find that it would be appropriate and reasonable for the policy to refer to placemaking. A recommendation is made on this basis.

“National benefit”

6. Policy MIN SS7 (surface coal proposals outwith the area of search and not meeting criteria of MIN SS6) states that its aim is “to recognise the national benefit of indigenous coal...”. This reflects the text contained in Scottish Planning Policy at paragraph 235 where it states “the planning system should recognise the national benefit of indigenous coal...”. Therefore, I consider that “national benefit” relates to Scotland and find that no further explanation is required to clarify this within the proposed plan.

“Reclamation”

7. I agree with Mr Mulders that the term “reclamation” should be replaced as it is not defined in the proposed plan. The council agrees and has provided suitable replacement wording for the text of paragraph 5.10. A small change to the plan is recommended on this basis.

“May” and “can”

8. Paragraph 6.15 (not paragraph 6.13 as referred to in the sections above) of the plan states that alternative provisions for community benefits “may be an acceptable alternative approach”. I find that it is appropriate for alternative arrangements to be considered as a possibility (using the term “may be”) rather than a certainty (using the term proposed by Mr Mulders of “will be”). This would allow the council to reasonably assess any alternative proposals for community benefits other than those stipulated in paragraph 6.15. No change to the plan is required on this basis.

“Can” and “will”

9. Paragraph 9.2 (part D) of the proposed plan suggests that restoration is an on-going process where part of a site “can” be restored as extraction activity progresses. Paragraph 9.6 also states that the planning authority “can” call on part of a financial guarantee to rectify any breach of consent. In both instances I find that the word is appropriate and reasonable in allowing some flexibility in approach as it may not always be the case that restoration must progress alongside extraction and, similarly, finance may not be required to rectify a breach. Consequently, I do not agree that the word “can” in these paragraphs should be changed to “will” as proposed by Mr Mulders.

“Robust”

10. Although in relation to wind energy development, Scottish Planning Policy (at paragraph 169) refers to the need for “a robust planning obligation to ensure that operators achieve site restoration”. I, therefore, find that the use of the term “robust restoration” in paragraphs 9.2 (part D) and 4.5 (part i) of the proposed plan is reasonable and should remain.

“More or less”

11. Proposed plan paragraph 7.11 refers to criteria which define a right of way including that “the route must follow a more or less defined route”. I consider that this definition is appropriate as rights of way may alter slightly over time, particularly if they do not always follow made-up paths. Consequently, the term “more or less” should remain.

“Certain” and “guaranteed”

12. The use of the word “certain” in paragraph 9.5 of the proposed plan, referring to the certainty of ensuring appropriate restoration, is sufficient without the need to replace the word with “guaranteed”.

Glossary

13. I find that the definition of “aftercare” is adequate as proposed - there may not always be an “agreed” scheme for aftercare and, consequently, the term “required standard” of restoration is sufficient. Furthermore, reference to the “intended after-use” is satisfactory to ensure restoration to the use envisioned.

14. The use of the term “money held in security” in the definition of bonds (financial) could be interpreted narrowly to refer only to cash and, consequently, I agree with Mr Mulders that this should be changed to “funding held in security” which would suitably widen the interpretation.

15. Former minerals opportunity sites are referred to in proposed policy MIN PPL6 (tourism activities on former mineral opportunity sites) with supporting paragraph 6.18 stating that “the legacy of minerals extraction in terms of the remaining unrestored sites, presents an opportunity...”. Therefore, I agree with Mr Mulders that the definition of former mineral opportunity sites should include reference to “unrestored” sites.

16. In relation to the definition of the word “restoration” I agree with the council that the terms “reused” and “heal” are appropriate and reasonable in relation to amending damage to natural resources. The definition also includes reference to “reinstatement”. I find the definition adequate without the need to refer to “repair”. I also consider that the definition is also sufficient to ensure sustainable care to natural resources without any modification.

17. The Ayrshire Joint Structure Plan (2003) and East Ayrshire Local Plan (2010) describe sewerage treatment as a by-product under the definition of ‘waste management’. Sewerage sludge is part of the waste cycle but not waste in itself and therefore reference to it as a “by-product” is reasonable.

18. I agree with Mr Mulders that a very minor change is required to the definition of the South West Scotland Connections Project to clarify its terms.

19. I consider that use of the word “waste” in connection with spoil is entirely appropriate and reasonable in referring to other material removed during mining. Therefore, no change to the plan is required on this matter.

20. Sterilisation may occur beyond the duration of consent for a development. Consequently, I find that it is reasonable for the definition of ‘sterilisation’ to refer to the prevention of mineral exploitation “in the foreseeable future”.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Inserting “and placemaking” between the text “encourage growth” and “within the area” within Policy MIN SS2: Minerals Restoration and Placemaking on page 16.
2. Replacing the sentence “As such the mismanagement of soils can affect the reclamation of land.” in paragraph 5.10 on page 40 with “As such the mismanagement of soils can affect how land is used now and in the future.”.
3. Replacing the word “money” with “funding” in the Glossary definition of ‘Bonds (financial)’ on page 79.
4. Inserting the words “unrestored or” between “were” and “abandoned” in the Glossary definition of ‘Former minerals opportunity sites’ on page 79.
5. Inserting the word “which” between “network” and “will” in the Glossary definition of ‘South West Scotland Connections Project’ on page 80.

Issue 3	Reliance on use of ‘communities’ and the non-inclusion of ‘dwellings’ and ‘settlements’	
Development plan reference:	Policy MIN SS4, MIN SS5, MIN SS 10, paragraphs 4.29, 4.34, 4.50 (part of the MLDP Aims), the Glossary and Annex 1	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
J Mulders (10)		
Provision of the development plan to which the issue relates:	The reliance on the use of the word “communities” and the non-inclusion of “dwellings” and “settlements” contained in various sections of the Plan.	
Planning authority’s summary of the representation(s):		
<p><u>J Mulders (10)</u></p> <p>J Mulders states that there are instances throughout the Plan (CD11) where individual dwellings are not given adequate protection, with emphasis instead on ‘communities’ and ‘settlements’. He states that a single dwelling should be afforded the same protection as settlements. Single dwellings have a distinct disadvantage from a planning perspective as they are only able to raise very low number of representations due to their low number of residents. By not protecting single dwellings, they are purposely disadvantaged due to their low numbers. J Mulders recommends the insertion of the word ‘dwellings’ at specific points throughout the Plan. J Mulders also suggests an amendment to the definition of ‘buffer zones’ in the Glossary.</p> <p>J Mulders also disputes the definition of settlements stating that it includes single dwellings and buffer zones (in respect of separation from dwellings) in the Glossary. In addition, J Mulders recommends the insertion of the word ‘settlements’ at specific points in the Plan to reflect his suggested definition of settlements which sets out that a settlement may be as small as a single house in a remote area or as large as a mega city.</p>		
Modifications sought by those submitting representations:		
<p>J Mulders seeks the following modifications:</p> <p>Insert “and dwellings” at the end of the last sentence of third paragraph in Policy MIN SS4 to read: “Such proposals will be required to demonstrate a clear on-site benefit to the environment, local communities and dwellings”.</p> <p>Insert “and dwellings” to the third sentence of paragraph 4.29 to read: “It is of paramount importance therefore that the winning of minerals is carried out in a responsible manner and that the impacts of extraction on our local communities, our environment, our built and natural heritage and dwellings are minimised”.</p> <p>Insert “and dwellings” to paragraph 4.31 to read: “In line with Scottish Planning Policy, the Plan identifies areas of search where surface coal extraction is most likely to be acceptable during the plan period, with particular emphasis on protecting local</p>		

communities **and dwellings** from significant impacts including cumulative impacts.”

Insert “**and settlements**” to the end of the last sentence in paragraph 4.34 to read: “However, we have included the 500m buffer in defining our area of search as this makes clear that extraction is most likely to be acceptable outwith this buffer and places emphasis on protecting communities **and settlements**”.

Insert “**and dwellings**” to the end of the aim which supports policy MIN SS5 to read: “To safeguard workable resources and minimise the impacts of extraction on local communities **and dwellings**”.

Insert “**dwellings**” to the first paragraph in policy MIN SS10 to read: “The extraction of construction aggregates will be supported where there will be no unacceptable and significant adverse impact on local communities, **dwellings** and the environment.”

Insert “**dwellings**” to the first bullet point in paragraph 4.50 to read: “To encourage the development of alternative uses on former minerals opportunity sites for tourism, leisure, forestry and agriculture to the benefit of local communities, **dwellings;**”

J Mulders suggests an alternative definition for settlement as follows and requests that this be included within the Glossary:

“A settlement is a place where people live. A settlement may be as small as a single house in a remote area or as large as a mega city (a city with over 10 million residents). A settlement may be permanent or temporary. An example of a temporary settlement is a refugee camp. However, a temporary settlement may become permanent over time. This has happened to many refugee camps that have been built in conflict zones.” (source: BBC – GCSE Bitesize – Geography) (RD10)

It should be argued that a single dwelling should be afforded the same protection as settlements. Single dwellings have a distinct disadvantage from a planning perspective as they cannot, due to their low number of residents, produce the volume of representations that a settlement can.

Insert “**and dwellings**” to criteria (xv) of Annex 1 to read: “Protection of existing landscape, nature conservation and built heritage designations including but not restricted to SPA, SAC, SSSI, LNCSSs, Scheduled Monuments, Listed Buildings, carbon rich soils, deep peat and priority peatland habitat, prime quality agricultural land **and dwellings** etc.”

Insert “**and dwellings**” to criteria (xviii) of Annex 1 to read: “Reinstatement of natural features, walls, hedges, water courses, rights of way, core paths **and dwellings** etc.”

The definition of Buffer Zones in the Glossary should be modified to read:

‘An area of land separating mineral development from adjoining sensitive land uses and ~~settlements~~ **dwellings** to ensure that communities are not directly affected by such forms of development.’

Summary of responses (including reasons) by planning authority:

Use of ‘communities’ and suggestion of alternatives (10)

The Council is of the view that inserting the word ‘dwellings’ throughout the MLDP is not

necessary. Criteria (iv) of policy MIN SS1 which is the overarching minerals policy requires all development proposals to ensure that they conserve and enhance the character, appearance and amenity of the rural area, communities and individual properties. This is in line with paragraph 237 of SPP (CD06) which states that Plans should set out the factors that specific minerals proposals will need to address including impacts on local communities, individual houses etc. This means that the impact upon dwellings will require to be considered in every proposal in any case.

In terms of Annex 1 (Required information for proposals for new mineral extraction sites and extensions to existing mineral extraction sites), criteria (xv) relates to landscape, nature conservation and built heritage designations, therefore the Council is of the view that the suggested modification is not appropriate. Annex 1, criteria (xviii) relates to the reinstatement of natural features including landscape features, therefore, the Council is of the view that the suggested modification is not appropriate.

The definition of settlements in the Proposed MLDP accords with that of settlements in the adopted EALDP 2017 (CD22) which has been scrutinised by the Scottish Government. In order to align the two plans the same definition of settlement is used. Two plans with two different definitions of settlements would be problematic, as they will ultimately both form the Development Plan for East Ayrshire. Whilst the word settlement is not strictly defined in the EALDP 2017, Volume 1 at paragraph 1.8 states that ‘LDP maps for all East Ayrshire settlements are contained within Volume 2.’ The settlements included in Volume 2 are therefore the defined ‘settlements’ for East Ayrshire in planning terms.

With regards to the suggested modification set out by J Mulders to the definition of buffer zones in the Glossary, the Council disagrees that this is necessary. The definition as currently worded, makes clear that a buffer zone separates minerals development from sensitive land uses. The Council considers that residential dwellings are a sensitive land use so are adequately protected within the definition. There is therefore no need to explicitly include dwellings within the definition. ‘Settlements’ is a more appropriate term as settlements encapsulate more uses over and above residential dwellings that the buffer zones would protect, such as education and health establishments.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Dwellings

1. The provisions of proposed policy MIN SS1 (minerals overarching policy) require the conservation of the character, appearance and amenity of communities and individual properties. As this policy applies to all development proposals, I agree with the council that there would be sufficient protection for individual dwellings without the need to insert reference to “dwellings” in policies MIN SS4 (former minerals opportunity sites and placemaking), MIN SS5 (surface coal extraction developments) and MIN SS10 (construction aggregates); or into paragraphs 4.29, 4.31 and 4.50 as suggested by Mr Mulders. I also note that the term “local communities” is used throughout the proposed plan in relation to minimising impacts – this, I consider, could be interpreted as applying to properties within but also outwith settlements providing an additional element of protection to dwellings. In addition, an aim of the plan is to “minimise the negative

impacts of minerals extraction on people” and proposed policy MIN PPL2 (protecting residential amenity) provides safeguards for individual properties from minerals developments. Therefore, I find that there is sufficient protection for those residing in dwellings and that no change to the plan is required in relation to this matter.

Paragraph 4.34 – buffer zones

2. Proposed paragraph 4.34 describes a 500 metre buffer around all settlements in relation to the areas of search for coal extraction. The paragraph notes that a reason for the buffer is to protect communities. I find that there is no need to add “and settlements”, as promoted by Mr Mulders, into the reasoning as it is clear from the paragraph that the buffer relates to settlements. No change to the plan is required on this basis.

Annex 1

3. I agree with the council that the criteria referred to by Mr Mulders in Annex 1 of the proposed plan relate to protection and reinstatement of the natural environment. Consequently, it would be inappropriate to insert reference to dwellings within these criteria. However, I note that the information required from applicants for new mineral proposals (as detailed in Annex 1) would aid the assessment of impacts on dwellings, including when works would occur; haulage; hours of operation; blasting; control of noise and dust; landscaping and screening; drainage; and planting and aftercare. No change to Annex 1 is required.

Glossary

4. The term ‘settlements’ is specific to the proposed plan and not intended to be a dictionary definition. The purpose of the definition is to identify which groupings of buildings is defined, for the purposes of the plan, as a “settlement”. I also note that in relation to consistency the definition would align with that of the adopted East Ayrshire Local Development Plan (2017). I find that the definition of ‘settlement’ is reasonable and should remain unchanged.

5. The definition of ‘buffer zones’ in the proposed plan refers to “an area of land separating mineral development from adjoining sensitive land uses and settlements”. This, as suggested by the council, could include sensitive receptors like houses so I consider that there is no need to refer specifically to “dwellings” in the definition. No change to the definition is required.

Reporter’s recommendations:

No modifications.

Issue 4	Request for additional maps	
Development plan reference:	Policy MIN ENV 14 and Paragraphs 4.36, 4.40. 7.15 and 8.11	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
J Mulders (10) L Howie (21)		
Provision of the development plan to which the issue relates:	Requesting additional maps on a range of topics at various sections throughout the Plan.	
Planning authority's summary of the representation(s):		
<p><u>J Mulders (10)</u></p> <p>Suggests that a range of additional maps covering a selection of chapters within the Plan (CD11) should be included for clarity and transparency.</p> <p><u>L Howie (21)</u></p> <p>Suggests that a reference map should be inserted in the Unconventional Oil and Gas section to provide illustrative information on the small areas with “good” potential for carbon sequestration.</p>		
Modifications sought by those submitting representations:		
<p>J Mulders suggests the following additions:</p> <ul style="list-style-type: none"> (i) A map showing the exploratory blocks that were on offer as part of the 14th round for a UK Petroleum and Development Licence (PEDL). (ii) A map showing the areas with “good” potential for carbon sequestration. (iii) A map showing the parts of the Spireslack sites which are not identified as areas of geological importance. (iv) A map showing the historical paths in East Ayrshire. (v) A map showing the location of all known spoil tips in East Ayrshire. (vi) A map showing the locations of potential rock quarries and/or an area of search. (vii) A map showing the locations of potential sand and gravel quarries and/or area of search. <p>L Howie suggests that a map showing the areas with “good” potential for carbon sequestration should be included within the Plan.</p>		

Summary of responses (including reasons) by planning authority:

Request for additional maps (10,21)

There are 10 maps contained within the Plan which cover a number of policy matters.

In relation to L Howie's proposed modification and point (ii) of J Mulders proposed modifications, requesting a map showing the areas with "good" potential for carbon sequestration, the Council is of the view that this is not necessary as there are maps and information contained on pages 32 - 36 of the Monitoring Statement (CD16). The Council considers that the inclusion of such maps in the Plan would be repetitious.

L Howie's representation has highlighted a minor typographical error in the second sentence of paragraph 4.40 which refers to 'DECC and BGS 2017' this should read 'DECC & BGS 2014'

In relation to the remainder of J Mulders modifications, the Council would make the following comments:

In relation to point (i), requesting a map showing the exploratory blocks that were on offer as part of the 14th round for a UK Petroleum and Development Licence (PEDL), the Council is of the view that this is not necessary. The Council considers that the inclusion of such a map in the Plan, given the closure of the 14th round of licensing, would constitute unnecessary and confusing information if added.

Point (iii) requests a map showing the parts of the Spireslack site which are not identified as areas of geological importance. The British Geological Survey (BGS) have been surveying the geological formations at the site of Ponesk/Spireslack. A report (OR/16/053) (CD37) into their findings of the geological significance of the site can be found on the BGS website which shows (in a 3D model) the areas of geological significance on the sites. Despite this, it will be important for any developer of the site to conduct the appropriate studies to determine the impact of any proposed development on the geological interest in line with Policy MIN ENV13. For this reason, the Council does not agree that an additional map is required.

Point (iv) requests a map showing the historical paths in East Ayrshire. On page 68 of the Plan, there is a map (Map 10) showing all the Rights of Way and Core Paths in East Ayrshire. The Council is of the view that this a sufficient and accurate map of all public pathways in East Ayrshire and the Council does not agree an additional map is necessary. Any diversion or stopping up of a road or footpath will be dealt with through Sections 207 and 208 of the Town and Country Planning (Scotland) Act 1997 (CD01) as appropriate, and will include public consultation. The Council maintains a public register where this information can be viewed (CD39). If there is any possible enforcement issue in respect of the unauthorised diversion of a road or footpath this should be brought to the attention of our enforcement team.

Point (v) requests a map showing the location of all known spoil tips in East Ayrshire. East Ayrshire has a lengthy history of minerals activity and does not hold a map of spoil tips. Given the history of minerals extraction, much of which will pre-date the planning system, it is unlikely that a definitive map could be produced. For this reason, the Council believes that a map may be misinterpreted as definitive. The Council does not agree that an additional map in this section would add benefit to the policy or supporting text.

Points (vi) and (vii) request, respectively, a map showing the locations of potential rock quarries and/or an area of search, and a map showing the locations of potential sand and gravel quarries and/or area of search. As per paragraph 238 of SPP (CD06), Local Development Plans should support the maintenance of a landbank of permitted reserves for construction aggregates of at least 10 years at all times. As an alternative, a criteria-based approach may be taken. The Council have not chosen to define an area of search. Provision of such a map would be contrary to the chosen policy direction.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

1. The Town and Country Planning (Scotland) Act 1997 (as amended) stipulates at section 15 that local development plans include a spatial strategy (a detailed statement of the planning authority’s policies and proposals) and “for the purposes of explaining or illustrating the proposals in the plan...contain or be accompanied by – (a) such maps, diagrams, illustrations and descriptive matter as may be prescribed, and (b) such other diagrams, illustrations and descriptive matter (if any) as the planning authority think appropriate”.

2. The proposed plan contains ten maps which explain and illustrate the proposals of the plan as required by the Act. In general terms, the additional maps suggested for inclusion by representees would provide supportive information which is not required to explain or illustrate proposals in the plan. However, I have responded to each suggested inclusion below.

UK Petroleum and Development Licence exploratory blocks

3. Paragraph 4.36 of the proposed plan explains that exploratory blocks were identified in East Ayrshire as part of the fourteenth round of applications for UK petroleum and development licences. However, the paragraph further explains that no licences were awarded in Scotland. I find that this paragraph simply provides background information in relation to the wider topic of ‘unconventional oil and gas, underground coal gasification and carbon dioxide sequestration’ supporting proposed policies MIN SS8 (unconventional oil and gas) and MIN SS9 (carbon sequestration). There are no proposals or policies which rely on the identification of the exploratory blocks in East Ayrshire. Therefore, I find that there would be no justification to include a plan showing their location in the proposed plan.

Areas with “good” potential for carbon sequestration

4. Paragraph 4.40 of the proposed plan includes reference to “a number of small areas with ‘good’ potential within East Ayrshire” for carbon dioxide sequestration. The council identify that a map exists illustrating these areas within the local development plan’s monitoring statement; and, proposed policy MIN SS9 relates to carbon sequestration. I find justification to provide some reference to the areas identified but as the map exists in a supporting document I consider that reproducing the map in the proposed plan would, as stated by the council, provide duplication. Consequently, I find that the insertion of a cross-reference to the document would be satisfactory.

Spireslack sites: areas with no geological importance

5. Reference is made in proposed policy MIN ENV14 (Spireslack canyon) that restoration of areas with no geological importance would not be precluded. As identified by the council, any proposals for restoration would have to show that areas of geological importance were avoided in accordance with proposed policy MIN ENV13 (conserving, enhancing and protecting geological interest). This is of particular importance because, although a study of the area has been conducted by the British Geology Society its report of findings states that it has conducted a “preliminary survey of the geology exposed but further analysis and documentation of features is required”. There is no definitive mapping of areas of no geological interest. Therefore, I agree with the council that there is no need to identify these areas of Spireslack within the proposed plan.

Historical paths

6. Rights of way and core paths are shown in the proposed plan on map 10. In addition, proposed policy MIN T4 (rights of way and core paths) provides “a presumption against adverse impact upon or the permanent closure of rights of way, core paths, bridle paths or footpaths used by the general public”. These provisions, together with those of the Town and Country Planning (Scotland) Act 1997 (as amended) to control the diversion/stopping up of routes, would ensure sufficient protection for access. Should any historical paths have been lost or disrupted then there would be provision for the council to investigate and take appropriate action if deemed expedient to do so. I note that Mr Mulders has not provided any historical mapping and that Scotways, the rights of way society for Scotland, has not made any representations to the proposed plan. Therefore, I find no basis to require the plan to show historical paths.

Spoil tips

7. The provisions of proposed policy MIN SUP3 (reworking of waste spoil tips) provide support for proposals to rework spoil tips. The policy does not require the location of spoil tips to be identified as it is for an applicant to identify and promote an opportunity aligned to the provisions of policy MIN SUP3. And, as noted by the council, the location of spoil tips is fairly unknown due to historical extraction. No plan of spoil tips has been provided by representees. Consequently, I find no basis to include a plan showing spoil tips in the proposed plan.

Sand, gravel and rock quarries

8. Paragraph 238 of Scottish Planning Policy (2014) requires that “plans should support the maintenance of a landbank of permitted reserves for construction aggregate of at least 10 years at all times in all market areas through the identification of areas of search” but that “as an alternative, a criteria-based approach may be taken, particularly where a sufficient landbank already exists or substantial unconstrained deposits are available”. As indicated at paragraph 4.47 of the proposed plan there is a landbank in excess of 15 years for hard rock, sand and gravel aggregate. Consequently, I agree with the council that the use of criteria-based policy (proposed policy MIN SS10: construction aggregates) as opposed to identifying areas of search is justified. No change to the plan is required on this basis.

Reporter's recommendations:

Modify the proposed local development plan by:

1. Replacing the third sentence of paragraph 4.40 on page 28 with the following:

“Present studies (DECC & BGS 2014) explain that the prospects for carbon dioxide sequestration are limited due to the extensive nature of previous underground mining activity, however, there are a number of small areas with ‘good’ potential within East Ayrshire (as identified in map 4 on page 32 of the Minerals Local Development Plan Monitoring Statement, June 2016).”.

Issue 5	Amend the definition of green networks to include blue networks	
Development plan reference:	Paragraphs 1.14, 3.1, 4.7, 4.17, 4.50 and glossary of terms.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
Scottish Environment Protection Agency (SEPA) (7)		
Provision of the development plan to which the issue relates:	To add references to blue networks where appropriate or expand the definition of green networks to include blue networks throughout the Plan and within the glossary.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>At various points throughout the plan (CD11), reference is made to green networks. SEPA would recommend that the MLDP also references blue networks. Alternatively, the definition of green networks could be expanded to include blue networks.</p>		
Modifications sought by those submitting representations:		
SEPA suggest references to blue networks be added where appropriate or that the Plan expand the definition of green networks to include blue networks. SEPA do not provide detail to specific examples of where blue networks should be included.		
Summary of responses (including reasons) by planning authority:		
<p><u>Green and blue networks (7)</u></p> <p>The Plan identifies the promotion of green networks as an important aim. In the glossary, green network is defined as 'a network of high quality green spaces, wildlife habitats, paths and other environmental infrastructure'. The Council is of the view that, although not explicitly stated, 'other environmental infrastructure' includes features that could be described as the blue network, such as lochs, wetlands and rivers. Whilst the Council does not therefore agree that this change is necessary, if to remove any ambiguity, the Reporter is minded to clarify this matter, the Council would have no objection and would suggest the glossary be amended as follows:</p> <p><i>'Green network - a network of high quality green spaces, wildlife habitats, paths and other environmental infrastructure 'including blue network features such as wetland habitats, rivers and lochs'</i></p>		
Reporter's conclusions:		
1. The council has indicated that reference to "environmental infrastructure" in the definition of 'green networks' was intended to include blue networks. However, I agree with the Scottish Environment Protection Agency (and the council's suggestion) that the definition should be more explicit and specifically refer to blue features. I find that the		

word “networks” included in the council’s suggested wording is superfluous.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Modifying the definition of ‘green networks’ in the Glossary of terms on page 79 as follows:

“Green network – a network of high quality spaces, wildlife habitats, paths and other environmental infrastructure including blue features such as wetland habitats, rivers and lochs.”.

Issue 6	The vision and aims of the Plan	
Development plan reference:	Paragraph 2.2, 3.1 and 4.7.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Natural Heritage (SNH) (9) J Mulders (10) Scottish Wildlife Trust (SWT) (11) REG Power Management Ltd (REG) (20) Hargreaves (24) The Royal Society for the Protection of Birds (RSPB) (25)</p>		
Provision of the development plan to which the issue relates:	The content and wording of the MLDP vision and aims outlined in paragraphs 2.2, 3.1 and replicated in paragraph 4.7.	
Planning authority's summary of the representation(s):		
<p><u>SNH (9)</u></p> <p>SNH state that the Vision in the Main Issues Report (MIR) (CD12) is more place specific, setting out to create better places.</p> <p><u>J Mulders (10)</u></p> <p>In relation to paragraph 4.7 of the MLDP (CD11) J Mulders suggests that the sixth aim be amended to ensuring that working and restoration practices are 'financially viable'.</p> <p><u>SWT (11)</u></p> <p>SWT note that biodiversity is not listed as a possible future use in the second aim.</p> <p><u>REG (20)</u></p> <p>REG state that the second aim should be amended to specifically acknowledge renewable energy as a potentially acceptable alternative use of former minerals sites. Linked to this, the aims when replicated at paragraph 4.7 should be amended. As currently worded, the Plan is too restrictive. Renewable Energy projects can deliver tourism, leisure and forestry alongside the main energy generation element.</p> <p><u>Hargreaves (24)</u></p> <p>Hargreaves indicate that the second aim of the MLDP should be widened out. It is considered that an overly restrictive MLDP will not bring forward the level of investment needed to meet the level of restoration and community benefits the Plan is striving for.</p> <p>Hargreaves also state that there is little acknowledgement or promotion of the requirement for the Council through the Plan to maintain an adequate and steady supply</p>		

of minerals or the significant contribution minerals extraction can make to sustainable development. It is critical that the MLDP gives clear strategic guidance on future mineral extraction, and particularly surface coal mining.

RSPB (25)

RSPB broadly supports the aims of the MLDP. RSPB wish to see nature conservation recognised as an alternative use for former minerals sites and so the second aim should be amended.

Modifications sought by those submitting representations:

SNH suggest using the Vision as set out in the Main Issues Report (MIR).

J Mulders suggests that at paragraph 4.7 the sixth aim be amended to read ‘To promote and deliver excellence in **financially viable** working and restoration practices of mineral extraction sites.’

SWT suggest the following change:

In paragraph 3.1, the second bullet point should be amended to include ‘**biodiversity**’ as an alternative use that will be supported on former minerals opportunity sites.

REG suggest the following change:

In paragraph 3.1, the second bullet point should be amended to include ‘**renewable energy projects**’ as a potentially acceptable use of former minerals sites. This amendment should be carried forward into paragraph 4.7. At the very least, should this change not be done, it is suggested that a statement be added stating that the list of uses is not exhaustive and that the Council will look favourably upon other uses, where they are appropriate in other respects.

This change should also be reflected in paragraph 4.7 of Page 15.

Hargreaves suggest the following changes:

In paragraph 3.1, the second bullet point should be amended to include ‘**energy, residential and employment opportunities**’

In addition Hargreaves seeks modifications to ensure the Plan gives sound and clear strategic guidance on future minerals extraction.

RSPB suggest the following change:

In paragraph 3.1, the second bullet point should be amended to read: ‘To encourage the development of alternative uses on former minerals opportunity sites for tourism, leisure, forestry, **nature conservation** and agriculture to the benefit of local communities.’

Summary of responses (including reasons) by planning authority:

MIR Vision (9)

The Council amended the Vision of the Plan from the MIR on the basis of comments received. At MIR stage, many respondents were supportive of the text within the Vision, welcoming the inclusion of the regeneration of former minerals sites for recreation and leisure uses and the inclusion of progressive restoration.

As per the Development Planning Circular (6/2013) (CD05), a vision statement “is a broad statement of how the development of the area could and should occur and the matters that might be expected to affect the development” and the Council received representations at MIR stage which raised concern over the length of the Vision in the MIR.

The Vision of the Plan reflects several aspects of the Vision from the MIR. The Vision of the MIR details that:

“East Ayrshire’s former mining sites will be restored and re-used and will provide communities with opportunities for long term employment connected to cultural and natural heritage such as through agriculture, forestry, tourism, recreation and leisure. Regeneration will result in natural, resilient places which reconnect communities and settlements through innovative open space projects. The need for a supply of minerals will be fulfilled through a responsible and justified approach to extraction with appropriate restoration being integrated from the outset.”

The Vision in the Plan firstly deals with a responsible and justified approach to mineral extraction and secondly, with the restoration and regeneration of former minerals sites. The Council have chosen to remove the repetition between the Vision and the Aims and to keep the Vision succinct. The Council consider that the Vision in the Plan is appropriately place specific as it refers to the restoration and reuse of former minerals sites contributing to the wider regeneration and enhancement of the East Ayrshire area.

The Council is of the view that this Vision is a succinct version of the Vision in the MIR and that combined with the aims, the Vision and the aims in the Plan accord with the MIR.

Further, the Council is of the view that the aims appropriately underpin the Vision of the Plan and collectively provide clear direction for what should be achieved through this Plan.

The second aim relates to the former minerals opportunities sites. The aim describes four uses that will be encouraged on the sites. This does not preclude other uses coming forward, and indeed being supported if all other policy requirements can be met, but it is only these uses that will be actively ‘encouraged.’

Financial viability (10)

The Council disagrees that the inclusion of ‘financially viable’ is necessary. The Council is not clear on the purpose of this addition and is of the view that the aim as currently written is sufficiently clear and robust.

Biodiversity and nature conservation (11, 25)

In terms of biodiversity and nature conservation, the Aims of the Plan deal with the future uses which the Council would like to see within East Ayrshire. The Council consider that biodiversity is not a “use” and instead generally refers to the variety of plant and animal life and therefore, does not fit with the future uses described in the Aims. Whilst the Council does not have any difficulty with the former minerals opportunities sites enhancing the biodiversity and conserving the natural environment, the Council is of the view that these matters are already given adequate support through the third and fourth bullet points of paragraph 3.1 and they do not need to be reflected in bullet point 2.

Alternative use (20, 24)

The suggestion to open up the list of alternative uses to (renewable) energy, residential and employment uses is considered by the Council to be unacceptable. Whilst the MLDP makes clear that these sites offer some potential for new uses, any proposals, seeking planning permission, will need to be carefully assessed to ensure that they are acceptable in the rural area; in line with SPP (paragraph 40) (CD06), principles of sustainable development and the spatial strategy of the EALDP 2017 (paragraph 2.16) (CD22). Whilst renewable energy developments may come forward on these sites, the principle will need to be tested thoroughly through the MLDP and EALDP 2017 if applicants wish development to commence on site prior to the preparation of LDP2. To give encouragement to the wide range of uses suggested would not represent a responsible approach to spatial planning in East Ayrshire. Likewise to state that the list is not exhaustive and other uses will be looked on favourably, raises the same concern, so is not supported by the Council.

The Council disagrees that the Plan does not acknowledge or promote the maintenance of a steady supply of minerals. Aim 7 of the plan does precisely this and is fulfilled through the spatial strategy. The spatial strategy, particularly in relation to surface coal and aggregates, sets out clearly the Councils approach to maintaining an adequate supply of minerals. The implementation of the Area of Search for coal and associated policies (MIN SS5 – MIN SS7) will ensure an adequate supply of coal whilst the criteria based approach for aggregates set out in MIN SS10 and MIN SS11, will ensure a responsible approach to aggregates extraction. This is considered entirely reasonable and fully in line with Scottish Planning Policy.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Vision

1. There is little difference between the vision of the main issues report and that presented in the proposed plan. In essence, both visions relate to: (1) restoration; (2) regeneration; and (3) provision of minerals. I accept that the main issues report vision provides specific references to community opportunities but, as stated by the council, the proposed plan’s vision includes mention of restoration providing “sustainable environmental, economic and social legacy” and contribution to wider regeneration and enhancement of East Ayrshire. The aims of the plan are also linked to the vision and these encourage proposals which would benefit communities and conserve/enhance and promote the natural environment. I find that the vision is sufficient without the need to revert to the wording used in the main issues report.

Aims

2. The aim of the proposed plan “to promote and deliver excellence in working and restoration practices of mineral extraction sites” is cited at paragraph 3.1 and repeated at paragraph 4.7. I consider that delivering excellent practice could include ensuring sufficient funding for restoration and aftercare. In any event, the proposed plan provides adequate provision to ensure financial guarantees. I agree with the council that it is unnecessary to include reference to financial viability within these paragraphs.

3. The second aim of the proposed plan encourages alternative uses on former mineral opportunity sites. I disagree with the council and consider that a former site could be used for biodiversity or nature conservation purposes which would be of benefit to the local community and could become a recreational or tourist attraction. Although other aims promote conservation and enhancement of the natural environment and biodiversity enhancement the second aim specifically relates to former opportunity sites. I note that proposed policy MIN SS4 (former minerals opportunity sites and placemaking) refers to after-uses including wetlands and regenerated wildlife habitats and/or new habitat networks which could be considered falling under the term “biodiversity” and “nature conservation”. I find that, as suggested by the Scottish Wildlife Trust and RSPB Scotland, that mention of biodiversity and nature conservation as potential future uses would not be unreasonable or inappropriate. A small change to the aim is therefore recommended.

4. While the council argue that it would be inappropriate to include other uses within the second bullet point of the aims proposed policy MIN SS4 supports “proposals that contribute to rural placemaking and provide amenity afteruses that protect and improve the environmental quality of the site and surrounding area and increase the value of the sites to local communities”. A range of amenity after-uses are then cited within the policy along with a statement that in addition to amenity after-uses “the council further encourages new, innovative uses on the former minerals opportunity sites which support at least one of the four restoration and placemaking themes of the MLDP”; and that “the council will be particularly supportive of multi-use developments that incorporate a range of uses”. I find that the wording of policy MIN SS4 is open to an assessment of alternative uses which may include renewable energy, housing and employment. I further note that any such proposal would need to be assessed against the provisions of the development plan including those of the adopted East Ayrshire Local Development Plan (2017) but that would not necessarily prohibit the promotion of alternative uses on former mineral opportunity sites. In these circumstances, I find it appropriate and reasonable for the second bullet point of the aims of the proposed plan to be amended to allow some flexibility. Rather than including specific uses I consider that inserting the word “including” would be sufficient to allow other uses to be considered.

Ensuring an adequate and steady supply of minerals

5. Scottish Planning Policy (2014) suggests that the planning system “safeguard workable resources and ensure that an adequate and steady supply is available to meet the needs of the construction, energy and other sectors”. For local development plans, Scottish Planning Policy directs that they “should support the maintenance of a landbank of permitted reserves for construction aggregates of at least 10 years at all times in all market areas through the identification of areas of search” or, as an alternative, “a criteria-based approach may be taken”.

6. The proposed plan includes ensuring an adequate and steady supply of minerals as an overarching aim of the plan; it notes that minerals extraction can contribute to sustainable economic growth (paragraph 4.27); it provides a spatial strategy which provides areas of search for coal and criteria to assess different forms of mineral extraction; and it highlights the level of construction aggregates in Ayrshire. Despite Hargreaves reservations, I find that the proposed plan does provide reasonable and appropriate strategy and guidance in relation to the future of minerals extraction in East Ayrshire following the provisions of Scottish Planning Policy. No change to the plan is required on this basis.

Reporter's recommendations:

Modify the proposed local development plan by:

1. Replacing the second bullet point of the Aims at paragraph 3.1 on page 11, and the second bullet point of paragraph 4.7 on page 15, with the following:

“To encourage the development of alternative uses on former minerals opportunity sites including for tourism, leisure, forestry, biodiversity, nature conservation and agriculture to the benefit of local communities;”.

Issue 7	Restoration and Placemaking	
Development plan reference:	Paragraph 4.5, Policy MIN SS1 and Annex 1	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environment Protection Agency (SEPA) (7) J Mulders (10) L Howie (21) Hargreaves (24) The Royal Society for the Protection of Birds (RSPB) (25)</p>		
Provision of the development plan to which the issue relates:	The content and wording of paragraph 4.5, Policy MIN SS1 (Minerals Overarching Policy) and Annex 1.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA welcomes the preparation of an overarching policy. However, the introductory statement of policy MIN SS1 on development proposal requirements is confusing.</p> <p>SEPA has significant concerns with the second criteria in policy MIN SS1:</p> <p><i>“Comply with the mitigation requirements of the MLDP Environmental Report”</i></p> <p>SEPA would agree with the principle of this criteria, however it will only be effective if the deficiencies of the Environmental Report (CD17) are addressed. The MLDP requires compliance with mitigation requirements which should be detailed in the Environmental Report.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders states, in relation to paragraph 4.5, that it would be helpful to define ‘positive restoration’ so there is no ambiguity to the difference to just ‘restoration’.</p> <p>In terms of paragraph 4.5 (iv) and policy MIN SS1 criterion (vii), J Mulders is disappointed that the North Kyle Forest Masterplan (NKFMP) (CD34) is not mentioned specifically, particularly as it has been widely consulted upon and supported by communities.</p> <p>J Mulders suggests clarifying in criterion (v) of MIN SS1 that afteruses should be ‘viable’.</p> <p>J Mulders suggests amendments to the factors set out in Annex 1.</p> <p><u>L Howie (21)</u></p> <p>In terms of policy MIN SS1 criterion (iv) L Howie suggests that additional content is required. The prevention of dereliction of habitable rural properties adjacent to site</p>		

workings should be afforded regulatory maintenance and security protection within planning approval of applications. There should be no loss of such e.g. farm steadings as vernacular buildings without the prior need of being 'listed'. Such buildings belong historically.

L Howie questions what benchmark reference defines criterion (v) of policy MIN SS1.

Hargreaves (24)

Hargreaves state that the purpose of policy MIN SS1 is unclear. It only appears to summarise all other policies of the MLDP (CD11) and so may not be required.

RSPB (25)

RSPB broadly support policy MIN SS1, however wish to see provision for the protection and enhancement of the natural and built environment as a whole, rather than just for designated sites or buildings.

Modifications sought by those submitting representations:

SEPA states that the introductory statement of policy MIN SS1 would benefit from further clarity.

SEPA request that the Environmental Report be amended to provide details of how the four mitigation measures (avoid, reduce, remedy and compensate) might be achieved.

J Mulders recommends that the term 'positive restoration' used in paragraph 4.5 should be defined so there is no ambiguity to the difference to just 'restoration'.

In terms of paragraph 4.5 (iv) and policy MIN SS1 criterion (vii), J Mulders is disappointed that the North Kyle Forest Masterplan (NKFMP) is not mentioned specifically, particularly as it has been widely consulted upon and supported by communities.

J Mulders suggest criterion (v) be amended to read 'Be of the highest possible quality restoration and aftercare and provide a **viable** afteruse for the site.'

J Mulders seeks the following changes to a number of the factors set out in Annex 1:

(iv) timescales for extraction **phases of** operations and methods of working;

(xxi) Removal of plant, machinery etc. on completion of works **and timing of such.**

Restoration and Aftercare

- (i) The identification of those areas to be restored to particular end uses, such as agriculture, forestry, wildlife purposes **as well as timescales** etc.

L Howie does not detail any specific modifications.

Hargreaves do not detail any specific modifications.

RSPB recommends that part (ix) of policy MIN SS1 be amended to read:

“(ix) Protect and enhance the natural and built heritage ~~designation~~-link to and integrate with green infrastructure”

Summary of responses (including reasons) by planning authority:

Criteria in MIN SS1 (7, 21, 25)

SEPA’s support for policy MIN SS1 is welcomed and noted. The Council is of the view that it is unnecessary to amend the wording of the introductory statement of policy MIN SS1. Similar text is set out in the introduction section of policy OP1 of the adopted East Ayrshire LDP 2017 (CD22) which has been fully scrutinised and considered through the Examination process. The statement clearly sets out what is expected of all development proposals. Proposals are required to meet the criteria as set out in policy MIN SS1, or otherwise, demonstrate how the proposal would contribute to sustainable development in the context of the relevant MLDP policies and SPP (CD06) so that they would outweigh any lack of consistency with the relevant criteria as set out in policy MIN SS1.

The Council is of the view that the second criteria of policy MIN SS1 does not require amendment. The Environmental Report will be amended in light of SEPA’s comments, in terms of mitigation requirements. Following amendments to the Environmental Report, criteria (ii) will be entirely reasonable and implementable.

L Howie’s suggestion that additional content is required to be added to policy MIN SS1 criterion (iv), the Council is of the view that the criterion does not require amendment. Policy MIN SS1 is the overarching minerals policy against which all proposals applicable to the MLDP will be assessed. The policy aids the delivery of the MLDP Spatial Strategy. Any future minerals development proposals will be required to meet the relevant policies in the MLDP. The MLDP, in line with SPP, seeks to minimise the impacts of extraction on local communities, the environment and the built and natural heritage. As currently worded, Policy MIN SS1 criterion (iv) could protect farm steadings of local importance where they contribute to the character, appearance and amenity of the rural area. Also, criterion (iii) provides a safeguard against unacceptable impacts on heritage interests. It is therefore considered unnecessary to specifically include the prevention of dereliction of habitable rural properties within the policy.

In terms of, L Howie’s question of what benchmark reference defines criterion (v) of policy MIN SS1, the Council is of the view that it is not possible to define such a benchmark and that there is no benchmark that defines criterion (v). All restoration and aftercare proposals will be required to be assessed on a case by case basis, taking on board the specific requirements and characteristics of the particular site.

The Council welcome RSPB’s broad support for policy MIN SS1. The Council is of the view that the wording used in criteria (ix) is appropriate and in line with SPP, in terms of valuing the natural and historic environment. Similar text is set out in the introduction section of policy OP1 of the adopted EALDP 2017 which has been fully scrutinised and considered through the Examination process. The Council is of the view that the wording of criteria (ix) does not require to be amended.

Restoration (10)

J Mulders recommends that the term 'positive restoration' in paragraph 4.4 should be defined. The Council does not consider this to be necessary. Paragraph 4.4 supports restoration plans that will positively enhance the landscape of an area hence the reason for using the word 'positive'.

North Kyle Forest Masterplan (10)

In terms of the lack of a reference to the North Kyle Forest Masterplan (NKFMP), the Council would point out that the Coalfield Communities Landscape Partnership (CCLP) boundary incorporates the North Kyle Forest Masterplan as part of the MLDP Spatial Strategy. This is illustrated in Map 1, on page 19 of the MLDP. The masterplan sits within the CCLP boundary area and is included as a potential spatial project. The Council therefore does not consider it necessary to refer to the NKFMP in paragraph 4.5 (iv) and policy MIN SS1 criterion (vii).

Afteruses (10)

In relation to the suggested inclusion of 'viable' in relation to afteruses, the Council does not consider this is necessary. The need for an afteruse to be viable is implicit in the requirement and does not need to be stated in the policy. However, as this does not change the thrust or direction of the policy, should the Reporter be minded, the Council does not have any objection to the suggested change.

Annex 1 (10)

In response to J Mulders comments on Annex 1, the Council is of the view that factor (iv) of Annex 1 does not require to specifically refer to the phases of operations. Policy MIN SS1 criteria (i) requires all development proposals to comply with the provisions of the MLDP vision and spatial strategy, all relevant MLDP and LDP policies etc. as well as the relevant provisions of Annex 1. The MLDP contains policies MIN PPL3 and MIN PPL 4 which relate to the duration extraction period for surface coal sites and non-coal minerals extraction. It is therefore not necessary to insert the words 'phases of' to factor (iv) of Annex 1.

Annex 1 part (xxi) refers to the removal of plant, machinery etc. on the completion of works. The Council is of the view that it is not necessary to explicitly refer to the timing of the completion of works and that the wording is sufficient.

Annex 1 (restoration and aftercare) (v) refers to the need to set out the end uses for the afteruse of the site. There is no need for this criterion to include a requirement for timescales, as this is sufficiently covered by criterion (iv) which requires details of the phasing, programming and implementation of restoration schemes. The suggested wording would therefore create unnecessary duplication.

Aside from the addition of the word viable, the addition of which the Council would not object to, the Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter's conclusions:Policy MIN SS1 - introduction

1. As identified by the council, the overarching policy OP1 of the adopted East Ayrshire Local Development Plan (2017) has the identical introduction to that of policy MIN SS1 (minerals overarching policy) in the proposed East Ayrshire Minerals Local Development Plan. Therefore, for consistency in the development plan it would be pertinent to retain the introductory wording of proposed policy MIN SS1. In any case, I find that the wording is clear in requiring proposals to meet relevant criteria listed in policy or provide sufficient justification for a departure in the context of other policy provisions and the content of Scottish Planning Policy. The introductory text should remain.

Policy MIN SS1 – criterion (iii) and the environmental report

2. The remit of the examination is to respond to unresolved matters to the proposed plan. Therefore, comments concerning the accompanying environmental report are for the council to address separately. I note that the concerns of the Scottish Environment Protection Agency regarding the imposition of criterion (iii) of proposed policy MIN SS1 – compliance with mitigation requirements of the environmental report – would be alleviated if the council amended the content of the environmental report. In response, the council has indicated that requisite changes will be made. No changes to the proposed plan are required to respond to this matter.

Policy MIN SS1 – criteria (iv)

3. Criterion (iv) provides protection for the rural area, communities and individual properties. Other policies within the proposed plan, including MIN PPL1 (protecting communities) and MIN PPL2 (protecting residential amenity), provide additional protection for communities and individual properties. Buildings of historic interest would be afforded protection from proposed policy MIN ENV10 (protection of built and natural environment resources). I consider that these provisions are reasonable to provide safeguards to help prevent dereliction and protection of properties from proposed extraction works without the need for any modification to the proposed plan.

Policy MIN SS1 – criterion (v)

4. Criterion (v) of policy MIN SS1 requires that after-uses are provided as part of development proposals. It would be reasonable to request that any after-uses are feasible from the outset to mitigate the possibility that they may fail. Consequently, a small change to criterion (v) of policy MIN SS1 is justified. I note that the council is accepting of this change.

5. Ms Howie suggests that the term “highest possible quality restoration and aftercare” in criterion (v) is ill-defined with no benchmark. I consider that the terminology used in the criterion suggests an aspiration for development proposals which should be considered alongside other provisions of the proposed plan including MIN SS2 (minerals restoration and placemaking) which requires progressive restoration and opportunities for environmental improvement. I find that no change to the plan is necessary to provide any benchmark or define the term “highest possible quality”.

Policy MIN SS1 – criterion (ix)

6. As identified by the council, the overarching policy OP1 of the adopted East Ayrshire Local Development Plan (2017) has the identical criterion (ix) to that of policy MIN SS1. Therefore, for consistency in the development plan it would be pertinent to retain the wording of criterion (ix) and reference to “designated” built and natural heritage sites. I note that criterion (iii) of the policy requires “no overriding unacceptable impacts on the environmental quality of the area including on areas of natural and geological conservation and heritage interest”; and that there is a suite of environment policies contained within the proposed plan which would protect the natural environment. On this basis, I find that no change to criterion (ix), as requested by RSPB Scotland, is required.

Restoration

7. Paragraph 4.4 of the proposed plan refers to “positive restoration and regeneration” in the context of seeking responsible minerals extraction. I consider that the term “positive restoration” is clear in promoting an affirmative response to extraction and restoration without the need for a separate definition of “positive restoration” to be included in the plan.

North Kyle Forest Masterplan

8. As stated by the council, the area of the North Kyle Forest Masterplan is shown within the proposed plan (map 1) as a Coalfield Communities Landcape Partnership project. Criterion (vii) of proposed policy MIN SS1 requires compatibility and, where possible, links between these projects and other projects in the authority. I find that the North Kyle Forest Masterplan is adequately referenced within the proposed plan without the need to make additional references in paragraph 4.5 or policy MIN SS1.

Annex 1

9. I agree with the council that criterion (iv) of Annex 1 (planning application details) is sufficient without the need to refer to phasing of operations as this is covered in criterion (iii). Similarly, there is no need to refer to the timing of any removal of plant and machinery within criterion (xxi) as it requires removal by the “completion of works” – a condition imposed on any planning permission could refer to a different period if deemed necessary. In addition, there is no need to refer to timescales within criterion (v) of Annex 1 (restoration and aftercare) as the details of phasing, programming and implementation of restoration are required through criterion (iv). No changes to the plan are required to refer to timings or phasing.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Replacing the word “an” with “a viable” within criterion (v) of Policy MIN SS1: Minerals Overarching Policy on page 14.

Issue 8	Restoration and the Coalfield Communities Landscape Partnership	
Development plan reference:	Spatial Strategy: Restoration and Placemaking: Policy MIN SS3: Coalfield Communities Landscape Partnership, pages 17-18 and Map 1.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environment Protection Agency (SEPA) (7) J Mulders (10) Hargreaves (24) The Royal Society for the Protection of Birds (RSPB) (25)</p>		
Provision of the development plan to which the issue relates:	The determination of applications in the Coalfield Communities Landscape Partnership area and the Coalfield Communities Landscape Partnership Map.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA suggest that any suggested schemes should be copied to SEPA for comment as they are likely to affect their interests, particularly if potential spatial projects include those in river valleys which SEPA may be able to contribute with advice on their improvement as well as those which may affect their regulatory interests with regard to CAR.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders suggests that there are several items missing from the Coalfield Communities Landscape Partnership map and requests that a more extensive and inclusive consultation will identify other potential projects. Linked to this, in Annex 4 J Mulders highlights items that may be missing from the list of projects.</p> <p>J Mulders suggests some minor amendments to the Restoration paragraphs 4.11 and 4.12. These changes suggest that it be stated in the Plan that inadequate enforcement led to unrestored surface coal sites and that there should be public community support for restoration proposals. Linked to the restoration of former coal sites, J Mulders questions in Annex 3 (Background information of surface coal operations since 2013), referred to in paragraph 4.8, why there is no anticipated completion date for House of Water coal site.</p> <p><u>Hargreaves (24)</u></p> <p>Hargreaves question how the MLDP (CD11) will be used in the determination of planning applications within the Coalfield Landscape Partnership Area. The vast majority of development within those communities is unlikely to be minerals related or on former minerals sites and so the wider policies of the East Ayrshire Local Plan (EALP) 2010 would logically be the better Development Plan document for those “non mineral” proposals.</p>		

RSPB (25)

RSPB support the Coalfield Communities Landscape Partnership, but state that it is important to recognise that it is unlikely to deliver significant physical change at former opencast sites and has limited scope to support restoration.

Modifications sought by those submitting representations:

SEPA do not request any specific modifications.

J Mulders requests that the following be inserted into the Coalfield Communities Landscape Partnership Map on Map 1 on page 19 of the MDLP:

- Perfect peatland- Martyrs Moss- Class 1 peat bog- not identified
- Inclusion of New Cumnock
- Lost villages of Beoch and Beoch Row
- Lost farms to opencast
- Covenanters ways

In Annex 4 J Mulders questions whether (i) other historical and important burns and watercourses should be included in riparian networks; (ii) Martyrs Moss peat bog should be included in Perfect Peatlands; and (iii) Beoch mining villages should be included within Town Trails and The Lost Mining Villages.

J Mulders suggests the second sentence of 4.11 be amended to read 'Many of the former surface coal sites have been left unrestored or have been badly restored through poor working practices, and inadequate monitoring **and enforcement**'.

J Mulders suggests the following text should be added to the second sentence of 4.12.... **'providing the developer can clearly demonstrate public community support.'**

Hargreaves suggest that it would be more logical for the East Ayrshire Local Plan (EALP) 2010 (CD19) to be used to assess proposals within the Coalfield Communities Landscape Partnership (CCLP) area and not the Minerals Plan.

RSPB does not suggest any specific modifications.

Summary of responses (including reasons) by planning authority:

SEPA (7)

The Council notes and welcomes SEPA's comments and will consult SEPA on all relevant proposals. It is not considered that the Plan requires to be modified to reflect this.

Scope of Projects (10)

The Coalfield Communities Landscape Partnership is made up of a partnership of organisations to which East Ayrshire Council is one as well as local communities. Therefore, it is not solely up to the Council to put projects forward and is the collective decision of the Partnership. The Coalfield Communities Landscape Partnership is currently in its Development Phase where projects (listed in Annex 4 of the MLDP) will be developed and consultation on these projects will be carried out through the Community Steering Group. Whilst it is not appropriate for the MLDP to include this information in

Map 1 and Annex 4, it is entirely feasible that they could be captured by the CCLP as the project progresses.

Amendments to wording (10)

In terms of J Mulders comments on paragraphs 4.11 and 4.12, the Council would comment that the inclusion of 'and enforcement' is not necessary, as inadequate monitoring sufficiently covers the problems that led to the unrestored sites. The Council does not agree the wording of paragraph 4.12 should be amended to include reference to a demonstration of public support. Wildlife habitats and wetlands will, in many cases, be acceptable uses, therefore a need to demonstrate public support is unduly onerous.

In response to J Mulders question on Annex 3 and the status of House of Water, the Council is of the view that it is entirely reasonable to state that the site is still an active coal site. This is sufficient in terms of the purpose of the annex; to provide a succinct overview of the status of the sites at a given point in time.

Inclusion of the CCLP in the MLDP (24)

The Council clarifies that paragraph 1.6 has been included in the Plan to provide a clear and concise explanation of when the MLDP will be used either instead of or alongside the EALDP2017 (CD22). For clarity, while Hargraves provide comment relating to the East Ayrshire Local Plan 2010, the East Ayrshire Local Development Plan 2017 has now superseded the Local Plan for all non-mineral matters. All development proposals which do not relate to minerals are assessed against the EALDP 2017. By way of context, a decision was made by East Ayrshire Council in 2013 (CD43) to prepare two separate development plans; one for minerals matters and one for all other matters. This was primarily in response to the uncertainty surrounding the future of surface coal mining at that time. The subsequent Local Development Plan 2017 makes clear that it does not provide the policy framework for minerals matters and that this will be left to the Minerals LDP, now the subject of this Examination. Critically, the minerals plan provides the policy framework for restoration as well as extraction; this approach was embedded within and consulted on through a Draft MIR and MIR and is considered to the Council as critical in ensuring a comprehensive approach to Spatial Planning, especially with regards to the coalfield area. Using this approach it is unavoidable that there will be instances where both the EALDP2017 and MLDP will be applicable and will be applied alongside each other. This is entirely appropriate and the MLDP has been prepared in this context. There is no conflict between the two Plans.

With particular reference to the Coalfield Communities Landscape Partnership (CCLP) Area, criterion (iv) of paragraph 1.6 makes clear that the EALDP 2017 will be used alongside the Plan to assess any applications within the CCLP area which are relevant to the aims and objectives of the CCLP. The Council is of the view that it is critical, for the success of the CCLP and to enable it to help drive placemaking and regeneration of the local landscape, that it be embedded within the MLDP. This provides an important mechanism for delivering some of the aims and placemaking based themes of the Plan and to not incorporate the CCLP into the Plan would represent a missed opportunity in terms of fulfilling the vision of the Plan, which has a clear focus on the '*wider regeneration and enhancement of East Ayrshire's landscape and environment*'. In light of this, it is therefore entirely appropriate that at paragraph 1.6 the scenarios set out include the CCLP area. The inclusion of Policy MIN SS3 is also important and necessary, as it is a positive policy that supports the Coalfield Communities Landscape Partnership.

As correctly pointed out by the respondent, many applications within the CCLP will be unrelated, such as householder developments etc. As these will not be relevant to the aims and objectives of the CCLP, the MLDP will simply not apply to such applications. The Council is satisfied that this approach is clear and justified.

Scope of the CCLP to change (25)

The Council is fully minded of the scope and remit of the CCLP and the MLDP has been prepared within this context. The Council is of the view that the Plan as currently worded accurately reflects the role of the CCLP.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Comments

1. The comments from the Scottish Environment Protection Agency and RSPB Scotland are noted but do not raise any unresolved matters with respect to the proposed plan. Consequently, while I note that the council will actively engage with the Scottish Environment Protection Agency on projects and acknowledges the scope of the Coalfield Communities Landscape Partnership, I have no remit to recommend any changes.

Scope of projects

2. As identified by the council the suite of projects illustrated on Map 1: Coalfield Communities Landscape Partnership Projects within the proposed plan, and those listed in Annex 4 of the plan, are derived from a partnership group. East Ayrshire Council is a member of the group but as a partnership I agree with the council that it would be inappropriate for it to promote projects, as promoted by Mr Mulders, which have not been approved by the wider partnership group. I note that the council has indicated that the projects promoted by Mr Mulders could still come forward through the partnership without the need for their inclusion in the proposed plan. No changes to the plan are required on this basis.

Amendments to wording

3. I agree with the council that it is unnecessary for the proposed plan to reference any perceived lack of enforcement as the reason for former surface coal sites being badly restored or not restored. Reference in paragraph 4.11 to “inadequate monitoring” is sufficient. There is also no need for applicants to gain community support for the inclusion of wildlife habitats and wetland areas within restoration proposals – it is enough for these items to be encouraged and supported through the plan as stated at paragraph 4.12. No changes to the plan are required on this basis.

Inclusion of the CCLP in the MLDP

4. Paragraph 1.5 of the proposed plan clarifies that “non minerals matters such as residential or retail development, are considered in the East Ayrshire Local Development Plan (EALDP) which was adopted in April 2017”. In relation to how the proposed minerals local development plan is to be used, paragraph 1.6 states that it sits alongside

the EALDP and statutory supplementary guidance as the “development plan”. Paragraph 1.6 also confirms that the minerals local development plan “will be used to guide, assess and determine...(iv) planning applications within the Coalfield Communities Landscape Partnership Area, which are relevant to the aims and objectives of the Coalfield Communities Landscape Partnership”.

5. I find that the proposed plan is clear in explaining that: (a) it is part of a suite of documents which comprise the development plan for the area; and (b) non-minerals applications will primarily be dealt with by the EALDP but that the minerals plan would be a factor in guiding, assessing and determining proposals in the partnership area. The East Ayrshire Local Plan (2010) mentioned by Hargreaves is no longer extant with respect to non-minerals matters and will be replaced by the proposed plan in relation to minerals. In any case, I find that no changes to the proposed plan are necessary to clarify how planning applications would be determined where located within the partnership area.

Reporter’s recommendations:

No modifications.

Issue 9	Development on former minerals sites	
Development plan reference:	Policy MIN SS4 and paragraphs 1.6 (iii) 3.1, 4.7, 4.22 and Map 2.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>W Young and Sons (5) Scottish Natural Heritage (SNH) (9) REG Power Management Ltd (REG) (20) Hargreaves (24)</p>		
Provision of the development plan to which the issue relates:	The content of policy MIN SS4 and supporting paragraph 4.22 and the definition of former minerals sites that will be included under paragraph 1.6 (iii).	
Planning authority's summary of the representation(s):		
<p><u>W Young and Sons (5)</u></p> <p>W Young and Sons question the intentions of the Plan (CD11) in relation to Piperhill, which is identified as one of the former minerals opportunity sites. The area is currently unsafe and any reinstatement work so far carried out has been unsatisfactory. Coal and forestry lorries continue to cause disruption. The area is not suitable for walkers, cycle networks etc. and is blighted by fly tipping, anti-social behaviour etc. There are surrounding facilities (Dumfries House and Auchinleck House) which are suitable for the community to enjoy. The land at Piperhill should therefore be reinstated to farmland as agreed.</p> <p><u>SNH (9)</u></p> <p>SNH support the requirement for proposals to contribute to rural placemaking and agree with the amenity afteruses set out in Policy MIN SS4. Green infrastructure would also contribute to successful rural placemaking and could be included in the list of amenity afteruses.</p> <p><u>REG (20)</u></p> <p>At paragraph 4.22 the MLDP states that the Council will '<i>only support proposals that offer clear benefits to local communities</i>' and that such benefits '<i>should be on-site.</i>' REG considers that this is an overly restrictive stance. Uses may have environmental, socio-economic and renewable energy benefits which should be given weight in the planning process. Benefits may also extend beyond the site boundary.</p> <p>REG considers that the MLDP should be modified to allow the Council to potentially support a wider range of alternative uses on restored sites and those that can offer on-site and off-site benefits. REG considers that renewable energy projects on former mineral sites can deliver a range of both on-site and off-site benefits and this should be recognised in the MLDP. REG are of this view that this would help facilitate the vision of the MLDP.</p>		

REG notes that the MLDP identifies on Map 2 a number of 'Former Mineral Opportunity Sites', which appear to be restricted to those sites which were abandoned in 2013 due to the liquidation of coal companies. In terms of Policy MIN SS4 specifically and the spatial strategy and vision more generally, REG believes that the MLDP should encourage alternative uses on a broader range of former mineral sites. Extending this in principle support for alternative uses to all former mineral sites could help maximise the potential for wider environmental, socio-economic and community benefits than would be the case if support for post restoration uses were limited to those sites shown on Map 2 only.

Linked to this point, REG also believe that support for alternative uses should include opportunities for sites that are currently being coaled, which will undoubtedly come forward over the next 20 years. It is important the MLDP allows for such scenarios.

REG notes that Policy MIN SS4 provides encouragement for 'new, innovate uses' including 'multi-use developments' on the former minerals opportunity sites. REG welcomes this approach but would question whether the support for a potentially broad range of uses conflicts with the statements in paragraphs 3.1 and 4.7 of the MLDP which very clearly specify tourism, leisure, forestry and agriculture as acceptable uses only. This list should be expanded, or at least the MLDP should be amended to make it clear that the list of post restoration uses is not exhaustive and the Council will look favourably upon other uses, where these are acceptable in other respects and deliver amenity uses too.

Hargreaves (24)

Hargreaves state that economic development and associated investment will be essential on the former mineral opportunity sites in order to bring them into beneficial use and bring wider economic, community and social improvements. Amenity and 'innovative' afteruses, whilst being welcomed, may not bring the financial catalyst needed to deliver the community benefits sought through policy MIN SS4. The contribution from commercial development and energy projects, such as the North Kyle Wind Energy project, must be recognised.

Modifications sought by those submitting representations:

W Young and Sons does not detail the specific changes it would like made to the Plan. The respondent requests that Piperhill be reinstated as farmland.

SNH request that green infrastructure be added to the list of amenity afteruses in Policy MIN SS4. For example, 'Amenity afteruses include the creation of: **green and blue networks**'.

Hargreaves does not detail the specific changes it would like made to the Plan. The respondent seeks recognition within Policy MIN SS4 of the contribution that could be made by commercial development and energy projects. The respondent requests that an additional policy be added to promote energy and employment uses on minerals opportunities sites, where those developments provide net economic benefit. This would be similar to the way policy MIN PPL6 promotes tourism.

REG does not detail the specific changes it would like made to the Plan. It is requested that the following matters be addressed:

- i. The Plan should be modified, through Policy MIN SS4, to allow the Council to

- support a wider range of uses on former minerals sites, with on and off site benefits;
- ii. Policy MIN SS4, and the Plan more generally, should support new uses on a wider spread of sites, than just the post-2013 sites as currently shown on Map 2.
 - iii. Linked to (ii) above, paragraph 1.6 (iii) should be modified to ensure that the Plan is applicable to and supports development on current minerals sites that become available for redevelopment during the lifetime of the MLDP.
 - iv. The uses listed in paragraphs 3.1 and 4.7 (bullet point 2) should be widened out (see issue 8) or at the very least a statement added that the list is not exhaustive. This would remove the contradiction with the wording of policy MIN SS4.

Summary of responses (including reasons) by planning authority:

Piperhill (5)

Policy MINSS4 and the supporting text has been included in the Plan to set out a positive approach to seeking appropriate new uses for former minerals sites.

Piperhill is one of the sites included in Map 2 and to which policy MIN SS4 applies. It is one of the sites which was revealed to have been abandoned in 2013 and has not been fully restored. Whilst the use of the site for agriculture, as requested by W Young and Sons, would be supported by the Council, the Council is of the view that, alongside the other opportunity sites, Piperhill is suitable for some potential new uses, as described in policy MIN SS4 and the MLDP aims, which would bring benefits to the local community and environment. The Council considers the current policy approach expressed in policy MIN SS4 of the Proposed MLDP to be a reasonable and balanced approach to this matter, which does not preclude the use of the site for agriculture.

Green and blue networks (9)

The Council is of the view, that whilst green and blue networks are not specifically referenced in the policy, some key elements that make up the networks are referenced e.g. 'multi-functional woodlands', 'wetlands' and 'wildlife habitats'. The addition of 'green and blue network', as requested by SNH, is therefore considered unnecessary.

Widening acceptable uses and sites (20,24)

Policy MIN SS4 and indeed the aims of the MLDP have been framed and worded to encourage uses on former minerals opportunity sites that will (i) be appropriate in the rural area; and (ii) bring clear benefits to the local communities and the environment. The overarching intent behind the approach is to reverse the legacy of environmental degradation that was revealed on sites abandoned by ATH Resources and Scottish Coal Ltd in 2013, and create places and uses that bring added value to the people and landscape that have long been affected by the minerals industry. The Council is firmly of the view that any new development on the former sites must be rooted in this context and must be focussed on enhancement, placemaking and positive action.

Taking this position, the Council does not agree that policy MIN SS4 needs amended to support a wider range of uses, as suggested by Hargreaves and REG. The Council recognises a number of potential serious consequences of this suggestion, specifically (i) incompatibility with the existing EALDP 2017 (CD22) policies, particularly on the basis that there is an existing wind farm spatial strategy in line with SPP (CD06) in the EALDP

2017 which the MLDP should not contradict or attempt to override; (ii) uses emerging which, whilst having economic or energy benefits, will not bring about the landscape/environmental enhancement and community benefits that the MLDP is aiming for; and (iii) a flawed approach to spatial development where developments that should be directed to settlements are coming forward in the rural area. Whilst the current approach of the Proposed MLDP recognises that these are brownfield sites and offer some development potential, this should not contradict sustainable development principles and a fundamental element of the EALDP 2017 spatial strategy that directs '*development to East Ayrshire's settlements*' (EALDP 2017 paragraph 2.16).

For the same reasoning, the Council does not agree that an additional policy focussed on the employment and energy potential of former sites should be included, as suggested by Hargreaves. If such uses come forward, there are adequate policies within both the proposed MLDP and the EALDP 2017 to assess such proposals against.

Paragraph 4.22 requires any development on minerals opportunity sites to provide on-site benefits. The Council disagrees with REG that this should be widened out to both on and off site benefits. As stated above, a fundamental element of the MLDP strategy is to reverse the legacy of dereliction on these sites and to turn them into areas with positive benefits for surrounding communities. The requirement for on-site benefits is critical to meet this aspiration. Should off-site benefits be acceptable there is a danger that these sites would again be developed for uses that totally detach and cut them off from communities; the opposite of what the MDLP wants to achieve.

Policy MIN SS4 and the associated Map 2 identify former minerals sites that were abandoned in 2013 as a result of the liquidation of coal companies. Whilst some restoration has been carried out and is continuing, these sites present vast derelict brownfield sites in the rural area. Given East Ayrshire's long history of coal mining, including deep mining and in more recent history surface coal mining, the Council fully recognises that there are a huge number of other former minerals sites throughout the authority that are not included in Map 2. However, as a result of time and natural greening/regeneration many of these sites have become a part of the countryside and the rural landscape. New development on them would not be appropriate in terms of sustainable development and the spatial strategy of the EALDP 2017 and the Proposed MLDP. The Council does not consider it appropriate for such sites to be included in the MLDP as suggested by REG. Such sites form part of the rural area and as such there are appropriate policies within the EALDP 2017 to address any development proposals that come forward.

The Council does not agree with the suggestion from REG, that current sites that may become available during the lifetime of the MLDP should be included within the remit of the MLDP and development on them supported. Minerals sites which are not identified in the MLDP as former minerals opportunity sites - as identified in Map 2 - but which cease extraction activity during the lifetime of the MLDP, will constitute sites benefitting from restoration and after care policies as espoused in this Plan upon adoption, and until then in the East Ayrshire Opencast Coal Subject Plan 2003 (CD20). As such, once restored to a satisfactory condition, these sites will form part of the rural area and any development proposals will be assessed against the EALDP 2017. The purpose of the Minerals Opportunities sites is to provide additional support for the restoration and re-use of sites that were left in a poor condition following the liquidation of the coal companies in 2013. Lessons learnt since that time, particularly in terms of compliance monitoring and financial guarantees, should ensure that a similar situation will not arise again. It is

therefore not necessary for the Minerals Plan to provide policy provision for new uses on sites that are successfully restored as per their appropriate restoration plans.

The contradiction, indicated by REG, between ‘**multi-use developments that incorporate a range of uses**’ (Policy MIN SS4) and the list of alternative uses listed in the aims in paragraph 3.1 and 4.7 is not accepted by the Council (the wording of the aims is covered sufficiently in Issue 6.) A range of uses could quite feasibly be achieved, by combining the amenity afteruses and the alternative uses listed in the second aim of the MLDP. The Council sees no requirement to amend Policy MIN SS4 to the effect that the list of alternative uses in aim 2 is not exhaustive; whilst recognising that former sites offer some potential for development and enhancement, the Plan must at all times deliver a sustainable approach to development, whereby development in the rural area must not be encouraged when such uses could more appropriately be directed to existing settlements.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Piperhill

1. As a former surface coal mine abandoned in 2013 I find it reasonable and appropriate for the proposed plan to identify Piperhill as an opportunity site. In support of its inclusion, I note that the representation from W Young and Sons suggests continuing difficulties in accessing and utilising the site which an appropriate after-use would likely help alleviate. There is nothing within the proposed plan or proposed policy MIN SS4 (former minerals opportunity sites and placemaking) that would prevent restoration of the Piperhill site to farmland. Consequently, I find that no change to the plan is required.

Green and blue networks

2. I agree with the council that the list of amenity after-uses described in proposed policy MIN SS4 include those related to the creation of green and blue networks. The list is not exhaustive as it states “amenity afteruses include the creation of:”. Therefore, other after-uses, including other green and blue network proposals, could be promoted with support from the policy. I find that no change to the policy wording is required on this basis.

Widening acceptable uses and sites

3. Paragraph 4 of my conclusions within Issue 6 (the vision and aims of the plan) refers to the content of proposed policy MIN SS4 in relation to the provisions of paragraphs 3.1 and 4.7 of the proposed plan. I recommend in Issue 6 that these paragraphs be amended to ensure that the list of alternative uses on former minerals opportunity sites is not exhaustive.

4. Paragraph 4.21 of the proposed plan encourages former mineral opportunity sites being brought back into use for “the benefit of local communities and the local economy”; while paragraph 4.22 confirms that support will only be given to “proposals that offer clear benefits to local communities” and should be “on-site, in terms of providing recreational, leisure, environmental and other types of facilities that will be of value to local

communities”. However, as outlined in my conclusions in Issue 6, the wording of policy MIN SS4 is more open to an assessment of alternative uses referring to proposals that “contribute to rural placemaking and provide amenity afteruses that protect and improve the environmental quality of the site and surrounding area and increase the value of the site to local communities”. I consider that the wording of the policy is not as strict as that of the reasoned justification at paragraphs 4.21 and 4.22 and suggests that uses such as renewable energy and employment could be considered where justified on former minerals opportunity sites with benefits extending beyond a site boundary. With this interpretation I find that there is no need to modify the text of the plan to be more accommodating of alternative proposals.

5. In relation to other former minerals sites and sites where extraction is on-going, I agree with the council that it is appropriate for proposals on these sites to be assessed in the context of the East Ayrshire Local Development Plan (2017) where there is a specific spatial strategy for development proposals (including housing and employment) and spatial framework for wind energy. That does not discount the fact that the proposed minerals local development plan includes an aim “to secure restoration of previously worked sites” and requires progressive restoration of current and future mineral extraction sites where such restoration may include proposals for future uses which could be considered in the context of the proposed plan. The two local development plans compromise the “development plan” (together with statutory supplementary guidance) and, therefore, it is reasonable for proposals to be considered against the provisions of both plans where appropriate. No change to the proposed plan is required on this basis.

Reporter’s recommendations:

No modifications.

Issue 10	The area of search for coal	
Development plan reference:	Policy MIN SS5 and supporting paragraph 4.32 and Map 3: Areas of Search for Coal.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environmental Protection Agency (SEPA) (7) Scottish Natural Heritage (SNH) (9) Scottish Wildlife Trust (SWT) (11) Darvel and District Community Council (DDCC) (13) Moscow and Waterside Community Council (MWCC) (18) Fenwick Community Council (FCC) (19) L Howie (21) Hargreaves (24) G Roberts (26)</p>		
Provision of the development plan to which the issue relates:	The Area of Search for Coal and relevant policy and supporting text, in particular the methodology used and the extent of the Area of Search included in the Plan.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA notes that any further coal development should avoid adverse impacts or further interference with the natural water environment, unless there will be an improvement on an existing legacy issue.</p> <p><u>DDCC (13), MWCC (18), FCC (19) and G Roberts (26)</u></p> <p>DDCC raise significant concerns over the continued use of and support for fossil fuels, in response to their impact on global climate change. The Community Council state that EAC should, as a matter of principle, take a stance against the use of fossil fuels and should limit the further exploitation of coal in East Ayrshire. The Council should focus efforts on ensuring the effective restoration of abandoned open cast sites.</p> <p>This view is shared by MWCC and G Roberts who believe there is insufficient justification for an Area of Search; the Plan (CD11) should presume against any further coal mining in East Ayrshire and focus instead on restoration of areas damaged by surface coal mines. Similarly FCC and G Roberts suggest the extent of the Area of Search sends a negative message about extraction and burning of fossil fuels, at odds with EAC's Energy Strategy and Carbon Management Programme 2014 (CD29).</p> <p>G Roberts asserts that the Council should not use SPP (CD06) as a justification for continuing to show extensive search areas for coal. SPP is not statutory. What is more, SPP does not dictate that LDPs should have an area of search; it 'advises' that they 'should.' SPP is out of date in relation to coal extraction matters. Furthermore, G Roberts submits that the question of the need for coal extraction is short term; therefore this issue should be reviewed within 5 years of the approval of this Plan, perhaps even</p>		

early on public examination.

DDCC (13), MWCC (18), FCC (19), L Howie (21) and G Roberts (26)

DDCC, MWCC and FCC object to the Area of Search for Coal, and in particular to its extension into the northern part of East Ayrshire. The northern part of East Ayrshire including the Irvine Valley already contributes significantly to energy generation. This is considered to be at capacity. The rural character of the area would be blighted and its ability to attract other forms of development (e.g. tourism, housing) would be undermined by the possibility of mining. The overbearing impact of Whitelee wind farm coupled with any surface mining would result in very negative impacts on residential amenity and landscape and therefore the Ayrshire Plateau Moorlands + Forestry + Wind farms landscape character type (East Ayrshire Landscape Wind Capacity Study 2018) (CD25) should be excluded from the area of search.

DDCC and G Roberts state that previous coal extraction in the area was thin and of poor quality. It is questionable whether coal would be found in sufficient quantities to make it financially viable, with landscape degradation being the most likely outcome. G Roberts states that Map 3 is based on areas where there are carboniferous coal measures. It does not demonstrate where there are 'workable coal reserves'.

L Howie states that the 500 metre buffer around settlements, described in paragraph 4.34 and as shown on Map 3 is too limited. It does not reflect that even maintenance work can prove disturbing e.g. persistent background 'droning', on / off heavy plant noise and associated traffic.

With regards to Map 3, G Roberts states that the Search Area appears to have been increased in comparison to what was proposed in the MIR (CD12) and this is disappointing. Yet, supply and demand has not been quantified. It would have been anticipated that further scoping of the area would decrease the extent, not increase it. The elasticity of the 500 metre buffer is also concerning. The EALDP 2017 Rural Protection Area (CD22) should be paramount.

G Roberts is concerned by the wording of policy MINSS5 which allows for extraction outwith the areas of search in certain circumstances. This is unacceptable. Experience has shown that development has routinely occurred outwith areas of search. Certainty is instead required, especially as the need for more coal has not been demonstrated or quantified. The need for coal is short term and as such the Plan should be reviewed after 5 years.

SNH (9), SWT (11), FCC (19), and Hargreaves (24)

SNH support the exclusion of the areas listed in paragraph 4.32 from the area of search for coal. However, SNH notes that some of the areas excluded in the MIR have not been excluded in the Proposed MLDP i.e. Local Nature Conservation Sites and a 500 metre boundary around the designated sites. Furthermore, SNH note that it should be ensured that the Area of Search does not have a significant adverse effect on the integrity of Muirkirk and North Lowther Uplands SSSI/SPA. This should be done through Habitats Regulations Appraisal of the Proposed Plan. Similarly, SWT and FCC note that the Area of Search sieving process does not include Local Nature Conservation Sites. These encompass a significant wildlife resource and should be included. Further, on the areas excluded from the Area of Search, FCC suggest that the areas of good quality agricultural

land be excluded and the area should not overlap with the Rural Protection Area expressed in the EALDP 2017.

Hargreaves assert that the Area of Search for Coal should not exclude the Coalfield Communities Landscape Partnership Area (CCLP). Whilst some of the projects that are part of the CCLP may require protection, the partnership itself does not require blanket exclusion. Including the CCLP effectively excludes any further development at House of Water.

There are two potential extensions to House of Water (Issue 10 - House of Water 1), fairly modest in scale that should be preferable to new greenfield sites being worked. The extensions would allow continued extraction, employment and further restoration benefits to the wider complex. The extensions require to be considered 'acceptable in principle, further to detailed consideration at site specific level.' The Area of Search Map should be amended to include these areas and to allow them to be assessed against under policy MIN SS5. Furthermore, the wording of policy MIN SS5 should recognise that the Areas of Search are indicative only, allowing for flexibility to search for specialist (industrial and domestic) coals.

G Roberts (26)

It is suggested by G Roberts that a table should be added to the Plan showing consented sites and their potential coals stocks / reserves, outputs, sales. It is stated by the respondent that both supply of and demand for minerals is required for the Plan to succeed.

Modifications sought by those submitting representations:

SEPA does not outline any changes that should be made to the Plan.

SNH suggest that the list in paragraph 4.32 is updated to include the areas set out in the MIR and ensuring that a buffer is provided as detailed in the MIR to avoid habitat and species deterioration.

SWT request that Local Nature Conservation Sites be included in the sieving process that underpins the Area of Search of Coal. Map 3 should be amended accordingly.

DDCC does not detail spatially the specific change it would like made to the Plan. The Community Council request that the extent of the Area of Search for coal (Map 3) should be amended, taking account of its concern over the Area spreading into the northern part of East Ayrshire.

MWCC request that the Area of Search for Coal be removed or the extent of the area limited. The Plan should presume against further coal extraction, focussing instead on restoration.

FCC request that the Area of Search for Coal be reviewed and limited, taking account of Agricultural land, Wind farm landscapes, Local Nature Conservation Sites and the Rural Protection Area.

L Howie does not detail the specific change that should be made to the Plan. It is asserted that the 500 metre buffer around settlements used in the Area of Search for

Coal map (Map 3) is too limited.

Hargreaves, while not detailing specifically the changes it wishes to see made, request the following points be addressed:

- The Area of Search should not exclude all of the Coalfield Communities Landscape Partnership (CCLP) area;
- The potential extensions (Issue 10 – House of Water 1) to House of Water should be included in Map 3;
- The wording of policy MIN SS5 should be amended to recognise that the Areas of Search are indicative only, giving flexibility for specialist coal.

G Roberts, while not detailing specifically the changes that should be made to the Plan, requests the following points be addressed:

- There is a lack of justification for the inclusion of an Area of Search for Coal;
- The contents of Map 3 need further justification;
- The Plan should make a clear statement against the burning of fossil fuels.
- A table should be added showing consented sites and their potential coal stocks/reserves, outputs, sales etc.

Summary of responses (including reasons) by planning authority:

Water Environment (7)

With regards to the comment from SEPA on the water environment in relation to mining applications, the Council is satisfied that this matter is given adequate policy protection through the MLDP water environment policies (MIN ENV6 – MIN ENV8).

The inclusion of an Area of Search (18, 26)

WMCC and G Roberts, question whether there is a need for the Plan to contain an Area of Search for Coal. The requirement for an Area of Search for Coal derives from paragraph 239 of SPP (CD06), which requires that LDPs ‘identify areas of search where coal extraction is most likely to be acceptable during the plan period’. Whilst EAC accepts that SPP is not statutory, it does form the Scottish Government’s policy on planning matters and is an important material consideration. By way of background, the inclusion of an Area of Search was fully explored through the Draft MIR (CD14) and MIR stages of the plan preparation process. Whilst a range of views were submitted, it is noted that the Scottish Government was of the view that an area of search must identify new sites for development in order to meet the outcomes of SPP. Further discussion with the Scottish Government on this matter took place, with clear direction given that an area of search was expected, to ensure compliance with SPP. It is therefore the Council’s position that the Proposed MLDP would be remiss to not include an area of search. At the same time, the Plan acknowledges at paragraph 4.33 the shift in the energy market to low carbon energy sources. In light of this, the area of search in the proposed MLDP is considered to the Council to be proportionate and reflects a responsible approach to the extent of the area of search identified; it sieves out important constraints whilst at the same time leaving an adequate size of area to give sufficient choice to operators, giving them some flexibility to explore the actual quality and depth of the coal reserves within the area.

G Roberts and WMCC call for the Plan to send a stronger message against the burning

of fossil fuels. Whilst the Council is fully committed to the transition to a low carbon future, the Plan has to recognise that at the moment coal remains part of the national energy mix in terms of energy production, albeit a relatively small part. In taking a responsible approach, the MLDP needs to recognise that proposals for coal extraction may still come forward and that these need to be carefully guided and managed to the most appropriate locations. The inclusion of the Area of Search gives the Council a mechanism for doing this i.e. directing any extraction to the most appropriate locations and then assessing any applications that may come forward against the relevant policies of the MLDP. It is entirely feasible that applications within the area of search may be refused consent if policies in the Plan are deemed not to be met. It is not the role of the MLDP to determine whether coal is needed. This is made clear in paragraph 1.13 of the Plan.

There is currently a requirement for the Plan to be reviewed after 5 years, therefore in response to G Roberts comments on the short term nature of the need for extraction, the Council is content that the existing legislative framework reflects the requirements of the minerals industry. It is noted that it is the Council's intention that the Minerals Plan be incorporated into the forthcoming LDP 2.

The Extent of the Area of Search (13,18,19)

DDCC, MWCC and FCC have expressed concerns over the extent of the Area of Search, specifically in terms of it including areas within the northern part of East Ayrshire. The methodology used to define the Area of Search, is described in paragraph 4.32. Geological maps have been used to identify where coal exists (CD38); at this strategic level it does not take account of the quality, depth or quantities of coal, just that coal is known to exist. The methodology then sieves out 6 constraints, as listed in paragraph 4.32, and identifies the remainder of the area where coal exists as the area of search. Importantly, this has been done with an authority-wide approach. Whilst recent coal extraction has been confined to the southern part of East Ayrshire this is not reflective of where coal exists and based on the methodology, there is no logical reason to omit certain parts of the authority which are not covered by these constraints. Whilst the concerns over compatibility with other investment such as tourism, are fully appreciated by the Council, similar issues apply in the southern area of the authority, where many communities are looking at ways to create new futures, which are not reliant on the minerals industry. In addition, policy MIN PPL5: Tourism development seeks to ensure that mineral extraction proposals and related development do not have an unacceptable adverse impact on existing rural tourism, leisure and recreational resources and facilities or on areas with substantial tourism or recreational development potential. It should also be borne in mind, that even within the area of search, Policy MIN SS5 requires that proposals must be in compliance with all other relevant MLDP policies, therefore proposals may not always be acceptable in policy terms. The Council, therefore, disagrees that the Northern Section of East Ayrshire should be omitted from the Area of Search.

The Area of Search methodology (9, 11, 18, 19, 21, 24, 26)

In response to G Roberts concern that the Area of Search methodology has not been justified, the Council disagrees. The Plan is very clear about how the Area of Search has been arrived at. The sieving process undertaken has excluded the areas where there are real incompatibility issues with coal extraction. This is not to say that extraction would be acceptable as a blanket position in the area of search; only that these are the areas where developers should look for potential sites, which will then need to be fully tested

through the planning application process.

In relation to SNH, FCC and SWT, the Council confirms that the MIR contained a version of the Areas of Search Map that included Local Nature Conservation Sites as a constraint that was sieved out. On reflection and taking account of the responses to the MIR the Council has altered its position, and has removed Local Nature Conservation Sites. It is the Council's contention that the Local Nature Conservation Sites are shown on Map 8 and are given adequate protection through Policy MIN ENV9. Any development for minerals extraction, including coal, needs to meet the policy MIN ENV9 criteria, which includes a presumption against development which 'could have an adverse impact on Local Nature Conservation Sites.' The critical component here is that development must be found to have no 'adverse impact.' This is important for Local Nature Conservation Sites (LNCS) as these were surveyed and identified some time ago (some dating back to before 1996 Local Government reorganisation) and up-to-date information on their condition and continued importance is not always known. This is not to say they are not important and require protection; but this must be proportionate to the value of the LNC in question. At the strategic level, to exclude them from the Area of Search, on balance, cannot be justified. At the site specific level, through policy MIN ENV9, should any development proposal have potential implications for an LNC, the developer will be required to explore, demonstrate and if necessary mitigate against any such impacts. The Council is of the view that this is a fair approach and one that takes account of both the potential conservation value of these sites, but also the limited up-to-date information that is available in some cases. It should be noted that a Habitats Regulation Appraisal has been undertaken in consultation with SNH (CD18).

MWCC have requested that several additional constraints be used in the area of search sieving exercise. With regards to the Rural Protection Area, this is a designation included in the EALDP 2017 to guide and manage new housing in the countryside. It is not applicable to minerals development. In terms of the renewable energy and the particular landscape character type plateau moorland with forestry + wind farms, the Council accepts that this landscape has been subject to significant change over the last 5 – 10 years and its capacity for further development is likely to be limited. However, the Council does not agree that it should be an additional factor to underpin the area of search, particularly given that pressure for wind farm development is being experienced across significant swathes of East Ayrshire's rural area, including the coalfield area. Should minerals extraction proposals come forward in this area, there are sufficient policies in the Plan to be able to robustly assess proposals, taking account of landscape impact and cumulative impacts (policies MIN ENV11 and ENV12.) Similarly, the EALDP 2017 provides a range of policies to adequately deal with wind farm proposals. In terms of agricultural land, it is protected through Policy MIN SS1: Minerals Overarching Policy part (viii). The Council do not consider that there is a need to duplicate the content of part (viii) of MIN SS1 in policy MIN SS4.

In response to the representation from L Howie that the 500 metre buffer around settlements included in paragraph 4.34 and Map 3 is too limited, the Council would make clear that the approach taken has been done so to be reflective of SPP. Whilst the MIR explored greater buffers between minerals operations and settlements, the advice provided by Scottish Government has resulted in the wording now presented. The Council fully appreciates that surface coal sites can cause disruption to communities, far in excess of this and is of the view that the policies included in the Plan are sufficient to ensure that such matters will be robustly assessed on a site by site basis.

Hargreaves state that the Coalfield Communities Landscape Partnership area should not be excluded from the Area of Search. The Landscape Partnership is an important vehicle in helping to deliver some of the wider restoration and rural placemaking aims and aspirations of the Plan. The Council, supported by the Community in response to the MIR engagement, is firmly of the view that the CCLP must be embedded in the Plan. This is important in ensuring the Plan is more than just a tool for managing minerals extraction; it is about guiding rural regeneration and placemaking and reversing the legacy of landscape dereliction felt across parts of East Ayrshire. By including the CCLP in the Area of Search methodology, it is clear that the focus for this part of the authority area is on restoration and regeneration. The Area of Search provides a variety of areas which are considered entirely sufficient to meet demand during and beyond the plan period.

The Council do not agree with Hargreaves that potential expansion at House of Water should be included within the Area of Search. Within the Plan, there is a very clear methodology that has been used to arrive at the Area of Search. It would not be appropriate to depart from this methodology in relation to one particular development/complex.

In response to the request by Hargreaves, the Council is unclear on why the flexibility is needed in the policy to allow for specialist coal extraction. In the absence of any justification to the contrary, the Council is of the view that all coal should be treated consistently and therefore policies MIN SS5, MIN SS6 and MIN SS7 and all other relevant MLDP policies should be used for any proposal for coal extraction.

Request for additional detail (26)

In response to the request from G Roberts regarding the addition of a table showing consented coal sites, reserves, output, sales etc., the Council does not agree that it is necessary or appropriate to include such detailed information within the Minerals Plan. Whilst some high level information has been included in terms of construction aggregates, this is to demonstrate the land bank as per SPP. It is not considered necessary to include such detail for coal, essentially as it would only represent a point in time and would quickly become out of date.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter's conclusions:

Water environment

1. The suite of water environment policies contained within the proposed plan would ensure the mitigation of flood risk; protection of water resources, water bodies and groundwater; and protection of private water supplies. I consider there to be sufficient provision to ensure that any risk to the water environment arising from coal extraction in the areas of search would be suitably managed as requested by the Scottish Environment Protection Agency.

The inclusion of areas of search

2. The statutory National Planning Framework 3 (2014) states, at paragraph 4.11, that "we will also need construction materials and energy minerals to support our ambition for

diversifying the energy mix". Therefore, at a national level there continues to be support for the extraction of coal as part of the energy mix.

3. To facilitate the extraction of energy minerals, Scottish Planning Policy (2014) states that "local development plans should safeguard all workable mineral resources which are of economic or conservation value"; and that "local development plans should identify areas of search where surface coal extraction is most likely to be acceptable during the plan period and set out the preferred programme for the development of other safeguarded areas beyond the plan period, with particular emphasis on protecting local communities from significant cumulative impacts". Although non-statutory, Scottish Planning Policy "is a statement of Scottish Government policy on how nationally important land use planning matters should be addressed across the country" and that "as a statement of Ministers' priorities the content of Scottish Planning Policy is a material consideration that carries significant weight".

4. While the National Planning Framework 3 and Scottish Planning Policy promote the move to a low carbon place (reducing carbon emissions and adapting to climate change) they also endorse the continued safeguarding of energy minerals as part of the energy mix. Consequently, I find that the identification of areas of search for coal in the proposed plan is reasonable and should remain. If national policy changes in the future then, as stated by the council, local development plans (required to be reviewed at least every five years) could adopt any new approach. There is no basis to insert a blanket ban on the burning of fossil fuels in the proposed plan.

The extent of, and methodology for, the areas of search

5. Scottish Planning Policy requires areas of search to be identified where they are "most likely to be acceptable during the plan period". There is no statement in Scottish Planning Policy regarding how a local development plan should derive its areas of search. Therefore, it is for the council to determine a suitable methodology.

6. The currently adopted East Ayrshire Opencast Coal Subject Plan (2003) contains 'potential coal extraction areas' (figure 3) which was derived using a sieving exercise where chosen constraints were identified and removed from the known 'coal resources in East Ayrshire' (figure 2). A similar approach has been undertaken in the proposed plan with a set of six constraints used to derive a newly formed 'areas of search' map (map 3 in the proposed plan). The choice to exclude some constraints previously used in the adopted plan (including prime and quality agricultural land; heritage resources; local nature conservation sites; water supplies and water catchment areas; areas with transportation constraints; important tourism and recreational resources; areas of high visual amenity; and areas of ancient and semi-natural woodland) but include new constraints (including the Coalfield Communities Landscape Partnership Area) has resulted in different areas of search being identified than those previously preferred.

7. Areas in the north of East Ayrshire are now identified in the areas of search mapping which were omitted from the 2003 subject plan. From the submissions I note that these areas may be influenced by wind energy development; contain areas of quality farmland; tourist attractions; and land for housing. However, as highlighted by the council, the sieve exercise to identify the areas of search is strategic and provides a simple indication of where coal proposals might be supported. There are sufficient policy provisions in the proposed plan to protect amenity and heritage, tourist, landscape, nature conservation and community assets when assessing any proposals for coal extraction. Similarly, there

is sufficient provision to enable the safeguarding of impacts on local nature conservation sites and ensure the assessment of the cumulative impacts of minerals proposals alongside wind energy developments. I note that the rural protection area identified in the adopted East Ayrshire Local Development Plan (2017) is for the assessment of housing proposals and, therefore, not applicable to the proposed plan. Consequently, while the proposed plan has changed the constraints used to identify the areas of search I find that the approach is reasonable and that there are adequate provisions in the proposed plan to safeguard assets from any adverse harm arising from coal proposals without the need to include further constraints, as promoted by parties, in map 3 of the proposed plan. The areas identified in the north of East Ayrshire should remain.

8. The areas of search were derived using geological mapping to ascertain where coal may exist. The requirement of Scottish Planning Policy is to safeguard areas of workable mineral resources. Applications would likely come forward only for coal extraction in areas where an operator was confident of working a site for its mineral assets. On this basis, I consider that it is sufficient for map 3 to have identified potential areas where coal may be workable. Proposed policy MIN SUP1 (sterilisation of workable minerals resources) would also ensure that no mineral resources were sterilised by development ensuring that resources were properly safeguarded.

9. The areas of search sieve process includes a buffer of 500 metres around settlements which is consistent with that chosen from the same exercise in the adopted East Ayrshire Opencast Coal Subject Plan. The chosen distance is for the identification of the areas of search. A proposal would be assessed against different policies depending on whether it was located within or outwith an area of search. In addition, proposals would also be subject to the provisions of proposed policy MIN PPL1 (protecting communities) which requires “an adequate separation distance between the development site and nearby communities”. Therefore, I find that the distance of 500 metres chosen to inform the areas of search is reasonable and requires no modification.

10. In further reference to buffer zones, I note that Scottish Planning Policy states in relation to the natural environment (at paragraph 196) that “buffer zones should not be established around areas designated for their natural heritage importance”. The proposed plan provides sufficient provision to assess impacts on the natural environment without the need to establish additional buffers around these assets in identifying the areas of search. The addition of such a constraint is not recommended.

Exclusion of the Coalfield Communities Landscape Partnership Area

11. The council has included the Coalfield Communities Landscape Partnership Area as a constraint in its sieving exercise to identify the areas of search. I note that this results in the omission of a large geographical area from the areas of search within East Ayrshire including land from Auchinleck and Cumnock in the east to Patna, Waterside, Bellsbank and Dalmellington in the west. A review of the coal resources mapped in the adopted opencast coal subject plan (figure 2) identifies that this area contains quantities of lower and middle coal measures over the majority of the area. Review of the same plan’s potential coal extraction areas (figure 2) shows that a good proportion of the area within the Coalfield Communities Landscape Partnership Area is currently identified with potential for coal extraction. The decision to remove this resource from the areas of search is therefore significant as it means that any proposals to extract coal from this location would be considered against proposed policy MIN SS7 (surface coal proposals outwith the area of search and not meeting the criterion of MIN SS6). The provisions of

this policy are strict in that they require all other operations to have ceased or to cease within a year; that the equivalent amount of coal could not be extracted within an area of search; and that other relevant policies are met.

12. However, as stated above, Scottish Planning Policy sets no criteria on how to identify the areas of search but it does promote the protection of local communities. The council has justification for including the partnership area as it wishes to concentrate on the rejuvenation of the former coalfield area and the communities located within it with a range of projects envisaged. There is no submission for parties that coal extraction would be incompatible with the vision for the Coalfield Communities Landscape Partnership Area. It may be that some development could be accommodated where justified. In any event, I find that exclusion of the partnership area from the areas of search is reasonable and should remain.

Habitats regulation appraisal in relation to the areas of search and Muirkirk and North Lowther Uplands Special Protection Area

13. The council has carried out a habitats regulation appraisal of the proposed plan (dated November 2018) which included identification of the Muirkirk and North Lowther Uplands Special Protection Area, its qualifying species/habitats, and its conservation objectives. The policies which relate to the areas of search mapping were assessed as not being able to rule out a likely significant effect on a Natura site (a special protection area or special area of conservation) and so were subject to an appropriate assessment. The appraisal concludes that implementing the proposed plan would “not have an adverse effect on the qualifying features of any Natura sites, therefore their conservation objectives will continue to be met and the integrity of all Natura sites will be maintained”. Scottish Natural Heritage were consulted on a draft version of the appraisal in October 2018 which resulted in modification to the appraisal. I find that an appraisal has been conducted as requested by Scottish Natural Heritage.

Extensions to House of Water opencast coal site

14. The adopted opencast coal subject plan includes policy MIN 3 (extensions to existing opencast sites) which provides general support for extensions to existing operational sites within the potential coal extraction areas. The House of Water opencast coal site is currently operational and seeks to have an area of land to the north and north-east included within the areas of search.

15. I sought further written submissions from the council and Hargreaves asking for mapping showing constraints and the areas of search in relation to the House of Water site and explanations as to how a proposal to expand an operational site would be assessed; why extensions are not preferable to opening new sites; and comments on progressive restoration in relation to the House of Water site. I also conducted an accompanied site inspection of the site on 30 April 2019.

16. The council response confirms that the proposed plan has no policy to assess extensions of existing coal extraction sites. Due to the legacy of mining on local communities the council now wishes to respond to extensions as if they were new applications. If an extension was within an area of search proposed policy MIN SS5 (surface coal extraction developments) would apply giving support in principle to proposals for coal extraction. If outwith an area of search then policy MIN SS7 would apply (its provisions are detailed in paragraph 11 above).

17. Hargreaves response suggests that the House of Water site is well established with high levels of local employment. It highlights that a new site for coal extraction in the areas of search would require excavation voids to receive overburden; soil stores; overburden stores; water treatment areas; stores and workshops; access roads; and plant and stock areas. These features are already in place at the House of Water site which, if extended, would require less land-take than a new site and would result in less local disturbance. There should be a policy preference to extending existing sites rather than rely on new sites to be developed for coal with generally lower levels of environmental and community impact and benefits of using existing infrastructure. The policies of the proposed plan collectively preclude the extension of House of Water despite it being the last remaining operation coal site in East Ayrshire.

18. The mapping produced shows that the current planning boundary of the House of Water site is approximately half inside the areas of search identified in the proposed plan with the remainder in an area covered by the Coalfield Communities Landscape Partnership Area. The area promoted to be included within the areas of search is entirely within the partnership area and includes an area of carbon rich soils (a further constraint on areas of search).

19. In removing the policy provision from the adopted plan to support the extension of operational sites the proposed plan has placed a burden on its only remaining operational opencast coal site. The provisions of policy MIN SS7 are narrow and would require Hargreaves to submit an application within a year of anticipated closure of the House of Water site meaning that it would likely be difficult to plan operations strategically with the risk of an application being refused or not processed before operations were to finalise. Furthermore, the second criterion of policy MIN SS7 would require a submission that there were no other potential extraction sites in the areas of search with the same reserves to be exploited. I agree with Hargreaves that opening a new site with the associated infrastructure provision would likely be more invasive than expanding an existing operational site albeit that expanding the areas of search to include the promoted House of Water extension would still require full environmental assessment and assessment against the provisions of the development plan.

20. Although there is a clear methodology to support the identification of the areas of search this has, as I understand, been conducted as a sieving exercise with the council not mentioning any consideration of site visit analysis. Hargreaves are the only operator to request an extension or modification to expand the areas of search. I consider that it is reasonable to make a modification based on an actual site where there is justification. In this case, the site is currently operational with associated infrastructure and employment. There is a current position in the adopted plan to support the expansion of operational sites which will be lost when the new plan is adopted. Utilising another site for coal exploitation may have a greater impact on the land and communities. And, the expansion would be subject to future thorough assessment and review if an application was submitted. Consequently, I find that the areas of search mapping should be expanded to include the area of land to the north and north-east of the existing House of Water site.

21. I do not consider that this modification would undermine the vision for the Coalfield Communities Landscape Partnership Area. I also note that other areas of carbon rich soils are included within the areas of search so this would not create a restriction on expanding the area of search around the House of Water site.

Policy MIN SS5

22. I agree with the council that there is no justification to allow flexibility in relation to the extraction of “specialist coal” in proposed policy MIN SS5 (surface coal extraction developments) as requested by Hargreaves. Proposals for coal should be assessed against the provisions of the proposed plan in the same manner. However, that does not dismiss the fact that the provision of specialist coal could be considered as a material consideration in the determination of an application. In addition, I find that it would not be appropriate to suggest in policy MIN SS5 that the areas of search were “indicative” as this would undermine the purpose of their identification and reduce certainty to local communities. No change the proposed plan is required to address these matters.

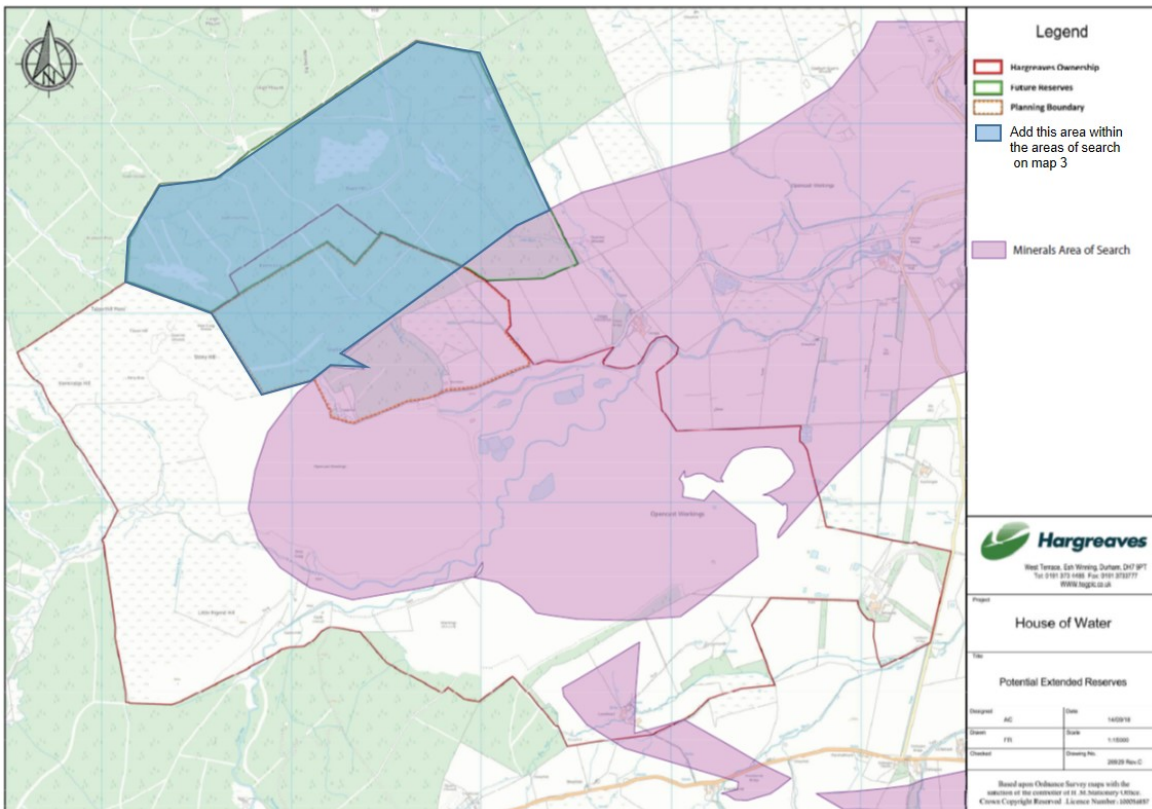
Request for additional detail

23. As identified by the council, there is no requirement to maintain a landbank in relation to coal. There is also no need for an applicant/developer/operator to divulge commercial information regarding sales of coal. And, I agree with the council that any data on reserves and output stated in the proposed plan would quickly become out-of-date. I find that there is no justification to include a table with additional information on coal as suggested by Ms Roberts.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Including the area highlighted in blue to the north and north-east of the House of Water site (as shown on the map below) within Map 3: Areas of Search for Coal on page 25.



Issue 11	Restoration Coal	
Development plan reference:	Policy MIN SS6: Restoration Coal	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environment Protection Agency (SEPA) (7) J Mulders (10) Scottish Wildlife Trust (SWT) (11) Hargreaves (24) The Royal Society for the Protection of Birds (RSPB) (25)</p>		
Provision of the development plan to which the issue relates:	The content and wording of policy MIN SS6, which deals with restoration coal (the process of extracting coal as part of a restoration scheme).	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA note that development should only proceed if the risk to the water environment can be appropriately managed. As for all mining applications, coal restoration site proposals will need to be assessed on an individual basis.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders suggests that an additional criteria be added to ensure that proposals have a clear end date. Some additional clarification is also suggested for criterion (iii) to ensure that the submitted business plan is viable and sustainable.</p> <p><u>SWT (11)</u></p> <p>SWT request that the first criterion should be amended to include nature conservation, as such opportunities should be recognised.</p> <p><u>Hargreaves (24)</u></p> <p>Hargreaves welcome the opportunity for coal extraction at abandoned sites, but state that the policy wording is unclear, especially with the significance given to 'pre 2013 abandonment sites'. Some sites that were abandoned post-2013 require the greatest restoration effort and where there is the greatest potential for restoration coaling. It is suggested that discounting them from this policy is counter-productive.</p> <p><u>RSPB (25)</u></p> <p>RSPB are of the view that the MLDP (CD11) must make clear that consent for restoration coaling could only be considered in exceptional circumstances. It should not be used as a reason to extend the boundary of site.</p>		

Modifications sought by those submitting representations:

SEPA do not require any modifications to be made to the Plan.

J Mulders seeks that:

- Criterion (iii) be amended to read ‘the developer has submitted a **viable and sustainable** business plan detailing how the extraction of coal cross-funds the restoration of the site.’
- An additional criteria be added (vii) ‘**The proposal has a finite completion date once the restoration masterplan has commenced or been determined.**’

SWT request that criteria (i) be amended to add nature conservation to the list of uses that will be supported on site, in addition to the current list of agriculture, forestry, recreational, tourist, leisure or sporting sectors.

Hargreaves request that clearer policy wording be used to clarify that restoration coal at any site can bring benefits and should be considered at the planning stage against the policy criteria.

RSPB seek that the policy make clear that restoration coaling will only be considered acceptable in exceptional circumstances and that it should be ensured that restoration coaling is not used as a reason to extend the boundaries of sites.

Summary of responses (including reasons) by planning authority:

Water Environment (7)

The Council notes the comment from SEPA. No changes are required.

Additional criteria and modification of criteria (10, 11)

The Council does not consider that the inclusion of ‘viable and sustainable’ is necessary, as these would be implicit in the application of the policy. However, to ensure the policy is sufficiently clear on this matter, the Council would not have any objection should the reporter be minded to amend the Plan in accord with this suggested modification.

The additional criterion that has been suggested, is considered unnecessary as criterion (ii) requires a comprehensive masterplan, detailing all stages to full restoration. Such ‘stages’ constitute a phasing plan. The additional criteria would therefore result in repetition. In terms of the finite nature of such stages, these can be considered through development management procedures.

In terms of the request by SWT to add ‘nature conservation’ to the list of uses, the Council has concerns over what this would actually entail and whether such a term could be too open to interpretation. Whilst reinstatement of peatlands or the creation of new wetlands could feasibly be appropriate end uses, the Council is concerned that a site could effectively be left to ‘naturalise’ with minimal effort and be described as nature conservation. This may be appropriate in some instances, but the Council does not agree that it would provide a justification for additional extraction taking place. It should also be noted that the criterion specifically states ‘The site is primarily developed for...’ therefore focussing on the major land uses. Such uses could also include some element of nature conservation alongside the land uses listed. For the reasons noted, the Council does

therefore not agree that this modification should be made.

Clarity (24)

In response to Hargreaves concern over the clarity of the policy, the Council can clarify the intended intent and purpose of the policy. The policy is intended to allow for a modest element of extraction, where this will help enable high quality, progressive restoration. The intention is that the policy will apply to those sites which were abandoned in 2013 due to the liquidation of the coal companies and to other **surface** coal sites, where operations ceased prior to 2013 (i.e. not deep mining sites). The Council notes that Hargreaves is concerned that the policy does not apply to those sites abandoned post-2013, which is where there could be the greatest opportunity for restoration coaling to contribute towards restoration efforts. The Council does not agree that this is appropriate. The policy is not intended to apply to more recent sites where extraction has carried on beyond 2013; these sites should have appropriate restoration plans and bonds in place to ensure that restoration coaling will not be necessary to secure restoration.

The Council recognises that the current wording of the policy, and particularly the reference to ‘pre-2013 abandonment’ could be amended to improve the clarity of the policy. This will not change the overall principle and direction of the policy. The Council therefore suggests the first paragraph of the policy be amended to read:

- ‘Outwith Areas of Search for coal (as defined in Map 3) and those sites with restoration contracts utilising drawn down restoration guarantee bonds, proposals for the restoration of existing unrestored or partially unrestored **surface** coal sites (abandoned in **2013 or earlier**) with coal remaining and which include a modest amount of extraction will be supported where all of the following criteria can be met:.....’

The suggested amendment makes clear that the policy applies to those sites that were abandoned in 2013 or before 2013. The addition of ‘surface’ ensures that the policy is not used with regards to older historic sites (associated with deep mining) where it would not be acceptable to re-visit for extraction purposes.

Exceptional circumstances (25)

RSPB request that the policy be amended to state that restoration coaling will only be considered acceptable in exceptional circumstances. However, no indication is given as to what RSPB would interpret as exceptional circumstances. In order to provide clarity in the policy, the Council is of the view that the policy would need to indicate what the ‘exceptional circumstances’ would be. The Council is confident that the policy, as currently worded and taking account of the clarifications suggested above, is sufficiently robust and appropriately caveated that only those developments that will secure high quality and properly planned restoration will receive support for restoration coaling. For this reason, the Council does not agree that the suggested modification is necessary.

The Council agrees with RSPB that the policy should not be used as a justification to extend the boundaries of sites. The Council is satisfied that within the policy wording ‘proposals for the restoration of existing unrestored or partially restored sites with coal remaining and include a modest amount of extraction’ it is implicit that extraction can only be within the site. This does not support extensions to sites for extraction. Whilst the Council believes this is sufficient, the Council would have no objection to the reporter

adding further clarification to reflect the point put forward by RSPB.

Apart from the suggested clarification bulleted above, the Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter's conclusions:

Water environment

1. The suite of water environment policies contained within the proposed plan would ensure the mitigation of flood risk; protection of water resources, water bodies and groundwater; and protection of private water supplies. I consider there to be sufficient provision to ensure that any risk to the water environment arising from restoration coal would be suitably managed as requested by the Scottish Environment Protection Agency.

Additional criteria and modification of criteria

2. I agree with Mr Mulders, as does the council, that it would be appropriate and reasonable for any business plan to be “viable and sustainable” to provide certainty of funding for restoration. Consequently, a small modification to criterion (iii) of proposed policy MIN SS6 (restoration coal) is justified.

3. As identified by the council, criterion (ii) of proposed policy MIN SS6 requires a comprehensive masterplan with stages of restoration included. Any timescales to be attributed to a staged restoration could be suitably controlled through the imposition of a condition through the development management process. Consequently, I find that insertion of an additional criterion on a finite timescale (as suggested by Mr Mulders) is unnecessary.

4. Criterion (i) of proposed policy MIN SS6 requires that sites are “primarily” developed for a range of specified uses. Although I note the council’s reservation in referring to “nature conservation” as a specified use I consider that it would be highly unlikely for a site to be promoted for simple “naturalisation” as there are other criteria within policy MIN SS6 which require a comprehensive masterplan ensuring control over what is approved and implemented. I find that a minor change to criterion (i) is reasonable in supporting the aim of the proposed plan to enhance the natural environment and promote green networks. The recommended change would also be consistent with my recommendations concerning former mineral opportunity sites expressed in Issue 6 (the vision and aims of the plan).

Clarity

5. The council has confirmed the intention of proposed policy MIN SS6 is to refer to unrestored or partially restored surface coal sites left in the period 2013 or earlier. I agree with the council that sites post 2013 would likely have suitable restoration plans and bonds without the need to rely on additional (modest) extraction to enable restoration – should this not be the case then this could be taken into account as a consideration in the determination of any restoration coal proposal for a post 2013 site through development management process. I find that in response to Hargreaves concerns it would be appropriate and reasonable for the policy to be modified to clarify its intention. Opening up the policy to allow any site to be considered for restoration coal would, for the reasons

stated above, not be justified.

Exceptional circumstances

6. The recommended clarification to policy MIN SS6 means that the scope for restoration coal is limited to surface coal sites left unrestored or partially restored on, or before, 2013. I further agree with the council that the policy relates to actual sites and does not provide any explicit support for expansion of sites. RSPB Scotland has not provided any examples of “exceptional circumstances” which would allow restoration coal. I find that the provisions of policy MIN SS6 are focussed to reasonable and appropriate circumstances where modest extraction may be acceptable. With a legacy of abandoned sites the approach of policy MIN SS6 to finding potential restoration solutions is also reasonable. I find that the policy does not need to be amended to refer to any exceptional circumstances.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Inserting “nature conservation,” after “agriculture,” in criterion (i) of Policy MIN SS6: Restoration Coal on page 26.
2. Inserting the words “viable and sustainable” before “business plan” in criterion (iii) of Policy MIN SS6: Restoration Coal on page 26.
3. Inserting the words “surface coal” between “restored” and “sites” in the first paragraph (third line) of Policy MIN SS6: Restoration Coal on page 26.
4. Replacing the words “pre 2013 abandonment” with “abandoned in 2013 or earlier” in the first paragraph (third line) of Policy MIN SS6: Restoration Coal on page 26.

Issue 12	Unconventional Oil and Gas and Carbon Sequestration	
Development plan reference:	Spatial Strategy – Unconventional Oil and Gas, Underground Coal Gasification and Carbon Sequestration; Policy MIN SS8 and MIN SS9	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Natural Heritage (SNH) (9) Scottish Government (17) L Howie (21)</p>		
Provision of the development plan to which the issue relates:	<p>Policy MIN SS8 sets out East Ayrshire Council’s position with regards to unconventional oil and gas proposals. Policy MIN SS9 sets out the requirements for carbon sequestration proposals.</p>	
Planning authority’s summary of the representation(s):		
<p><u>SNH (9)</u></p> <p>SNH welcomes the requirement for planning applications for carbon sequestration to take into consideration the impacts upon landscape. This could be further expanded to include consideration of impacts on views and visual amenity.</p> <p><u>Scottish Government (17)</u></p> <p>Scottish Government requires the plan (CD11) to be modified to reflect the current Scottish Government policy position on UOG.</p> <p><u>L Howie (21)</u></p> <p>L Howie refers to policy MIN SS8 which states that no unconventional oil and gas proposals will be supported during the lifetime of the Minerals Local Development Plan. Policy MIN SS8 also states that the position will be fully reviewed if the Scottish Government’s position on the embargo is revised. The introductory text of page 7 of the Proposed Plan, more specifically paragraph 1.3 states that the MLDP represents the Council’s settled view, on how, in relation to minerals, East Ayrshire should be developed over the next 10-20 years. L Howie would like further clarity in relation to the assurance that no proposals will come forward during the lifetime of the Plan.</p>		
Modifications sought by those submitting representations:		
<p>SNH suggest inserting the following wording to bullet point 5 of policy MIN SS9, “...<i>Impacts upon landscape</i> “including landscape character, views and visual amenity”.</p> <p>Scottish Government requests that the plan be modified to state, “The Scottish Government announced its preferred policy position to not support the development of unconventional oil and gas in Scotland in October 2017. This preferred position is</p>		

currently subject to the necessary statutory assessments, prior to finalisation”.

L Howie does not specify any modifications to policy MIN SS8.

Summary of responses (including reasons) by planning authority:

Additional wording (9)

The Council consider that the wording of policy MIN SS9 is sufficient and the suggested expansion of the wording of bullet point 5 by SNH is not necessary. The assessment of any impact on landscape as a result of a carbon sequestration proposal will be fully taken into consideration. In addition, policy MIN ENV11 seeks to protect East Ayrshire’s landscape character and policy MIN ENV12 requires all proposals to be accompanied by a Landscape and Visual Impact Assessment. The Council is therefore of the view that no changes are necessary to policy MIN SS9. However, the Council would have no objection if the Reporter sees merit in modifying the Plan as suggested.

Scottish Government Policy Position (17)

The wording of Policy MIN SS8 was correct at the time of the publication of the MLDP (Scottish Government’s Unconventional Oil and Gas Statement, 2017 (CD44)), however in light of the representation from the Scottish Government, and if the Reporter was to be in agreement, the Council would have no objection to modifying the plan by replacing the third sentence of paragraph 4.37 with the following text:

“The Scottish Government announced its preferred policy position to not support the development of unconventional oil and gas in Scotland in October 2017. This preferred position is currently subject to the necessary statutory assessments, prior to finalisation”.

Plan duration (21)

Although an LDP has a vision for 10-20 years it will be reviewed within five years from its date of adoption. Scottish Ministers have a power under the Town and Country (Scotland) Act 1997 (section 16(7)) (CD01) to direct a planning authority to prepare and submit a report as to why it has failed to replace its LDP within five years. It is likely that the policy will be reviewed as part of a new LDP in the future. If the position of the Scottish Government was to change before the preparation of a new LDP then East Ayrshire Council will be required to bring forward a review of the plan. The Council is satisfied that the Plan, as currently worded, is accurate and clear on this matter.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Unconventional oil and gas

1. As promoted by the Scottish Government, and agreed by the council, the national policy position with regard to unconventional oil and gas has changed since the publication of the proposed plan. Therefore, it is reasonable and appropriate for the plan to be modified to reflect the current situation. A modification to paragraph 4.37, as suggested by the council, would be satisfactory.

2. As identified by the council, the proposed plan provides a 20 year vision and provides a settled view on how minerals should be developed over the next 10-20 years. However, the plan is required to be reviewed every five years and, as stated at paragraph 4.25, the intention of the council is to combine the minerals local development plan with the East Ayrshire Local Development Plan. I note from the most recent development plan scheme (2018) that the next East Ayrshire Local Development Plan is due for adoption in 2021. Consequently, no support would be given in a local development plan for unconventional oil and gas proposals until at least 2021 and that would only occur should the Scottish Government change its policy position. I consider that the proposed plan provides sufficient detail on the current situation with regard to unconventional oil and gas without the need to provide any further explanation or reassurance.

Carbon sequestration

3. I note that proposed policy MIN ENV12 (assessing landscape and visual impacts) requires all proposals to be accompanied by a landscape and visual impact assessment. However, as proposed policy MIN SS9 (carbon sequestration) refers to landscape impacts I agree with Scottish Natural Heritage that it would be reasonable for it to also refer to visual impact. However, I don't agree with Scottish Natural Heritage's proposed wording as impacts on views and visual amenity are not necessarily exclusively defined by the landscape. A small change to the policy is justified.

Reporter's recommendations:

Modify the proposed local development plan by:

1. Replacing the third sentence of paragraph 4.37 on page 28 with the following:

“The Scottish Government announced its preferred policy position to not support the development of unconventional oil and gas in Scotland in October 2017. This preferred position is currently subject to the necessary statutory assessments, prior to finalisation.”.

2. Replacing the criterion “Impacts upon landscape;” with “Landscape and visual impacts;” within Policy MIN SS9: Carbon Sequestration on page 29.

Issue 13	Aggregates and fireclay	
Development plan reference:	Policies MIN SS10 and MIN SS11, tables 2 and 3 and paragraphs 4.44 – 4.49 and paragraph 8.5.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environment Protection Agency (SEPA) (7) British Aggregates Association (BAA) (8) Scottish Natural Heritage (SNH) (9) J Mulders (10) Minerals Products Association (MPA) (15) Breedon Northern Limited (Breedon) (16) The Royal Society for the Protection of Birds (RSPB) (25)</p>		
Provision of the development plan to which the issue relates:	The content and wording of policies MIN SS10 and MIN SS11 on Construction Aggregates and supporting paragraphs and tables.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA point out that potential construction aggregate proposals must include information on water quality and quantity impacts to surrounding surface water and groundwater resources, as well as impacts on abstractions and private water supplies. In terms of MIN SS11, SEPA indicate that proposals may come forward for fireclay extraction disassociated from coal reserves. To reflect this, the Council may wish to include a statement of support in the Plan (CD11) for independent fireclay extraction, subject to water monitoring and assessments.</p> <p><u>BAA (8)</u></p> <p>BAA questions the appropriateness and clarity of the construction aggregates landbank being expressed on an Ayrshire basis instead of an East Ayrshire basis. It is suggested that an application post-2022, when Tincornhill quarry is due to close could be automatically refused as there would still be a 10 year landbank, albeit that the landbank includes areas outwith East Ayrshire. This position needs clarified in the Plan.</p> <p>At paragraph 8.5, BAA states that it is a fallacy to believe that recycled and so called secondary aggregates reduce the demand for primary aggregates. BAA states that this is not the case. For every tonne of high spec aggregate that is produced, a tonne of by-product is produced, as the by-product is subject to the aggregate levy it cannot compete with recycled or secondary so get left in the quarry causing stockpiling problems. Recycled and secondary aggregates is fine for temporary work but in most cases not good for quality construction.</p> <p><u>SNH (9)</u></p> <p>SNH welcome the criteria based approach of policy MIN SS10, but suggest the policy</p>		

could be amended to ensure that negative impacts on the environment are avoided and not just considered. The consideration of impacts on the landscape are welcomed, but this could be further expanded to include consideration of impacts on views and visual amenity.

J Mulders (10)

At paragraph 4.49, J Mulders suggests that the commercially sensitive information submitted in support of an application should be 'justifiable'.

MPA (15) and Breedon (16)

MPA and Breedon both question table 2, in particular the appropriateness of the tonnage to be extracted including 'minded to grant' applications. It is considered that this is misleading as such applications may not result in approvals or may bring with them conditions that make consents un-implementable commercially. It is also noted that table 3 identifies 'consented extraction'. It should be clarified that this means estimated reserves at the time the consent was granted and does not relate to remaining reserves.

RSPB (25)

RSPB do not support policy MIN SS10 and believe the MLDP should be explicit in not supporting further extraction while the market needs are being satisfied in Ayrshire.

Modifications sought by those submitting representations:

Whilst SEPA does not put forward specific wording, it is suggested that a statement of support for fireclay extraction, without any association to coal extraction, is included within the Plan.

BAA does not put forward specific wording, however, it is suggested that clarity is needed on the 10 year landbank in relation to it including sites outwith East Ayrshire.

MPA would like tables 2 and 3 amended to more accurately reflect the current landbank situation. Breedon would like table 2 amended to remove 'minded to grant' applications.

SNH suggest the second sentence of the policy be amended to read:

'the following criteria will be used to assess applications, and applicants should provide supporting information accordingly, **ensuring that there are no significant negative impacts on the environment**'

SNH suggest the fifth criterion of policy MIN SS10 be amended to read:

'Impacts upon landscape **including landscape character, views and visual amenity;**'

RSPB do not support policy MIN SS10 and it is assumed request that the policy be removed from the Plan.

J Mulders suggests that paragraph 4.49 should be amended to read:

*'Applicants should note that the submission of any **justifiable** commercially sensitive*

information submitted to support an application will be treated in the strictest confidence.'

BAA, whilst not outlining a specific modification it would like made to paragraph 8.5, indicates that the statement regarding the use of recycled and secondary aggregates reducing demand for primary aggregates is incorrect.

Summary of responses (including reasons) by planning authority:

Support for fireclay (7)

The Council would clarify that clay, including fireclay, is an aggregate, as defined in table 1 of the Plan (page 30). Any application for fireclay extraction that is not associated with coal, would therefore be assessed against Policy MIN SS10 and all other relevant policies of the Plan. Policy MIN SS11 has been included for the particular purpose of ensuring that fireclay is explored as part of coal applications. The Council is of the view that policy MIN SS10 is sufficient to address any applications solely for fireclay and therefore no changes to the Plan are required.

Ayrshire landbank (8)

BAA suggest that the Plan requires greater clarity in terms of the 10 year landbank and what this means for proposals, with particular concern expressed over the appropriateness of using an Ayrshire-wide landbank. The Council does not agree that greater clarity is required. Paragraphs 4.44 and 4.45 confirm that as Ayrshire is the appropriate market area for construction aggregates, based upon research showing where aggregates produced in Ayrshire are actually used, the landbank for the MLDP purposes is Ayrshire. Operator surveys and discussions with operators was held to inform this position and to ensure the landbank was described in the Plan as accurately as it could be. Greater detail on the landbank and the developments that contribute to it are included within the Monitoring Statement (CD16). It is entirely sensible that the landbank relates to where the demand for aggregates is coming from and that taking an Ayrshire-wide regional approach is a more realistic reflection of how the market operates. This matter was discussed with Scottish Government officials in advance of the Proposed Plan, at which time it was advised that a joint Ayrshire market was appropriate, subject to consultation with Dumfries and Galloway Council and the Clydeplan Strategic Development Planning Authority, which took place as suggested. The Plan, at table 2, clearly indicates that the landbank is an 'Ayrshire aggregates landbank'.

In relation to BAA's concern that this would have implications for how a new application would be assessed, the contribution to the landbank is one of 9 criterion that such a development would be assessed against within policy MIN SS10. Again, at this stage it is considered appropriate that the landbank be considered on an Ayrshire basis as this reflects how the aggregates market operates. To comply with this criterion, an application would in effect need to demonstrate that it will meet a need within the Ayrshire market, an entirely reasonable requirement and not one that is unfair or unduly onerous. Table 3 provides information of the existing landbank of construction aggregates in East Ayrshire. As detailed above, the Scottish Government has stated that a joint Ayrshire market area is appropriate. The Council does not therefore see a need to modify the Plan.

Recycled and Secondary Aggregates (8)

In terms of BAA's concerns over recycled and secondary aggregates, the Council is of

the view that the current wording is correct and accurate. As evidenced on page 33 of the Monitoring Statement, the Annual Minerals Raised Inquiry by the Minerals Product Association (CD36) states that 29% of Britain's aggregates market is made up of recycled and secondary materials. Without these, surely there would be greater demand on primary aggregates, therefore the Council does not see any inaccuracy with stating in paragraph 8.5 that recycled and secondary aggregates are reducing the demand on primary aggregates. Paragraph 8.5 makes no comment on the extent to which it is reducing demand so even if demand was reduced for temporary work, as noted by BAA, this would to a certain degree at least reduce demand.

Negative impacts (9)

SNH have requested that MIN SS10 be amended to make clear that negative impacts should be avoided and not just considered in the assessment. The Council considers that the need to avoid negative impacts is implicit in the wording and intention of the policy. In particular, the first sentence indicates that extraction will be supported where there 'will be no unacceptable and significant adverse impact on local communities and the environment.' As the policy should be read in full, the need to reiterate as suggested by SNH is not considered necessary. In addition, policy MIN SS1, which will be applicable to all proposals, makes clear specifically in criterion (iii), (iv), (ix) and (x) that there should be no unacceptable impacts on the environment and that the environment should be protected and enhanced. Any aggregates application will also require to be assessed against the specific environmental policies of the Plan, contained within Chapter 5, which are sufficiently robust to protect against unacceptable and significant adverse impacts.

Landscape criterion (9)

In terms of the suggestion by SNH to add additional wording to the landscape criterion, the Council would point out that there are two specific policies on landscape (Policies MIN ENV11 and MIN ENV12), as well as criterion (x) of policy MIN SS1, which adequately addresses the points raised here. It is not necessary to therefore add additional detail under policy MIN SS10, when the specific landscape policies will cover the more detailed landscape matters.

Additional Wording (10)

The suggestion by J Mulders to add 'justifiable' into paragraph 4.49 is not considered by the Council to be necessary. The applicant will be free to submit information they consider relevant to their application. In all such instances the Council makes a judgment as to whether it is relevant and justifiable, in relation to the proposal and the information itself. There is no need for this to be inserted into the MLDP.

Tables 2 and 3 (15, 16)

In relation to tables 2 and 3 on page 31 of the Plan, and the comments by MPA and Breedon regarding the need for greater clarity, the Council points out that the tables were included in the Plan to provide useful information and to help demonstrate why the criteria based policy MIN SS10 has been included instead of an Area of Search policy. Table 2 outlines the Ayrshire landbank, at a given point in time, that being the date of the Monitoring Statement (June 2016). In accord with paragraphs 61 to 62 of Circular 6/2013 (Development Planning) (CD05) a key purpose of the Monitoring Statement is to summarise the evidence base for the Plan. It is therefore entirely appropriate that table 2

within the Plan relates to the more detailed information within the Monitoring Statement. For clarity, the figures in table 2 reflect the remaining consented tonnage still to be extracted within Ayrshire i.e. the consented amount of aggregates, minus the amount that has thus far been extracted. This information was compiled by the Council on the basis of information supplied by operators at the time of writing the monitoring report.

In response to Breedon and MPA’s representation that the inclusion of ‘minded to grant’ applications in table 2 is misleading, the Council can confirm that at the time of writing the Monitoring Statement there was one outstanding ‘minded to grant’ application, which was at that time awaiting the conclusion of a legal agreement. The consent for this application has now been issued. The Council would therefore have no difficulty should the reporter wish to remove ‘including minded to grant applications’ from the title of the second column of Table 2. The remainder of Table 2 could remain as is.

Within table 3, the Council agrees with MPA and Breedon that the ‘Consented Extraction’ column refers to estimated reserves at the time of consent and not reserves that are remaining at this point in time. For clarity, this is different from the data contained in table 2. Table 3 does not take account of whether the consents have been implemented or the amount of aggregates that have been extracted. It is solely based on the amount of extraction permitted through planning consents. The Council is of the view the current wording in the table is sufficiently clear on this matter, however, should the Reporter be so minded the Council would have no difficulty with further clarity being added to this issue. For further clarity, table 3 which includes solely East Ayrshire data has been updated since the Monitoring Statement to include the recently consented development at ‘The Meadows’, Galston (CD42) and to reflect the granting of consent for North Drumbooy (CD41) within the Proposed Plan.

Requirement for further extraction (25)

In response to RSPB, the approach to construction aggregates within the Plan is in line with the framework set out by SPP (CD06), which indicates that should a landbank of aggregates exist, a criteria based policy approach should be adopted. This is what the Plan does. Policy MIN SS10 is a criteria based approach. It would not be appropriate and would not be compliant with SPP, for the Plan to simply say that further aggregates will not be supported. Aggregates production is central to development and economic activity, with the construction market always subject to change. It is essential for the proper planning of East Ayrshire that the Plan contains appropriate policies to assess any applications for aggregates extraction that may come forward.

Aside from addressing the change to Table 3, the Council is of the view that no changes are required to the Minerals Local Development Plan with regard to this issue.

Reporter’s conclusions:

Water environment

1. The suite of water environment policies contained within the proposed plan would ensure the protection of water resources, water bodies, groundwater, and private water supplies. I consider there to be sufficient provision to ensure that any risk to the water environment arising from extraction of construction aggregates would be suitably managed as requested by the Scottish Environment Protection Agency.

Independent fireclay extraction proposals

2. As identified by the council, the definition of “construction aggregates” in the proposed plan (at paragraph 4.43) includes “clay”. Consequently, applications for fireclay extraction separate from a coal extraction operation would be suitably assessed against the provisions of proposed policy MIN SS10 (construction aggregates). Therefore, no change is required to the proposed plan to address this matter.

Aggregates landbank

3. Scottish Planning Policy (2014) advises that “plans should support the maintenance of a landbank of permitted reserves for construction aggregates of at least 10 years at all times in all market areas” through identification of areas of search or, as an alternative, using a criteria-based approach. Paragraphs 4.44 to 4.48 of the proposed plan reflect this advice confirming a market area of “Ayrshire” and, as a 15 year landbank of construction aggregate is available (with the exemption of clay), adopting a criteria-based approach for maintaining the landbank.

4. The council conducted surveys of operators and consulted adjoining authorities and the Scottish Government to inform its decision to adopt an “Ayrshire” market area. As stated at paragraph 4.44 of the proposed plan some “90% of aggregates quarried in Ayrshire remain within Ayrshire post-extraction”. It is, therefore, justifiable that “Ayrshire” and not the authority boundary of East Ayrshire continues to be identified as the appropriate market area in the proposed plan.

5. As identified by the council, proposed policy MIN SS10 provides criteria to assess construction aggregate proposals including their contribution to the maintenance of a landbank of reserves. Consequently, the fact that a 10-year landbank may be available following the closure of Tirncornhill hard rock quarry would only be one of nine criteria to be considered. Additionally, the policy does not prohibit proposals coming forward where a 10-year landbank is maintained. Further proposals could justifiably contribute to the landbank reserve. No change to the proposed plan is required to respond to the concerns of the British Aggregates Association in relation this matter.

Recycled and secondary aggregates

6. The council has provided concrete sources which indicate that that recycled and secondary aggregates account for 29% of Great Britain’s aggregates market. Therefore, I do not consider that reference in paragraph 8.5 to the recycled and secondary market reducing the demand on primary aggregates a misconception. The text should remain.

Negative impacts

7. Proposed policy MIN SS10 requires that proposals have “no unacceptable and significant adverse impact on local communities and the environment.”. Therefore, I am satisfied that the policy would allow the avoidance rather than simply the consideration of impacts on the environment. No change to the policy is required to respond to Scottish Natural Heritage’s concern on this basis.

Landscape criterion

8. Consistent with my conclusions on Issue 12 (paragraph 3), I find that it would be

reasonable and appropriate to modify the assessment criterion in proposed policy MIN SS10 regarding landscape impacts to refer also to visual impact. A minor change to the policy is therefore recommended.

Additional text

9. I agree with the council that it is not necessary to caveat paragraph 4.49 of the proposed plan to require only “justifiable” commercially sensitive information. It is appropriate for the plan to simply highlight that any commercially sensitive information submitted (whether relevant or not) will be treated confidentially. The text of paragraph 4.49 should remain unchanged.

Tables 2 and 3

10. The council has confirmed that there are no ‘minded to grant’ applications related to Table 2 (Ayrshire aggregates landbank). Therefore, it is reasonable for this reference to be removed from the table. The council has also confirmed that the consented extraction referred to in Table 3 (Mineral extraction in East Ayrshire) refers to the estimated reserves at time of consent. I find that it would be clearer if the table made this explicit. A small change is therefore recommended.

Requirement for further extraction

11. National Planning Framework 3 (2014) highlights that “our mineral resources support the construction and energy sectors”; and Scottish Planning Policy advises that “minerals make an important contribution to the economy, providing materials for construction, energy supply and other uses, and supporting employment” and that the planning system should “safeguard workable resources and ensure that an adequate and steady supply is available to meet the needs of construction, energy and other sectors”. Therefore, I find that there is a direction at a national level to support the maintenance of a minerals supply.

12. The proposed plan provides a criteria-based policy (MIN SS10) to properly assess construction aggregate proposals and ensure that the need for any aggregate is weighed against any negative impacts. I agree with the council that it would be inappropriate and unreasonable to prohibit the promotion of further construction aggregate proposals within East Ayrshire. No change to the plan is required on this basis to respond to the concerns of RSPB Scotland.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Replacing the criterion “Impacts upon landscape;” with “Landscape and visual impacts;” within Policy MIN SS10: Construction Aggregates on page 32.
2. Deleting “(including minded to grant applications)” from Table 2: Ayrshire aggregates landbank on page 31.
3. Inserting “(estimated reserves at time of consent)” after “Consented extraction” within Table 3: Mineral extraction in East Ayrshire on page 31.

Issue 14	Strategic Woodland creation	
Development plan reference:	Policy MIN SS12, paragraphs 4.3, 4.50 – 4.57 and Map 4	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environment Protection Agency (SEPA) (7) Scottish Natural Heritage (SNH) (9) Scottish Wildlife Trust (SWT) (11) REG Power Management Ltd (REG) (20) The Royal Society for the Protection of Birds (RSPB) (25)</p>		
Provision of the development plan to which the issue relates:	The inclusion of policy MIN SS12 within the MLDP and the detail of the policy, supporting text and associated map.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA recommend that flood risk be given consideration in proposals relating to woodland. Forestry has the potential for large woody debris to exacerbate flooding if not managed correctly. With good forestry management techniques flood risk can be minimised. We expect to be consulted on forestry proposals to ensure flood risk has been adequately assessed.</p> <p><u>SNH (9) and SWT (11)</u></p> <p>SNH welcome the spatial representation in respect of woodland creation and support the factors set out in paragraph 4.54. SNH suggest it would also have been useful to take peatland and carbon rich soils into account and to provide specific detail on the landscape designation. SNH also point out that in many instances mining has taken place on land with important biodiversity value and that restoration plans intended that such biodiversity value would return. To convert restored sites to forestry will permanently change the biodiversity and landscape character. Original restoration plans, or parts of them, should be carried through wherever possible.</p> <p>Similarly, SWT note that the SSSIs and LNCSs are not included in the Plan (CD11) as factors that might limit large scale woodland creation and point out that these designations could be compromised by tree planting.</p> <p>Further, SNH consider that opportunities for a range of different types of woodland creation should be well-planned and designed to ensure effective integration with the surrounding landscape.</p> <p><u>REG (20)</u></p> <p>REG has no objection of the strategic woodland creation pilot project but raises a number of questions that should be addressed.</p>		

- REG question whether the project goes beyond the realms of the MLDP and is unclear why this matter and the policy (MIN SS12) are included within the Plan. Any standalone forestry policy would not be assessed against the Plan as per paragraph 1.5 as there is no minerals extraction element. REG consider that this project should be brought into other Council publications to broaden awareness of the project.
- Clarification is sought on what is meant by strategic scale. Whilst REG see opportunities for renewable energy proposals to contribute to this, it will depend on buy in from other stakeholders as noted in the Plan.
- Clarification is sought on how pressure for energy development has helped identify the indicative area. REG notes and welcomes the statement that the area does not preclude other developments. Is it intended that the development of renewable energy projects could help facilitate the creation of woodland? The area does coincide in part with East Ayrshire's least sensitive area for wind farm development as per the wind energy SG (CD23), leading to the conclusion that the two uses are compatible. This point should be made clearer.

RSPB (25)

RSPB object to the inclusion of the policy MIN SS12 within the Plan. This is on the basis that the MLDP is not the appropriate document in which to propose a strategic approach to woodland creation. If there is a requirement for a woodland strategy, this should be developed as a separate document with proper consultation and assessment, not as a bolt on to the MLDP where it is unlikely anyone looking for woodland policy would think to look, raising issues over transparency of approach. Linked to this, strategic woodland creation should not be included within paragraph 4.3 on Page 12.

Modifications sought by those submitting representations:

SNH request that text (denoted in bold below) be added into paragraph 4.54 to take account of peatland and carbon rich soils as well as highlighting the relevant landscape designations. For example:

'The indicative area shown on map 4 is based on the preferred area, but also takes into account certain factors that may limit opportunities of larger scale woodland creation; Natura 2000 sites, areas of particularly high landscape and scenic value **such as Wild Land Areas and Sensitive Landscape Areas**, prime quality agricultural land, **areas with potential for non-woodland habitats, areas of peat and carbon rich soils** and areas where pressure for renewable energy is particularly high'.

SNH recommend providing additional text (denoted in bold) to the following sentence of Policy MIN SS12:

"The Council will work proactively in partnership with Forestry Commission, landowners and other local stakeholders to explore opportunities for a range of different types of woodland creation, in doing so, seeking to ensure that any such woodland planting **is well-planned and designed to ensure integration with the wider landscape and offer multiple benefits for the environment, existing communities and the local economy.**"

SEPA require that flood risk issues associated with forestry creation be considered.

SWT does not detail a modification to be made, but does raise concern over the non-inclusion of SSSIs and LNCSSs in defining the indicative strategic woodland creation area.

Although not explicitly stated, it is assumed that as RSPB object to policy MIN SS12, it seeks the removal of the policy, as well as supporting paragraphs (4.50 – 4.57) and Map 4.

REG make a number of points on this issue, but does not state clearly what modifications should be made to the Plan. It is questioned why the policy (MIN SS12) is included in the Plan, REG does not request that it be removed. REG request that the Council clarify a number of matters.

Summary of responses (including reasons) by planning authority:

Flood Risk (7)

The Council note and acknowledge SEPA's comments on the flood risk implications that come with forestry creation. However, the Council does not believe that any changes to the Plan are necessary as a result of these comments.

Policy MIN SS12 and the supporting text are intended to be very strategic and give support for an innovative new project that will explore capacity for strategic scale woodland creation. Flood risk and flood prevention will be an important part of the project, part of the intention of which is that new woodland will be properly planned, designed and managed so issues like flood management can be fully considered. Given that the policy gives very high level 'in principle' support for the project and does not go into great detail and on the factor that will shape the woodland creation, it is not considered appropriate to highlight flood risk within this section of the Plan.

Nature conservation (9, 11)

The Council notes the alternative wording suggested by SNH in relation to paragraph 4.54 and within Policy MIN SS12. However, at this stage the Council does not agree that this level of detail is required. Paragraphs 4.51 to 4.54 make clear that the area identified is indicative and will be further explored and refined as more detailed work is carried out. Issues like peatland and carbon rich soils, which the Council recognises as an important constraint, tend to be spread out in small parcels, which make them difficult to reflect in a very strategic, broad brush initial identification of the pilot area. These constraints will be considered when further work is carried out. In addition, paragraphs 4.55 and 4.56 state that the Council and Forestry Commission will seek to work with local communities and landowners to explore the potential and opportunities for different types of woodland creation and states that partnership and collaborative working will be essential to ensure that areas of woodland can link in with surrounding land uses. For clarity, paragraph 4.57 states the intention for the project to produce planning guidance which will provide far more detailed guidance on woodland creation in the indicative area and will take on board issues such as peatland, carbon rich soils and how the Council will work with stakeholders, communities and landowners to ensure that the benefits are shared.

Similarly, the Council does not agree that the suggested text on wild land, sensitive landscape and biodiversity is required. Again, the indicative area has been produced by a very high level sieving process and such factors will come into play at a more detailed stage. Further detailed information will be included within the non-statutory planning guidance. It should also be noted that the Council does not consider that the aforementioned factors are all incompatible with a range of woodland types. Whilst SWT does not detail a specific modification, it does note that SSSI's and LNCS's have not

been included and could be compromised by tree planting. Similar to the Council's response to SNH's concerns, the indicative area shown on Map 4 has been defined on the basis of high level constraints and matters such as SSSIs and LNCSs will be considered as the project progresses.

Appropriateness of policy (20, 25)

The Council acknowledge REG and RSPB's objection to the Policy, in the main because they do not agree that the MLDP is an appropriate document for such a strategy and policy. The Council disagree with this assertion. Paragraph 6 of circular 6/2013:

Development Planning (CD05) makes clear that **'development plans are spatial, land use plans which are primarily about place. They guide the future use of land in our cities, towns and rural areas, by addressing the spatial implications of economic, social and environmental change'**. SPP paragraph 52 (CD06) states **'Local development plans should describe the types and scales of development which would be appropriate within a green belt. These may include....development associated with woodland and forestry, including community woodlands'**.

Paragraph 79 states: *'Plans should set out a spatial strategy which: Promotes economic activity and diversification, including, where appropriate, sustainable development linked to....forestry'*. In line with this policy, Annex 2 of the Plan sets out that there will be guidance prepared on strategic woodland creation. This is entirely in line with paragraph 201 of SPP which states: **'Planning authorities should consider preparing forestry and woodland strategies as supplementary guidance to inform the development of forestry and woodland in their area, including the expansion of woodland of a range of types to provide multiple benefits'**.

Further to the above, the Council reaffirms the purpose and remit of this Plan; it is not just about extraction, but is about dealing with the legacy of previous extraction and supporting wider landscape restoration and rural placemaking. Woodland creation may be an appropriate future use for some, not all, former mineral sites, dependent on the particular conditions and characters of the site. This is made clear in paragraph 4.56 of the Plan. The Council is therefore of the view that it is appropriate to include woodland creation within the MLDP, given the opportunities it may bring, and considers this to be a positive and worthwhile inclusion. To not include this within the Plan would be a missed opportunity in terms of ensuring the Plan provides some direction on how its vision and aims can actually start to be delivered. In addition, the Council agrees with REG, that consideration should be given to including the pilot project within other Council documents and strategies and this is something the Council will explore. Given its relevance to the MLDP but other wider matters, it is also the Council's intention to consider whether this should be incorporated into LDP2, the Council's next Local Development Plan, which will join the MLDP and LDP into one document.

The rationale behind the policy is set out in the aims of the Plan and in policy MIN SS4, as well as paragraphs 4.50 – 4.54, but for clarity, the Council reaffirms that the intention behind the policy is to encourage a more strategic and planned approach to woodland creation and to support amenity afteruses and to encourage innovative uses on former minerals opportunity sites. Currently, a lot of woodland creation projects come forward as small, piecemeal schemes, which are not always well linked to each other and to other surrounding land uses, environments and communities. The intention of the woodland creation project is to address this and be able to look at woodland creation on a strategic, joined-up basis, taking it into account as one aspect of the current situation in relation to abandoned opencast sites. The purpose of the indicative area, is to be able to focus

efforts on a specific area, which when looking very strategically at potential for woodland creation is likely to be compatible, rather than take an authority wide approach. As noted above, Map 4 illustrates an indicative area where strategic woodland creation may be possible and in which the Council and partners will ‘explore the potential and opportunities for different types of woodland creation.’ Policy MIN SS12 gives support for this work.

In response to the concern over transparency, whilst the Plan gives support for the principle of strategic woodland creation, paragraph 4.57 confirms that planning guidance will ultimately be prepared on this matter, which will be subject to consultation and engagement. Paragraph 4.55 also makes clear the process of exploring fully capacity and potential for woodland within the indicative area will be a collaborative process, dependent on buy in from landowners, communities and local stakeholders.

Strategic scale (20)

In terms of what is meant by strategic scale as queried by REG, the actual level of woodland creation envisaged within the area identified on map 4 has still to be worked out, as this will very much be dependent on the woodland capacity work that will be carried out as the project progresses. As stated previously above, a key outcome of the project will be to achieve a more joined up approach, moving away from piecemeal woodland creation, to looking at a wider picture of what kind and scale of woodland should be guided where.

Renewable energy (20)

The pressure for renewable energy, so far, in East Ayrshire has been focussed most intensely on the expansive upland arc around the east and south of the authority. That is to say this is the area where development has been consented and constructed. The indicative woodland area has largely excluded these areas where windfarms are operational or have been consented. The Council is of the view that woodland and renewable energy are not necessarily incompatible, but it would be difficult where development has been established to explore opportunities for woodland. In terms of where there is current interest for wind energy, whilst there may be opportunities for collaboration, the indicative woodland area has not been identified with the purpose of facilitating this, as suggested by REG, and it would be inappropriate for the MLDP to promote renewable energy development in this way, given that the key assessment tool for renewable energy proposals will remain to be the EALDP2017 (CD22), including the spatial framework as per SPP. For clarity, at the time of writing, there are no consented schemes within the indicative woodland area. In developing the pilot project and preparing planning guidance, the relationship between the potential for woodland creation and possible wind farms will be fully explored.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Flood risk

1. Proposed policy MIN SS12 (strategic woodland creation) indicates that the council will work with “other stakeholders” to explore opportunities for woodland creation which, I

suggest, would include the Scottish Environment Protection Agency. Woodland creation would also be considered against the suite of policies contained in the proposed plan which address mitigation of flooding and protection of water quality and groundwater resources. Consequently, I find that there is sufficient provision in the plan to actively engage with the Scottish Environment Protection Agency on woodland creation and respond to water environment matters without any modification.

Nature conservation

2. Supporting paragraphs 4.50 to 4.57 of the proposed plan provide a detailed reasoning for the promotion of policy MIN SS12. The plan indicates that the woodland creation is being promoted as part of a pilot project with Forestry Commission Scotland where local communities, landowners and stakeholders would be involved. Map 4 (indicative strategic woodland creation area) has been produced to provide a strategic map of where woodland creation might be supported – it is not definitive and does not only relate to unrestored formerly mined sites. As an indicative map I agree with the council that it is not necessary to show all the potential constraints to woodland creation including sites of special scientific interest, wild land, sensitive landscape areas, local nature conservation sites, peatland and carbon rich soils. These constraints can be identified and addressed as part of the non-statutory planning guidance likely to be produced on woodland creation (as indicated at paragraph 4.57 of the plan) and/or when any woodland creation proposals are submitted in the context of full provisions of the proposed plan which include policies which protect important natural heritage and environmental resources. No change to identify constraints, as suggested by Scottish Natural Heritage and the Scottish Wildlife Trust, is required.

3. Similarly, the supporting paragraphs mention that care will need to be taken when considering what type of woodland would be appropriate in relation to the location and surroundings. Habitat networks and avoidance of isolated pockets of woodland are also mentioned. The paragraphs further note that woodland is not always the answer in relation to restoration of sites. Further non-statutory planning guidance is also anticipated in relation to woodland creation. Consequently, I find that there is sufficient provision in relation to woodland creation without the need to modify the wording of policy MIN SS12 to refer directly to integration with surrounding landscape.

4. I further note the concern of Scottish Natural Heritage that some forms of woodland could reduce the biodiversity offer. However, I consider that this matter could be suitably addressed through the provisions of the proposed plan (and any non-statutory planning guidance) as, and when, any proposals for woodland creation are submitted. No change to the plan is required to address this point.

Appropriateness of policy

5. The council provides quotes from Scottish Government Circular 6/2013 on 'development planning' and from Scottish Planning Policy (2014) with regard to support for including forestry policy within a local development plan. I note that paragraph 52 of Scottish Planning Policy referred to by the council relates to areas of designated green belt and, therefore, is not relevant to East Ayrshire. In any case, support for forestry creation at a national level to be promoted through local development plans is not contested.

6. Paragraphs 1.6 and 1.7 of the proposed plan confirm that its purpose is not simply as

a tool to determine planning applications but also to act as a driver for regeneration and transformation of East Ayrshire’s rural area and the Coalfield Communities Landscape Partnership Area. While an aim of the plan is to encourage alternative uses of former minerals opportunity sites (including for forestry) it also aims to promote green networks. The section on woodland creation in the proposed plan explains its intention to enhance the environment of the coalfield area and help address areas of unrestored land. I consider that there is sufficient justification to include a policy and approach to woodland creation within the proposed plan.

7. In relation to consistency, the adopted East Ayrshire Local Development Plan (2017) does not refer to the woodland creation pilot project but does include policy ENV9 (trees, woodland and forestry) which supports proposals for woodland and forestry expansion. In relation to transparency, the main issues report for the proposed plan included a preferred option of woodland planting for community benefit and noted that woodland creation on restored sites was an aspiration. The proposed plan was subject to a period of representation and, as stated by the council, any non-statutory planning guidance on woodland creation would be subject to public consultation. I find that in terms of development plan consistency and transparency the policy on woodland creation is satisfactory.

Strategic scale

8. The council has described the pilot project outline and the need for further refinement of where woodland creation would occur in the future. I consider that the term “strategic scale” relates to the fact that the indicative area for potential woodland creation covers a wide geographical area and also relates to a pilot scheme involving four local authorities. I find the term is reasonable as applied in the context of the woodland creation section of the proposed plan. In any event, no change to the proposed plan is sought by REG Power Management Limited in relation to this matter.

Renewable energy

9. The council has clarified that the indicative woodland creation area avoids areas where wind energy development has been consented. As indicated by REG Power Management Limited the proposed plan suggests at paragraph 4.55 that “the indicative area for woodland creation does not preclude any other development coming forward”. Therefore, forestry and renewable energy schemes may be compatible depending on the circumstances. While the adopted East Ayrshire Local Development Plan (2017) provides the spatial framework and policies to assess wind energy proposals any consideration of facilitation of woodland creation would be a matter to be addressed in relation to the provisions of the development plan which could include the promotion of woodland as provided in proposed plan policy MIN SS12. No changes on these matters have been sought by REG Power Management Limited and the council has reasonably responded to the matters raised. Consequently, no change to the proposed plan is necessary in relation to renewable energy.

Reporter’s recommendations:

No modifications.

Issue 15	Peat	
Development plan reference:	Policies MIN ENV1, ENV2 and Map 5	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environment Protection Agency (SEPA) (7) Scottish Natural Heritage (SNH) (9) Scottish Wildlife Trust (SWT) (11) REG Power Management Limited (REG) (20) The Royal Society for the Protection of Birds (RSPB) (25)</p>		
Provision of the development plan to which the issue relates:	The wording and content of Policy MIN ENV1 and MIN ENV2 and the detail contained in Map 5.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA would recommend that policy MIN ENV2 contains a reference to both SEPA and SNH. SEPA are likely to comment on water and waste related issues which could require authorisation.</p> <p><u>SNH (9)</u></p> <p>SNH welcome the presumption against the disturbance and/or removal of peat within areas listed in the policy including Potential Peatland Enhancement Sites. However, conservation works might also lead to disturbance of peat. SNH recommend that policy MIN ENV1 in the Plan (CD11) is reworded to ensure such soils are protected but avoid preventing works that are otherwise to the longer term benefit of a site. In addition, SNH consider that Class 1, 2 and 5 peatland areas should be listed.</p> <p><u>SWT (11)</u></p> <p>SWT highlight that a number of potential peat enhancement sites are listed but these do not include Barlosh Moss SSSI and the Moss is also not included on Maps 5, 6 or 7. This is an important site with considerable potential for enhancement and has also been included in the South of Scotland Bog Project.</p> <p><u>REG (20)</u></p> <p>REG state that paragraph 5.3 notes that peat extraction within East Ayrshire has taken place as a result of wind farm development and surface coal mining. Given ongoing developer interest in wind farms it is likely that peat extraction will continue to be an issue that needs to be addressed in some wind farm planning applications. On the basis that the MLDP will be applicable to the assessment of planning applications involving an element of minerals extraction and not solely in their own right, REG considers that policies MIN ENV1 and MIN ENV 2 may be relevant to some wind farm applications and</p>		

therefore would benefit from redrafting to make it clear they are not related solely to minerals proposals.

RSPB (25)

RSPB welcome the recognition of the importance of peat as a habitat and carbon store, however do not believe that the policy goes far enough in protecting Class 1 and 2 peatland habitat, which is regarded as being of national importance but may not be designated. RSPB believe that the list of sites in the policy as it stands may be hard to justify, for example, why should peat in Protected Built Resources be given special protection?

Modifications sought by those submitting representations:

SNH suggest amending the first paragraph of policy MIN ENV1 to read:

“There will be a presumption against peat extraction and other development likely to have an adverse effect on peatland and/or carbon rich soils within....Class 1, Class 2 and Class 5 peatland areas...”

SEPA suggest that policy MIN ENV2 contains a reference to SEPA as well as SNH, in terms of the storage of peat and its use in the restoration of a site.

SWT suggest inserting Barlosh SSSI to Map 5 on page 37, Map 6 on page 39 and Map 7 on page 48 of the Plan.

REG suggest amending the wording of policy MIN ENV1, in particular the wording ‘**as part of any proposed minerals development**’ and the wording ‘**in order to access mineral reserves on site**’ in policy MIN ENV2.

RSPB suggest, in terms of, policy MIN ENV1 the following wording may be more appropriate:

“Development affecting nationally important carbon rich soils, deep peat and priority peatland habitat, will only be permitted where the objectives of the overall integrity of the area can be shown not to be compromised following the implementation of any mitigation measures. Any significant adverse effects must be clearly outweighed by social or economic benefits of national importance”.

Summary of responses (including reasons) by planning authority:

SEPA (7)

Policy MIN ENV2 has been prepared as a result of the MIR preferred option which set out that the storage of peat should be carried out to the satisfaction of the Council and SNH. As no comments were received on this, policy MIN ENV 2 reflects the MIR preferred option. However, the Council would have no objection to the policy containing a reference to SEPA if the reporter was minded to agree with SEPA’s suggestion.

Peat (9, 25)

With regard to SNH’s representation concerning the wording of policy MIN ENV1, there

appears to be concern that a presumption against disturbance or removal of peat could compromise its conservation. However, the second paragraph of policy MIN ENV1 provides advice on how such proposals should be assessed if they come forward. The aim of the policy is to minimise the release of carbon dioxide emissions and if the Council can be satisfied that there is not a release of carbon dioxide then the proposal could be approved. It is important to remember that the circumstances of the application of this policy are limited to minerals extraction and associated minerals restoration. Any work not associated with this would be considered through policy ENV10: Carbon Rich Soils of the EALDP (2017) (CD22).

In addition, SNH suggest amending the policy to include Class 5 peatland areas. There is reference to Class 1 and 2 areas of peat, other carbon rich soils and peatland habitat as these are recognised as being nationally important carbon-rich soils, deep peat and priority peatland habitat and areas of potentially high conservation value and, in relation to Class 2 areas, there is restoration potential. Scotland's soils website classifies soils from class 1 to -2. Policy MIN ENV 1 covers classes 1 and 2. However, class 5 is covered by MIN ENV2: Storage and removal of peat. The policies are designed to reflect the relative importance of classification of soils. Looking at the soil maps on Scotland's soils website (CD40), Class 5 soils cover vast areas of East Ayrshire. Including Class 5 soils in Policy MIN ENV1 would, in the Council's view, be a disproportionate response.

Policy MIN ENV1 seeks to protect peat and other carbon rich soils within internationally, nationally and locally important sites including protected built resources. SPP (CD06) requires policies to protect areas of peatland and for Plans to minimise the impacts of extraction on local communities as well as the environment and the built and natural heritage. These important sites include built resources, for example, scheduled monuments, which can be located within areas of national importance for peat, and are therefore included in the policy. In terms of Class 1 and 2 areas of peat, other carbon rich soils and peatland habitat, policy MIN ENV1 has been prepared in line with advice from SNH. At MIR stage, SNH recommended that the Carbon and Peatland Map 2016 (CD10), should be used to guide development away from the most sensitive resources. Map 6 conforms to the Carbon and Peatland Map 2016, indicating where Class 1 and 2 areas of peat, and other carbon rich soils and peatland habitat are likely to be found in East Ayrshire. SNH also advised the Council that the map cannot and should not be used in isolation to determine the impacts of a specific development proposal on peat. This should be based on a detailed, site specific survey of peatland habitats and peat depths across the site using existing methods. The policy therefore requires such a detailed site specific survey in relation to proposed minerals development. The Council is of the view that the policy affords sufficient protection to peat and other carbon rich soils, whilst addressing the concerns raised by SNH at MIR stage.

Maps (11)

In terms of SWT's representation relative to the peatland enhancement sites in Map 5, paragraph 5.5 of the plan makes it clear that these sites are those which the Coalfield Environment Initiative (CEI) have identified as potential peatland enhancement sites. Barlosh Moss is not included as it is not on the CEI's list (CD35). We are aware, however, through our CEI colleagues that some work has been carried out on this site through an SNH scheme. We are aware that the list of sites will not therefore capture all sites which could benefit from enhancement however, even with the addition of Barlosh Moss it may not do so. If the Reporter is minded to include Barlosh Moss in paragraph 5.5 then the Council would have no objection to this. Paragraph 5.5 refers to potential for future

peatland enhancement work and provides some examples in which Barlosh Moss could be included. In terms of Map 6, Barlosh Moss SSSI is not included as it is partly Class 5 in terms peat and carbon rich soils (and partly not categorised peat) and the map only shows classes 1 and 2. It would therefore be inaccurate to include Barlosh Moss SSSI on Map 6. In terms of Map 7, the Council can confirm that Barlosh Moss SSSI is on the map and is the green area to the east of Drongan.

Renewable Energy (20)

Paragraph 5.3 provides a background to peat disturbance and extraction in East Ayrshire as a result of not only minerals extraction but also wind energy developments. The Council is firmly of the view that policies MIN ENV1 and MIN ENV 2 relate to minerals development proposals. Wind energy proposals will be assessed against the relevant policies in the adopted East Ayrshire Local Development Plan 2017. Any proposals for borrow pits which involve the extraction of minerals and may be in relation to a wind energy proposal will be assessed against the relevant Minerals LDP policies, including MIN SUP 2, MIN ENV1 and MIN ENV2.

Reporter's conclusions:

SEPA involvement

1. Proposed policy MIN ENV2 (storage and removal of peat) requires restoration to be carried out to the satisfaction of the council and Scottish Natural Heritage. As the policy requires the approval of a statutory consultee with an interest in peatland restoration I find that there is justification to also include reference to the Scottish Environment Protection Agency which also has a legitimate interest in this matter. A small change to policy MIN ENV2 is therefore recommended.

Peat

2. I agree with the council that class 5 peat resources would be adequately protected by proposed policy MIN ENV2 as those that do not fall within the remit of policy MIN ENV1 (peat and other carbon rich soils). There is no need to replicate protection in two policies for this peat class. No change is required to policy MIN ENV1 to address this matter.

3. I note the council's argument that proposals for peatland conservation would not likely be directly applicable to policy MIN ENV1 as it relates to mineral extraction. However, in defence of its position on other policies within the proposed plan the council has indicated that the plan goes beyond mineral proposals and seeks to aid regeneration of communities and the rural area. Consequently, although there is a carbon rich soil protection policy within the adopted East Ayrshire Local Development Plan (2017) - policy ENV10 - a proposal for peatland conservation may also be considered against the provisions of policy MIN ENV1. For that reason, I find that a clarification to policy MIN ENV1 is justified.

4. In addition, I agree with RSPB Scotland that the policy as worded is confused in the sense that it provides a presumption against disturbance and/or removal of peat but then provides, as I interpret it, that the presumption relates only to internationally and nationally designated sites/assets. Scottish Planning Policy (2014) suggests in relation to minerals and local development plans that "policies should protect areas of peatland and only permit commercial extraction in areas suffering historic, significant damage through

human activity and where conservation value is low and restoration is impossible". This point is reflected in the proposed plan at paragraph 5.7 but not within policy MIN ENV1. Scottish Planning Policy does not caveat the protection of peatland to only international and national designations.

5. I find that it would be reasonable for the policy to provide a presumption against disturbance/removal of class 1 and 2 peatlands and other areas of carbon rich soil without restricting the presumption to particular areas/sites/assets. The wording provided by RSPB Scotland requires tests in relation to integrity and national benefits. These tests are usually reserved for impacts to international and national designations (as identified at paragraphs 208 and 212 of Scottish Planning Policy) and are not directed to peat and carbon rich soil resources. Consequently, I find that the wording promoted by RSPB Scotland should not be used in this case.

Mapping

6. Paragraph 5.4 of the proposed plan refers to bog enhancement by the East Ayrshire Coalfield Environment Initiative and partners at six listed sites while paragraph 5.5 suggests that there is potential for peatland enhancement elsewhere. The council has identified that Barlosh Moss has been subject to some enhancement work and may benefit from future improvement. Consequently, I agree with the Scottish Wildlife Trust that the site should be mentioned in paragraph 5.5 and identified on Map 5 (potential peatland enhancement sites). I note that it is already shown on Map 7 (sites of international and national importance for nature conservation) and that it does not include areas of class 1 or 2 peat so should not be shown on Map 6 (peat and carbon rich soils). I am satisfied that the text of paragraph 5.5 would allow the inclusion of other sites for peatland enhancement without the need to specifically name them.

Renewable energy

7. As identified by the council the provisions of the adopted East Ayrshire Local Development Plan would be used to assess wind energy proposals. Aspects of the proposed minerals local development plan may apply, in some circumstances, where extraction is promoted as part of a wind energy proposals. The proposed plan and adopted plan are part of the "development plan" for East Ayrshire and would be applied, where relevant, to proposals. I consider that there is no omission with respect to protection of peatland habitats and carbon rich soils relating to wind energy proposals. The wording of policies MIN ENV1 and MIN ENV2 referring to "part of any minerals development" and "in order to access reserves on site" does not need to be removed for this reason.

Reporter's recommendations:

Modify the proposed local development plan by:

1. Replacing the second sentence of Policy MIN ENV2: Storage and removal of Peat on page 40 with "All storage of peat and its use in the restoration of a site must be carried out to the satisfaction of the Council, Scottish Natural Heritage and the Scottish Environment Protection Agency."

2. Inserting "Barlosh Moss" after "Glainsnock Moss" in paragraph 5.5 on page 36.

3. Identifying Barlosh Moss on Map 5: Potential Peatland Enhancement Sites on page 37.

4. Replacing the first paragraph of Policy MIN ENV1: Peat and other carbon rich soils on page 40 with:

“There will be a presumption against the disturbance and/or removal of class 1 and 2 peatland, deep peat and other carbon rich soils unless for a conservation purpose.”.

Issue 16	Sewage Sludge	
Development plan reference:	Paragraphs 5.15-5.22 and Policy MIN ENV 4.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environment Protection Agency (SEPA) (7) Scottish Natural Heritage (SNH) (9) J Mulders (10) L Howie (21) G Roberts (26)</p>		
Provision of the development plan to which the issue relates:	The wording and content of paragraphs 5.15-5.22 and Policy MIN ENV 4.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA state that sewage sludge is a waste and therefore is subject to regulation by SEPA with respect to storage and use. SEPA request that early contact with them is required to ensure compliance with relevant waste regulations. Further, SEPA state that if poorly managed, the deposition of sewage sludge could result in adverse impacts to the water environment.</p> <p><u>SNH (9)</u></p> <p>SNH state that there are a number of errors with the content and wording contained in paragraph 5.17 of the Plan (CD11) in relation to the use of sewage sludge in areas of peatland.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders states that sewage sludge should be avoided as it is not tested for harmful substances. J Mulders gives detailed information about the content and process of producing sewage sludge and highlights the potential dangers of spreading sewage. J Mulders states that unless mitigation measures are put in place to ensure the plants grown on land contaminated by sewage sludge are not consumed by animals, which in turn are consumed by humans, sewage sludge should not be used. Further, J Mulders states that sewage sludge is imported from other areas of the UK and not solely produced in Scotland.</p> <p><u>L Howie (21)</u></p> <p>L Howie states that further analysis (beyond the requirements of SEPA) should be carried out on sewage sludge which is to be used on land to review for "alien content (drugs, antibiotics, hormones, steroids, opiates etc.)".</p>		

G Roberts (26)

G Roberts considers that the use of sewage sludge requires further investigation given the lack of scientific analysis of the impact of “so called nutrients” on the ground, on new vegetation and on grazing livestock. G Roberts states that paragraph 5.18 discusses analysis prior to depositing sludge and seeks further clarity on this analysis if restored land is to be environmentally healthy and safe. Further, G Roberts states that she looks forward to supplementary guidance relating to this and other matters relating to minerals extraction.

Modifications sought by those submitting representations:

SEPA have not requested any specific modifications.

SNH request that paragraph 5.17 is modified to read:

“There are various benefits to using sewage sludge in restoration projects as it contains nutrients (e.g. nitrogen, phosphate, potash, magnesium and sulphur) which are essential to plant and animal growth, ~~and it is recognised as a good substitute for peat in land reclamation projects. It enhances peatland areas and is readily available from sewage treatment centre. Further, it.~~ It is an economically advantageous product and therefore it can assist in producing best value solutions for legacy sites where there is insufficient money available for restoration to the approved scheme. As long as it is well managed, the use of sewage sludge allows recycling that is safe and, **in particular circumstances**, environmentally beneficial.”

J Mulders requests a number of modifications:

(i) A reference to where the sewage sludge, which is used in East Ayrshire, is imported from should be inserted at the end of paragraph 5.15.

(ii) The wording “**or partially treated**” inserted into paragraph 5.19 after the word “untreated”.

(iii) Additional wording inserted to the last paragraph of Policy MIN ENV 4:

“The planning authority should ensure with regular compliance monitoring that the operator is adhering to the regulations as SEPA are not resourced to do so. In addition, a bond should be provided by the developer to ensure that any subsequent contamination or harm to human health, animal life, habitat or environment, that remediation costs are financially secured, so that the burden does not fall back on the taxpayer. The polluter pays principle should be financially secured.”

(iv) A reference is made in paragraph 5.22 to the date in which the non-statutory planning guidance for Sewage Sludge will be published and confirmation if the guidance will be publically consulted.

L Howie and G Roberts have not requested specific modifications.

Summary of responses (including reasons) by planning authority:Waste (7)

The Council is of the understanding that sewage sludge is not a waste. In the report published by the Scottish Government (Review of the Storage and Spreading of Sewage Sludge on Land in Scotland (the Sludge Review) Final Recommendations, February 2016) (CD32), paragraph 8 on page 1 details that “Sewage sludge is a by-product of the waste-water treatment process which can be useful in agriculture and land reclamation.” The Council consider that this report is a credible and accurate source of information.

Wording (9, 10)

The Council sourced this information from the report “Review of the Storage and Spreading of Sewage Sludge on Land in Scotland (The Sludge Review) Final Recommendations” published by the Scottish Government in February 2016. The Scottish Government carried out a review of sewage sludge practices assisted by SEPA and Scottish Water. In paragraph 8 on page 1 of this report, there is detail given about the definition of sewage sludge followed by bullet points detailing the valuable properties of sewage sludge. This list continues on to page 2 of the report and the last bullet point states that “it (sewage sludge) is a good substitute for peat in land-reclamation projects thus conserving valuable natural peatland.” While the Council notes the comments from SNH, they have not provided an evidence base that would suggest this information was incorrect. The Council considers that the Scottish Government report is a credible source and that the information contained within the report was accurate at the time of writing and as far as the Council is aware the report is still valid and has not been superseded.

In addition, this wording in paragraph 5.17 was used in the MIR (CD12) and SNH did not object to the wording at MIR stage. The Council is of the view that no changes are required to paragraph 5.17.

The Council does not agree with the additional wording suggested by J Mulders. The subject of paragraph 5.19 is the potential odour of untreated sewage sludge and the impact of sludge treatment. Sludge treatment of untreated sewage sludge can reduce the potential for noxious odours. The Council considers that the additional wording (i.e. to introduce ‘partially treated’) would introduce ambiguity; the extent of odour nuisance would be dependent on the level of treatment, therefore ‘partially treated’ is too broad a statement to introduce. The Council is therefore of the view that no changes are required.

Criteria (ii) of Policy MIN ENV 4 states that the MLDP will support the responsible use of sewage sludge where it can be conclusively shown to the Council that its use during the operational, post-operational and monitoring phases of work, meets the requirements of SEPA. It would not be appropriate for a Development Plan policy to include wording to say that a statutory agency is not resourced to ensure regulations are adhered to, as suggested by J Mulders.

Testing of sewage sludge (10, 21, 26)

As a general point, J Mulders suggests that sewage sludge should be avoided and G Roberts and L Howie request additional tests on it to be put in place. The Council is of the view that there is a role for sewage sludge, when it is appropriately regulated and managed. It would be inappropriate and contrary to the advice of the relevant statutory

agencies, for the MLDP to say that it must be avoided or further tested. Instead, the Plan allows for it where it meets the robust policy requirements. This is considered an entirely reasonable approach.

Origin of sewage sludge (10)

The Council does not agree that the Plan should refer to the origin of the sewage sludge which is used within East Ayrshire. This would be a difficult issue in which to gain accurate information for and the Council does not see the merit of adding this information into the supporting text. The Council is of the opinion that no further changes should be made to paragraph 5.15.

Licence compliance (10)

Paragraph 5.18 states that the operator must register and obtain a licence and thereafter carry out an assessment of the soil conditions of the on-site material before spreading the sewage sludge. It will be up to the operator to ensure that the requirements set out by SEPA are complied with and it is up to SEPA to monitor sites which use sewage sludge material. With agreement of the Reporter, the Council suggests that the following sentence be inserted into paragraph 5.18:

“Regular compliance monitoring of sites will be carried out as part of the site restoration scheme.”

This sentence will provide clarity on the monitoring of sewage sludge on a site as part of the restoration scheme compliance monitoring.

The Council is of the view that the policy is robust enough that a financial bond will not be required for the spreading of sewage sludge. No changes to Policy MIN ENV 4 required.

Guidance (10)

There is a table in Annex 2 which includes information on the projected timescales for the production of each piece of supplementary and non-supplementary guidance. This table includes a timescale of the Peat, Excess Soils and Sewage Sludge non-statutory guidance and this is projected to be completed in 2018-2019. The Council is of the view that the timescales for the non-statutory supplementary guidance have been made clear in Annex 2 and that, similar to the non-statutory guidance for the East Ayrshire Local Development Plan, the guidance will be publically consulted on. No changes to paragraph 5.22 are required.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Sewage sludge definition and regulation

1. As identified in my conclusions in Issue 2 (terminology and clarity) previous components of the development plan have defined sewage sludge as part of the waste cycle but not waste in itself. In any case, the Scottish Environment Protection Agency (SEPA) is the national waste regulator and I note its request to be involved in sewage

sludge proposals. Paragraph 5.18 of the proposed plan acknowledges that a licence must be obtained from SEPA to allow sewage sludge spreading. Proposed policy MIN ENV4 (sewage sludge) also requires the responsible use of sewage sludge where it meets the requirements of SEPA. In addition, the proposed plan contains a suite of policies which would protect the water environment and policies to protect communities and residential amenity.

2. The proposed plan notes at paragraph 5.20 that, according to the Scottish Government's 'Review of the Storage and Spreading of Sewage Sludge', February 2016, there is "no health risk associated with the spreading of sewage sludge in Scotland". In any case, I find that the provisions of the proposed plan, and the involvement of SEPA, would mean that it would be unlikely that any harm would arise as a result of sewage sludge proposals. I further find that the proposed plan contains sufficient provisions to ensure that SEPA is involved in sewage sludge proposals and that any potential impact on the environment is properly managed. Consequently, I consider that there is no need to require a bond as a safeguard against impacts.

3. I also agree with the council that it would not be appropriate or reasonable for the proposed plan to refer to the capacity of SEPA to monitor sewage sludge activity. However, as promoted by the council in response to Mr Mulder's concerns, it would be appropriate to refer to compliance monitoring – a small insertion to paragraph 5.18 would suffice. I note that the wording suggested by the council refers to "restoration scheme" while the other supporting paragraphs and policy MIN ENV4 refer to "restoration projects". I also note that in Issue 2 the council agree that the word "reclamation" is not defined in the proposed plan and should be substituted. Consequently, I find that it is necessary to make changes to the wording promoted by the council to ensure consistency in the terminology used throughout the plan and recommend consequential changes.

Paragraph 5.15

4. Whether imported or native the controls over the use of sewage sludge contained in proposed policy MIN ENV4 would still apply to proposals involving its use in East Ayrshire. Consequently, I agree with the council that no change is required to proposed paragraph 5.15 to identify the source of sewage sludge.

Paragraph 5.17

5. The 'Review of the Storage and Spreading of Sewage Sludge' document was published with assistance from SEPA and Scottish Water. As identified by the council the publication highlights that sewage sludge has several valuable properties including that "it is a good substitute for peat in land-reclamation projects thus conserving natural peatland". The document also notes, at paragraph 14, that "as long as it is well managed, the use of sewage sludge allows us to recycle valuable materials in a way that is safe and environmentally beneficial". The wording of paragraph 5.17 in the proposed plan reflects the content of this government document. Consequently, I agree with the council that there is no need to remove reference to sewage sludge being used as a peat substitute; or a need to caveat that environmental benefits may only occur in particular circumstances.

Paragraph 5.19

6. Proposed paragraph 5.19 notes that Scottish Water recognise that untreated wastewater sludge can cause an odour nuisance. It would be unreasonable to extend this acknowledgement to also include “partially untreated” wastewater sludge without the express consent of Scottish Water. As a statement of fact I find that the provisions of paragraph 5.19 are sufficient and should remain.

Paragraph 5.22

7. As identified by the council, Annex 2 (MLDP supplementary guidance and non-statutory guidance) of the proposed plan identifies that non-statutory guidance on ‘peat, excess soils, sewage sludge’ will be produced in 2018-2019. I find this sufficient without the need to specify a date in paragraph 5.22 when the non-statutory guidance would be produced.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Adding the following final sentence to paragraph 5.18 on page 42:

“Regular compliance monitoring of sites will be carried out as part of the site restoration project.”.

2. Changing the word “reclamation” in paragraphs 5.15, 5.17, 5.18 and 5.20 on pages 42 and 43 to “restoration”.

3. Removing the words “and/or reclamation” from the aim in Policy MIN ENV4: Sewage Sludge on page 43.

Issue 17	Protection of the Water Environment	
Development plan reference:	Policies MIN ENV 6, 7, 8 and MIN SS 7.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environmental Protection Agency (SEPA) (7) J Mulders (10) Scottish Wildlife Trust (SWT) (11) L Howie (21) Scottish Water (23) Hargreaves (24)</p>		
Provision of the development plan to which the issue relates:	The content and wording of policies relating to the Water Environment (MIN ENV 6, MIN ENV 7, MIN ENV 8 and MIN SS7).	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u> In respect of policy MIN ENV6, SEPA suggest that it should be strengthened, by setting out measures to be undertaken by applicants to protect the water environment. SEPA suggests that within policy MIN ENV8, restoration should include supporting restoring the water environment to the original catchment area, which may have previously been altered as a result of mining operations.</p> <p>With particular regard to the water environment, SEPA states that in relation to Policy MIN SS7, any further coal developments should avoid adverse impacts and further interference with the natural water environment, unless it can be demonstrated it will result in an improvement on an existing legacy issue.</p> <p><u>J Mulders (10)</u> J Mulders suggests that the wording of criterion 1 of policy MIN ENV8 be amended to remove the term 'surface coal'. This statement singles out only coal sites, whereas it should cover ALL sites. In terms of criterion 2, J Mulders questions whether there is a limit on how many wetlands are required and the cumulative effect of having many. It is suggested that a land capacity study linked to the benefits they bring to communities would be appropriate.</p> <p><u>SWT (11)</u> SWT suggest there should be a blanket presumption against the introduction of non-native species. Aquatic ecosystems are particularly susceptible to colonisation by non-natives and there are many examples of species 'escaping' from their original introduction site and causing major problems. Limiting the presumption to connected water bodies is insufficient. Policy MIN ENV8 should be amended accordingly.</p>		

L Howie (21)

L Howie seeks clarification as to whether policy MIN ENV6 - Criterion (ii) of the Plan (CD11) extends to protecting and ensuring reinstatement responsibilities of historical water sources to agricultural land areas.

L Howie questions, in policy MIN ENV8, to whom and for how long the requirement to 'effectively manage' all water bodies applies to.

Scottish Water (23)

Scottish Water request that policy MIN ENV7 be amended to state that Scottish Water will not be involved in Private Water Supply discussion.

Hargreaves (24)

Hargreaves state that the requirement of Policy MIN ENV8 to preclude the creation of waterbodies is overly restrictive and unnecessary. Some well designed and engineered waterbodies may offer 'innovative' restoration opportunities. A well-managed and evolving restoration of a surface coal mine will seek to progressively address the disturbed land as the engineering operations advance. The final phase of engineering will seek to integrate the restoration landscape in accordance with characteristics of the surrounding landscape. At this point the inclusion of a well-engineered waterbody may curtail the length of time the engineering works will be onsite and will maximise the available funds to enhance the wider restoration scheme.

Modifications sought by those submitting representations:

In terms of suggested modifications to policy MIN ENV6:

SEPA welcomes the inclusion of policy MIN ENV6 but believes it could be considerably strengthened with the inclusion of a statement setting out what measures the applicant should undertake to demonstrate protection of the water environment. This could, for example, be achieved by the operator monitoring baseline, operational and closure stage water environment parameters on and surrounding the development site. A monitoring plan, agreed with the Council and SEPA, should be implemented with regular submissions of reports including any actions required.

L Howie does not suggest a specific modification but questions whether criterion (ii) of policy MIN ENV6 protects and ensures the reinstatement responsibilities of historical water sources to agricultural land areas.

In terms of a suggested modification to policy MIN ENV7:

Scottish Water request that Policy MIN ENV7: Private Water Supply be amended to reflect that where a private water supply is required, discussions and ongoing water quality monitoring, would be between the individual and East Ayrshire Council and Scottish Water would not be involved with this.

In respect of suggested modifications to policy MIN ENV8:

Hargreaves request that Policy MIN ENV8 be modified to remove the presumption against

the creation of deep waterbodies.

SWT request that bullet point 3 should be amended to presume against the introduction of non-native species. This should not be limited to instances where there is connectivity to other water courses.

L Howie, whilst not suggesting any specific changes, questions in criterion (iv) by whom and for how long water bodies should be effectively managed.

SEPA welcomes this policy. SEPA points out that restoration should include supporting restoring water environment to original catchment area, where previously altered as result of mineral activity. It should be noted that deep waterbodies do not fall within definition of wetlands.

J Mulders requests that within criterion (i) the term 'surface coal sites' should be deleted to read **'There will be a presumption against the creation of deep waterbodies on surface coal sites where previously there were none'**

In terms of policy MIN SS7:

SEPA requires that:

Any further coal developments should avoid adverse impacts and further interference with the natural water environment, unless it can be demonstrated it will result in an improvement on an existing legacy issue.

Summary of responses (including reasons) by planning authority:

In addressing the comments raised on Policy MIN ENV6, the Council initially would like to clarify the types of development that the suite of MLDP environment policies including Policy MIN ENV 6,7,8,9 and 10 concern minerals related development with other types of development being assessed under the EALDP 2017 (CD22). If the Reporter is minded to clarify this, the Council would not have any objections to this.

Policy MIN ENV6 (7, 21)

The Council is of the view that the suggestion from SEPA to include a statement setting out the measures the applicant should take to demonstrate protection of the water environment is too detailed a matter to appropriately include within the MLDP policy. It is a long standing practice of Development Management to include conditions requiring that the applicant undertake protection of the water environment including submitting a monitoring plan, agreed with the Council and SEPA, highlighting how it will be implemented with regular submissions of reports including any actions required. This issue is correctly addressed by the Development Management process. The Council does not agree that any amendments to the text are necessary.

In response to L Howie's comment on policy MIN ENV6 criterion (ii), the Council notes that the policy criterion is intended to ensure any changes to water levels, flows or quality will not have unacceptable impacts on the natural environment, water abstraction schemes or flood risk. This is a protective policy; it cannot be used to re-instate responsibilities for water sources. The Council is of the view that this would be outwith the remit of the MLDP.

Policy MIN ENV7 (23)

In response to Scottish Water, the policy was written to reflect the Council's understanding of the Private Water Supply procedures at the time of writing. It is reflective of the preferred option within the Main Issues Report (CD12), which was specifically supported by Scottish Water. However, in order to reflect Scottish Water's current concerns and to ensure the policy is procedurally accurate, the Council would have no objection to the Reporter modifying the Plan, as per Scottish Water's suggestion.

Policy MIN ENV8 (7, 10, 11, 21, 24)

In response to Hargreaves concerns over the wording of policy MIN ENV8, the issue of the creation of deep water bodies was explored through the Main Issues Report, with the current wording largely reflecting the preferred option. This option on the whole received support through MIR consultation. The Council believes the presumption against new deep waterbodies is appropriate. Deep waterbodies have a significant impact on the rural landscape and do not represent the Council's aspiration for high quality restoration. Deep water bodies associated with the minerals industry tend to appear incongruous with the natural landscape of the area and, due to health and safety issues surrounding them, they do not harness good access to and use of the rural area for surrounding communities. This is a major issue that the Plan aims to address through its restoration and placemaking principles i.e. re-connecting communities with their landscape. Whilst the policy states that there is a presumption against new waterbodies, it may be that on occasion, should a proposed water body facilitate an innovative approach to restoration with added value for the environment and communities, there may be justification to support such a proposal. The onus would lie with the developer to evidence such a case.

In response to SWT, in terms of the introduction of non-native species, the wording of criterion (iii) reflects the Main Issues Report (MIR) wording which caveated the introduction of non-native species to waterbodies that have connectivity to other water courses. This was generally supported through the MIR consultation. The Council remains of the view that the current wording is appropriate. There may be occasion where non-native species could appropriately be allowed within water bodies on restoration sites; the policy should not prevent such opportunities. However, there are appropriate safeguards within other policies both in the MLDP and the EALDP2017 (CD22) (which would likely be applicable) that would restrict any such development that carried with it risks to the wider water environment i.e. policy ENV12 of the EALDP 2017 states that 'There will be a presumption against any development that will have an adverse impact on the water environment in terms of pollution levels and the ecological value of water habitats.'

In response to L Howie, water bodies are required to be affectively managed by all parties responsible for their management such as site operators, land owners etc. The management of water bodies should be carried out during the operational period and extended into the restoration and after care periods as required. It is not possible for the MLDP to state a specific time range or indeed a responsible authority for this as it will depend on the particular circumstances of the site in question.

In response to SEPA, the Council confirms that policy MIN ENV 8 would support measures to restore water environments to original catchment areas, when practicable. However, where the extent of operations straddles a watershed, due to potential practicability of engineering issues required or concerns regarding excessive inflows to existing water courses, a pragmatic approach needs to be taken as to the practicability of

water environment reconnection to original catchment areas. The Council notes that deep waterbodies do not fall within the definition of wetlands. Policy MIN ENV8 is concerned with the wider water environment in respect of restoration, therefore there is no conflict with including support for wetland habitats within this policy.

In terms of J Mulders suggested amendment that the presumption of deep water bodies should not be restricted to surface coal sites, the Council does not agree that the suggested changes to the wording are necessary. Due to the different nature of surface coal mines in so far as they tend to cover a far larger area of ground, there have been deep water bodies created before now that are significant in surface area and are incompatible with the natural landscape pattern of the area. As quarries tend to be more limited in surface area, the creation of waterbodies as part of their restoration may sometimes, but not always, be acceptable.

In terms of SEPA's concern over policy MIN SS7, the Council is of the view that it is not necessary to add in text relating to the water environment. The policy is intentionally succinct and requires development to comply with all relevant policies of the MLDP. It does this, so as to prevent a long list of requirements being added into this policy. Any development would therefore require to comply with the water environment policies as well as policy MIN SS1. It is further noted that policy MIN SS1 requires compliance with the SEA Environmental Report (CD17), which provides a range of mitigation measures and will serve the same purpose as adding additional text in order to strengthen the policy. The Council does not agree that a change to the wording of the policy is required.

Aside from the factual amendment suggested by Scottish Water and the Council's clarification of the type of development related to Policies MIN ENV 6,7,8,9 and 10 which the Council has no objection to if the Reporter is so minded to accept, the Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter's conclusions:

Policy MIN ENV6

1. Proposed policy MIN ENV6 (the protection of water resources, water bodies and ground water) requires adequate mitigation measures where mineral proposals could impact on water resources. The measures should be capable of being implemented as agreed by the council and the Scottish Environment Protection Agency (SEPA). In practice, the mitigation measures would be secured through the imposition of conditions of any planning permission granted. I find that the provisions of policy MIN ENV6 are sufficient to ensure that suitable mitigation measures were imposed which, as identified by SEPA, could include a monitoring plan. Consequently, no change to the policy is required.

2. As stated by the council, policy MIN ENV6 seeks to protect water resources rather than promote restoration. However, there would be the opportunity through the provisions of proposed policy MIN SS2 (minerals restoration and placemaking) to "identify opportunities for environmental improvement in restoration and incorporate these where practicable". Consequently, I find that there is provision within the proposed plan to encourage the restoration of historical water courses without any modification to policy MIN ENV6.

Policy MIN ENV7

3. Proposed policy MIN ENV7 (private water supply) requires identification of private water supplies in consultation with the council and Scottish Water and mitigation measures where necessary. However, the representation from Scottish Water raises a concern regarding “where a private water supply is required” suggesting that any discussions would be between an individual and the council and not involve Scottish Water. I consider that this response misinterprets the provisions of policy MIN ENV7 which are about protection of existing private water supplies from mineral operations not about the creation of new private water supply connections. Should a new connection be required as a mitigation measure to alleviate an impact from a minerals proposal then this could be agreed between the council, the developer and the owners of the individual property affected. No change to the policy is required to stipulate this or clarify that Scottish Water would not be involved.

Policy MIN ENV8

4. The council has provided reasonable justification to retain the presumption against the creation of deep waterbodies including their impact on the rural landscape; biodiversity; access and health and safety. Creation of deep waterbodies also goes against the promotion of securing high-quality restored environments. The presumption to avoid deep waterbodies presented in proposed policy MIN ENV8 (restoration and the water environment) should remain.

5. The council suggests tendencies related to the characteristics of surface coal sites compared to quarry sites in relation to waterbodies but these may not occur in all instances. The council has also raises legitimate concerns regarding the impact of deep waterbodies in response to the representation from Hargreaves which I have agreed. Therefore, I consider that it would be appropriate and reasonable for the presumption to apply to all sites rather than just surface coal sites as requested by Mr Mulders.

6. The concern regarding non-native plant species relates, as presented in policy MIN ENV8, to connections with other water bodies suggesting that the council wishes to avoid the spread of non-native species. I note that Scottish Planning Policy (2014) states that where planting of non-native species is promoted that account should be taken of the provisions of the Wildlife and Countryside Act 1981. I find that, as identified by the council, there could be justification to include non-native species in a restoration project. However, use of non-native species would have to be very carefully controlled. The provisions of the policy are sufficient to ensure that this would be the case. Therefore, I find that the reference to the use of non-native species should be retained.

7. As stated by the council, the imposition of conditions on any granted planning permission for minerals operations would include identification of who (or what body) was responsible for maintaining the quality and level of water bodies throughout operation, restoration and in the aftercare period. The timescales associated with this maintenance would also be stated. Consequently, I find that there is no need to modify the criterion in policy MIN ENV8 related to effective management of water bodies as requested by Ms Howie.

8. SEPA suggest that “wetlands” do not include deep waterbodies. There is no suggestion of this within policy MIN ENV8. Furthermore, the glossary definition of “wetland habitats” in the proposed plan clarifies that “most voids left by surface coal

workings would not qualify as wetland habitats”. No change to the plan is required to address this matter.

9. While the council suggests that policy MIN ENV8 would support the restoration of original catchments this is not explicit or implied. I note the potential practical issues with re-instating original catchments but consider that the policy could usefully and reasonably provide support for restoration. A new bullet point is therefore recommended.

Policy MIN SS7

10. The proposed plan contains a suite of policies related to the protection of the water environment including MIN SS1 (minerals overarching policy); MIN ENV5 (mitigating flood risk); MIN ENV6; MIN ENV7; and MIN ENV8. These policies would be sufficient to ensure that any minerals proposals, including for coal extraction, are adequately assessed to ensure no harm to the water environment. Other policies including MIN SS6 (restoration coal) and MIN SS2 (restoration and placemaking) would enable the reversal of any legacy issues where justified and/or in support of a proposal. Consequently, I find that there is sufficient provision within the proposed plan in relation to the water environment without the need to modify proposed policy MIN SS7 (surface coal proposals outwith the area of search and not meeting the criteria of MIN SS6).

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Removing the words “surface coal” from the first bullet point in Policy MIN ENV8: Restoration and the Water Environment on page 46.

2. Inserting a new bullet point into Policy MIN ENV8: Restoration and the Water Environment on page 46 as follows:

- “The restoration of water environments to original catchment areas will be supported.”.

Issue 18	The Built and Natural Environment	
Development plan reference:	Policies MIN ENV9 and MIN ENV10.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Woodland Trust Scotland (2) Scottish Natural Heritage (SNH) (9) Scottish Government (17) Hargreaves (24)</p>		
Provision of the development plan to which the issue relates:	Suggested changes to the wording and specific criterion of policies MIN ENV9 and MIN ENV10.	
Planning authority's summary of the representation(s):		
<p><u>Woodland Trust Scotland (2) and Scottish Government (17)</u></p> <p>Both Woodland Trust Scotland and the Scottish Government seek modifications to the wording of policy MIN ENV 10 (iii). The Woodland Trust is seeking modifications to provide the necessary clarity as to the scope of what woodland and trees should be protected in line with SPP (CD06). It suggests that it is best not to limit the wording to trees protected by Tree Preservation Orders, as not all trees that need to be protected have an Order. The Scottish Government requests that the policy aligns with SPP and reflects the Scottish Government's Control of Woodland Removal Policy (CD09). The Control of Woodland Removal policy explains the criteria for determining when woodland removal will be acceptable.</p> <p><u>SNH (9)</u></p> <p>SNH suggest amending the wording of policy MIN ENV 9 (i) of the MLDP (CD11) to clarify that the three modified tests apply only where a proposal has failed to demonstrate that there will be no adverse effect on the integrity of Natura site(s). The three modified tests being where (i) there are no alternative solutions; (ii) there are reasons of overriding public interest; and (iii) compensatory measures are taken to ensure that the overall coherence of the site is protected. It is suggested that this wording will remove any ambiguity and make clear that the further tests are only required where there will be an impact on the integrity of the Natura site. Where there is no impact, the three tests are not required.</p> <p>Regarding criterion (iii) of policy MIN ENV9, SNH welcome the requirements for effective management and conservation of existing landscape features although this could be expanded to cover enhancement of landscape features, where possible, and to provide more detail on landscape character.</p> <p>SNH seek clarification with regards to part (i) of policy MIN ENV10: Protection of Built and Natural Environment Resources by explaining through a rewording of the policy what is meant by "requiring conservation".</p>		

Further, SNH note that designated landscapes such as Sensitive Landscape Areas (SLAs) have not been referenced either in Policy MIN ENV 10 or in Policy MIN ENV 11: Protecting the Landscape. SNH understand that these have informed the Environmental Report (SEA) (CD17).

Hargreaves (24)

Hargreaves suggests that the current wording of policy MIN ENV9 criterion (ii) and policy MIN ENV10 is too restrictive. The policies will effectively sterilise minerals throughout East Ayrshire without opportunity for benefits from development or overriding factors to be properly taken into account.

Modifications sought by those submitting representations:

The following changes are suggested to Policy MIN ENV9:

SNH suggest:

- criterion (i) should be reworded as follows “Development will ~~only~~ be permitted in such areas **only** where an assessment of the proposal indicates that it will not adversely affect the integrity of the area **site(s)**; **or it has been demonstrated that** there are no alternative solutions; there are reasons of over-riding public interest, including social and economic; **and compensatory measures are taken to ensure that the overall coherence of the site is protected.**”
- criterion (iii) should be reworded as: ‘the effective management, conservation and **enhancement** of existing landscape features **which are** ~~of major importance~~ **important components of local and wider landscape character** for wild fauna and flora...’

Whilst not suggesting specific modifications, Hargreaves suggests that policy MIN ENV9 criterion (ii) is too restrictive and needs amending to avoid significant impacts on the resources and to expressly allow local, regional and national benefits (as the case may be) to be taken into account.

The following changes are suggested to Policy MIN ENV10 (inserts in bold):

SNH suggest that criterion (i) of policy MIN ENV10 should be reworded to clarify what is meant by ‘requiring conservation’.

SNH further suggest that the following text is inserted in Policy MIN ENV 10:

“In particular, the Council will not support proposals where they would (j) have a permanent adverse impact or cause irreversible damage to heritage resources and their setting requiring conservation including **Wild Land Areas, Sensitive Landscape Areas**, listed buildings, gardens and designed landscapes, scheduled monuments, battlefields, archaeological and industrial archaeological sites.”

Hargreaves suggests that policy MIN ENV10 is too restrictive and needs amending to avoid significant impacts on the resources and to expressly allow local, regional and national benefits (as the case may be) to be taken into account.

Scottish Government and Woodland Trust Scotland both suggest alternative wording for policy MIN ENV10 (iii):

Scottish Government – ‘(iii) result in **adverse impacts on the loss of any areas of ancient and semi-natural woodland or any individual or groups of trees protected by Preservation Orders any areas of ancient and semi-natural woodland or any individual or groups of trees protected by Preservation Orders. Removal of trees and/or hedgerows will only be allowed where this will achieve significant and clearly defined public benefits. The Scottish Government’s Control of Woodland Removal Policy will also be taken into account where relevant.**’

Woodland Trust – suggest altering point (iii) to ‘**(iii) result in the loss of or damage to any areas of ancient woodland, along with other woodlands, hedgerows and individual trees, especially veteran trees of high nature conservation and landscape value or any individual or groups of trees protected by Preservation Orders;**’

Summary of responses (including reasons) by planning authority:

Policy MIN ENV9 (9, 24)

The Council notes the first suggested modification by SNH and the reasons for the suggested amendment. In terms of Natura sites and SSSIs, the wording of the MLDP makes clear that development should meet three tests i.e. (i) it should not affect the integrity of the area; (ii) there should be no alternative solutions and (iii) there should be reasons of over-riding public interest including those of a social or economic nature.

The Council recognises that the wording results in a restrictive policy position. The Council believes there is a strong justification for this. The MLDP applies to only a limited range of development proposals, significantly distinct from the wide scope of developments that will be assessed by the EALDP 2017 (CD22) and indeed the vast majority of development plans that SPP is intended to guide. The Council can see no circumstances in which a development resulting in a negative impact on the integrity of a Special Protection Area (SPA), Special Area of Conservation (SAC) or Sites of Special Scientific Interest (SSSI) could be supported, when looking at the range of developments that will be assessed under the this policy i.e. minerals extraction. SPP at paragraph 208 (CD06) states that a derogation is available for authorities to approve a plan or project which could adversely affect the integrity of a Natura site if three tests are met. The Council does not in this instance think it is necessary or appropriate to make use of the derogation.

The legacy of minerals extraction in East Ayrshire has had an impact on the integrity of Natura sites, to such an extent that Infraction proceedings have been initiated by the EU (CD45). Infraction proceedings are brought about when the European Union has evidence that a Member state has failed to transpose a directive properly or is not enforcing legislation correctly. In this instance, the Infraction proceedings relate to a potential breach of the SPA Habitat Direction, following a complaint to the EU over the loss of habitat from the Muirkirk and Lowther Uplands SPA due to the unrestored opencast sites in the area. As a result, a suite of mitigation works have been agreed with the European Commission, which require to be delivered to address the negative impacts of the unfinished coal operation and deal with the issues raised in the complaint. A significant amount of public money, in the most part from the Scottish Government, has had to be identified to action this. This experience has reaffirmed the need for strong policy support for the internationally and nationally designated sites. As required through paragraph 196 of SPP, the Council believes the Plan as currently worded affords the

appropriate level of protection to these internationally and nationally designated areas.

The Council is firmly of the view that the modified wording suggested by SNH does not offer adequate protection in the specific context of the Minerals LDP and its remit. If an adverse impact on a SPA, SAC or SSSI is identified, such a development should not be supported by the Minerals LDP, irrespective of whether the other tests are met. The Development Plan position should remain clear that social and economic reasons cannot be used to justify a minerals extraction development that will adversely affect the integrity of one of the protected areas in question. Should this suggested wording be inserted, this would become a very real possibility.

The Council appreciates the point raised by SNH that development that can be demonstrated to not affect the integrity of the protected area should not be required to meet the other tests. However, given the national and international importance of these protected areas, and the limited range of development proposals that will be determined against the Minerals LDP, the Council is of the view that it is acceptable that the additional tests apply. For clarity, in terms of how the Plan will be used alongside the EALDP2017, it is the Council's intention that the environmental policies of the MLDP will only be used for minerals extraction proposals. For all other proposed uses, including those within minerals opportunity sites, it will be the environmental policies of the EALDP 2017 (CD22) that will be the most appropriate so will be applied. For minerals extraction purposes therefore, the Council maintains that it is reasonable that all three tests be used.

In response to SNH's second suggested modification to policy MIN ENV9, the Council is of the view that the suggested change by SNH would not alter the meaning of criterion (iii) therefore should the reporter agree, the Council would have no objection to the change in wording. However, the Council maintains that the current wording is clearer and easier to digest and the suggested amended wording would make the criteria more difficult to read and interpret for users of the Plan.

In response to Hargreaves suggestion that criterion (ii) is too restrictive and needs amended, the Council is of the view that an appropriate balance has been struck through the proportionate wording of the policy. It provides protection for Local Nature Reserves and Local Nature Conservation Sites. At the same time it allows for development where appropriate conservation and management can be put in place and allows for replacement habitats, species or features where damage is unavoidable. The Council considers this to be an entirely reasonable position, in accord with SPP.

Policy MIN ENV10 (2, 9, 17, 24)

In relation to SNH's request that criterion (i) of Policy MIN ENV10 be amended to clarify the meaning of 'requiring conservation' the Council confirms that this is in relation to the setting of heritage resources. Proposals will not be supported if they have an adverse impact on the setting of a heritage resource that requires conservation i.e. if the setting is intrinsic to and enhances the heritage resource. To remove any possible ambiguity from the Plan, the Council would be content for the Reporter to modify the Plan in this respect, if minded to do so. The Council would therefore suggest that 'requiring conservation' could be removed from the policy, without any implication for the overall direction or application of the policy.

In relation to SNH's request for the inclusion of Wild Land and Sensitive Landscape Areas

in the policy, the EALDP 2017 contains two policies (Policies ENV 7: Wild Land and Sensitive Landscape Areas and ENV 8: Protecting and enhancing the landscape) which seek to protect and enhance areas of wild land and sensitive landscape areas and safeguards wild land through the LDP maps. In addition, non-statutory guidance has been prepared on Sensitive Landscape Areas (SLA) (CD46) which provides further detail on which particular qualities make the SLA valuable and important on a local and regional scale. Policy MIN ENV 11 in the MLDP aims to ensure that any proposals for mineral extraction give due weight to minimising the impact on the landscape and a list of landscape features (which is not exhaustive) is included in the policy. The Council considers that these areas are appropriately covered by policies in the EALDP 2017 and further landscape features will be protected through policy MIN ENV 11 in the MLDP. Therefore to avoid repetition of policy, the Council is of the view that no changes are necessary.

With regards to Hargreaves comment that Policy MIN ENV10 is too restrictive, the Council does not think it overly restrictive to expect operators to avoid causing a permanent adverse impact or cause irreversible damage to heritage resources and their settings. This position is reflective of SPP and the EALDP2017 and the Plan would be remiss in its duties to not protect these matters.

With regards to both the Scottish Government and Woodland Trust Scotland suggestions to modify the wording of policy MIN ENV 10 (iii), the Council is of the view that whilst the policy as currently worded is sufficient, in order to give more detailed direction and guidance, if the Reporter is so minded the Council would be content for the wording to be changed to reflect both comments. It would suggest the following wording, subject to approval by the Reporter:

“(iii) result in adverse impacts on ~~the loss of~~ any areas of ancient woodland, along with other woodlands, hedgerows and individual trees, especially veteran trees of high nature conservation and landscape value or any individual or groups of trees protected by Preservation Orders ~~any areas of ancient and semi-natural woodland or any individual or groups of trees protected by Preservation Orders~~. Removal of trees and/or hedgerows will only be allowed where this will achieve significant and clearly defined public benefits. The Scottish Government’s Control of Woodland Removal Policy will also be taken into account where relevant.”

Reporter’s conclusions:

Policy MIN ENV9

1. Scottish Planning Policy (2014) refers to Natura 2000 sites (special protection areas and special areas of conservation) at paragraphs 207 to 210. It outlines the process in relation to these designations regarding plans and projects where it must be determined if there would likely be a significant effect on a site and, if so, an “appropriate assessment” is required to determine the implications for the conservation objectives of the site. The national policy clarifies that “such plans or proposals may only be approved if the competent authority has ascertained by means of an “appropriate assessment” that there will be no adverse effect on the integrity of the site”. However, paragraph 208 indicates that “a derogation is available for authorities to approve plans or projects which could adversely affect the integrity of a site if:

- there are no alternative solutions;

- there are imperative reasons of overriding public interest, including those of social or economic nature; and
- compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.”.

2. Criterion (i) of proposed policy MIN ENV9 (protection of areas of nature conservation interest) provides a presumption against development which could adversely impact special protection areas, special areas of conservation and sites of special scientific interest. It further advises that “development will only be permitted in such areas where an assessment of the proposal indicates it will not adversely affect the integrity of an area, that there are no alternative solutions and that there are reasons of over-riding public interest, including those of a social or economic nature. Any necessary mitigation measures will be required to reduce any adverse impacts”.

3. The wording of criterion (i) of policy MIN ENV9 does not follow that suggested in Scottish Planning Policy as it: (1) does not provide the possibility of an exception where the integrity of a site is predicted to be adversely affected; and (2) includes sites of special scientific interest.

4. I note that the council wishes to take a firm stance with regard to potential impacts on designations and that it has first-hand experience of the European Commission taking infraction action. However, the approach taken in the proposed plan is not aligned with that provided in Scottish Planning Policy; it is inconsistent with its policy approach in the adopted East Ayrshire Local Development Plan (2017) – policy ENV6 (nature conservation); and goes against the advice of the national advisor on natural heritage matters – Scottish Natural Heritage. Therefore, I find that criterion (i) should be modified with reference to the Natura 2000 network.

5. Furthermore, while I note that criterion (i) of policy MIN ENV9 reflects national policy and regulatory requirements for international designations it includes sites of special scientific interest which are nationally designated. Hargreaves response refers to criterion (ii) of policy MIN ENV9 but also suggests that policies should allow local, regional and national benefits to be taken into account. As advised in Scottish Planning Policy (paragraphs 212 to 213), the tests in relation to development and sites of special scientific interest are different to that of international designations. Consequently, including sites of special scientific interest in criterion (i) provides a more restrictive approach that does not allow for the consideration of national benefits. This is not the case in the adopted East Ayrshire Local Development Plan (2017) where policy ENV6 (nature conservation) separates the tests for international (Natura 2000) sites and sites of special scientific interest. I find that for consistency, in relation to national policy and the development plan, sites of special scientific interest should be removed from criterion (i) and given their own criterion following the tests stated in Scottish Planning Policy (and in East Ayrshire Local Development Plan policy ENV6).

6. I do not find criterion (ii) of policy MIN ENV9 overly restrictive in relation to the protection of local nature conservation sites and local nature reserves. The requirement to provide appropriate measures to conserve and manage sites/reserves closely follows the requirements set out in the adopted East Ayrshire Local Development Plan (policy ENV6) to avoid impacts and provide mitigation. The wording of criterion (ii) should remain.

Policy MIN ENV10

7. I agree with Scottish Natural Heritage that the inclusion of the words “requiring conservation” in criterion (i) of proposed policy MIN ENV10 (protection of built and natural environment resources is confusing. Removal of the words, as indicated by the council, would clarify that the criterion relates to heritage resources and their respective settings. A minor change is therefore recommended.

8. There is no mention in the proposed plan of either wild land or sensitive landscape areas. However, paragraph 1.6 of the proposed plan indicates that proposals for minerals extraction will be considered against the components of the minerals local development plan and the adopted East Ayrshire Local Development Plan. The adopted plan contains policy ENV7 (wild land and sensitive landscape areas) and refers to non-statutory guidance on sensitive landscape areas. Consequently, there would be provision to ensure that any proposals for minerals extraction (and any other proposal, including those on former mineral opportunity sites) were assessed in relation to any impacts on wild land and sensitive landscape areas. Therefore, I agree with the council that there is no need to insert reference to wild land and sensitive landscape areas within criterion (i) of policy MIN ENV10.

9. Scottish Planning Policy (paragraphs 216 to 218) identifies the need to protect woodland, hedgerows and individual trees from development; and highlights the Scottish Government’s ‘Control of Woodland Removal Policy’. Proposed policy MIN ENV10 is too narrow in its protection by only focussing on semi-natural ancient woodland and trees protected by tree preservation orders. It also does not refer to the woodland removal policy. And, with respect to Hargreaves concerns about over-restriction, it provides an absolute stance where no loss of woodland resource would be supported which, I consider, is overly restrictive. A change to the criterion wording, as promoted by the council, would address these issues.

10. Scottish Planning Policy requires development plans to protect natural and built heritage assets; address potential pollution of the air (in relation to minerals proposals in particular); and protect the woodland resource. Consequently, I find the provisions of policy MIN ENV10, which convey the advice of Scottish Planning Policy, are appropriate and reasonable without the need for any modification other than that recommended in the paragraph above.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Replacing criterion (i) of Policy MIN ENV9: Protection of Areas of Nature Conservation Interest on page 47 with:

“(i) there will be a presumption against development which could adversely impact areas designated or proposed by Scottish Ministers for designation as Special Protection Areas or Special Areas of Conservation (Natura 2000 sites shown on Map 7). Development will only be permitted in such areas where an assessment of the proposal indicates that it will not adversely affect the integrity of the area; or it has been demonstrated that there are no alternative solutions; there are reasons of over-riding public interest, including social and economic; and compensatory measures are taken to ensure that the overall coherence of the Natura 2000 network is protected.”.

2. Inserting a new criterion (ii) into Policy MIN ENV9: Protection of Areas of Nature Conservation Interest on page 47 as follows:

“(ii) Any development affecting a site of special scientific interest will only be permitted where it will not adversely affect the integrity of the area or the qualities for which it has been designated or where any significant adverse effects on the qualities for which it is designated are clearly outweighed by social, environmental or economic benefits of national importance (Map 7).”.

3. Re-naming criterion (ii) as (iii), and criterion (iii) as (iv), in Policy MIN ENV9: Protection of Areas of Nature Conservation Interest on page 47.

4. Removing “, requiring conservation” from Policy MIN ENV10: Protection of Built and Natural Environment Resources on page 50.

5. Replacing criterion (iii) of Policy MIN ENV10: Protection of Built and Natural Environment Resources on page 50 with:

“(iii) result in adverse impacts on any areas of ancient woodland, along with other woodlands, hedgerows and individual trees, especially veteran trees of high nature conservation and landscape value or any individual or groups of trees protected by Preservation Orders. Removal of trees and/or hedgerows will only be allowed where this will achieve significant and clearly defined public benefits. The Scottish Government’s Control of Woodland Removal Policy will also be taken into account where relevant.”.

Issue 19	Landscape	
Development plan reference:	Paragraphs 5.27, 5.28, and 5.29; Policies MIN ENV11 and MIN ENV12 and supporting text.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Natural Heritage (SNH) (9) J Mulders (10) Hargreaves (24)</p>		
Provision of the development plan to which the issue relates:	The wording and content of Policies MIN ENV11 and MIN ENV12.	
Planning authority's summary of the representation(s):		
<p><u>SNH (9)</u></p> <p>In terms of paragraph 5.29, SNH state that the need 'for emphasis to be on restoring and enhancing the landscape' is supported, however, it is considered that landscape should also be protected and managed effectively.</p> <p>With regard to policy MIN ENV11, SNH welcome the requirement for development proposals to conserve and enhance important landscape features and note that landscape character has been included in this policy. SNH suggests that it would be beneficial to also include landscape setting and visual amenity. As the policy seeks to conserve and enhance important landscape features, this could be referenced in the policy 'Aim'.</p> <p>Further, SNH have suggested that the final sentence of Policy MIN ENV 12 be amended to ensure that cumulative visual impact(s) are also taken into account.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders states that the last sentence of paragraph 5.28 of the MLDP (CD11) is factually incorrect. The House of Water and Greenburn complexes are still operational and therefore the statement should be deleted. J Mulders also suggests additional wording to be added to the second sentence of paragraph 5.28.</p> <p>In terms of paragraph 5.29, J Mulders suggests inserting wording to the second and third sentences of paragraph 5.29.</p> <p><u>Hargreaves (24)</u></p> <p>In terms of policy MIN ENV12, Hargreaves recognise the importance of the landscape and visual impact assessment process in designing mineral sites and associated mitigation. The policy should not though be used to define how the assessment is undertaken in terms of cumulative impacts with other forms of development. It is for professional judgement, following professional guidance to determine which development</p>		

types should be included in cumulative assessment. SPP (CD06) does not require cumulative assessment across different development types.

Modifications sought by those submitting representations:

J Mulders suggests additional wording to be added to the third sentence of paragraph 5.28 to read: “The lack of appropriate **compliance monitoring, planning enforcement and** restoration following the collapse...”. In addition, Mr Mulders also requests that the last sentence of paragraph 5.28 be deleted.

J Mulders suggests inserting the word ‘potentially’ to the second sentence of paragraph 5.29 to read: “The Plan is clear that emphasis now needs to be on restoring and **potentially** enhancing the landscape”.

J Mulders suggests inserting the wording ‘and appropriate bonding’ to the last sentence of paragraph 5.29 to read: “Any proposal.....by comprehensive restoration proposals **and appropriate bonding**”. SNH recommend inserting the following wording to paragraph 5.29, “**emphasis needs to be on protecting, restoring, enhancing and managing the landscape**”.

SNH recommend inserting text to part (i) of policy MIN ENV11 such as “**Landscape setting**, settings of settlements and buildings within the landscape..”. SNH also suggest, inserting the wording “**visual amenity**” to part (ii) of the policy. In addition, SNH suggest amending the wording of the ‘Aim’, for example, “To ensure any proposals for minerals extraction give due weight to minimising impact on landscape, **enhancing it where possible.**”

SNH suggest the following wording be inserted into Policy MIN ENV 12:
“The Council will not support proposals where there will be unacceptable cumulative landscape **and/or visual impacts.**”

Hargreaves does not suggest any specific modifications to policy MIN ENV12, but does express concern over the principle of requiring a cumulative impact assessment involving different development types.

Summary of responses (including reasons) by planning authority:

Wording (9, 10)

With regard to J Mulders representation concerning paragraph 5.28, the Council is of the opinion that it is not appropriate to include the wording suggested. This section of the MLDP relates to landscape and the lack of appropriate restoration. Compliance monitoring is covered under Chapter 9 on page 74. In terms of the last sentence of paragraph 5.28, the Council is of the view that it is not necessary to delete this sentence. The reference to machinery and operations relate to those sites abandoned in 2013 and not those that remain operational. The Council maintains that there has been a significant landscape impact where machinery has left and operations ceased.

There is no need to insert the word ‘potentially’, as suggested by J Mulders, to the second sentence of paragraph 5.29 as this would not reflect a key objective of the MLDP which is to place emphasis on restoring and enhancing the landscape. Given the negative landscape impacts of the minerals industry over a number of years, it is entirely

appropriate that the Plan now focusses on landscape enhancement.

Inserting the wording suggested by SNH to the second sentence of paragraph 5.29 would take the sentence out of context; the sentence merely highlights that due to past circumstances, the Plan places emphasis on restoring and enhancing landscape. Policy MIN ENV11 clearly focusses on protecting landscape features, character and setting.

With regard to SNH's representation on policy MIN ENV11, the Council is of the view that this is in line with SPP and that no changes are necessary. However, if the Reporter was minded to agree with SNH to remove any ambiguity from the Plan, the Council would have no objection to policy MIN ENV11 being amended as per the suggested wording.

Visual Impacts (9)

In relation to SNH's suggestion to include additional wording to Policy MIN ENV 12 with regard to visual impacts, the Council does not agree that this wording should be included. The policy is clear in that Landscape and Visual Impact Assessments must include a cumulative impact assessment which must take account of all relevant development types and their impacts on the landscape including visual impacts. This policy is in response to the significant scale of landscape change that has occurred in East Ayrshire with surface coal extraction activities. There are large areas of dereliction in the rural landscape due to a lack of appropriate restoration and a number of opencast coal sites being located in close proximity to each other. Therefore, the MLDP places an emphasis on restoring and enhancing the landscape and any future proposal that will result in further disturbance to the landscape will have to be fully justified. The Council is of the view that visual impacts are covered within the cumulative landscape assessment that is required as part of Policy MIN ENV 12, therefore no changes are necessary.

Cumulative assessment (24)

With regard to Hargreaves' representation, the Council disagree that SPP does not require cumulative assessment across different development types. For example, paragraph 199 of SPP (CD06), states that Plans should address 'the potential effect of development on the natural environment...and the cumulative effects of incremental changes'. Paragraph 202 of SPP also states that development management decisions should take account of potential effects on landscapes and natural and water environment, including cumulative effects. In addition, the assessment of a plan's likely environmental impact should be considered in relation to the Environmental Assessment (Scotland) Act 2005 (CD03), these are: biodiversity; population; human health; fauna; flora; soil; water; air; climatic factors; material assets; cultural heritage, including architectural and archaeological heritage; landscape; and the inter-relationship between them. It is also important to establish whether any significant environmental effects are likely to be short, medium or long term, whether they are permanent or temporary, and whether these effects will be direct, indirect, synergistic or cumulative.

The environmental report which accompanies the MLDP is in line with the 2005 Act and assesses the likely cumulative impacts of the Plan's vision, aims, strategy, policies and proposals. The Council is therefore of the view that it is appropriate to make this requirement in the Plan, in order to avoid or mitigate against adverse cumulative impacts as a result, in this case, of minerals development.

East Ayrshire's rural area has, for many years, been and continues to be under pressure

for a range of uses associated with the energy sector, primarily coal extraction, wind energy and associated electrical infrastructure. On their own, each of these uses has the potential to have a significant impact on East Ayrshire’s landscape. Cumulatively, they have the potential to have an even more significant impact. It is considered by the Council that in the interests of the proper planning of the area and minimising any negative impacts, a robust analysis of the cumulative impact of such developments is critical. The requirements of Policy MIN ENV12 are therefore entirely reasonable.

Reporter’s conclusions:

Paragraph 5.28

1. The purpose of proposed paragraph 5.28 is to highlight the legacy of abandoned sites in the rural landscape. I agree with the council that there is no need to refer to a lack of compliance monitoring or enforcement as potential reasons why the surface coal mining industry collapsed in 2013. In addition, as identified by the council, the final sentence of paragraph 5.28 relates to abandoned sites and should remain to highlight the impact of abandoned sites on the rural landscape. No changes to paragraph 5.28 are justified.

Paragraph 5.29

2. The proposed plan includes references to conserving landscape features, protecting the landscape, and providing suitable aftercare for restored sites. Therefore, I consider it reasonable for paragraph 5.29 to refer to protecting and managing the landscape in addition to restoring and enhancing it. A small change, as promoted by Scottish Natural Heritage, is recommended.

3. I do not agree with Mr Mulders that the word “potentially” should be added before “enhancing the landscape” as this would introduce ambiguity whereas the plan is clear that enhancement is to be positively promoted.

4. Furthermore, I consider that it is sufficient for paragraph 5.29 to refer to the need for “comprehensive restoration proposals” without reference to appropriate bonding as this matter is suitably addressed in proposed policy MIN WP1 (financial guarantees). The plan should be applied as a whole and so no change is required to paragraph 5.29.

Policy MIN ENV11

5. Proposed policy MIN ENV11 (protecting the landscape) seeks to protect and enhance landscape character but also provides a list of landscape features which the policy requires to be conserved or enhanced. Within the list criterion (i) refers to the settings of settlements and buildings in the landscape; while criterion (ii) refers to skylines, distinctive landform features, landmark hills and prominent views. I consider that while landscape setting could be a component in assessing the impact on landscape character and landscape features it is not a landscape feature in itself. Similarly, while visual impact could be a component of how the landscape is experienced it is not a landscape feature. Consequently, I do not agree with Scottish Natural Heritage that reference to “landscape setting” and “visual amenity” in criteria (i) and (ii) of policy MIN ENV11 would be appropriate. However, overall the provisions of policy MIN ENV11 would allow for an assessment of landscape setting and visual amenity and other policies of the proposed plan, specifically, criterion (ii) of proposed policy MIN PPL2 (protecting residential amenity), would allow further protection in relation to these matters.

6. I further find the aim of policy MIN ENV11 sufficient without the need to refer to enhancement “where possible”. Introduction of “where possible” would introduce vagueness whereas the policy positively promotes enhancement. The aim to minimise impact on the landscape is sufficient without the need for modification.

Policy MIN ENV12

7. Proposed policy MIN ENV12 (assessing landscape and visual impacts) requires all proposals to submit a landscape and visual impact assessment, including a cumulative assessment. However, the final sentence of the policy only directs that no support will be given to proposals with unacceptable cumulative landscape impact with no mention of unacceptable visual impact. The policy does not, as argued by the council, only refer to landscape matters. I find that, as the policy requires both a landscape and visual assessment, it would be reasonable to refer to unacceptable visual impact in the final sentence as suggested by Scottish Natural Heritage. A consequential change to the aim is also recommended.

8. I note that Scottish Planning Policy (2014), at paragraph 202, suggests that “development management decisions should take account of potential effects on landscapes and natural and water environment, including cumulative effects”. Despite being raised by Hargreaves, policy MIN ENV12 does not prescribe definitively how to conduct a landscape and visual impact assessment in relation to cumulative effects. It requires a cumulative impact assessment to be submitted which “must take account of relevant development types”; and directs that the “assessment should consider, where relevant, the cumulative impact of minerals extraction alongside renewable energy, waste management and electrical infrastructure developments”. Therefore, the text of the policy allows for some professional discretion in terms of what is deemed “relevant” to consider. I find that there is justification for the policy to seek that cumulative effects of minerals development and other types of development could be considered as part of a landscape and visual impact assessment. No change to the policy is required on this basis.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Replacing the second sentence of paragraph 5.29 on page 51 with:

“The Plan is clear that emphasis now needs to be on protecting, restoring, enhancing and managing the landscape.”.

2. Replacing the final sentence of Policy MIN ENV12: Assessing Landscape and Visual Impacts on page 53 with:

“The Council will not support proposals where there will be an unacceptable cumulative landscape and/or visual impact.”.

3. Replacing the aim of Policy MIN ENV12: Assessing Landscape and Visual Impacts on page 53 with:

“To ensure that a full assessment can be made of the possible landscape and visual impact of any minerals proposal.”.

Issue 20	Conserving, enhancing and protecting geological interest	
Development plan reference:	Policy MIN ENV 13 and paragraphs 5.34 and 5.40.	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Natural Heritage (SNH) (9) J Mulders (10) Mineral Products Association (MPA) (15) Breedon Northern Limited (Breedon) (16)</p>		
Provision of the development plan to which the issue relates:	The wording of Policy MIN ENV13 and the accuracy of the supporting text.	
Planning authority's summary of the representation(s):		
<p><u>SNH (9)</u></p> <p>SNH suggests that there has been an error in the reference to “Geological Conservation Review Sites” in paragraph 5.34 and suggests additional changes.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders requests that, for the sake of clarity and certainty, additional information about mitigation plans for the site at Spireslack should be inserted into paragraph 5.40.</p> <p><u>MPA (15) and Breedon (16)</u></p> <p>MPA and Breedon suggest that the terminology used within Policy MIN ENV 13 is vague and open to broad interpretation and suggest changes.</p>		
Modifications sought by those submitting representations:		
<p>Within paragraph 5.34 SNH requests that the reference to “32 Geological Conservation Review sites” is removed and instead should be replaced with “Regionally Important Geological Sites”. SNH also requests that at paragraph 5.34 the reference to “which may become SSSIs in the course of time” be removed as there are no plans to designate such sites as SSSIs.</p> <p>J Mulders requests that a reference be made to the mitigation plans that the Council are likely to have if the Council does not find future partners for the site in paragraph 5.40.</p> <p>MPA and Breedon request that within policy MIN ENV13 reference is made to SSSI's and Geological Conservation Review Sites instead of “geological features” to provide transparency and to ensure interpretation is unambiguous.</p>		

Summary of responses (including reasons) by planning authority:

Geological Conservation Review Sites (9)

The Council is of the understanding that Geological Conservation Review (GCR) is the register of known nationally and internationally important geological and geomorphological sites in the UK (CD47). The GCR underpins the designation of Earth science features through the Sites of Special Scientific Interest (SSSI) designation meaning that the majority of GCR sites have statutory protection through SSSI.

Although the main phase of the GCR was concluded in 1990, advances in science mean that periodic review of certain parts of GCR sites is required in order to ensure the GCR remains credible and robust. SNH are responsible for advising on the conservation and enhancement of the GCR sites. Therefore the Council is of the view that the Plan is correct in stating that GCR sites can be designated as SSSIs regardless of internal work plans within SNH. Within East Ayrshire, there is currently one Regionally Important Geological Site at Spireslack. The Council is of the view that affording protection to GCR sites will lead to the protection and conservation of a larger number of geological sites across the local authority area.

The GCR sites which are referred to in paragraph 5.34 are recognised as Geological Conservation Review Sites which are located within East Ayrshire. This information was taken from the East Ayrshire State of the Environment Report (CD26) which detailed that there were “32 Geological Conservation Sites” located in East Ayrshire. Upon further investigation, the Council is of the view that this information is slightly inaccurate as the area surveyed covers the areas of East and North Ayrshire. Therefore, the Council has obtained SNH datasets for Geographical Conservation Review sites and this has enabled the Council to locate 11 Geological Conservation Review sites within the East Ayrshire Council boundary. In light of this new information, the Council is of the view that the number of Geological Conservation Review sites should be updated within the Plan. Therefore, with agreement from the Reporter, the Council suggest that the following wording in paragraph 5.34 be changed to:

“A further **11** Geological Conservation Review sites exist in East Ayrshire which may become SSSIs in the course of time.”

It is not considered that this would change the underlying aims of the policy.

Mitigation Plans (10)

In relation to J Mulders representation, the Council disagrees that additional information about mitigation plans should be inserted in paragraph 5.40. This paragraph sets out the potential of Spireslack as an educational and geotourist facility and one in which the Council will develop future proposals for the site. Geological audits and studies are ongoing at the site by the British Geological Survey and therefore, the Council will consider the recommendations of these studies before proposing specific development for the site. The Council is of the view that there is no merit in including mitigation if detailed proposals have not yet been realised.

Terminology (15, 16)

The Council does not agree that the reference should be made to SSSI’s and Geological

Conservation Review Sites within Policy MIN ENV 13. SSSI sites are already afforded protection through Policy MIN ENV 9, therefore, the Council do not see the merit in duplicating policy wording. However the Council agree that the term “geological features” is a broad reference and with agreement from the Reporter, the Council suggest inserting the following wording to policy MIN ENV 13:

“Development shall not be permitted which adversely impacts upon **nationally and locally important** geological features unless required in respect of health and safety.”

The Council considers that the inclusion of this wording removes any ambiguity associated with the term geological features.

Reporter’s conclusions:

Geological sites clarification

1. To provide clarity in relation to geological resources, I sought further written submissions from the council. In response, the council confirmed that there are 20 sites of special scientific interest and 11 geological review sites in East Ayrshire; that every geological review site is contained within the boundary of a site of special scientific interest; and that only one site (Spireslack) is identified as a regionally important geological site.
2. The proposed plan, therefore, incorrectly refers to 32 geological conservation review sites. The plan also states that geological conservation review sites may become sites of special scientific interest in the course of time but, as illustrated on a plan submitted by the council, the boundary of these sites are wholly contained within the boundaries of existing sites of special scientific interest. Therefore, despite the fact that Scottish Natural Heritage has no plans to designate any further sites of special scientific interest in East Ayrshire at the present time, the geological conservation review sites are already incorporated in such sites and their interest safeguarded. I further note that the geological conservation review sites are not regionally important geological sites as suggested by Scottish Natural Heritage.
3. In response to the above, I find that proposed paragraphs 5.33 and 5.34 should be modified to refer to the correct number of geological conservation review sites and remove reference to potential future identification as sites of special scientific interest. Any suggested amendments to include references to the geological interest of any site of special scientific interest’s designation could be reviewed between the council and Scottish Natural Heritage separately.

Paragraph 3.40

4. The content of proposed paragraph 5.40 supports the encouragement given in proposed policy MIN EN14 (Spireslack Canyon) for the promotion of the site’s geological interest. The final sentence of paragraph 5.40 suggests that the council “will work with partners to assist with studies to develop future proposals for the site”. I consider that this partnership working would allow for action regarding utilising the site for geo-tourism activity (as promoted by the council) and allow for any necessary mitigation of the site. Therefore, I find that there is no need to specifically refer to mitigation plans within paragraph 5.40.

Policy MIN ENV13

5. I sought further written clarification from the council regarding the intention of proposed policy MIN ENV13 (conserving, enhancing and protecting geological interest) and what “nationally and locally important geological features” would refer to. In response, the council confirmed that the policy would allow consideration of national sites (sites of special scientific interest and geological conservation review sites) and other notable geological features which are important to the geology of the area which would likely become apparent through site surveys, environmental impact assessment work and consultation processes. The three unrestored sites mentioned in paragraph 5.34 of the proposed plan would also be covered by this policy along with, the council suggests, regionally important sites.

6. I find that reference to the protection of “geological features” in proposed policy MIN ENV13 is appropriate and reasonable. I do not agree that the term needs to be defined as “nationally or locally important geological features” as that omits regionally important sites. I consider that insertion of “of interest” after “geological features” would be sufficient to ensure that not all geological features were indiscriminately protected from development. Clarification of what is of interest would be determined at the development management stage informed, as mentioned by the council, by any designations, studies and/or knowledge of the site. I further note that proposed policy MIN ENV9 (protection of areas of nature conservation interest) would also safeguard sites of special scientific interest without the need for these sites to be specifically mentioned in policy MIN ENV13 – this matter is further dealt with in Issue 18 above. I also consider that the three unrestored sites referred to in paragraph 5.34 should be named to provide clarity in relation to implementing policy MIN ENV13.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Replacing the final sentence of paragraph 5.33 on page 53 with:

“East Ayrshire contains 20 SSSIs many of which contain features of geological interest including 11 Geological Conservation Review Sites.”.

2. Deleting the first two sentences of paragraph 5.34 on page 53.

3. Adding the following text to the end of the third sentence of paragraph 5.34 on page 53:

“- Grasshill, Ponesk and Dalfad.”.

4. Adding the words “of interest” after “geological features” in the first and second lines of Policy MIN ENV13: Conserving, enhancing and protecting geological interest on page 55.

Issue 21	Protecting Communities	
Development plan reference:	Policy MIN PPL 1: Protecting Communities and Policy MIN PPL 2: Protecting Residential Amenity and supporting text (paragraphs 6.1 – 6.3) and Glossary	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>British Aggregates Association (BAA) (8) J Mulders (10) Mineral Products Association (MPA) (15) Breedon Northern Limited (Breedon) (16) Scottish Government (17) L Howie (21) Hargreaves (24)</p>		
Provision of the development plan to which the issue relates:	The approach to protecting communities and residential amenity.	
Planning authority's summary of the representation(s):		
<p><u>BAA (8)</u></p> <p>BAA states that buffer zones should be decided on a case by case basis and that it is wrong to compare opencast coal sites to aggregate quarries in relation to buffer zones.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders requests that additional wording be added to paragraph 6.3 and Policy PPL1 and PPL 2. J Mulders states that the Plan (CD11) should address the issue that the increasing size of the machinery used on minerals sites over time may have caused an increase in noise, vibration and light pollution.</p> <p><u>MPA (15) and Breedon (16)</u></p> <p>MPA and Breedon set out that the 500m buffer zone in SPP (CD06) specifically refers to coal extraction. Both hard rock and sand and gravel quarry operations are not comparable to those of the surface coal mining industry and therefore, should not be required to comply with the same buffer limits as surface coal sites. Reasons for this are provided as follows:</p> <ul style="list-style-type: none"> • Quarry operations require to remove only a limited amount of material before reaching the product to be extracted whereas Surface Coal Mining generally requires the removal of vast quantities of overburden (rock), in excess of 50m to 80m deep before it reaches the coal it wishes to extract. Quarry operations are therefore far smaller in both depth of excavation and lateral extent and have a far smaller potential to cause amenity issues. • Furthermore, sand and gravel operations may for example be designed in closer 		

proximity of receptors to be limited following an initial soil strip to the operation of a single machine at a quarry face to dig/excavate the sand and gravel which is then placed directly onto a field conveyor by this machine and transported to a remote plant site for processing.

MPA (15)

MPA state that a significant percentage of quarry sites across Scotland are permitted within 500m of residential property including all of East Ayrshire’s existing construction aggregates quarries. In this regard if this policy is retained in its present form MPA considers that it will severely prejudice the ability to secure an adequate and steady supply of minerals in accordance with the aims of the plan and the requirements of Scottish Planning Policy.

Scottish Government (17)

Scottish Government state that SPP does not specify the need for a 500 metres buffer zone around communities when considering mineral extraction, other than for opencast coal. Further the Scottish Government state that the need for a 500 metres buffer zone around a community should be undertaken on a case by case basis taking into account local factors.

L Howie (21)

L Howie discusses the mental health issues associated with the loss of historically scenic and peaceful rural area. L Howie states that merit must be given to the psychological impact/legacy that results from industrialisation and lack of restoration/abandonment in areas. These effects cannot be brushed aside or overcome easily.

Hargreaves (24)

Hargreaves state that Policy MIN PPL1 is inconsistent with SPP and that the policy needs to be adjusted to reflect SPP. The circumstances where coal development may be allowed to take place within 500m of settlements should not be a closed list. Hargreaves considers that the policy should provide circumstances “such as” and include extraction of Restoration Coal.

Modifications sought by those submitting representations:

BAA does not request a specific modification but expresses that it does not support a policy that dictates that all minerals sites will have a buffer zone of less than 500 metres; it should be on a case by case basis.

J Mulders requests the following changes:

The following wording be inserted in paragraph 6.1:

“The industry **poor practice** has also had a marked impact on the local landscape of the coalfield area.”

The following wording should be inserted into paragraph 6.3:

“A buffer distance **substantially** greater than this would, however, be more likely to be considered acceptable to the local community **and settlements.**”

The following wording should be inserted into bullet point two of Policy MIN PPL1:

“The duration of the work; **including a finite ending date;**”

The following wording should be inserted into the last paragraph of Policy MIN PPL 1:

“Any development within 500 metres should be restricted to non-engineering works or mitigation measures **with the agreement of residents.**”

The following changes to the aim of Policy MIN PPL1:

“Aim: To provide an **agreed** appropriate buffer between communities and minerals operations to avoid or ~~minimise~~ possible adverse impacts on residential amenity.”

The following wording to be inserted in paragraph two of Policy MIN PPL 2:

“Applicants should submit supporting information with all minerals related applications which demonstrates that they have considered, minimised and if necessary, mitigated **provided that they are supported by residents.**”

Further, J Mulders requests that paragraph 6.3 addresses the issue that the size of the machinery, used on minerals sites, may have caused an increase in noise, vibration and light pollution.

MPA and Breedon request that MIN PPL1 should not impose an arbitrary buffer limit for aggregates.

The Scottish Government proposes that the policy should be amended to remove the 500 metres buffer zone.

L Howie does not request specific modifications however, has expressed that the scale of the buffer zone should be inclusive of the psychological impact of minerals extraction.

Hargreaves request that the policy needs to be adjusted to reflect SPP in relation to the minimum buffer zone for coal sites only and that the circumstances where coal development may be allowed to take place within 500m of settlements should not be a closed list. It should provide circumstances “such as” and include extraction of Restoration Coal (this is covered in Issue 11: Restoration Coal).

Summary of responses (including reasons) by planning authority:

Policy MIN PPL 1 aims to provide an appropriate buffer between communities and minerals operations to avoid or minimise possible adverse impacts on communities. Policy MIN PPL 2 aims to give appropriate weight to impacts on residential amenity in the determination of planning applications.

Requirement for a buffer zone (8, 15, 16)

The Council is of the view that a buffer zone is required for all minerals extraction

operations. The Council has extensive experience of the impacts of various types of minerals extraction upon its communities and comments on this have been plentiful throughout the MLDP process. Whilst the Council is aware that this policy departs from Scottish Planning Policy paragraph 244 in terms of including aggregates, all minerals extraction brings with it to varying degrees dust, noise, vibrations and air pollution. These are issues which have a real impact on peoples' lives and residents in East Ayrshire have been subjected to such impacts over long periods of time. SPP is clear that negative impacts on people should be avoided; and it is also clear that there are various ways of avoiding or mitigating against such impacts in terms of other legislation. However, the Council is of the view that a buffer zone is the most effective means of minimising impacts on communities. Paragraph 242 of SPP, which albeit refers to development management, states that information provided with any application should include an adequate buffer zone between sites and settlements. The need for a buffer zone is therefore established in SPP – albeit on a case by case basis. It is the Council's view that 500m is a minimal distance, and in terms of the scale of East Ayrshire is a small barrier to operators in the selection of a site, but one which will have a positive impact upon communities. Pre-existing consents will not be impacted by this policy.

Additional wording (10)

In relation to J Mulders suggestion for additional wording, the Council does not agree that these should be inserted into the policies or supporting text. The Council considers that the language used within the policies and supporting text is acceptable in terms of tone and transparency. The scale of the buffer zones will be defined on the basis of specific circumstances which are detailed in the Plan. It is up to operators to consult on appropriate buffer distances with communities for non-engineering and mitigation works if deemed necessary.

In relation to J Mulders suggestion of referencing the issue of the size of machinery, the Council does not agree that this is an issue that should be addressed in the Plan as minerals sites contain different typologies which will dictate the type of machinery used on the site in addition to differing operational processes.

Mental Health (21)

The Council notes L Howie's comments; however, the Council considers that this issue is outwith the remit of a Local Development Plan.

Deviance from SPP (17, 24)

In relation to the representations from the Scottish Government and Hargreaves, the Council is of the view that Policy MIN PPL1 is not contrary to SPP in relation to buffer distances.

In depth public consultation at Draft MIR (CD14 and CD15) and MIR (CD12 and CD13) stages has revealed that the long legacy of mineral extraction in East Ayrshire has had and continues to have a significant impact on communities and people. Minerals extraction can bring a range of disturbances to communities such as dust, noise, vibration and air pollution. It is clear from this consultation that the MLDP needs to address these issues to ensure that the quality of life of communities and local residents is protected from the impacts of minerals extraction.

At MIR stage, the Council's preferred option was to determine appropriate buffers on a case by case basis with an anticipated minimum of a 1km buffer for settlements and a maximum of 2km with due regard given to a specific list of the impacts of mineral extraction activity. As detailed in the summary of representations document, the Scottish Government made a representation at MIR stage on the preferred option and stated that the anticipated minimum buffer undermined and added uncertainty to the case by case approach to buffer identification. The Scottish Government also commented that the alternative option (of determining a single buffer size of 500m) did not comply with SPP as it did not provide for case by case determination of buffer zones as per paragraph 244 of SPP.

While preparing the Proposed Plan, the Council reviewed the preferred and alternative proposals of the MIR, in light of the Scottish Government's representation, and ensured that the policy in the Proposed Plan referred to buffer zones being defined on the basis of the specific circumstances of the proposals i.e. on a case by case basis. Furthermore, the Council reduced the minimum buffer distance from 1km in the MIR to 500m in the Proposed Plan. The Council's justification for the inclusion of a 500m buffer zone is detailed below.

While SPP does not explicitly state a minimum buffer distance, the Council is of the opinion that SPP does implicitly state that a minimum 500m is environmentally acceptable. In paragraph 244 of SPP, it is stated that:

"Site boundaries within 500 metres of the edge of settlements will only be environmentally acceptable where local circumstances, such as the removal of dereliction, small-scale prior extraction or the stabilisation of mining legacy, justify a lesser distance. Non-engineering works and mitigation measures within 500 metres may be acceptable."

The Council interprets this paragraph to suggest that the minimum buffer distance for extraction outwith the circumstances in sentences two and three of paragraph 244 is 500m.

The Council considers that the guidance outlined in SPP does not reflect the situation of the local area and as discussed previously, communities have suffered years of disturbance of opencast minerals sites due to the close proximity of a number of sites to settlements. If the local circumstances are the main consideration of applying an appropriate buffer zone, the Council considers that the MLDP is the appropriate mechanism to assess the local issues of applying a buffer distance.

Circumstances for lesser distances (24)

In response to the representation from Hargreaves relating to the list of circumstances where surface coal development may be allowed to take place within 500m of settlements, the Council disagrees that additional circumstances should be added to this list. As the policy clearly states, proposals will be assessed on a case by case basis taking into account the specific circumstances of the proposals including the list suggested in the policy. The Council does not intend for this list to be a closed list and the list gives general suggestions as to the receptors which should be considered when setting a scale for the buffer. The Council are of the opinion that the policy should not and could not provide exhaustive circumstances as the circumstances on each mineral site can vary.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter's conclusions:

Inclusion of a 500 metre buffer zone

1. In relation to 'promoting responsible extraction of resources', Scottish Planning Policy (2014) recognises the important contribution that minerals make to the economy and that "planning should safeguard mineral resources and facilitate their responsible use". Part of that responsibility is ensuring that the impacts of extraction on local communities are minimised.
2. Paragraph 238 of Scottish Planning Policy requires that development plans support the maintenance of a 10-year landbank of permitted reserves for construction aggregates at all times through either identification of areas of search or provide a criteria-approach to assess proposals. In addition, paragraph 239 requires local development plans to identify areas of search for surface coal extraction "with a particular emphasis on protecting local communities from significant cumulative impacts".
3. In relation to development management, Scottish Planning Policy suggest (at paragraph 244) that "consent should only be granted for surface coal extraction proposals which are either environmentally acceptable (or can be made so by planning conditions) or provide local or community benefits which clearly outweigh the likely impacts of extraction. Site boundaries within 500 metres of the edge of settlements will only be environmentally acceptable where local circumstances, such as the removal of dereliction, small-scale prior extraction or the stabilisation of mining legacy, justify a lesser distance. Non-engineering works and mitigation measures within 500 metres may be acceptable".
4. Proposed policy MIN PPL1 (protecting communities) provides support for minerals operations "which provide an adequate separation distance between the development site and nearby communities and sensitive receptors". However, the policy then states a specific buffer zone of a minimum of 500 metres for mineral operations with a few exceptions. Paragraphs 6.1 to 6.3 of the proposed plan provide the reasoned justification for the policy stating that "there are real issues that affect people living in the vicinity of minerals extraction"; that a key role of the proposed plan "is to ensure that the quality of life of residents and communities is not harmed"; and that the plan "aims to ensure that in the first instance negative impacts on people are avoided". I further note from the main issues report, and responses to that report, that impacts arising from noise, vibration, lighting and landscape/visual impact can occur, in some instances, up to a distance of two kilometres from mineral extraction sites.
5. While I consider that there is a solid basis to ensure that the proposed plan safeguards residents from harm there is also an onus on maintaining a steady and reliable supply of minerals in support of sustainable economic growth. There are several conflicting issues from the insertion of a 500 metre buffer zone as explained below.
6. Scottish Planning Policy does not promote that buffer zones be identified in development plans. It is in relation to the assessment of proposals (development management) that a distance of 500 metres is referred - at that point in the planning process there should be detailed submissions with respect to the predicted impact of any

proposed minerals operation allowing an informed decision to be taken with regard to the appropriate separation distance to be imposed. Reference to 500 metres in Scottish Planning Policy is from the edge of settlements not from other receptors as referenced in the proposed policy. And, the distance of 500 metres is referred to in Scottish Planning Policy only in relation to surface coal extraction. Therefore, while I note that the council has expertise in dealing with minerals proposals and has received support from communities to implement a buffer zone, the proposed plan inserts a buffer zone for all mineral operations without the support from Scottish Planning Policy for taking such a position.

7. Supporting paragraphs 6.2 and 6.3 of the proposed plan state that negative impacts are best avoided through “ensuring an appropriate separation distance”; that policy MIN PPL1 “requires an appropriate buffer”; that “the buffer will be determined on a case-by-case basis”; and that Scottish Planning Policy “is quite clear that buffer zones should be determined on a case-by-case basis”. Paragraph 6.3 then also states that as “a baseline, therefore, in accord with Scottish Planning Policy the council expects that a buffer should, as a minimum provide a separation distance of 500 metres between development site and settlement...”. Furthermore, policy MIN PPL1 states that “the scale of the buffer should be defined on the basis of the specific circumstances of the proposals” but then requires a minimum 500 metre buffer zone. Consequently, the proposed plan provides conflicting information stating, on the one hand, that separation distances should be defined on a case-by-case basis justified in terms of specific circumstances but then, on the other hand, requires a minimum separation distance of 500 metres. Taking this stance does not “accord with” Scottish Planning Policy.

8. With respect to surface coal extraction, I note that the proposed plan has used a sieve exercise to determine the areas of search for coal with one input being a 500 metre buffer around settlements. I deal with matters related to the area of search in Issue 10 above. However, the use of a settlement buffer to identify the areas of search is not subject to an unresolved representation. Therefore, the unresolved matter of dispute is whether a buffer zone should be identified in relation to other mineral extraction operations. I am conscious of the response from industry which suggests that there are a significant number of quarries located within 500 metres of settlements in Scotland and that the operations in relation to the extraction of coal are not comparable to that of extracting sand and gravel or hard rock. As noted above, I am also mindful of the need to maintain a landbank of construction aggregates and the clear distinction in Scottish Planning Policy between determination of aggregate proposals and surface coal extraction (where the 500 metre distance is referred).

9. Having considered the above, I find that there is little justification to support the provision of a buffer zone for mineral operations. The plan is contradictory in reference to the “appropriate” separation distance; there is no support from Scottish Planning Policy for a buffer zone; and, operations can occur (where justified) within 500 metres of settlements as evidenced from practice. Therefore, I recommend that reference to the minimum 500 metre buffer zone from policy MIN PPL1 and associated paragraphs should be deleted.

Circumstances for lesser distances

10. Proposed policy MIN PPL1 includes some exceptions to allow development within 500 metres: non-engineering works and mitigation measures. It also allows consideration of proposals within 500 metres where there would be removal of dereliction

and small-scale prior extraction or stabilisation of mining legacy. These exceptions are derived from Scottish Planning Policy but are definitive whereas Scottish Planning Policy includes the words “such as” meaning that the list is not exhaustive and could include other developments where justified. Indeed, within the proposed plan there are potential exemptions which are not listed including restoration coal. Therefore, I find that proposed policy MIN PPL1 should include an allowance for other forms of operation within 500 metres.

Additional wording

11. I find that there is no need to refer to industry practice (poor or otherwise) in paragraph 6.1. It is sufficient for paragraph 6.3 to note that local communities may support greater separation distances without the need to insert “substantially greater”; and the term “community” is adequate without the need to also refer to acceptance of “settlements”. I further agree with the council that there is no need to refer to the size of machinery in paragraph 6.3. The provisions of the plan, particularly proposed policy MIN PPL2 (protecting residential amenity) would be sufficient to assess the impact of operations on residents/communities.

12. The imposition of conditions at the development management stage would ensure that an end period for operations was directed without the need for proposed policy MIN PPL1 to require a “finite date” to be agreed. The aim of policy MIN PPL1 is also adequate in referring to the provision of an appropriate buffer “to avoid or minimise possible adverse impacts” as some impacts may occur which require mitigation. There is also no need for operators to gain the approval of residents for operations within 500 metres of settlements as in practice that could be difficult to achieve – the council acting reasonably as planning authority should ensure that operations do not harm the amenity of residents. This conclusion also applies to the wording change sought by Mr Mulders for proposed policy MIN PPL2 in relation to seeking support of residents for proposals. No changes to the wording of the proposed plan are required on this basis.

Mental health

13. The proposed plan acknowledges that mineral extraction operations have an impact on people and their quality of life. I find that there are sufficient provisions in the proposed plan to enable the assessment of potential impacts on the scenic and rural landscape; safeguard amenity; mitigate impacts; and enable restoration of current and legacy sites (matters raised by Ms Howie). I also note that impacts on human health can be a material consideration in planning decisions. On this basis, I find that there is no need for any modification to the plan to refer specifically to mental health as a consideration.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Deleting the sentence “The buffer zone should be a minimum of 500 metres.” from Policy MIN PPL1: Protecting communities on page 57.

2. Replacing the word “comprising” with “including” in the second paragraph of Policy MIN PPL1: Protecting communities on page 57.

3. Replacing the final sentence of Policy MIN PPL1: Protecting communities on page 57 with:

“Non-engineering works or mitigation measures within 500 metres may be acceptable.”.

4. Adding the following text to the end of the third sentence of paragraph 6.3 on page 56 which currently ends “justify a lesser distance”:

“for surface coal proposals.”.

5. Deleting the fourth sentence of paragraph 6.3 which begins “As a baseline...”.

6. Replacing the fifth sentence of paragraph 6.3 with:

“Greater separation distances would be more likely to be considered acceptable to the local community.”.

Issue 22	Duration of Extraction	
Development plan reference:	Policy MIN PPL3: Duration of extraction period for surface coal sites and Policy MIN PPL4: Duration of extraction period of non-coal minerals extraction and supporting text (paragraphs 6.4 – 6.5).	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
British Aggregates Association (BAA) (8) J Mulders (10) L Howie (21) Hargreaves (24)		
Provision of the development plan to which the issue relates:	The inclusion of and wording of policies on the duration of extraction periods for minerals operations.	
Planning authority's summary of the representation(s):		
<p><u>BAA (8) and Hargreaves (24)</u></p> <p>BAA and Hargreaves do not support Policy MIN PPL 4. BAA state that construction for aggregates can only be found where they are deposited geologically and the extraction period should be based on the area consented. By limiting the operation by time alone, BAA state that this puts a restriction on an operator wanting to apply for an extension when the current area of permitted reserves runs out. This is another case of this Plan (CD11) linking aggregate quarry operations to opencast coal operations.</p> <p>As well as MIN PPL4, Hargreaves request that MIN PPL3 be deleted from the Plan. Hargreaves state that it is unnecessary to apply an arbitrary 5 (or extended 10 year) limit on coal extraction sites. To do so, Hargreaves state would unnecessarily sterilise reserves and could preclude further operations at House of Water and be counterproductive in securing further restoration opportunities. Hargreaves detail that the planning Act provides that every mineral planning permission should have an end date and any proposal to alter the end date should be considered on a case by case basis. Hargreaves note that from the information contained in the MLDP that all extraction sites will have expired over the MLDP, if it is to run for 20 years, and so some applications may be foreseeable.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders states that additional wording should be inserted in paragraph 6.4.</p> <p><u>L Howie (21)</u></p> <p>L Howie states that there should be a clear definition of “practicable” in Policy MIN PPL3.</p>		

Modifications sought by those submitting representations:

BAA and Hargreaves do not support Policy MIN PPL 4 and request its deletion. Further, Hargreaves request the deletion of MIN PPL3.

J Mulders requests the wording “**year after year possibly for decades**” to be inserted at the end of paragraph 6.4. The last sentence of the paragraph would read: “In order to safeguard the long term amenity of communities, this situation should not occur where it will adversely impact upon residential amenity, **year after year possibly for decades.**”

L Howie requests that ‘**practicable**’ be defined in MIN PPL3

Summary of responses (including reasons) by planning authority:

For clarity, the purpose of policies MIN PPL 3 and MIN PPL 4, as summarised in paragraphs 6.4 and 6.5, is to safeguard against communities and residential properties from being impacted by the minerals industry for prolonged periods of time. The need for this policy has been derived from past experience which has seen communities and residents in East Ayrshire being impacted in this way, sometimes in excess of 20 years, by a combination of separate sites. A clear outcome of the MIR (CD12 and CD13) and draft MIR (CD14 and CD15) engagement was a desire from the community to ensure this can no longer occur.

Linking Quarry Operations with Opencast Coal Operations (8)

The Council disagrees with the representation from BAA in relation to the Plan linking quarry operations with opencast coal operations. By including 2 separate policies on the duration of extraction, one for coal and one for non-coal, the Council is clearly demonstrating that it recognises that the extraction of the different materials require different policy approaches. Policy MIN PPL 3 states that the permission for non-coal minerals extraction will be time limited; 5 years with scope for a further 5 year extension. Unlike Policy MIN PPL 3, the Council have not included within MIN PPL4 a specific time limit that should be applied to non-coal extraction development (Policy MIN PPL 4). Nevertheless, it is appropriate for consents issued for non-coal minerals extraction to have a time limit on them, appropriate to the location and nature of the specific operations, and MIN PPL4 reflects this; this is important to manage the ongoing acceptability of any impacts arising from the development, primarily on surrounding communities and the environment. The wording of MIN PPL4 makes clear that extensions to the life of quarries can be supported, as long as the five criteria are met. This is considered an entirely reasonable approach.

Policies MIN PPL3 and 4 (8, 24)

The Council disagrees with Hargreaves representation in relation to the deletion of Policies MIN PPL 3 and both Hargreaves and BAA in relation to the deletion of MIN PPL 4. During the course of the MLDP process, communities have continuously raised the issue of the prolonged disturbance they have endured due to the extensions to existing surface coal sites and the location of sites in close proximity to each other.

The Council is of the view that it is perfectly reasonable to propose a time limit on extensions for extraction. The amenity of communities and residents is a critical consideration in the determination of proposals for minerals extraction. Most extraction

proposals will have some impact on residential amenity, be it noise, dust, vibrations, traffic related or a combination of factors. Whilst the consideration of an application may on balance determine that the impacts are of an acceptable level, the Council does not believe that this means that the impacts will necessarily be acceptable on a permanent or long term basis and that residents should be expected to experience impacts in perpetuity or over an extended period of time. Instead, it is critical that consents are time limited. To ensure a plan-led and transparent approach to this matter, the Council is firmly of the view that it is appropriate for the MLDP to give a clear policy direction on this matter. It should be noted that the policy does include provision for extensions beyond 10 years in very exceptional circumstances; where there will be no ongoing disturbance to the same communities or residents already impacted. In addressing Hargreaves representation regarding House of Water, it may be that exceptional circumstances could be demonstrated, dependent on it being robustly evidenced that no existing impacts would be continued.

Paragraph 6.4 (10)

The Council is of the view that inserting the additional wording is not necessary. Paragraph 6.4 outlines the extent to which settlements and communities have suffered years of disruption due to the extraction activities in East Ayrshire, sometimes in excess of 20 years. In addition the first part of the sentence in question uses the phrase 'long term' which makes clear that the issue is about the ongoing impacts on communities and individual dwellings. The Council therefore considers the additional wording suggested duplicates the contents of the paragraph.

Definition of Practicable (21)

In response to the request from L Howie that '**as far as practicable**' be defined, the Council does not agree that such a definition is necessary. PPL3 confirms that progressive restoration should be carried out before the commencement of works on an extended site. However, it is likely there will be instances where this is not practical, as the extension works may impact on the original site that is to be restored, for example, access may need to be taken over part of the original site, so it would not make sense to restore at that time. The inclusion of '**as far as practicable**' makes allowances for such scenarios. Practicable is considered an appropriate term to use as it ensures that elements of restoration will only not be carried out when there are practical barriers preventing it. In addition, the practical reasons why full restoration may not be possible before works on the extended site commence, will likely be very site specific and it is not therefore feasible to provide a broad, catch-all definition of what constitutes 'as far as practicable'. The Council does not consider that it is necessary to include an explanation of this within the policy.

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter's conclusions:

1. The National Planning Framework 3 (2014) and Scottish Planning Policy (2014) note the valuable contribution that minerals make to the economy. However, there is also an acknowledgement that extraction should minimise impacts on local communities and sensitive receptors. The council identify that East Ayrshire has a legacy of mineral extraction operations and communities with first-hand experience of the impacts which

can arise. There is a balance to be struck in providing a steady and adequate supply of minerals and safeguarding communities.

2. The Town and Country Planning (Scotland) Act 1997 (as amended) includes provisions in relation to mineral working including conditions on the duration of development. While the default expiration date for the winning and working of minerals is stated as 60 years beginning with the date of planning permission, there is also provision for council's to apply a longer or shorter period. There is no distinction within the Act in terms of coal or non-coal minerals.

Policy MIN PPL3

3. In relation to proposed policy MIN PPL3 (duration of extraction period for surface coal sites), the responses from concerned parties do not provide any alternative period for consent. The council has drawn on past experience to determine the periods of an initial 5 years, allowing an additional 5 year extension, and entertaining an extended period beyond 10 years where there are exceptional circumstances. As expressed by the council, there is the opportunity for an applicant/operator to provide exceptional evidence to expand or continue winning/working a site and, therefore, avoid sterilisation of the site. The limitation on consent is necessary to safeguard communities and avoid prolonged exposure. The time periods presented are not arbitrary but based on experience. I find that the policy on restricting the duration for surface coal sites should remain. However, I consider that the requirement when considering an extension beyond 10 years that there is to be "no ongoing disturbance or nuisance to the same local communities or individual houses" for surface coal operations is excessive in being so definite. The text in proposed paragraph 6.5 refers to a demonstration of "no adverse impacts" which I find should be reflected in the policy.

Policy MIN PPL4

4. In relation to proposed policy MIN PPL4 (duration of extraction period for non-coal minerals extraction), I note that minerals can only be extracted where they are located. It is also the case, as noted in Scottish Planning Policy, that some sites are slower to quarry than others based on demand and the difficulty in removing some minerals. However, proposed policy MIN PPL4 does not suggest any specific time periods for operations but simply advises that proposals will be "time limited". The period of limitation, as allowed for in the Act, would be determined by the council likely in discussions with the applicant/operator. The duration of consent is not defined as it is for coal extraction and there is an opportunity in the policy to extend any consent where justified. I find that the policy is satisfactory and should remain.

Paragraph 6.4

5. I agree with the council that it is sufficient for proposed paragraph 6.4 to refer to past impacts which have occurred for "a considerable period of time, sometimes in excess of 20 years" without the need to also suggest that impacts on amenity from future operations could last "years and years possibly for decades".

Definition of 'practicable'

6. The use of the term 'practicable' within in proposed policy MIN PPL3 relates to restoration and extensions of sites. It is reasonable and appropriate for the term to be

used within the policy as it may not be practicable to implement the full restoration of originally worked areas prior the commencement of works on an extended site. This does not mean that restoration would be abandoned in favour of new operations. There is no need for this term to be defined in the proposed plan.

Reporter's recommendations:

Modify the proposed local development plan by:

1. Inserting the word "adverse" between "no" and "ongoing" in the third sentence of Policy MIN PPL3: Duration of extraction period for surface coal sites on page 58.

Issue 23	Tourism	
Development plan reference:	Policy MIN PPL6: Tourism activities on former minerals opportunity sites	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Natural Heritage (SNH) (9) REG Power Management Ltd (20)</p>		
Provision of the development plan to which the issue relates:	The detailed wording of Policy MIN PPL6, which supports tourism activities on former mineral opportunity sites.	
Planning authority's summary of the representation(s):		
<p><u>SNH (9)</u></p> <p>SNH supports the Council's requirement for development proposals associated with tourism to improve and/or create new active travel infrastructure. SNH state that for active travel to be successful, it is important for routes to be direct, legible and well-integrated which should be highlighted in the policy.</p> <p><u>REG (20)</u></p> <p>REG welcomes the approach of paragraph 6.18 that the Council will encourage and support proposals that could help boost the visitor attractions in the area such as sport, leisure and recreational uses. REG state that they consider Policy PPL 6 is too restrictive as it limits this support to "former minerals opportunity sites only." REG states that it would be short sighted and counter-productive if the MLDP limited support for such schemes to the currently identified former minerals opportunity sites only. There will be other opportunity sites that come forward through the lifetime of the MLDP (CD11) and Policy MIN PPL6 should be modified to accommodate potentially acceptable schemes on these sites.</p>		
Modifications sought by those submitting representations:		
<p>SNH have requested the insertion of the following text to part (iii): "The proposal will improve/create new path networks and/or cycle networks leading to the facility which are direct, clearly legible and integrated with the wider active travel network."</p> <p>SNH had requested that the wording "create new" was inserted to the wording of criterion (iii) of the Policy. This wording was already in the Policy and SNH were requesting a duplication of similar wording.</p> <p>In response to the representation from SNH, the Council sent an email (1st November 2018) (RD18) to SNH requesting further clarification of their representation. A response was received from SNH (1st November 2018) (RD18), outlining that the duplication of similar wording was an error and that the requested modification should read:</p>		

“The proposal will improve/create new path networks and/or cycle networks leading to the facility **which are direct, clearly legible and integrated with the wider active travel network.**”

REG request that Policy MIN PPL 6 should be modified to accommodate potentially acceptable alternative schemes on other opportunity sites (sites not already identified through the Plan as “former minerals opportunity sites”).

Summary of responses (including reasons) by planning authority:

Wording of Criterion (9)

The Council is of the view that the wording of criterion (iii) is clear and sufficient in supporting the creation of path and cycle networks associated with tourism development. In addition, all development proposals will be required to comply with Policy MIN SS1: Minerals Overarching Policy which includes a variety of criteria requiring a proposal to link with surrounding uses such as linking with other access projects such as through the Local Development Plan 2017 Placemaking maps, Coalfield Communities Landscape Partnership projects and linking with green infrastructure.

Other Opportunity Sites (20)

The suggestion to expand the policy to include other opportunity sites is not considered by the Council to be appropriate in the context of the MLDP. Minerals sites which are not identified in the Plan as former minerals opportunity Sites - as identified in Map 2 - but which cease extraction activity during the lifetime of the Plan, will constitute sites benefitting from restoration and after care policies as espoused in this Plan upon adoption, and until then in the 2003 Opencast Coal Subject Plan (CD20). As such, once restored to a satisfactory condition, these sites will form part of the rural area and any development proposals will be assessed against the EALDP2017 (CD22). The purpose of PPL6 in the MLDP is to, alongside MIN SS4, provide additional support for the restoration and re-use of sites that were left in a poor condition following the liquidation of the coal companies in 2013. Lessons learnt since that time, particularly in terms of compliance monitoring and financial guarantees, should ensure that a similar situation will not arise again. It is therefore not necessary for the Minerals Plan to provide policy provision for new uses on sites that are successfully restored as per their appropriate restoration plans and these can adequately be dealt with through the tourism policies, and / or the energy infrastructure policies, or other policies as appropriate, of the EALDP (2017).

The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

1. The support for proposed policy MIN PPL6 (tourism activities on former mineral opportunity sites) and paragraph 6.18 are noted but require no further action with respect to the examination.

Policy MIN PPL6

2. The qualities of successful places set out in Scottish Planning Policy (2014) refer to proposals which are easy to move around and beyond. In particular, paragraph 46 of

Scottish Planning Policy states that a development that considers place and needs of people before the movement of vehicles “would include paths and routes which connect places directly and which are well-connected with the wider environment beyond the site boundary”. Following this advice, I find that it would be appropriate for criterion (iii) of proposed policy MIN PPL6 to be modified using the text suggested by Scottish Natural Heritage.

Paragraph 6.18 and terms of policy MIN PPL6

3. Proposals on former mineral opportunity sites would be dealt with through a range of policies including MIN SS1 (minerals overarching policy); MIN SS4 (former mineral opportunity sites and placemaking); and MIN PPL6. I have made recommendations with respect to acceptable uses on former mineral opportunity sites through Issues 6 and 9 above. With respect to other opportunity sites, I agree with the council that the provisions of the adopted East Ayrshire Local Development Plan (2017) would apply. In particular, policy TOUR1 (tourism development) of the adopted plan supports and encourages appropriate new and improved tourism facilities throughout the area; and policy TOUR3 (rural sporting, leisure and recreational activities) allows for a range of tourism uses in the countryside. The provisions of proposed policy MIN PPL6 (and the supported reasoning at paragraph 6.18) are related to former mineral opportunity sites. I find that there is sufficient provision in the development plan to deal with proposals on other opportunity sites without the need to modify the proposed minerals plan.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Replacing criterion (iii) of Policy MIN PPL6: Tourism activities on former mineral opportunity sites on page 62 with:

“The proposal will improve/create new path networks and/or cycle networks leading to the facility which are direct, clearly legible and integrated with the wider active travel network.”.

Issue 24	Community benefits	
Development plan reference:	Paragraphs 6.6 – 6.15	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Sportscotland (1) British Aggregates Association (BAA) (8) J Mulders (10) Mineral Products Association (MPA) (15) Breedon Northern Limited (Breedon) (16) Scottish Government (17)</p>		
Provision of the development plan to which the issue relates:	The guidance contained in the Plan relative to the Councils preferred approach to securing community benefits from minerals operations.	
Planning authority's summary of the representation(s):		
<p><u>Sportscotland (1)</u></p> <p>In relation to paragraph 6.12 and the types of projects that developer contribution monies will be available for, Sportscotland supports the inclusion of community-led sports and leisure, but would like this to be widened out to more than just cycle tracks and path networks, to allow for a broader range of sporting uses.</p> <p><u>BAA (8)</u></p> <p>BAA strongly objects to quarry operators being persuaded to support some form of community fund, with the fear that if they don't planning consent will be refused. Whilst at 6.6 the Plan (CD11) talks about 'voluntary' contributions, it also talks about 'encouraging' operators to make a contribution. The aggregates industry pays £2 per tonne in aggregate levy to HMRC (not applicable to the coal industry) and some also make a voluntary contribution to support local communities. Local taxes and rates, currently payable, should go towards the projects listed in 6.12, not an additional contribution.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders makes a series of comments on the community benefits section of the Plan; (i) he questions whether the proposed new approach to the management of community benefits should be consulted on with the affected communities; (ii) asserts that that rate of community benefit suggested in paragraph 6.10 should be applicable to all minerals taken off-site, e.g. to include fireclay etc.; (iii) suggests additional wording be added to 6.12 (v) to make clear that service provision should not replace anything that is the responsibility of the local authority and (iv) community benefits should be included within a legal agreement with the Council.</p>		

MPA (15) and Breedon (16)

MPA and Breedon raise concerns that the community benefits section of the Plan is contradictory; the Plan states that community benefits are voluntary and that the Council cant require they be made, but at the same time states that they are ‘recommended’ and prescribes a level at which they should be paid. This effectively implies they are compulsory. MPA and Breedon do not support the proposal for contributions to a new Minerals Fund if it is compulsory.

MPA and Breedon further highlight that the proposed use of community benefits largely mirrors the original intention for some of the funds from the aggregates levy, which all aggregates operators pay into. Whilst aggregate operators may sometimes make additional local arrangements, this should not be applied as a matter of policy. Should an additional cost to operators be added by the MLDP by way of the community benefits payment, the cost will likely be passed onto customers, most of whom are local to Ayrshire. Discussion is currently underway with Scottish Government to ring fence monies raised through the aggregates levy to be for communities in the vicinity of quarries.

Scottish Government (17)

The Scottish Government are of the view that the Securing Community benefits section of the Plan needs amended to make clear that community benefits are voluntary. As currently worded paragraphs 6.8 – 6.11 make clear that developers/operators are expected to make a financial contribution to the Minerals Fund, taking no account of other contributions (non-financial) the developer may claim stem from the proposal.

Modifications sought by those submitting representations:

Sportscotland request that criteria (vi) of 6.12 be modified by either deleting ‘cycle tracks and path networks’. Alternatively adding ‘e.g.’ before cycle tracks and path networks.

BAA does not set out the specific change it would like made to the Plan. The key element of the objection is that aggregates operators should not be required or encouraged to make a community contribution.

J Mulders seeks that:

- (i) affected communities should be consulted on changes to the community benefits approach;
- (ii) 6.10 be amended to make clear that the contribution for surface coal extraction should also include a contribution for any other materials being taken off site, this should include a community benefit relating associated with the extraction of fireclay;
- (iii) the wording of 6.12 (v) be amended to read ‘Community led service provision.

Providing it does not replace services that are the responsibility of the local authority.’

MPA requests that the Community benefits section be re-evaluated, to remove duplication of the Aggregates levy.

Breedon requests that paragraphs 6.6 – 6.15 be revised to make clear that any contribution to the Minerals Fund is voluntary, and not mandatory.

Scottish Government requests a reference be inserted into the 'Securing Community Benefits' section to the effect that contributions are voluntary rather than a mandatory commitment.

Summary of responses (including reasons) by planning authority:

Range of Sport and Leisure Projects (1)

The Council agrees that there could be opportunities for a greater range of sport and leisure projects. The Council would therefore have no objection to this minor amendment, subject to the approval by the Reporter, which does not change the overall intention or direction of the policy.

Engagement (10)

In response to point (i) from J Mulders, the Council can confirm that the MLDP process has provided a platform for engagement with local communities. In particular, the engagement on the MIR sought and received a number of community views on proposed amendments to the preferred system of securing community benefits (CD12 and CD13). Non-statutory guidance on community benefits, as described in paragraph 6.13 will also be subject to appropriate consultation and engagement. The Council is therefore of the view that sufficient consultation has taken place and will take place on this matter.

Applicability (10)

In terms of J Mulders point (ii) the Council would suggest operators refer to paragraph 6.11 which refers to non-coal extraction. The contribution rate for any non-coal materials leaving the site, should be considered on case by case basis, taking account of the particular site specific circumstances of the development. This ensures a consistent and fair approach, which will be guided by the actual material being extracted and its associated method of extraction and level of disturbance caused.

Council Services (10)

The Council agrees, in principle, with the third point raised by J Mulders; anything funded through the Minerals Fund must not replace services that are the responsibility of the Council. The Council does not, however, agree this point must be stated in the MLDP and will be detailed clearly in the non-statutory planning guidance that will be prepared, to provide much more detailed guidance on this matter. This is a similar approach to how the Renewable Energy Fund has been treated in the EALDP 2017 (CD22); the associated planning guidance makes clear that 'The REF will not be used for projects that are the statutory responsibility of the Council' (CD24). This is not stated in the EALDP 2017 itself. The Council therefore suggests there is no need to amend the MLDP and instead, this matter should be clearly stated within the forthcoming planning guidance.

In terms of community benefits being included within a legal agreement, the Council is of the view that this does not need to be stated within the Plan and, in line with procedures and LDP provision for the Renewable Energy Fund, such detail on the delivery and securing of benefits should be included within Planning Guidance.

Securing Community Benefits – Voluntary Contribution (8, 15, 16, 17)

MPA, Breedon, BAA and the Scottish Government all make the request that the ‘Securing Community Benefits’ section be revised to make clear that any contribution is voluntary and is not a mandatory requirements. The Council agrees that any contribution will be voluntary. The Council disagrees, however, that the Plan needs amended to clarify this.

At the outset, the first paragraph in this section (6.6) states very clearly that ‘Community benefits are a voluntary contribution’ and that ‘the Council cannot require developers to make a community contribution, but it encourages them to do so’. To add, as has been suggested, a further reference to say that contributions are voluntary and not mandatory, would in the Council’s view add unnecessary repetition to the Plan. Furthermore, paragraph 6.15 makes clear that the Council has no problem with operators taking forward a different approach, which could include non-financial benefits.

The Council acknowledges the points made by Breedon and MPA with regards to potential duplication between a community benefits contribution and the aggregates levy. In part in recognition of this, the Plan does not suggest a particular rate in terms of an aggregates contribution and instead suggests that this be considered on a site by site basis. This is not dissimilar to what happens at present, with certain quarries making local contributions at a rate set locally. The Council has checked with MPA the current status of the discussions in respect of the aggregates levy with the Scottish Government (RD19).

The Council is firmly of the view that it is entirely valid that the MLDP contain the ‘Securing Community benefits’ section and that this be applicable to all minerals operators. As the contribution is voluntary, the Council is merely setting out a suggested framework for how it believes best value can be achieved for communities. It is pointed out that the approach to the Minerals Fund and developer contributions is intentionally similar to that embedded in the EALDP 2017 in relation to the Renewable Energy Fund (REF). The EALDP 2017, sets out the Councils preferred approach to community benefits, which is to contribute to the Council managed REF. But again, this is voluntary and the EALDP 2017, makes clear that developers/operators can take forward alternative approaches. In practice, the REF system is working successfully; whilst all monies are for communities, it allows the Council input into ensuring the funding results in valuable and beneficial outcomes for communities. The Council’s intention is that a similar mechanism be put in place for minerals operators, which wish to use the Council framework.

With the exception of the suggested minor amendment set out by Sportscotland, to which the Council would have no objection, the Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Range of sport and leisure projects

1. I agree with Sportscotland that any money available could be used for a range of sport and leisure projects other than simply cycle tracks and path networks. A small change to the text of criterion (vi) in proposed paragraph 6.12 to clarify that cycle tracks and paths are examples would allow spending on a range of suitable projects.

Engagement

2. I note from the council’s response that communities have been invited to, and did, engage on the provisions of the proposed plan through the main issues report. I also note that a consultation on future non-statutory guidance on community benefits will also be forthcoming. I consider that sufficient opportunities have been, and will be, provided to allow active community involvement in any changes to community benefits without the need to modify the proposed plan.

Applicability

3. As explained in my conclusions below, the contributions from operators to communities are non-mandatory and voluntary. It is for an operator to determine on a case-by-case basis whether to contribute to the community when exporting material, including fireclay (as mentioned by Mr Mulders), from a site. The proposed plan is clear that contributions to the community or minerals fund could include both coal and non-coal extraction. No change to the plan is required to aid clarification of this matter.

Council services

4. The council has statutory responsibilities to provide certain services and any contributions to the community and/or minerals fund should not be used as a substitute for these services. The council has clarified that this point is currently stated in non-statutory guidance on a renewable energy fund and would also be clarified in guidance to be prepared in relation to community benefits arising from mineral operations. On that basis, I find that there is no need for the proposed plan to comment on this matter.

Securing community benefits – voluntary contributions

5. I understand that there is a requirement for operators to make mandatory contributions through the aggregates levy for the extraction of rock, sand and gravel. This, as mentioned in industry responses, is set at £2 per tonne. There is no similar requirement for the extraction of other minerals. I also understand from the responses that operators are subject to taxation and local rates.

6. While Scottish Planning Policy (2014) refers to community benefits with respect to surface coal extraction this, I consider, relates to non-financial benefits arising from a proposal. There is no mention of financial contributions related to coal or non-coal operations as a “benefit”. There is, as highlighted by the council, reference in Scottish Planning Policy to securing community benefit from wind energy proposals where these are acceptable in land use terms, and consent is being granted, with a national standard of £5,000 per megawatt per year normally negotiated. However, no party has referenced any national standard or guidance in relation to financial community benefits from mineral operations.

7. There is no policy in relation to community benefits in the proposed plan. However, proposed paragraphs 6.6 to 6.15 provide a comprehensive overview of the council’s expectations regarding securing community benefits. While the paragraphs advise that “community benefits are voluntary” and “are completely separate from the planning process” they also state that the council “encourages them” and that “it is recommended that all minerals proposals that are acceptable and approved by the council should be accompanied by a contribution to the council’s new Minerals Fund”. The paragraphs also

confirm that the amount paid to the minerals fund should be matched by the same amount given to communities. And, the text suggests rates for the contributions - a minimum of 30 pence per tonne for coal and an annual contribution for non-coal.

8. The development plan should provide certainty. However, in this case, I agree with respondents and find that paragraphs 6.6 to 6.15 can be interpreted as including contradictory statements in terms of whether community benefit contributions are required. I consider it reasonable for the proposed plan to encourage voluntary contributions but it should be clear that these are non-mandatory and carry no weight in decision-making. Concerned parties have not provided specific modifications to the paragraphs. An option would be to defer much of the detailed information to the non-statutory guidance but I consider that the most efficient response would be to recommend some minor changes to the text to emphasise that contributions are voluntary.

Reporter's recommendations:

Modify the proposed local development plan by:

1. Replacing criterion (vi) in paragraph 6.12 on page 60 with:

“(vi) Community led sports and leisure: For example, cycle tracks and path networks.”.

2. Inserting the text “, non-mandatory,” between “voluntary” and “contribution” in the second last sentence of paragraph 6.6 on page 59.

3. Deleting the final sentence of paragraph 6.6 on page 59.

4. Replacing the first sentence of paragraph 6.8 on page 59 with:

“Minerals proposals that are accepted and approved by the Council could be accompanied by a contribution to the Council’s new Minerals Fund.”.

5. Inserting the following text at the beginning of the third sentence of paragraph 6.8 on page 59:

“If voluntary contributions are offered, the amount paid...”.

6. Inserting the word “voluntary” before “contribution” in paragraph 6.9 on page 59.

7. Replacing the text “expects all applicants to” with “suggests applicants” in the first sentence of paragraph 6.11 on page 59.

8. Replacing the word “should” with “could” in the third sentence of paragraph 6.11 on page 59.

9. Replacing the text “However, should the developer” with “Although voluntary, developers may” in the second sentence of paragraph 6.15 on page 60.

10. Deleting “,this may be an acceptable alternative approach” from the last sentence in paragraph 6.15 on page 60.

Issue 25	Transport policies and supporting text	
Development plan reference:	Policies MIN T2 and MIN T4, Paragraphs 7.6, 7.12, 7.14	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>J Mulders (10) Transport Scotland (14) Network Rail (22)</p>		
Provision of the development plan to which the issue relates:	The Transportation chapter of the Plan, and specifically policies on the Cumulative Impacts of Minerals Related Traffic and Rights of Way and Core Paths well as supporting text.	
Planning authority's summary of the representation(s):		
<p><u>J Mulders (10)</u></p> <p>J Mulders makes the following comments on the Plan (CD11):</p> <ul style="list-style-type: none"> the wording of policy MIN T2: Cumulative Impacts of Minerals Related Traffic should be augmented to include the transport of Timber being required to be included in a cumulative assessment. that a date for renewal of the Core Path Plan should be added to the text of paragraph 7.12 the text of paragraph 7.14 should be amended by adding the word 'replace' to read – 'As part of the spatial strategy of the Minerals Local Development Plan, the Coalfield Communities Landscape Partnership will seek to improve, 'replace' existing and create new path networks throughout the area to reconnect people with their landscape. that the wording of Policy MIN T4: Rights of Way and Core Paths be amended to read - AIM: To ensure there are no adverse impacts or closures of Rights of Way or Core Paths for more than 3 months in total. <p>J Mulders also questions whether, if opencast coal operations have destroyed rights of way or core paths, should they not be replaced in one form or another.</p> <p><u>Transport Scotland (14)</u></p> <p>Transport Scotland request a correction be made, at paragraph 7.6, to the definition of acronym LGV from Large Goods Vehicle to Light Goods Vehicle.</p> <p><u>Network Rail (22)</u></p> <p>Network Rail suggest that the Council may wish to revise the wording of Chapter 7 to reflect the most recent Network Rail business plan documents, specifically the 'Scotland Route Study: Long Term Planning Process' (2016) (RD16) and 'Freight Network Study: Long Term Planning Process' (2017) (RD17).</p>		

Modifications sought by those submitting representations:

Transport Scotland request text change at 7.6 from Large Goods Vehicle to **Light Goods Vehicle**.

J Mulders suggests:

- Policy MIN T2: modify text to include timber haulage as requiring cumulative assessment,
- paragraph 7.12: a date for renewal of the Core Path Plan be added,
- paragraph 7.14: text added to say - '**replace existing**',
- Policy MIN T4: text added to say - **for more than 3 months in total**,

Network Rail does not detail any specific modifications, but suggests revision to wording of Chapter 7 to reflect the most recent Network Rail business plan documents.

Summary of responses (including reasons) by planning authority:

Timber Haulage (10)

With regards to J Mulders first point on including timber haulage in policy MIN T2 as being a consideration to be included in future cumulative assessment: The Ayrshire Timber Transport Group (ATTG) including the Forestry Commission Scotland and Ayrshire local authorities produced an Ayrshire Agreed Routes Map for Timber Transport in 2003 (CD30). The purpose of the Agreed Routes Map is to direct timber traffic onto appropriate routes in order to avoid weak and inappropriate public roads, such as those passing through local communities, to mitigate the impacts associated with timber transportation. A mechanism for amending the Agreed Routes Map has been developed which allows it to remain up to date and responsive. If an application for a proposal within East Ayrshire was to result in timber transport movements then the Transport Assessment relating to that application would assess any likely impacts and any movements would be in accord with the Agreed Routes Map. As a separate, established mechanism is in place for managing timber transport, it is not considered appropriate or necessary for the Plan to include this. No change to the text is therefore considered necessary.

Core Path Plan (10)

Regarding paragraph 7.12, periodic review of the Core Path Plan is required under the Land Reform (Scotland) Act 2016 (CD02). It is envisaged that the East Ayrshire Core Path Plan (CD28) will be reviewed after 5 years. It is not possible, at this stage to identify a specific date. The addition of new routes requires review of the Core Path Plan and has resource implications. The Council is not in a position, at this stage, to identify a specific date for Plan adoption, as suggested by J Mulders.

Paragraph 7.14 (10)

Regarding the suggested addition to paragraph 7.14, it is considered by the Council that the addition of 'replace' is not appropriate. The intention should not be to 'replace' existing paths; instead, as the current wording makes clear, the MLDP and the Coalfield Communities LP aim to improve the existing paths and create new paths. 'Replacement' of paths should not be encouraged although reinstating lost paths is entirely appropriate.

If on occasion, replacement of paths is the best option or if paths that have been destroyed need to be replaced, this is covered under the potential to create new paths.

MIN T4 (10)

Regarding Policy MIN T4, for practical operational reasons, it may not be possible to time-limit closures to 3 months in duration. This is particularly on the basis of the often large scale and complex typology of extraction or restoration sites, which may mean in any practice, any re-routing or closures may need to be in place for longer than 3 months.

Light Goods Vehicle (14)

The Council consider the requested change from Transport Scotland, to reflect the correct meaning of acronym LGV as being Light Goods Vehicle, to be a purely factual correction and is therefore content for the Reporter to make this amendment.

Chapter 7, Paragraphs 7.3 to 7.10 and Policy MIN T1 (20)

With regards to Network Rail comments, the policy MIN T1 encourages transportation of minerals by rail but recognises that this will not always be possible. Paragraphs 7.3 to 7.10 of the MLDP provide a background to minerals freight traffic in Ayrshire and highlight capacity constraints and pinch-points in East Ayrshire. The Council is of a view that the current wording encapsulates, in policy terms, the detail contained within the Network Rail Business Plan. The fact that Network Rail does not have funding plans to upgrade the network in East Ayrshire is not a matter that the MLDP needs to make reference to.

Aside from the factual correction in relation to Light Goods Vehicles, the Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.

Reporter’s conclusions:

Timber haulage

1. Proposed policy MIN T1 (routing of the transport of minerals) requires a traffic and transport assessment to accompany applications for minerals operations. The assessment is required to “take into consideration any cumulative impacts on the transportation network as a whole arising from the proposal”. While Mr Mulders suggests modification to proposed policy MIN T2 (cumulative impacts of minerals related traffic) to refer to timber haulage, I find that the provisions of proposed policy MIN T1 would ensure that traffic movements associated with timber were addressed when assessing minerals proposals. The provisions of policy MIN T2 relate specifically to cumulative impacts from minerals and wind energy developments. No change to the proposed plan is required to make specific reference to timber haulage.

Core paths plan

2. The Land Reform (Scotland) Act 2003 (as amended in 2016) requires a local authority to review a core paths plan if Scottish Ministers direct them to do so. A local authority may also “review a plan if they consider it appropriate to do so for the purpose of ensuring that the core paths plan continues to give the public reasonable access throughout their area”. There is, therefore, no prescribed time-period for the review of a core paths plan in

statute. However, the proposed minerals plan, at paragraph 7.12, suggests a review of the core paths plan every 5-7 years. I find that identification of this period is reasonable without the need to provide an exact review date in the proposed plan.

Paragraph 7.14

3. I recognise that the council wish to improve, and create new, path networks as expressed in paragraph 7.14. However, the proposed paragraph identifies that surface coal operations have “led to the loss of some rights of way and other path connections”. Therefore, I agree with Mr Mulders that it would be reasonable to refer to the reinstatement (repair) of these routes. A small change to the text of paragraph 7.14 is recommended.

Policy MIN T4

4. As identified by the council, while it would be preferable to minimise the period of time that rights of way and core paths were affected by minerals development it would not likely be practicable or reasonable to restrict any adverse impact/closure to a period of three months (as suggested by Mr Mulders). Proposed policy MIN T4 (rights of way and core paths) allows for appropriate diversions to routes to be implemented should an impact on a right or way/core path be unavoidable. I consider this provision sufficient without any need to provide any limitation on the period of potential impact in the proposed plan.

Light goods vehicle

5. As agreed by the council, the term “large goods vehicle” should, as identified by Transport Scotland, be modified to correctly refer to “light goods vehicle”.

Chapter 7 content

6. Network Rail’s response notes that it has no aspirations in the control period 2019 to 2024, or in the long-term, for freight enhancements in East Ayrshire. The proposed plan refers to the current freight capacity and indicates, at paragraph 7.10, that the council will work with partners (Ayrshire Roads Alliance, North Ayrshire Council and Strathclyde Partnership for Transport) to address capacity constraints on the transport network which inhibit freight movement. There is no specific mention of freight enhancements on the rail network within the proposed plan. I find that the provisions of the plan in relation to freight are satisfactory without the need to refer to the lack of planned enhancement, at this time, from Network Rail.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Amending the second sentence of paragraph 7.14 on page 67 to read “...will seek to improve existing, reinstate and create new path networks...”.
2. Changing the word “Large” to “Light” in paragraph 7.6 on page 65.

Issue 26	Ensuring an adequate supply of minerals	
Development plan reference:	Policy MIN SUP1 and supporting text (paragraph 8.1)	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
Mineral Products Association (MPA) (15) Breedon Northern Limited (Breedon) (16)		
Provision of the development plan to which the issue relates:	The wording of Policy MIN SUP1 which seeks to safeguard all workable mineral resources of economic or conservation value.	
Planning authority's summary of the representation(s):		
<p><u>MPA (15) and Breedon (16)</u></p> <p>MPA and Breedon state that sterilisation of mineral reserves from 'other development' should include both direct sterilisation such as construction building over minerals and indirect sterilisation such as stand-off buffers which a built development would introduce.</p>		
Modifications sought by those submitting representations:		
MPA and Breedon do not explicitly suggest any modifications to policy MIN SUP1, however do state that sterilisation of mineral reserves should include both direct sterilisation and indirect sterilisation.		
Summary of responses (including reasons) by planning authority:		
<p><u>MPA (15) and Breedon (16)</u></p> <p>The Council understands that the representations seek to ensure that sterilisation should include (i) where construction takes place over minerals therefore preventing access to the minerals; and (ii) where such construction means minerals under adjacent or surrounding land cannot be accessed because of necessary buffers around the construction, where it would not be feasible or appropriate to undertake minerals extraction. For example, it would not be appropriate for minerals extraction to take place directly adjacent to a new housing development.</p> <p>The Council is of the view that no changes are necessary to policy MIN SUP1 of the Plan (CD11) as it conforms to SPP (CD06) which directs Local Development Plans to safeguard all workable mineral resources which are of economic or conservation value and ensure that these are not sterilised by other development. The current wording of the policy is sufficiently broad that it could be applied to both direct and non-direct sterilisation as described by the respondent; the wording of the policy that workable minerals should not be 'permanently sterilised by other development' could be interpreted to mean both the land that is used for the construction itself and any surrounding land where minerals extraction would no longer be possible because of the construction.</p>		

<p>The Council is of the view that no changes to the Minerals Local Development Plan are required with regard to this issue.</p>
<p>Reporter's conclusions:</p>
<p>1. I agree with the council that the wording of proposed policy MIN SUP1 (sterilisation of workable minerals resources) would safeguard workable mineral resources, which are of economic or conservation value, from development proposed either directly on, or in the vicinity of, the resource. There is no need for the policy to refer to any stand-off buffers.</p>
<p>Reporter's recommendations:</p>
<p>No modifications.</p>

Issue 27	Borrow Pits	
Development plan reference:	Policy MIN SUP2: Borrow Pits and supporting text (paragraphs 8.2 to 8.4)	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Environmental Protection Agency (SEPA) (7) British Aggregates Association (BAA) (8) Scottish Natural Heritage (SNH) (9) J Mulders (10)</p>		
Provision of the development plan to which the issue relates:	The content and wording of Policy MIN SUP2: Borrow Pits and supporting paragraphs.	
Planning authority's summary of the representation(s):		
<p><u>SEPA (7)</u></p> <p>SEPA suggests consideration of impacts to the surrounding water environment of large borrow pits should be considered akin to that of quarrying.</p> <p><u>BAA (8)</u></p> <p>BAA states that borrow pits should only be allowed if they are located within the footprint of consented development otherwise they will require mineral planning consent in the normal manner. They are also subject to the aggregates levy if they are located on land outside of the consented development footprint.</p> <p><u>SNH (9)</u></p> <p>SNH suggest that the developer should provide justification for the scale of the borrow pit including details for successful restoration. They also consider that the potential impacts of borrow pits on landscape should be taken into account.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders states that material from borrow pits should not cross site boundaries and boundaries should be devised accordingly if necessary. In relation to paragraph 8.4 J Mulders comments that should there be insufficient oversight to ensure compliance the local planning authority should be held liable. J Mulders also suggests additions to SUP2 to ensure that borrow pits are finite and working hours are taken into consideration.</p>		
Modifications sought by those submitting representations:		
<p>SEPA has made no specific modifications but request that the water environment is considered.</p> <p>BAA does not suggest any modifications.</p>		

SNH suggest the following changes. Firstly, it is suggested the text of MIN SUP 2 be amended to include ***“The scale and number of borrow pits will need to be justified in relation to the site including details for successful restoration.”*** And secondly, inserted as a bullet point after (viii), ***“the impact upon landscape”***.

J Mulders does not suggest specific modifications in relation to paragraphs 8.2 and 8.4 but seems to suggest the deletion of ‘or adjacent to a site’ from paragraph 8.2. In terms of policy MIN SUP 2, the respondent suggests that bullet (ii) is amended to ‘they are **finite** time-limited’ and bullet point (v) is altered to ‘the duration of the excavation **and working hours.**’

Summary of responses (including reasons) by planning authority:

Impacts to Water Environment (7)

In respect of SEPA’s comment with regard to the water environment the Council considers that this is addressed through Chapter 5 of the MLDP (CD11) (wider water issues are dealt with in issue 20).

Borrow Pits and Site Boundaries (8) (10)

BAA and J Mulders state that borrow pits should be within a site boundary. Paragraph 8.2, in describing what a borrow pit is, explains that borrow pits are commonly within or adjacent to site boundaries. However, policy MIN SUP2 makes it clear that the MLDP policy is that within East Ayrshire all borrow pits will be required to be within the planning application boundary of the project the mineral is to be used for. It is therefore considered that the Plan is sufficiently clear in this respect and that no further changes are necessary.

Scale of Borrow Pits and Impacts on Landscape (9)

In terms of SNH’s proposed amendments to MIN SUP2, it is the Council’s view that bullet points 1-4 address these points in a more specific manner than the suggested text and that therefore no alteration is required. In respect of (viii), the Council considers that the impacts upon landscape are adequately covered by MIN ENV11: Protecting the Landscape and MIN ENV12: Assessing Landscape and Visual Impacts. The additional bullet point would constitute unnecessary repetition.

Wording (10)

In respect of J Mulders amendments to the policy, the Council does not find that the word ‘finite’ would add anything to ‘time-limited’ which essentially means the same thing. In respect of the clause on working hours, this can be dealt with through Environmental Health legislation or development management and is not a matter for the local development plan.

Reporter’s conclusions:

Impacts on water environment

1. Proposed policy MIN SUP2 (borrow pits) requires proposals for borrow pits to be assessed against the wider raft of plan policies including MIN ENV5 (mitigating flood risk);

MIN ENV6 (the protection of water resources, water bodies and ground water); and MIN ENV7 (private water supply). In addition, policy MIN SUP2 requires attention to, under criterion (vii), of “environmental considerations such as impacts on the water environment”. I find that there is sufficient provision to ensure that the water environment is considered without the need to modify policy MIN SUP2.

Borrow pits and site boundaries

2. While I note the council’s suggestion that paragraph 8.2 refers to the current situation regarding borrow pits – that they may be located on or adjacent to sites – it is not clear from the text that this isn’t meant to relate to new proposals. Proposed policy MIN SUP2 requires that borrow pits must be within the planning application boundary. Therefore, to ensure that there is no confusion reference to adjacent land should be removed.

Scale of borrow pits and impacts on landscape

3. The requirements of proposed policy MIN SUP2 follow those, and provide more stipulations, than those set out in paragraph 243 of Scottish Planning Policy (2014). I agree with the council that the proposed policy would provide satisfactory provisions to ensure that the scale and extent of any proposed borrow pits was adequately addressed and considered. There is no need to add the text suggested by Scottish Natural Heritage regarding number and scale of borrow pits.

4. In addition, the proposed policy refers to proposals for borrow pits being assessed against the other provisions of the proposed plan which would include policy MIN ENV11 (protecting the landscape) and MIN ENV12 (assessing landscape and visual impact). On that basis, I agree with the council and find that there is no need for proposed policy MIN SUP2 to refer to impact on the landscape.

Wording

5. I further agree with the council that it is sufficient for proposed policy MIN SUP2 to require that proposals for borrow pits are “time-limited” without the need to also require proposals to be “finite”. Working hours may be controlled through environmental health legislation but can also, reasonably, be addressed through the imposition of conditions through the development management process if justified. Consequently, I find that there is no need to refer to working hours specifically in policy MIN SUP2.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Replacing the first sentence of paragraph 8.2 on page 70 with:

“A borrow pit is an area where minerals (such as sand, gravel and rock) are extracted within a site.”.

Issue 28	Compliance monitoring	
Development plan reference:	Paragraphs 9.1 – 9.4	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>British Aggregates Association (BAA) (8) J Mulders (10) Mineral Products Association (MPA) (15) Breedon Northern Limited (Breedon) (16) Scottish Government (17) L Howie (21)</p>		
Provision of the development plan to which the issue relates:	The content and wording of the compliance monitoring section of the Plan.	
Planning authority's summary of the representation(s):		
<p><u>BAA (8)</u></p> <p>BAA suggests that compliance monitoring should not require a legal agreement, just planning conditions.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders suggests that additional wording be added to make sure that compliance monitoring visits are carried out by suitably qualified and independent individuals.</p> <p>It is also suggested by J Mulders that compliance reports should be made available to the public within 3 months of their regular defined due date.</p> <p>J Mulders states that it is imperative that enforcement action is not kept as a last resort. Enforcement action should swiftly follow non-compliance, rather than assisting developers to negotiate their way out. A set finite time limit for developers to return to full compliance would seem appropriate. A fixed penalty notice for minor breaches could be used and applied to all major developments. Furthermore, J Mulders suggests that environmental monitoring should include vibrations as well as noise.</p> <p><u>MPA (15) and Breedon (16)</u></p> <p>Regarding Section 9 of the Plan (CD11) generally –</p> <ul style="list-style-type: none"> • All references to environmental monitoring which come under SEPA's remit should be removed, in accord with Scottish Government policy and guidance. Operators pay SEPA to undertake work in their role as the environmental regulator and as per PAN51 (CD07) the Planning System should not be used to secure objectives that are more properly achieved under other legislation. • Compliance monitoring for hard rock should be annual. This would be consistent 		

with sand and gravel, reflecting the limited impact of the extraction of both.

Scottish Government (17)

The Scottish Government request that reference to the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 (CD04) be added. The regulations allow a planning authority to secure a fee of £500 and £250, for monitoring of active and inactive surface coal sites respectively, with up to 8 rechargeable visits per annum for a site allowed.

L Howie (21)

L Howie requests that a timeframe should be inserted for when the compliance reports for sand and gravel should be passed to the Council.

Modifications sought by those submitting representations:

Regarding Section E: Financial guarantees p75, BAA suggest compliance monitoring should use planning conditions rather than legal agreements.

MPA and Breedon suggest:

- Removal of all reference to environmental monitoring which comes under SEPA monitoring remit;
- Compliance monitoring for hard rock should be conducted as annual visits;

L Howie suggests that sand and gravel compliance reports should be passed to the Council within a specific stipulated time frame.

J Mulders suggests the text in paragraph 9.3 be amended to read (inserts in bold):

Surface coal

*Compliance visits will take place monthly and compliance reports produced and submitted to the Council every 2 months, **will be undertaken by individuals suitably qualified and fully independent of the developer/operator**;*

Rock

*Compliance visits will take place at 6 month intervals with compliance reports prepared and passed to the Council for approval as soon as practically possible. , **This will be undertaken by individuals suitably qualified and fully independent of the developer/operator***

Sand and gravel

*Compliance visits will take place annually, with compliance reports prepared and passed to the Council as soon as practically possible. **This will be undertaken by individuals suitably qualified and fully independent of the developer/operator.***

*Following Council approval, the compliance report will be made publicly available as soon as practically possible **but within 3 months of the regular defined due date**.*

J Mulders suggests the text in paragraph 9.4 be amended to read:

*9.4 Should any breaches be identified through the compliance monitoring procedures the Council will expect the developer to take immediate steps to bring operations in to accordance with approved plans. If necessary, the Council will ~~consider using~~ **commence** enforcement measures.*

With regards non-compliance, J Mulders suggests that enforcement action should be swift and compliance time limited before further action is taken. Further action could include fixed penalty notices.

J Mulders suggests that at 9.2 the first bullet be amended to read (insert in bold) 'Noise/**vibration**'.

Regarding Compliance Monitoring pp75-76, Scottish Government suggest the inclusion of reference to the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017.

Summary of responses (including reasons) by planning authority:

For the purpose of setting the context, the Council makes clear that the compliance monitoring section within the Plan reflects the clear and robust measures that the Council has put into practice since 2013, following the demise of the coal companies and the resultant landscape dereliction that emerged. Robust compliance monitoring that is transparent and consistent is critical to ensuring that extraction and restoration operations are carried out in a responsible manner, minimising any adverse impacts. However, in policy terms, it is made clear that the current approach to compliance monitoring, agreed by East Ayrshire Council on 19 September 2013 in the 'Steps to Recovery' report (CD31), continues to reflect the relevant policies of the East Ayrshire Opencast coal subject Plan (CD20), specifically policies MIN 35, 36, 38, 39 and 40. In policy terms therefore, the principles of the compliance monitoring requirements are not new.

The Compliance monitoring section of the Plan not does not contain policies, so is not binding on developers in terms of the Development Plan provision. It sets out the Councils agreed, established and in use procedures for compliance monitoring, an important Planning function of the Council. The Council is firmly of the view that it is an important element of the Plan; it has been included to make clear what the Councils procedures are for compliance monitoring and to be up-front about it, for the benefit of developers but also for local communities. It is in everyone's interests for the Council to be fully transparent about the level of compliance monitoring it expects to be undertaken.

Use of Legal Agreements (8)

In response to BAA, a key test for the suitability of the use of conditions in achieving desirable outcomes is in their enforceability. In the event of a company entering liquidation, without a legal agreement, it would not be possible to ensure satisfactory mitigation measures or land restoration/aftercare will occur. There is therefore a clear need for the use of legal agreements and the Plan as currently worded is thus entirely appropriate.

Environmental Monitoring and Compliance Monitoring for Hard Rock (15, 16)

In terms of the comments from Breedon and MPA, the Council would respond as follows:

- The Council believes that the respective duties, with regards to Environmental Monitoring and under which organisation's remit those duties fall – be they Local Authority or SEPA - is distinct and clearly understood. The environmental monitoring element of the compliance monitoring procedures is a critical element of monitoring the operations on site and ensuring that any development granted planning consent does not result in adverse impacts on the environment. Environmental monitoring was included as a policy in the 2003 Opencast Coal Plan (CD20) and has subsequently been incorporated into the Councils compliance monitoring procedures that it has focussed heavily on since 2013. The Council is of the view that it is entirely reasonable to retain this within the compliance monitoring procedures. Environmental monitoring carried out under SEPAs remit is, as the respondent points out, carried out under alternative regulations and does not cover the same scope. It is not considered necessary to modify the existing text.
- The compliance monitoring requirements for hard rock are necessary to ensure operations are undertaken in an acceptable manner. The use of a 6 month interval is a long standing arrangement and is still deemed appropriate. It is pointed out that there is some flexibility built into the intervals stated in 9.3; it is stated that these intervals should be applied 'unless otherwise agreed with the Council'. If therefore, an operator can make the case that for a particular site, less frequent monitoring will be acceptable, the Council will be happy to consider this.

Compliance Monitoring Reporting for Rock, Sand and Gravel (10, 21)

Regarding L Howie and J Mulder's suggestion that sand and gravel compliance reports should be passed to the Council within a specific stipulated time frame, the current monitoring regime regarding compliance reports provides necessary flexibility to take account of operational and geological considerations and is deemed proportionate and to work satisfactorily. However, should the Reporter be so minded, the Council would suggest that it may be appropriate at paragraph 9.3, for consistency with surface coal, to amend the reporting requirements as follows:

'Rock

Compliance visits will take place at 6 month intervals with compliance reports prepared and passed to the Council for approval ~~as soon as practically possible~~ **within 2 months.**

Sand and gravel

Compliance visits will take annually, with compliance reports prepared and passed to the Council ~~as soon as practically possible~~ **within 2 months.'**

~~The Council is of the view that it would be too restrictive to stipulate a timeframe for this.~~

Qualifications (10)

In response to J Mulders, the Council considers the modification of the text of paragraph 9.3 through the addition of the following: ***'This will be undertaken by individuals suitably qualified and fully independent of the developer/operator'*** is unnecessary as

suitability of qualification/ independence is implied. It is not necessary to make this explicit in the text; there would be no point in the requirement for compliance visits, if the visits were not undertaken by someone with the appropriate expertise. The requirement for a fully independent qualified individual to carry compliance monitoring is covered either in a planning condition and/or legal agreement. Compliance with planning conditions and legal agreements is set out in paragraph 9.2 of the MLDP. For the sake of keeping the Plan succinct and to the point, the Council does not agree that such additional detail is warranted.

Enforcement (10)

In response to J Mulders comments about the use of enforcement measures, the Council is content that the Plan as currently worded is sufficient. The Council believes enforcement measures should be proportionate and reasonable; whilst the Council will not hesitate in using where necessary, it is considered reasonable to first of all allow the operators a set amount of time to address any breaches. This is what is made clear in 9.4 and is entirely appropriate.

Vibrations (10)

In response to J Mulders comment suggestion that environmental monitoring include ‘noise/vibration’, the Council does not agree this is necessary. As currently worded, 9.2 makes clear that compliance monitoring will not necessarily be limited to the four items listed (noise, blasting, air quality and water quality). If there was a need to monitor vibrations at a particular site, the policy does not preclude this.

Compliance Monitoring Fees (17)

In response to the Scottish Government, the Council considers that with regard to the suggested inclusion of planning fees reference - Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 (CD04) that through practical experience of monitoring the long term after care on certain sites that the 8 visits per site per annum allowance has not in all cases proven sufficient. Since 2013, this is an area that the Council has considerable expertise and experience in. Given the legacy of rural dereliction that East Ayrshire has to deal with, and the resultant huge importance of robust monitoring, the Council is of the view that if the particular circumstances of a site require additional monitoring, this should be put in place with the agreement of the applicant.

S75 is the preferred means for the initial and subsequent periodic reviews as this ensures sufficient funds are available for effective Monitoring.

The Council is of the view that no modifications to the Minerals Local Development Plan are required in respect of this issue.

Reporter’s conclusions:

Use of legal agreements

1. Paragraph 9.3 of the proposed plan states that for all mineral operations “the requirements for compliance monitoring will normally be secured through an appropriate legal agreement”. I have emphasised the word “normally” as this provides an opportunity

to allow another form of control, such as a planning condition, to be used where justified. Therefore, I find that there is no need to remove reference to use of a legal agreement to secure compliance monitoring as suggested by the British Aggregates Association.

Environmental monitoring

2. Scottish Government planning advice note 51 on ‘planning, environmental protection and regulation’ (revised 2006) notes that planning powers “are not an alternative means of controlling matters with are properly the responsibility of the environmental protection regimes. Each means of control should be used as required by its own legislation, but when two or more are relevant to the same project it is imperative that they complement each other”. The advice note also highlights the avoidance of duplicating the effect of other legislative controls but notes that a planning authority may decide to control a matter even though it is regulated by an environmental protection regime.

3. While I note that some of the matters which are listed in the proposed plan may be subject to separate environmental protection regimes that does not mean that they must be omitted from investigation. I consider that the primary concern is that any compliance monitoring is compatible with, and does not duplicate, the role and responsibilities of the Scottish Environment Protection Agency (the national environmental protection body which, I note, has been involved in the preparation of the proposed plan and has not made any representations with regard to compliance monitoring). I find that a small change to the text of the proposed plan to refer to compatible approaches would be reasonable.

Compliance monitoring for hard rock

4. The stated period for compliance visits for rock operations is six months in paragraph 9.3 of the proposed plan. However, the paragraph also allows different periods for visits to be agreed with the council. Therefore, annual visits (as promoted by the Minerals Products Association and Breedon Northern Limited) could be accommodated (where justified) without the need to modify the plan.

Submission of compliance reports

5. I agree with Mr Mulders and Ms Howie that it would be reasonable, in this instance, to include a defined period for compliance reports to be produced and passed to the council. The period of two months suggested by the council for rock and sand and gravel would align with the stated requirements for surface coal operations.

Qualifications

6. Paragraph 9.2 of the proposed plan states that compliance monitoring is to be carried out by “an independent mining engineer”. Therefore, I find that there is no need to state at paragraph 9.3 (as suggested by Mr Mulders) that compliance monitoring will be carried out by a suitably qualified and independent person.

Enforcement

7. As detailed in the Town and Country Planning (Scotland) Act 1997 (as amended), planning authorities may take enforcement action where there has been a breach of planning control, and that it is expedient to issue a notice. Scottish Government Planning

Circular 9/2009 on ‘planning enforcement’ suggests a series of steps when considering potential enforcement action including negotiation prior to taking action. However, where action is required the circular advises rapid initiation. The proposed plan, at paragraph 9.4, suggests that an operator would be given some initial time to respond to any potential breach immediately and that the council would “consider using enforcement measures”. I find this response consistent with the provisions of the Act and policy stated in the circular with no need revise the plan to require the commencement of enforcement action where a breach is found (as this action may not be expedient).

Vibrations

8. The list of items that may be subject to environmental monitoring in paragraph 9.2 of the proposed plan is not exhaustive meaning that monitoring of vibrations could be required where justified. Therefore, I find that the plan does not need to refer specifically to vibrations.

Compliance monitoring fees

9. The Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 allow a fee to be paid, on eight occasions in a 12-month period, to the planning authority in certain circumstances in relation to site visits and production of monitoring reports. I note that the council has experience of visiting sites more frequently than the fee regulations would allow a payment to be made and that alternative payment has been sought by the council. The Scottish Government’s response simply asks for reference to be made to the fee regulations reasoning that the regulations allow for fees to be paid. I consider that the regulations would apply whether referred to in the proposed plan or not. As the council is not reliant on their provision I find that it is not necessary for the fee regulations to be cited in this case.

Reporter’s recommendations:

Modify the proposed local development plan by:

1. Appending the following text to the end of the second sentence in paragraph 9.2 on page 74:

“ being careful to be compatible with, and not duplicate, the functions of the environmental regulator – the Scottish Environment Protection Agency.”

2. Replacing the text “as soon as practically possible” with “within 2 months” from the sentences referring to rock and sand and gravel in paragraph 9.3 on page 75.

Issue 29	Financial guarantees	
Development plan reference:	Paragraphs 9.5, 9.6 and 9.8	Reporter: Alasdair Edwards
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Scottish Power Renewables (SPR) (3) Scottish Environmental Protection Agency (SEPA) (7) British Aggregates Association (BAA) (8) J Mulders (10) Mineral Products Association (MPA) (15) Breedon Northern Limited (Breedon) (16) Scottish Government (17)</p>		
Provision of the development plan to which the issue relates:	The supporting text relating to Financial Guarantees	
Planning authority's summary of the representation(s):		
<p><u>SPR (3)</u></p> <p>SPR suggests a breakdown of costs based on the level of detail in the Environmental Impact Assessment is onerous, and should therefore be deferred until after the consent stage.</p> <p><u>SEPA (7)</u></p> <p>SEPA suggests modifying text to make explicit that a contingency amount should be included in the quantum.</p> <p><u>BAA (8)</u></p> <p>BAA express concern due to the lack of detail regarding how qualified the independent consultant should be. It needs to be someone with who is a qualified minerals assessor and not a quantity surveyor from the construction industry.</p> <p><u>J Mulders (10)</u></p> <p>J Mulders suggests the text in paragraph 9.5 and 9.8 of the Plan (CD11) should be amended to emphasise (i) the importance of securing appropriate restoration; and (ii) that the local authority will call down the financial guarantee to rectify any breach in agreed development or restoration.</p> <p><u>MPA (15) and Breedon (16)</u></p> <p>MPA and Breedon state that the applicant should not cover the cost of independent consultant. The Chief Planner has advised the minerals industry that planning fees cover all expenses relating to the determination of an application. This would include any</p>		

independent assessment of the cost of restoration. This was one justification for the recent increase in planning fees.

Scottish Government (MLDP 17)

The Scottish Government suggests amending paragraph 9.8 (i, ii, iii) to better reflect PAN 64 (CD08) and HOPS 'Position Statement on the Operation of Financial Mechanisms to Secure Decommissioning, Restoration and Aftercare of Development Sites' (CD33). As it stands the Plan goes beyond the advice of PAN64 and HOPS, by setting out that the Councils independent consultant will assess restoration plans and that the cost of the assessment will be met by the developer through a formal legal agreement. Planning authorities may only charge for undertaking their function where there is an express authority to do so.

Modifications sought by those submitting representations:

In relation to Paragraph 9.8(i):

SPR suggests a breakdown of costs as part of the Environmental Impact Assessment should come later (post-consent).

SEPA suggest modifying text to make explicit that a contingency amount should be included in the quantum.

BAA suggest that additional detail regarding how qualified the independent consultant should be should be added.

J Mulders suggests :

- that in paragraph 9.5 '**where possible**' be deleted.
- the first sentence of paragraph 9.6 be amended to read 'Restoration and aftercare proposals require to be underpinned by a form of **viable** financial guarantee'
- the text in paragraph 9.8 be augmented by adding additional bullet point to read: *(iv) The Council will annually review the financial 'well-being' of the developer to ensure the project is capable of being completed as consented. It will also ensure the bond(s) are not in danger of being forfeited.*
- Policy WP1 be amended to state that 'the mechanism and amount covered will be reviewed at regular **a minimum of 12 month** intervals.....'

Scottish Government suggests amending paragraph 9.8 (i, ii, iii) to better reflect PAN 64 and HoPS 'Position Statement on the Operation of Financial Mechanisms to Secure Decommissioning, Restoration and Aftercare of Development Sites' - *Paragraph 9.8 (ii) of the Proposed Plan goes beyond this by setting out that the Council's independent consultant will assess restoration plans and that the cost of this assessment will be met by the developer through a formal legal agreement. Planning Authorities may only charge for undertaking their functions where there is an express authority to do so.*

MPA and Breedon suggest removing references to operators paying for consultants employed by East Ayrshire Council during the planning application determination period, as Scottish Government has confirmed that these costs are covered by planning application fees.

Summary of responses (including reasons) by planning authority:Detail of Costs (3)

Planning consent is granted subject to satisfactory legal agreement being in place. Whilst it is accepted that costs may not be wholly detailed at this stage and that variations may occur, scope exists to incorporate a contingency amount in the quantum expected to address variables and account for changing requirements. Hence the importance of ratification by an independent surveyor/ accountant etc. experienced in mineral matters to ensure fairness and equity. The Council fully recognises that costs may vary over the lifetime of the development and it is for this reason that Policy WP1 makes clear that the financial guarantee, both in value and type of guarantee, must be regularly reviewed to ensure it remains sufficient.

Financial Guarantee Quantum (7)

In respect of SEPA's request that it be made explicit that the financial guarantee quantum should include a contingency allowance, the Council is of the view that in practice the quantum will always include a contingency amount. Whilst this is not stated clearly in the Plan, it is considered standard practice that this be the case. The Council does not consider it necessary to state this explicitly, however, if the Reporter is of the view that such an inclusion would remove any ambiguity from the Plan, the Council has no real difficulty with this change.

Qualifications of Independent Consultant (8)

As suggested by BAA, it is essential that the independent consultant obtained to assess the cost of restoration must be suitably qualified. In practice and in accord with the Councils established procedures an Independent mining engineer is appointed. The Council do not consider it necessary for this level of detail to be included within the Plan.

Additional wording / clarification (10)

In response to the points made by J Mulders:

- Paragraph 9.5 - The inclusion of 'where possible' in relation to restoration occurring throughout the extraction period reflects the variety of minerals operations that this text will apply to. For some extraction operations, such as a borrow pit or small scale hard rock quarry with a limited lifespan, it may not always be possible to restore throughout the extraction period. Thus the 'where possible' allowance is entirely reasonable. For clarity, in terms of surface coal mining, the Council is of the view that it would be very unlikely that restoration throughout the extraction period would ever not be possible.
- Paragraph 9.6 – The insertion of 'viable' to describe a financial guarantee is not necessary. The requirements for financial guarantees described in paragraphs 9.5 – 9.8 and policy WP1 are sufficiently clear and detailed. As a result of taking the steps outlined, a viable financial guarantee will be arrived at. The suggested insertion of viable is therefore not necessary.
- Paragraph 9.8 – The Council does not support this suggestion. The insertion of the additional bullet point is not necessary as the present policy wording through paragraphs 9.5-9.8 provides an adequate and proportionate policy response to the need for and calling on of financial guarantees. The suggestion would amount to

undertaking a full financial health check of the business which is both impracticable and onerous.

- Policy WP1 – The Council does not agree that it is appropriate or necessary to include a specific timeframe within which financial guarantees should be reviewed. The review period will vary depending on the nature and scale of the development. A 12 month interval may not be appropriate for all sites.

Securing an Appropriate Financial Guarantee (17)

The Council is of the view that the advice provided in PAN 64 and the HOPS Position Statement is not adequate, borne out by the experience of East Ayrshire Council, in particular over the last 5 years. The utilisation of independent consultants is vital to ensuring the scale of the restoration challenge on sites is accurately and realistically identified and addressed. This has been a long standing policy requirement and is stated in the East Ayrshire Opencast Coal Subject Plan 2003 (CD20); this Plan's predecessor in this regard. Given the experience gained since 2013 and the Council's knowledge of the scale of dereliction in the rural environment, the Council is of the view that the Council and its communities can only have confidence in the restoration plans if they are independently examined. The Council points out that PAN 64 is now 12 years old and the Council considers the advice contained in it to be out of date and has been overtaken by the experience gained and lessons learnt in respect of the effects of the 2013 industry collapse.

Calculation of the bond by an independent specialist, paid for by the operator, will ensure that the sum calculated takes account of the full cost of restoration and aftercare, including professional fees. To pass this cost on to the developer, is considered fair and proportionate. However, this requirement is not contained within Policy WP1; it is within the text as it is an important part of the Council's established procedures with regards to this matter. Further detailed information will be contained within the Supplementary Guidance and will support Policy MIN WP1.

S75 is the preferred means of ensuring that independent professional advice is available, for the initial and subsequent periodic reviews as this ensures arrangements remain in place in the event of operator liquidation.

Independent Consultant Costs (15) (16)

The Council regards the utilisation of independent consultants as vital to ensuring the scale of the restoration challenge on sites is accurately and realistically identified and addressed. This has been a long standing policy requirement and is stated in the East Ayrshire Open Cast Subject plan (EAOCSF) 2003; this Plan's predecessor in this regard.

Calculation of the bond by an independent specialist, paid for by the operator, will ensure that the sum calculated takes account of the full cost of restoration and aftercare, including professional fees. Scope exists to incorporate a contingency amount in the quantum expected to address variables and account for changing requirements. The bond can be reviewed at regular intervals to ensure that it is in line with the cost of restoration and aftercare. The Council is of the view that it is entirely reasonable for the applicant to be asked to meet the cost of this.

S75 is the preferred means of ensuring that independent professional advice is available, for the initial and subsequent periodic reviews as this ensures arrangements remain in

place in the event of operator liquidation.

Reporter's conclusions:

Details of cost

1. The current documents comprising the development plan for minerals proposals (the Ayrshire Joint Structure Plan 2007; the Opencast Coal Subject Plan 2003; and the East Ayrshire Local Plan 2010) all refer to the provision of a financial guarantee to ensure suitable restoration and aftercare proposals are implemented.
2. The Heads of Planning Scotland 'position statement on the operation of financial mechanisms to secure decommissioning, restoration and aftercare of development sites' (2018) states that "planning conditions should ensure that independent professional advice is available, at the developers' cost, for the initial assessment and for subsequent periodic reviews of the financial guarantee and restoration proposals". The key point arising from the statement is that there should be some "initial" assessment.
3. An initial assessment could be conducted either at the planning application stage or at the post-consent stage. The council, understandably, wish to seek security that there is adequate provision for a financial guarantee that would suitably cover the restoration and aftercare of a site. Conversely, Scottish Power Renewables full submission highlights that it is "very onerous, if not impossible, to provide a level of detail in the environmental impact assessment report sufficient to inform an accurate breakdown of costs at this [the planning application] stage". The company also explain that details are likely to become outdated as the proposal is worked up in the post-consent phase. It further suggests that a condition or planning obligation be used to ensure the provision of the cost information at the post-consent stage.
4. I find that it would be appropriate and reasonable for the proposed plan to require the submission of some information with regard to costs to inform the decision-making process. While a substantive condition or planning obligation could be used to secure the submission of cost details prior to works commencing on site it would be useful for an indication of costs to be known earlier in the process. However, I agree with Scottish Power Renewables that an exact breakdown of costs would likely be, in practice, difficult to achieve at the outset particularly as most environmental statements contain draft restoration and aftercare plans which are subject to further review and approval in the post-consent stage. Therefore, I find that the proposed plan should continue to request a breakdown of costs as part of the environmental statement but that these should be estimates to be verified should consent be granted.

Financial guarantee quantum

5. While the council suggests that contingency is taken into account in practice I consider that it would be appropriate for this to be referenced in the proposed plan in relation to the quantum reached. I note that there is support for this approach in the Heads of Planning Scotland position statement.

Qualifications of independent consultant

6. Again, although the council suggests that it uses mining engineers to provide independent consultancy advice this is not explicit in the proposed plan. I find that it

would be reasonable and appropriate to refer to an individual who is a qualified minerals assessor as promoted by the British Aggregates Association.

Additional wording/clarification

7. I agree with the council that restoration may not be able to be undertaken during the extraction period. Therefore, supporting appropriate restoration during the extraction period “where possible” in paragraph 9.5 of the proposed plan is reasonable and should remain.

8. The independent verification and regular review of financial guarantees, as promoted in the proposed plan (and to be supported by statutory supplementary guidance), would be sufficient to ensure that any guarantee was “viable”. I agree with the council that the proposed plan, at paragraph 9.6, does not need to refer to “viable financial guarantees” as promoted by Mr Mulders.

9. There is no need for the proposed plan to require a financial “well-being” check of operators on a regular basis. It is sufficient for the plan to require verification and review of the financial guarantee and mechanism used to secure funding should it be required for the restoration and aftercare of the site. This arrangement should ensure that bonds (or other mechanisms used to secure funding) are not forfeit as feared by Mr Mulders. No change to the proposed plan is required in relation to this matter.

10. The Heads of Planning Scotland position statement suggests “periodic” review of financial guarantees. I find that the requirement in proposed policy MIN WP1 (financial guarantees) that “the mechanism and amount covered will be reviewed at regular intervals” is appropriate and reasonable. The intervals could be stipulated in any conditions/planning obligations implemented/agreed to ensure compliance. I do not agree, therefore, with Mr Mulders suggestion that a 12-month review period should be stated in policy MIN WP1.

Securing an appropriate financial guarantee and costs

11. Scottish Government planning advice note 64 on ‘reclamation of surface mineral workings’ advises at paragraph 112 that financial guarantees are an appropriate means to secure restoration and aftercare of sites. The document also advises that bonds may be used and notes (at paragraph 113) that “calculation of the bond by an independent specialist, perhaps paid for by the operator, will ensure that the sum calculated takes account of the full cost of restoration and aftercare, including professional fees”. The Heads of Planning Scotland position statement also highlights that costs can be met by the developer (as quoted in paragraph 2 above). The proposition that the operator/developer should pay for independent review is, therefore, established.

12. The concern of the Scottish Government relates to the planning authority charging for undertaking its functions. The Minerals Products Association and Breedon Northern Limited also suggest that any costs accrued during the planning application stage should be met by the planning authority using the funds from the planning application fee. There is no specific indication within the proposed plan that independent verification would be undertaken during the initial processing of an application. Paragraph 9.8 of the proposed plan requires submission of a breakdown of costs in relation to restoration and then suggests review by an independent consultant but does not state when this exercise would be conducted.

13. I understand that, generally, verification is conducted where an authority is 'minded to grant' or grants an application with either a planning obligation or suspensive condition used to secure the financial guarantee on the basis of finalised restoration and aftercare plans. This means that the applicant is not burdened with submitting final detailed costings at an early stage in the planning process where there is no certainty of an outcome in favour of development and no certainty over the final details of restoration (as these may be subject to change based on comments received from the planning authority, statutory consultees and interested parties during the processing of an application). I find that it is reasonable for the council to require an applicant/ developer/operator to pay for independent verification in the post-consent stage as this is an established practice (as set out in my conclusions in paragraph 11 above). However, should the council wish to seek verification during its processing of the application then I consider that this expense would be more appropriately funded by the council as part of its function and responsibility to process and determine a planning application with requisite fees. As indicated by the Scottish Government, it would not be the role of a consultant to review a restoration plan as that is a function of the planning authority – the role would be to assess the financial guarantee (the mechanism and amount) to ensure that it would satisfactorily cover the required sum for restoration and aftercare (as defined in the wording of policy MIN WP1). I find that paragraph 9.8 should be modified to clarify these points. A small change to policy MIN WP1 is also recommended to clarify that a financial guarantee is required but does not need to accompany a proposal from the outset.

14. The language used with paragraph 9.8 of the proposed plan could also be interpreted that a council employee would carry out verification where it states "will be assessed by the Council's independent consultant" (my emphasis). I consider that what was meant by this statement was a consultant appointed by the council rather than an employee but find that this should be clarified in the text. Similarly, the text refers to payment through a formal legal agreement whereas the wording of proposed policy MIN WP1 suggests the use of an appropriate condition or a planning obligation to secure the financial guarantee, verification and review. I find that this point also requires to be clarified in paragraph 9.8 to allow either option as the Heads of Planning Scotland position statement suggests that a suspensive condition could be used.

15. While I have recommended changes, I note that the council intends to prepare statutory supplementary guidance on financial guarantees which could provide further information in terms of the steps to be undertaken to secure an appropriate financial guarantee. This process would involve consultation and scrutiny by the Scottish Government.

Reporter's recommendations:

Modify the proposed local development plan by:

1. Removing the text "to be accompanied by" in the first paragraph of Policy MIN WP1: Financial Guarantees on page 77.

2. Replacing the second sentence in criterion (i) of paragraph 9.8 on page 76 with:

"This must include an estimated breakdown of costs, phasing and confirmation of the value of the guarantee proposed which can be verified and amended following subsequent approval of a final restoration and aftercare plan(s)."

3. Replacing criterion (iii) of paragraph 9.8 on page 76 with:

“An independent consultant (a minerals assessor or an individual with specialist knowledge in minerals) shall review and provide an assessment of the costs of restoration and aftercare throughout the lifetime of the development (including the operational, restoration, aftercare and mitigation periods). The cost of assessment will be met by the developer. The maximum figure for restoration, aftercare and mitigation, as provided by the independent consultant and taking account of inflation, contingency and any supervisory costs will be used by the Council as the required amount (quantum) in the financial guarantee provided.”.