

## Supplementary Report to the Scottish Ministers

### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by Allison Coard a reporter appointed by the Scottish Ministers

- Case reference: NOD-SLS-001-1
- Site Address: Hyndford Quarry, Lanark, South Lanarkshire, ML11 9TA
- Application for planning permission dated 23 November 2012 called-in by notice dated 29 January 2014. Targeted re-opening of case commenced following the decision by the Court of Session dated 9 May 2017 to quash the Scottish Minister's Decision of 7 December 2016
- The development proposed: extension to mineral extraction and associated restoration and enhancement works
- Further written submissions invited on 13 March 2019 following Ministers Notice of Intention dated 18 February 2019

Date of this report and recommendation: 10 June 2019

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Scottish Government  
Planning and Environmental Appeals Division  
4 The Courtyard  
Callendar Business Park  
Callendar Road  
Falkirk  
FK1 1XR

DPEA case reference: NOD-SLS-001-1

The Scottish Ministers  
Edinburgh

Ministers

In accordance with your intentions letter dated 18 February 2019 I enclose a Supplementary Report. This provides advice on the planning obligations and conditions that should be attached to a grant of planning permission for the proposed southern extension of Hyndford Quarry.

This follows on from a Supplementary Report dated 16 November 2015 as prepared by Mr Jackman and Mr Edwards. That report advised Ministers on the conditions and obligations as relevant to the southern extension at that time.

To inform my Supplementary Report I issued a Procedure Notice on 13 March 2019. Comments were invited from the parties who took part in the 2018 re-opening of the case as well as the consultation authorities. The previously recommended conditions for the southern extension were attached as a starting point for that process. Parties were invited to provide any updated information, including environmental information, which might indicate the need for amendment to these conditions. These exchanges concluded on 25 April 2019.

In addition to these further written submissions I have referenced the evidence as submitted through the 2018 process, including the hearing held in February 2018, in so far as relevant to the southern extension. I have also had regard to the reasoning as included in the Ministers recent statement of intention. My report also takes account of the Environmental Assessment, Addendum and other environmental information submitted by the parties, and all the written representations made in connection with the proposal.

On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. The 2017 regulations revoked the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 with certain exceptions. The 2011 Regulations continue to have effect for an application (and any subsequent appeal) for planning permission where the applicant submitted an environmental statement in connection with the application before 16 May 2017. That was done in this case. The present application should therefore be determined in accordance with the 2011 regulations as they applied before 16 May 2017.

## CHAPTER 1: BACKGROUND

1.1 On 23 November 2012, the applicant submitted a planning application to South Lanarkshire Council to extend the existing quarry. The general location, the proposed site boundary and the proposed new areas for mineral extraction are shown in [document A.8\(a\)](#).

1.2 The subject of this report is confined to the conditions/legal agreement that should apply to the proposed southern extension area following the [Scottish Ministers Intentions Letter dated 18 February 2019](#). This follows the instruction from Scottish Ministers in paragraph 52 of that letter to “advise them on what conditions or legal agreements would be appropriate in respect of a permission granted on that basis”.

1.3 The legislative basis for planning obligations is set out in Sections 75, 75A, 75B and 75C of the Town and Country Planning (Scotland) Act 1997 (as amended). Scottish Ministers guidance is contained in Scottish Government Circular 3/2012 – Planning Obligations and Good Neighbour Agreements.

1.4 The legislative basis for the imposition of planning conditions is set out in Sections 37 and 41 of the Act. Scottish Ministers guidance and advice on the use of planning conditions is contained in Circular 4/1998 - The Use of Conditions in Planning Permissions, this includes reference to legal principles that have been developed through case law.

1.5 The conditions that might apply to a southern extension only have been rehearsed previously. On that basis the conditions drafted by Mr Jackman and Mr Edwards in their [Supplementary Report dated 16 November 2015](#) were considered as a starting point for this current report. By way of procedure notice dated 13 March 2019 comments were sought on these and the conditions that should apply in relation to the Ministers most recent Intentions Notice dated 18 February 2019. The following chapter of this report summarises the comments received. The responses received are as attached in full at Appendix 2. The final chapter sets out my conclusions following the instruction from Scottish Ministers to “advise them on what conditions or legal agreements would be appropriate”.

## CHAPTER 2: COMMENTS MADE BY THE MAIN PARTIES

### Applicant's position

2.1 With regard to the conditions proposed for the southern extension in the Reporters' Supplementary Report of 2015 the comments made to the Reporter on 8 December 2017 apply.

2.2 With regard to the comments on Conditions 2 and 4, [a plan is attached](#) showing the area within Phase 1 which is located beyond the buffer zone shown shaded red. A reference to this plan in the conditions would provide clarity that this area can be worked. This would also allow for better restoration of this area of the quarry. A long term management plan and the setting up of a liaison group is not necessary for development of the southern extension only.

2.3 The Working Group has confirmed that it has no objections to the southern extension. It is not located close to any residential properties so as to affect amenity. A planning obligation to secure a management plan and liaison group is therefore not necessary to make the development acceptable in planning terms. Nor is it the case that the proposed obligation is so directly related to the regulation of the development that the development should not be permitted without the obligation. The Working Group's proposed obligation does not therefore meet the tests in Scottish Government Circular 3/2012.

2.4 The attached [Section 75 agreement](#) remains registered against the title to the quarry and contains obligations relating to contributions to cover wear and tear on the public road network and undertakings to cease operations under permission CL/11/0285. There is therefore no need for a new obligation to be entered into. The agreement was registered on 31 August 2016. This secures the obligations set out in the Reporter's procedure notice. In response to the comments of the Working Group no operations have been carried out under the planning permission issued by Ministers in December 2016. Operations under CL/11/0285 were and are authorised.

2.5 The following section details the comments made in relation to the wording of the proposed conditions.

#### Condition 1

2.6 In relation to the first proposed condition the Reporters' report dated February 2015 concluded that the proposed development would preserve, protect and enhance the character, integrity and quality of the New Lanark World Heritage Site and its setting (and its Outstanding Universal Value). The reason for Condition 1 is not therefore supported by planning judgment. This condition therefore fails the necessity test as set out within Circular 4/1998 and is unreasonable.

#### Condition 2

2.7 The eastern side of Phase 1 contains a reserve of sand and gravel outwith the buffer zone of the New Lanark World Heritage Site and Designed Landscape. Condition 1 does not preclude extraction within this area and the area should therefore be included within this condition. There is no reason to exclude the area to the east of the Drove Road and Bonnington Estate boundary from the permitted extraction and restoration area and to

create a further buffer to the World Heritage Site buffer zone. Excluding this area would result in an inferior restoration scheme.

2.8 The World Heritage Site buffer zone exists to protect the Outstanding Universal Value of the World Heritage Site. It has no intrinsic value of its own. The Working Group are seeking to apply a buffer zone to a buffer zone. The specification of a buffer strip in conditions is not necessary to protect the setting of Bonnington Estate and the Drove Road. The inclusion of the area up to the Bonnington Estate boundary wall area in the extraction area would allow a much better restoration scheme. It would enable slopes to be profiled to a more gentle gradient, thereby improving the overall restoration of the quarry and the subsequent after-use of the site.

### Condition 3

2.9 This condition requires that all extraction operations should be discontinued no later than 31 December 2030 and that the site be restored in accordance with the approved restoration and enhancement plans by 31 October 2032.

2.10 The timescale for discontinuing operations at Hyndford should be extended to 31 December 2040 with restoration and enhancement completed by 31 October 2042. Timescales were previously agreed in a condition proposed by the Council to discontinue operations by 31 December 2032 and to complete restoration by 31 October 2034. These timescales were predicated on the grant of permission for both the western and the southern extensions.

2.11 If permission is to be granted for the southern extension only, that will change the nature of the operations. The removal of the western extension area does not mean that less time would be needed overall to complete extraction. In fact it will take longer to extract mineral economically from the southern extension if there is no extraction from the western extension. This is because most of the more valuable coarse mineral (coarse sand and gravel) deposits are in the western extension area. The coarse mineral deposits in the southern extension are likely to be exhausted within the first five years of working. The remaining material in the deposit will be predominantly fine sands for use in building and asphalt products. There is less demand for fine sands as the core business is focussed on coarse aggregate which is the key component for the concrete market.

2.12 Once the coarse deposits have been exhausted, there will be no opportunity to blend the fine and coarse final products together. Operations would then be scaled back severely from the 500,000 per annum tonnes proposed in the planning application for the whole of the Hyndford extension to a level which is more realistically aligned with market demand. This is likely to be in the region of 150,000-200,000 tonnes per annum. At this rate, it will take longer to extract the minerals. A corresponding increase in the timescale permitted to complete extraction and restoration of the site is requested. There is certainly no reason to reduce the period for extraction and restoration proposed in the Reporter's draft conditions. To do so would threaten the economic viability of the quarry.

### Condition 4

2.13 Again this should include the eastern side of Phase 1 as this contains a reserve of sand and gravel outwith the buffer zone of the World Heritage Site and Designed

Landscape. Condition 1 does not preclude extraction within this area and the area should therefore be included within this condition.

#### Condition 5

2.14 This condition requires that, in the event of extraction operations ceasing on the site for a period of 12 months or more, the planning authority shall deem site operations to have ceased permanently and the occupied areas restored within 24 months in accordance with the approved restoration plans. The 12 month timescale should be increased to a period of 24 months after which if extraction operations have ceased then they shall be deemed to have ceased permanently. The reason for this is, as noted above, because the southern extension contains very large stocks of fine sand, as opposed to the more valuable coarse minerals found in the western extension. Extraction may have to cease for periods of time in excess of 12 months so that sand stocks can be sold until levels of production are sustainable again.

#### Condition 6

2.15 The eastern side of Phase 1 contains a reserve of sand and gravel outwith the Buffer zone of the World Heritage Site and Designed Landscape. Condition 1 does not preclude extraction within this area and the area should therefore be included within this condition.

#### Condition 7

2.16 The eastern side of Phase 1 contains a reserve of sand and gravel outwith the buffer zone and Designed Landscape. Condition 1 does not preclude extraction within this area and the area should therefore be included within this condition.

2.17 The enhancement works were primarily proposed within the planning application in order to restore the degraded parkland area (Enhancement Zone A and Phase 1) and offset any adverse impacts associated with Phase 1 operations. Phase's 2A and 3 already benefit from planning permission (CL/11/0285). Enhancement proposals within Phases B, C and D are not necessary in order to ensure extraction within Phase 2B is acceptable. Therefore this condition does not meet the necessity test contained within Circular 4/1998.

#### Condition 8

2.18 The eastern side of Phase 1 contains a reserve of sand and gravel outwith the buffer zone of the World Heritage Site and Designed Landscape. Condition 1 does not preclude extraction within this area and the area should therefore be included within this condition.

#### Condition 11

2.19 This condition restricts haulage vehicle movements to 0700 - 1700 hours Monday to Friday and 0700 - 1300 hours on Saturdays and limits operations on site to 0630 - 1900 hours Monday to Friday, 0630 - 1300 on Saturday and 0800-1600 on Sundays with no working on public or local holidays. The opening hours should be extended to allow operations between 0600 and 2000 hours Monday - Friday. Restriction on lorry movements before 0700 hours has a huge impact on the operation of the quarry as over 20 lorries arrive most mornings at 0700. This means that, by the time the lorries are loaded at the

quarry, they then arrive at their delivery destination during the rush hour which exacerbates traffic problems.

2.20 The limit on movements of vehicles from Hyndford results in problems providing material daily within the timescales required for large road works projects, such as concrete pours for motorway works. If the quarry was allowed to open at 0600 (with a restriction on all vehicles from turning left until 0700), all traffic from the quarry could be cleared from Lanark before 0730, which would ease congestion in the town. The restriction on activities taking place on public and local bank holidays should be lifted. This restriction obliges staff to take days off when it does not suit them. Other quarries in Scotland are permitted to open on public and local holidays and the requirement to close at Hyndford means that it is less competitive. Proposed restrictions on working hours and vehicle movements could be accepted on Saturdays and Sundays.

#### Condition 19

2.21 This condition requires that a scheme setting out how internal access roads will be surfaced and maintained and debris prevented from being carried onto public roads be submitted for the Council's approval and thereafter implemented. This condition is not necessary as the grant of permission for the southern extension will not require any changes to be made to the access roads that are currently used. There are no problems associated with use of the access roads at present so this condition is not required.

#### Condition 21

2.22 This condition restricts the importation of cement and other materials for site processing to 50,000 tonnes per annum. As a result of the refusal of permission for the western extension, the limit on the importation of materials should be increased to 100,000 tonnes per annum. As outlined above, it is likely that the coarse material deposits within the southern extension will be exhausted within the first few years of operation. In order for the quarry to be economic, it is likely that the import of aggregates would be required for blending. This would include importation of coarse aggregates, bagging materials and blockworks, which is estimated to be in the region of 100,000 tonnes per annum.

#### **Council's position**

2.23 The conditions and obligations attached as Appendix 1 to the Procedure Notice remain up to date and relevant. Consequently, no further amendment is proposed.

2.24 For the avoidance of doubt, the previously expressed position that the council considers the granting by the Scottish Ministers of the southern extension alone is not competent and that such a proposal should rightly have been the subject of a new planning application. In relation to the matters raised by the applicant on conditions 3, 5, 7, 11, 19 and 21 the council relies on its comments as submitted to Reporters in August 2015.

2.25 In relation to the Working Groups comments on conditions 1, 2 and 3 reference is also made to the council's 2015 response. The Planning Obligation signed and registered on the 31 August 2016 remains extant and that the continued operations under permission CL/11/0285 are authorised.



2.26 In 2015 the main issues referenced by the council were to secure the contribution to roads repairs through the proposed Section 75 agreement. This matter was subsequently addressed and is included in the concluded agreement. Minor suggested word changes were generally incorporated in the Reporters final set of conditions as advised to Ministers at that time. In response to changes proposed by the Working Group at that time the council did not consider the establishment of a liaison group was necessary. In response to the applicant's proposed changes to conditions 3,7,11 and 21 these were considered substantial changes raising new issues not addressed in the original planning application.

### Condition 3

2.27 It would not be appropriate to simply increase the timescale by 10 years at this stage.

### Condition 5

2.28 A 12 month period proposed is reasonable and appropriate. For the site to lie idle for 24 months, prior to any prospect of restoration taking place, would have an adverse impact on the amenity of the surrounding area and is not acceptable.

### Condition 7

2.29 The works are not dependant or, in terms of their nature and appearance, reliant upon the works originally proposed for the western extension. The removal of the requirement to carry out the works shown on the current proposal materially alters the application and has not been the subject of consultation with other agencies or with the surrounding community and therefore for the reasons outlined above should not be accepted.

### Condition 11

2.30 Amending the working hours or days on which the quarry can operate would materially alter the terms of the original proposal and could impact on the surrounding area. The hours proposed have not been the subject of consultation with other agencies or with the surrounding community and therefore for the reasons outlined above should not be accepted.

### Condition 21

2.31 The proposed condition allows the applicant to seek an increase. Such a request could be accompanied by the necessary supporting information to allow a decision to be made at that time. The change as proposed has not been considered as part of the transport assessment that accompanied the original application.

## **The Working Group's position**

2.32 The evidence considered by the reporter was in the context of a full grant of planning permission. It should be revisited afresh in the context of a partial permission. Paragraphs 4.115 to 4.121 of the reporter's report deal with the consequences of granting Planning Permission for the southern extension alone. However, no meaningful consideration was given to the question of conditions for the grant of the southern extension alone. The conditions for a part grant of Planning Permission at Appendix 2 were not recommended. It is simply stated without any justification that "*I find no reason to disagree with these conditions [as recommended by the first reporters and accepted by Ministers in 2016] should this eventuality arise*" [i.e. that Scottish Ministers approve the southern extension only]. There is no explanation for this conclusion.

2.33 The current consultation must be consistent with a fresh consideration of the evidence in this case and the need, therefore, to explore issues relevant to obligations and planning conditions in full detail for the southern extension only. It is especially clear that such a fresh view of the appropriate conditions is necessary as a result of the detailed reasoning available from the Notice of Intentions letter of 28 February 2019 with regard to the Ministers' intended decision. The current reporter's consideration should not be confined to changes in circumstances but to "*de novo*" consideration of the reasoning for amendments required to the conditions in Appendix 2 of the Report.

2.34 The Section 75 agreement signed and registered on 31 August 2016 has already taken effect from the issue of the decision on 7 December 2016, to date, or at least during the period from 7 December 2016 to 9 May 2017. That is the date when the first decision was quashed. The continued operations under the ROMP permission CL/11/0285 may have been unauthorised from that date. They were not made the subject of an application for approval of matters specified in the conditions of the 2016 permission, while it was in force. This may in turn have prejudiced the effective implementation of conditions to mitigate the effects of the workings of the southern extension. These have continuously been stressed to be significant for the setting of the adjacent heritage landscape, the features and amenity.

2.35 The Environmental Statement for the ROMP (CL/11/0285) concluded that the impact of the currently consented workings on the designated Falls of Clyde Designed Landscape would be 'high' in magnitude and 'major' in significance, and that the close proximity of the Drove Road, even to the current workings, would be audible as well as visible, and would "*extend further an uncharacteristic industrial land use into this part of the landscape which had previously been valued as parkland and for its views and serenity...*".

2.36 Further heads of terms are required to address a Liaison Committee at community level to consider the detailed proposals for the extent and nature of the workings, reinstatement, restoration, landscaping and aftercare. The relevant representations in this respect are summarised in Paragraphs 2.12 of the first Reporters' Supplementary Report of November 2015.

2.37 The area of greatest concern is that of the boundary zone between the southern extension and the areas protected by the proposed refusal of the western extension. A 50 metre buffer strip, must be specified by condition. Any details of the workings which are likely to affect this area and which are then to be approved by the planning authority on application for approval of matters specified in a suspensive condition should be the subject

of community and expert consultation. An appropriate approach to community and expert consultation on this whole vital matter can only be guaranteed by the obligation to convene a liaison group for the purpose. Concerns on this matter reflect those of other objectors, such as Sir William Lithgow (in relation to Boat Haugh) and Ms Annette Leppla, who objected to the western and the southern extensions.

2.38 The proposed heads of terms do not accommodate the representation by the Working Group that a Liaison Committee should be established by means of a planning obligation to allow consultation at community level on the detailed proposals for the extent and nature of the workings, reinstatement, restoration, landscaping and aftercare. These representations are summarised in Paragraphs 2.12 of the first Reporters' Supplementary Report of November 2015. The following head of terms is recommended:

“That prior to the submission of any application to the planning authority for any approval of matters specified in conditions relating to the extent and nature of the workings, reinstatement, restoration, landscaping and aftercare of the southern extension area within a distance of at least 50 metres from the Drove Road, a liaison group shall be established. It will consist of the applicants, the planning authority, member organisations of the New Lanark and Falls of Clyde Working Group, Historic Environment Scotland and Scottish Natural Heritage. It will be established and administered by the applicants for the purpose of consultation on the detailed specifications for the treatments of the specified area. The liaison group will be convened at least once a year for the duration of the permission.”

2.39 Much of the submission to the first Reporters on the matter of conditions remains relevant. The terms of the Notice of Intention from Scottish Ministers of 18 February 2019 (at paragraphs 23, 26, 27 and 30, for example) adds considerable weight to the view that certain principles with regard to the treatment of that part of the southern extension area adjacent to Bonnington estate and to the Drove Road as far as Boat Haugh must be stated in specific terms in the conditions. They are as important to the overall terms of the permission now proposed as is the exclusion of the western extension. Reference is made to setting in the context of the definition provided in Document C17-Managing Change in the Historic Environment. The setting of Bonnington estate and its features should be protected in this context.

2.40 Within the context of the setting of the World Heritage Site (in functional terms as well as visual terms, in accordance with the UNESCO Guidelines at Doc H28) and of the Designed Landscape, such individual components as the Drove Road, the estate boundary wall (on top of the Mediaeval park pale) and the continuity of the fluvio glacial landforms are an essential part of the setting and require in turn to be seen in their own setting. There is a clear remit for Scottish Natural Heritage in relation to geology and geomorphology and it should be included with Historic Environment Scotland as part of a liaison group. The existing quarry has already removed a part of the Lanark ice margin landform. The southern extension will remove a further large part.

2.41 The Drove Road, following the best contour to the ancient river crossings and the wall/park pale, built on rising ground, can only be fully interpreted from these features if the existing rising ground beyond them is preserved. The protection of the view of these areas in a continuous panorama from Bonnington (especially from Peacock Hill, or Gentleman's Mound) and along the Drove Road, is vital to permit the authentic and integrated interpretation of the glacial landform. This is the key to the understanding of how the Falls

of Clyde were created. The impact of the southern extension on its western edge is highly sensitive and important.

2.42 The applicants have sought to include the existing buffer strip of approximately 50 metres between the workings under the ROMP consent CL/11/0285 and its predecessor, and the Drove Road. The purpose of this strip was clearly to protect the adjacent heritage assets as far as the southern limit of the current consent from the impacts described in the applicants' own Environmental Statement. The beneficial effects of this are clear to be seen, and should be continued for the same reason, and extended to the entire length of the southern extension. The rising ground within the current buffer strip extends to the end of the estate boundary wall at the turn to Tulliford, after which the ground undulates or falls in the direction of the workings as far as Boat Haugh.

2.43 On the falling ground, the 50 metre distance is the least that should be provided to protect the amenity of the users of the Drove Road during workings, although it is accepted that in the long term the artificial landform will be open to view. No attempt at landscape screening should be permitted within any buffer strip as this will not take effect until after the operations are completed, and may therefore be at odds with the character of the adjacent designed landscape.

2.44 The strip the applicants wish to include was to have been included in the western extension and is therefore now excluded.

#### Conditions 1 and 2

2.45 It is not appropriate for such a vital matter as the western edge treatment of the southern extension to be dealt with under a suspensive condition. The planning authority has given no indication during this case of its own recognition of the sensitivity of this issue, and the process of approval would involve no statutory requirement to consult any party or to advertise the application for public comment. A 50 metre undisturbed buffer strip is a simple concept to describe and enforce. More detailed aspects, which may also be critical but more difficult to define in planning conditions, should be the subject of consultation through the liaison group as proposed above under the Heads of Terms for planning obligations.

2.46 The applicant now not only rejects the continuation of the strip to Boat Haugh, as we seek, but that they wish to include within their consent the existing buffer strip which falls in the western extension as shown on the application plan and is thus excluded from the consent proposed in the Notice of Intentions. The applicants only reason to include the "red area" is based on allowing better restoration. However this is insubstantial and the strip in question was clearly important in original 1995 consent and the restoration contours were established by CL/11/0285. Attached [Appendix 1](#) provides evidence of this.

2.47 The following wording should be included for Condition 1:

1. That notwithstanding the submitted plans there shall be no development, mineral extraction or landscaping within the area identified as the New Lanark World Heritage Site Buffer Zone or the Falls of Clyde Designed Landscape as currently designated, or within the buffer strip referred to in condition 2. Accordingly, no consent is given for Phase 1 as shown on Plan P2/1842/5A – July 2013 – Proposed Block Phasing, and

for the avoidance of doubt, this includes the strip of land beyond the common boundary of the above designations which falls within Phase 1.

*Reason: To protect the setting of New Lanark World Heritage Site, the Falls of Clyde Designed Landscape and adjacent parts of its setting.*

2.48 Condition 2 should then read:

2. That no development shall take place until plans have been submitted and approved in writing by the Planning Authority showing the extent of mineral extraction, landform level details and screening along the western boundary of phase 2A and the whole of phase 2B as shown on plan number P2/1842/5A – July 2013. The approved plans shall be implemented unless otherwise agreed in writing by the Planning Authority. Notwithstanding the generality of the above, a 50 metre buffer strip between the application site and the Drove Road shall be maintained as a continuation of the existing strip, at all times free from any disturbance from the approved operations throughout the duration of the permission.

*Reason: To protect the integrity of the heritage interpretative value and the visual amenity of the area, which comprises the settings of the New Lanark World Heritage Site, the Falls of Clyde Designed Landscape and its fluvio glacial landforms, the Drove Road to Tulliford and Boat Haugh and the Bonnington estate boundary wall.*

### Condition 3

2.49 The original application, and the terms of the recommended permission by the first Reporters was for completion of restoration by 31 October 2032. As the western extension has been excised and was to have taken 5 years to extract, no evidence has been submitted for a duration of consent for later than 2027.

2.50 It has always been made clear that there would be impacts of a temporary and a permanent nature. Others have objected outright to the southern extension on this basis. There is no special case for the prolongation of the consent to the greater detriment of environmental impact than is already the case.

2.51 Condition 3 should read –

3. That all extraction operations on the site shall be discontinued no later than 31 December 2025 and that the entire site shall be restored in accordance with the approved restoration and enhancement plan or plans (as required by conditions 6) and 7) by 31 October 2027.

*Reason: In the interests of amenity and to ensure that the Council as Planning Authority retains effective control of the development.*

### Annette Leppla

2.52 As the reporter did not recommend conditions for the southern extension these need to be looked at again although the previous reporters report on this matter could be used as a starting point. Any demands to vastly increase the timescale of the operations, the

working hours, closure on public holiday and being allowed to pause extraction for up to 24 months without consequence must be resisted.

2.53 The discussion around the establishment of a management plan and a liaison group is noted. The Working Group has not objected to the southern extension but I and others did. Some form of liaison group therefore remains a valid proposition. The involvement in such a liaison group including local community groups with an interest in what is going to happen to their landscape and their amenities is surely a sensible idea. Important decisions should not be made over local people's heads by the planning authority.

2.54 The Working Group's detailed case for the firming up of a buffer zone to protect elements of the Designed Landscape is persuasive. A condition to create a protective strip should be adopted. It is quite wrong of the applicant to call a request for this protective strip the application of a buffer zone to the buffer zone, they are clearly two separate matters (and areas in need of protection).

#### Sir William Lithgow

2.55 As indicated in my original report to Ministers Sir William Lithgow objected to the Southern Extension given concerns about its impact on Boat Haugh and this objection is again referenced in the comments received above from the Working Group. On the matter of conditions he responded in 2015 that he hoped the proposed conditions could deliver public access, sustainable conservation of the historic river side area of great beauty and the ruin of Boat Haugh.

#### Other Consultation responses

2.56 Responses received from Historic Environment Scotland and Scottish Natural Heritage confirm they have no additional comments to make. The Scottish Environment Protection Agency (SEPA) confirms it has no further comments at this stage but that conditions 29-33 remain relevant to the protection of SEPA's interests and that the issues being disputed by parties fall outwith its remit. Transport Scotland confirms it has no comments to make.

## CHAPTER 3: REPORTER'S CONCLUSIONS

### Context

3.1 The Scottish Ministers' Intention to grant planning permission for the southern extension and the reasons for this are as stated in their letter dated 18 February 2019.

3.2 From the summary of cases above Ministers will note the remaining reservations of South Lanarkshire Council regarding the legal competency of granting planning permission for the southern extension only. I note that Scottish Ministers address this matter in paragraph 50 of their February 2019 letter. Questions about the legal context for restricting the scope of the permission are raised by the applicant in its comments on Condition 1. However my remit here is confined to the consideration of conditions in the context set by the Ministers' Intentions Notice. The Working Group cautions that the reasoning for the conditions must be firmly based on the decision as proposed and considered afresh in light of Ministers' intentions.

3.3 I have considered the context and need for any associated legal agreement bearing in mind the terms of the [extant legal agreement](#) and the advice set out in Circular 3/2012 on Planning Agreements and Good Neighbour Developments. My assessment takes account of:

- whether any necessary provision could otherwise be secured through planning condition or through other legislation;
- whether such provision is supported by the development plan; and
- whether it is related to and proportionate with the proposed development in terms of the mitigation of its impacts and necessity to enable the development to go ahead.

3.4 In addition my assessment below considers the planning conditions which would be necessary, relevant to planning, relevant to the development to be permitted, enforceable and reasonable in the context of the stated intention to grant planning permission for the southern extension only. This assessment follows the advice set out in Circular 4/1998 on the use of Planning Conditions.

3.5 Paragraph 9 of Circular 4/1998 states that conditions should only be imposed where they will meet clear land use planning objectives. Drawing on the terms of the Circular I have considered the appropriate conditions in the context of whether they are:

- clearly justified to support any approval and on whether the proposal would be unacceptable without such provision;
- relevant to planning and fairly and reasonably related to the development to be permitted or its effect on the surroundings;
- a consequence of the proposed development;
- capable of being enforced; and
- suitably precise and reasonable.

## **Planning Obligations**

3.6 An agreement was registered under Section 75 of the Planning Act on 31 August 2016. This followed the reasoning that consolidation of all operations into one planning permission would provide clarity when discharging and monitoring conditions, and for enforcement purposes. This reasoning remains valid and I find nothing to indicate that the concluded agreement cannot continue to serve its intended purpose in the context of Ministers' current intentions. I consider that this agreement continues to serve this planning purpose and is necessary and relevant in the context of Circular 3/2012 on "planning obligations and good neighbour agreements".

3.7 A copy of the registered agreement is attached. There is no dispute between parties on the issue of consolidating the two permissions.

3.8 In addition, I consider that this extant agreement remains relevant to address wear and tear on the local road network through an annual road repairs payment. Again the agreed wording indicates that it can remain applicable in the current context. I consider that addressing the impact on local roads as a consequence of the assessed vehicle movements remains a relevant land use planning consideration that can be appropriately addressed in this way. There is no dispute between parties on this matter. I am satisfied that this approach meets the terms of the Circular given that alternative provision under the Roads Act (Section 96) relies on cost recovery from the operator. I agree with the council that reliance on Section 96 alone may not have provided sufficient surety of recovery for longer term quarry operations.

3.9 Whilst the Working Group raises matters about this agreement in relation to the progress of current operations I consider these are matters which fall to the remit of the council as planning and enforcement authority.

3.10 In the context of the recommended legal agreement, had planning permission been granted for the whole site, I previously recommended that there was a need for a long term management plan to be secured through legal agreement. This would have included provision to help guide the future management of the site and also included the establishment of a liaison group. I have considered whether such a requirement would remain reasonable in the context of the reduced scheme bearing in mind the clear opinions of the Working Group in this respect.

3.11 For the larger scheme there was in my view a clear planning justification for such consultation and agreement given the operations extended into the Historic Designed Landscape and had a greater degree of interface with sensitive areas, public access and residential properties. However, the reduced scheme relates to the original application area and avoids relatively more sensitive areas. The council with its experience of minerals operations anticipates no need for such provision preferring to rely upon the stated conditions to regulate this more limited expansion of the existing operations. The applicant takes a similar view and the current operations are progressing without such provision. So whilst I can understand the concerns of the Working Group I am unclear what the planning necessity would be in these reduced circumstances. I am concerned that it would be overly onerous and unreasonable to require such an agreement in this case. In these circumstances I do not consider that such a requirement would meet the test of necessity or reasonableness as set out in the Circular.



## **Planning Conditions**

3.12 The conditions that should apply to any grant of planning permission have now been rehearsed on a number of occasions. Firstly by the council, then by Mr Jackman and by Mr Edwards in relation to the whole scheme, then in relation to the southern extension (the reduced scheme) and most recently through the 2018 re-opening of the case. I must now look at these conditions afresh in the context of the Ministers' current intentions notice. However, the previously advised conditions for the reduced scheme provide a helpful starting point for that assessment.

3.13 In the main the conditions as set out previously in the Supplementary Report (2015) are not disputed. No additional reasoning or change in circumstance has been brought to my attention to justify any change. In taking account of the Ministers' intended decision and the stated reasons for these conditions I find no conflict with the terms of the Circular. Many of these conditions reflect those that would have been applied in any event had the application as a whole been approved. Consequently I advise that the following conditions 9,10,12,13,14,15,16,17,18,20,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40, 41,42,43,44 and 45 would remain appropriate in the context of Ministers' current intentions.

3.14 On the remaining conditions similar issues are raised as previously and as rehearsed through my 20 June 2018 report to Ministers through paragraphs 4.115-4.121. However my focus in that report was on the scheme as a whole. Whilst I provided some commentary on the conditions that might apply to a southern extension there was no recommendation other than to advise Ministers of the matters raised and of the conditions as recommended by the reporters in 2015. In this Supplementary Report I have addressed these matters in further detail and my conclusions and recommendations are as set out below.

### **Condition 1**

3.15 The restriction of the developable area to protect the New Lanark World Heritage site and avoid its identified buffer zone is fundamental to the Ministers' reasoning. This area also includes the Bonnington Estate as part of the Falls of Clyde Historic Designed Landscape. Given that emphasis I consider that, regardless of any other adjustments to the boundary of the site, a condition is required to exclude these areas from the terms of any planning permission.

3.16 In that respect I consider the condition below remains appropriately framed to serve that planning purpose and is necessary in the context of the proposed decision. Reference to the plan ([P2/1842/2 Document A8b](#)) showing the New Lanark Heritage site buffer zone clarifies the area to be protected and reflects Ministers' intentions in this respect:

1. That notwithstanding the submitted plans there shall be no development or mineral extraction within the area identified as the New Lanark World Heritage Site Setting/Buffer Zone on plan number P2/1842/2 – May 2012.

*Reason: To protect the setting of New Lanark World Heritage Site and to protect the Falls of Clyde Designed Landscape*

3.17 However, the Circular advises that any condition must be sufficiently precise and in that context I have carefully considered the area to be included within the terms of any planning permission for the Southern Extension only. To assess this I have reproduced

below the description of the various areas relevant to this application from [paragraph 7.2 of the original planning application](#) and as repeated in the accompanying [Environmental Statement \(paragraph 1.23\)](#). This description should be read alongside plan P2/1842/5A – July 2013 - Proposed Block Phasing ([document A8e](#)).

Phase 1 – This is a 22ha area located immediately west of the current excavation area and south of Robiesland Farm and East Lodge. It is known as the Western Extension Area.

Phase 2A – This measures 41ha and is the current extraction area. This phase consists entirely of mineral that that is already permitted for excavation under the current consent. This area will be progressively worked and restored whilst the extension application is considered.

Phase 2B – This is a 20ha area located immediately south of Phase 2A. It is known as the Southern Extension Area.

Phase 3 – This is the plant site area. This phase also consists entirely of mineral that is already permitted for excavation

3.18 As it stands and as described above Phase 2A already has planning permission. Reference to the plan P2/1842/5A shows the extent of Phase 2a and the boundary drawn away from the estate boundary. Proposed Phase 1 (the Western Extension Area) whilst contained mainly to the west of the Drove Road and within the Historic Designed Landscape/buffer zone also includes a strip of land to the east of the Bonnington Estate boundary and outwith the Historic Designed Landscape and New Lanark World Heritage Site buffer zone. This extends to adjoin the boundary of Phase 2A and the current extraction area.

3.19 This is the eastern area of Phase 1 as shown in red on [the applicant's submitted plan](#) (the "red area"). The applicant considers this should be included as part of any grant of planning permission for the southern extension. In response The Working Group clearly state that as this strip was to have been included in the Western Extension (taken as Phase 1) the intention of Ministers is to exclude this area.

3.20 I consider the definition of the boundary of the approved extraction area (CL/11/0285) and its treatment are relevant considerations given that the extent of Phase 2A has already been established. Inclusion of the area shown in red on the applicant's plan would in effect extend Phase 2A. I note the council has no objection to inclusion of this area. I recognised in 2018 that a suspensive condition 3 could enable clarification of the boundary. However, I also accepted the advantages of reflecting the established phasing and on the need for precision.

3.21 In that context and on further consideration of the original application description above I consider it is clear which areas represent the western and southern extensions. In considering the terms of the already concluded legal agreement, as discussed above, the premise for consolidation of the extant permission with the extended area to the south is accepted and agreed. This has the effect of bringing Phase 2A within the terms of the reduced scheme. However there is nothing to suggest to me that the limits of that phase could be other than as shown in plan P2/1842/5A – July 2013.

3.22 Without any clear evidence to the contrary I find it is reasonable to assume that the reduced scheme subject of this report would include only the remaining workings in Phase 2A and inclusion of the new extraction area shown as Phase 2B. It would not apply to any part of Phase 1 (the Western Extension) which Ministers intend to exclude.

3.23 In terms of a reduced scheme I therefore consider that there is no premise to revisit the terms on which Phase 2A was defined. To do so would involve making potentially uninformed judgements about inclusion of part of the western extension beyond the limit of the current approved extraction works. I accept that my previous recommendation to Ministers included Phase 1. However, that consideration was based on the entire area and the consequent phasing and mitigation proposals. Extension of Phase 2A to establish the limits of extraction along the Drove Road was not part of my consideration. This is not a matter highlighted in the Ministers' Intentions Notice.

3.24 Taking all of the above into account I can understand that the previously proposed framing of condition 1 could lack precision and leave some ambiguity in terms of the area to which this planning permission would relate. In turn this could run contrary to the terms of the Circular. Consequently, for the purposes of clarity and precision I agree with the Working Group that the first condition should go further to clarify the area to which the proposed permission would relate.

3.25 However, given my assumption that the Ministers' Intention and reasoning relates to exclusion of the western extension as a whole (Phase 1) I am not persuaded that the "red area" should be differentiated. Consequently I do not consider that the additional reference to this area as proposed by the Working Group need be included.

3.26 In addition, my assessment is that any reference to the mitigation to be applied to protect the amenity of adjoining areas is more appropriately left to be addressed through a separate condition. This enables condition 1 to be solely concerned with the restriction of the terms of the planning permission to the southern extension. I consider it is necessary to make sure this condition is sufficiently precise to identify the area to which permission for a southern extension only is to apply. However, I find that the wider consideration of any required mitigation should be addressed separately. I return to that matter in relation to condition 2 below.

3.27 I understand the applicant's position that the "red area" is distinct and severable as it is not within the World Heritage site buffer zone nor the Historic Designed Landscape. However it falls within a phase of development that is. As stated above I am not persuaded that this additional area can simply be added to either of the phases that I am considering as part of this report. To do so may have implications for the mitigation already considered through the previous approval of Phase 2A and extend this permission beyond that intended by Ministers. The applicant's submissions reference the benefits to be gained in terms of restoration and a more gentle profile of slopes. However, I do not consider the basis for this is sufficiently demonstrated. In the absence of further details on the proposed works, phasing and restoration of this area, were it to be severed from Phase 1, I do not consider it appropriate to add it to the terms of any permission for the Southern Extension.

3.28 Drawing together all of the above my recommendation is that the following wording for Condition 1 should be included:

1. That notwithstanding the submitted plans there shall be no development or mineral extraction within the area identified as the New Lanark World Heritage Site Buffer Zone or the Falls of Clyde Designed Landscape identified on plan number P2/1842/2 – May 2012. Accordingly, no consent is given for Phase 1 as shown on Plan P2/1842/5A – July 2013 – Proposed Block Phasing.

*Reason: To protect the New Lanark World Heritage Site buffer zone and to protect the Falls of Clyde Designed Landscape.*

3.29 Clearly it would remain for Ministers in light of their stated reasoning to consider whether to support inclusion of the “red area”. However, in the event that request is viewed positively I would suggest that this matter should be left for further detailed consideration in light of the appropriate details. Such an approach could be secured by means of a suspensive condition. In that scenario I would advise that the first version of condition 1 above is attached. Condition 2 could then reserve consideration of the appropriate treatment for the western boundary as a whole subject to further details and to the prior approval of the planning authority.

#### Condition 2

3.30 Paragraph 27 of the Ministers’ letter notes the protection of the Falls of Clyde Designed Landscape including the impact on the Bonnington Estate boundary wall and a few mature parkland trees. Scottish Ministers also note that “following restoration there would be a perceptible change in the original landform and this would be a permanent change in the landscape that would have been evident in the historical estate layout”. Further the Ministers state in paragraph 35 that the the western extension is designated for its cultural significance as part of a designed landscape and Scottish Ministers consider that further encroachment and mineral extraction within the Middle Clyde Valley Special Landscape Area is unacceptable and conflicts with Policy NHE16. Paragraph 42 on compliance overall with the development plan references the need to avoid significant disturbance into protected areas.

3.31 The Working Party references these matters in support of its concerns about extraction extending up to the boundary of the World Heritage Site buffer zone given the potential to impact on landform and on the setting of the Drove Road, boundary wall and Historic Designed Landscape. I understand that the main area of concern relates to the boundary zone between the southern extension and the areas protected by the refusal of the western extension.

3.32 I have also had regard to Paragraphs 23, 26, and 30 of the Notice of Intention as referenced by the Working Group. I can understand that the areas of the reduced scheme in immediate proximity to the Drove Road and Estate Boundary are relatively more sensitive in terms of protecting the amenity of the area. The sensitive treatment of the boundaries of the extraction operations would be a material planning consideration in taking into account the relevant matters of amenity, landscape and heritage impacts.

3.33 In that respect the application as submitted provided details of mitigation, phasing and boundary treatment but this was based on the whole proposal including the western extension. The details of the application did not address the southern extension area in isolation. Consequently, I consider that further consideration and detailing of the boundary treatment and any relevant mitigation in the interests of visual amenity and landscape

impact to apply in the context of Ministers' current intentions are relevant matters. Such mitigation would be necessary in order to secure the acceptability of the reduced scheme. On approval of the reduced scheme the Drove Road would continue as a recreational route during the operational phase and would link through to Boat Haugh along the boundary of the Bonnington Estate.

3.34 As described above the Working Group has referenced the "red area" on the western boundary of Phase 2A as the current buffer strip and emphasise the importance of retaining this. Indeed it advises that a 50 metre buffer strip should be extended further to include a similar strip along the Western Boundary of Phase 2B. This is considered necessary in order to protect the setting, interpretation and amenity of heritage assets and the recreational route along the Drove Road.

3.35 The reduced scheme, in terms of the agreed legal agreement, would amalgamate the extant and new permission to include Phase 2A and the proposed Phase 2B. For the reasons stated above I do not consider that either condition 1 or condition 2, based on the available information, should be worded in such a way as to specify that the eastern portion of Phase 1 should be included in any permission.

3.36 In addition, I consider that application of a 50 metre buffer between the Drove Road and Phase 2B would lack any substantive justification. Whilst a similar strip reflects the separation of the Drove Road and extraction for Phase 2A the definition of that area reflects the particular circumstances of the site, its context and the mitigation proposed at that time. Without sectional drawings and details of screening and ground treatment I consider it would be inappropriate to require this to be mirrored for Phase 2b. I do not consider that it would be reasonable to be so prescriptive at this stage in the absence of the relevant detailed information.

3.37 That said I consider that the treatment of this boundary and the definition of a limit to the extraction area requires to be addressed not only in respect of adjoining heritage assets but also in the context of the landscape setting of the surrounding area and the amenity of recreational users of the Drove Road. Condition 44 as previously recommended enables geomorphological conditions to be recorded. I consider that this provision along with the wider requirements of a suspensive condition 2 sufficiently address the matters raised by the Working Group. I consider that provisions in the interests of protecting the amenity of the area also reflect Ministers' reasoning as set out in their Intentions Notice. In that context, I consider that a suspensive Condition 2 as set out below should be applied. This reflects that previously recommended but with some minor adaption to specify the matters to be addressed.

2. That no development shall take place until plans have been submitted and approved in writing by the Planning Authority showing the extent of mineral extraction, landform, level details and screening along the western boundary of phase 2A and the whole of phase 2B as shown on plan number P2/1842/5A – July 2013. The approved plans shall demonstrate how appropriate boundary treatment will protect the heritage, landscape and visual amenity of the adjoining area. The approved plans shall be implemented unless otherwise agreed in writing by the Planning Authority.

*Reason: To protect the heritage, landscape and visual amenity of the adjoining area which includes the setting of the New Lanark World Heritage Site(buffer zone), the*

*Falls of Clyde Designed Landscape, the Middle Clyde Valley Special Landscape Area and recreational access along the Drove Road.*

3.38 In the event that Ministers take an alternative view and consider that inclusion of the “red area” should be specifically supported a consequent variation of this condition would be required to reference an extended Phase 2A (including the relevant portion of Phase 1 which is not within the New Lanark World heritage Site Buffer Zone). This would provide assurance through the need for prior approval of detailed plans by the planning authority that the objectives of this condition should not be compromised by such inclusion.

Condition 3

3.39 In 2015 the timescales recommended by the previous reporters would have extended extraction operations from 2027 (as stated on the extant permission) to 2030 with restoration by 2032. The Working Group consider that with removal of the Western area there is no case for extension beyond 2027. I note the applicant’s case for further extension to reflect not only the passage of time but the lower extraction rates that are predicted. However, having considered the smaller scale of the extraction area an operational timeframe extending to 2040 would significantly prolong the works and the consequent period over which local impacts would be experienced. My conclusion is however that a timeframe to 2027 would be unreasonably restrictive given the extraction rates indicated. On balance I consider that the timescale proposed in 2015 should provide some additional flexibility to take account of the time that has elapsed since then and to allow for a realistic period over which extraction can be completed. Consequently, I advise that the timescales be stated as 2032 and 2034 respectively:

3. That all extraction operations on the site shall be discontinued no later than 31 December 2032 and that the entire site shall be restored in accordance with the approved restoration and enhancement plan or plans (as required by conditions 6 and 7) by 31 October 2034.

*Reason: To ensure that the Council as Planning Authority retains effective control of the development.*

Condition 4

3.40 The only disputed matter on this condition is linked to the arguments above regarding the inclusion or otherwise of the “red area”.

3.41 My conclusions above apply in this context and Ministers should note that should they take an alternative view then amendment of this phasing condition would require to include reference to the eastern side of Phase 1 outwith the Buffer zone, World Heritage Site and Historic Designed Landscape. I have assumed that the progressive working would incorporate that area as an extension of the current phase 2A.

3.42 That aside my recommendation is that the condition as suggested previously is in accordance with the Circular and should be attached to any grant of planning permission for the southern extension:

4. That the extraction operations shall proceed in accordance with phases 2A, 2B and 3, illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, with each phase being worked progressively in that order.

*Reason: To provide for progressive restoration.*

#### Condition 5

3.43 The applicant requests that the 12 month period after which operations will be deemed to have ceased should be increased to 24 months. I understand this request is linked to the nature of the finer sand material in the southern extension and that the applicant considers that as this is less valuable it is likely to prove more difficult to sustain production levels. I can understand the potential difficulties if this were to be the case. However for land use planning purposes I consider that a cessation of operations for up to two years would create unreasonable uncertainty and an increased risk that the required restoration and timeous re-instatement of the site would not be secured.

3.44 For this reason I consider that provision for the satisfactory restoration of the site is more effectively and reasonably controlled by retention of the shorter 12 month period. Consequently I recommend inclusion of the condition as previously proposed and as recommended by the council as planning and enforcement authority.

5. Notwithstanding the terms of condition 3 above, in the event of extraction operations on site ceasing for a period of 12 months or more, the Planning Authority shall deem site operations to have ceased permanently, and the application site area shall be restored within a period of 24 months in accordance with the approved restoration plan or plans (as required by condition 6). That, in the event of extraction operations on any phase of the site ceasing for a period of 12 months or more, the operator, within 2 months of the phase having been deemed to have ceased, shall submit, for the written approval of the Council as planning authority, an interim restoration scheme for that part of the site, to include timescales for restoration, and shall thereafter undertake the restoration as detailed within the approved plan in line with the approved timescales.

*Reason: To secure the satisfactory reinstatement of the site.*

#### Condition 6

3.45 I find no question that this condition responds to the terms of the Circular and that provision for the necessary re-instatement of the site is an appropriate requirement for the proposed quarry operations.

3.46 Again the applicant raises the issue of inclusion of the “red area” within the scope of this condition. In that respect I refer back to my conclusions above that this area is not appropriately included.

6. That no mineral extraction operation shall commence within either phases 2A, 2B, or 3, as illustrated on drawing P2/1842/5A – July 2013 – Proposed Block Phasing, until a detailed restoration plan or plans for that phase, and any other areas of the application site to be restored during the period mineral extraction operations are taking place within that phase, has been submitted to and approved in writing by the Council as Planning Authority.

The detailed restoration plan or plans shall include detailed information on landform levels, drainage (including ground water and surface water run-off flowpaths). Soil coverage, surface treatment, planting schedules, final boundaries, paths, signage, parking and the progressive restoration of the phase.

All restorative works shall thereafter be undertaken in accordance with the details and timescale stipulated within the approved detailed restoration plan or plans, unless otherwise approved in writing by the Council as Planning Authority.

*Reason: These details were not submitted at the time of the application and are required. To ensure the application site is satisfactorily restored in a phased manner.*

#### Condition 7

3.47 Initially the enhancement works were to start around Phase 1 the Western extension. Operations were to commence from the western extent of Phase 1 and progress easterly back toward the existing quarry, returning to an area currently consented for extraction operations (Phase 2A), and then progress in a southerly direction into the proposed southern extension area (Phase 2B). The final extraction area (Phase 3) is located beneath the current processing area in the north eastern area of the application site. The condition as proposed had planning permission been granted for the entire development included the following clarification regarding the relevant enhancement areas:

Phase 1 - Enhancement Zone A  
Phase 2A - Enhancement Zone B  
Phase 2B - Enhancement Zone C  
Phase 3 - Enhancement Zone D

3.48 The applicant states that much of this enhancement was proposed to offset impacts associated with the Phase 1 operations. I can appreciate that the enhancement was proposed as a package of measures and that Phase 2A and 3 were considered through planning permission (CL/11/0285). Nonetheless the proposal involves a substantial extension of the workings southwards and an extension to the life of the quarry. In that context I agree with the council that it remains appropriate to require the works which form part of this current application. These are clearly associated with the relevant phases as shown on the applicant's submitted plan P2/1842/5A - Proposed Block Phasing – July 2013. To remove such enhancement proposals would risk running contrary to the terms of the planning application as submitted and the mitigation assessed through the environmental assessment and as understood by the public and other agencies.

3.49 Consequently, I consider there is a remaining requirement to address those elements of the proposed scheme relevant to the mitigation of the effects of Phases 2A, 2B and 3 to fully address the impacts of the albeit reduced scheme. I find no reason to depart from the wording as proposed by the previous reporters and consider this condition continues to comply with the terms of the Circular. In addition, the applicant also makes the point about inclusion of the "red area". I have addressed this matter above.

7. That no mineral extraction operations shall commence within each phase 2A, 2B or 3 as illustrated on drawing P2/1842/5A – July 2013 – Proposed Block Phasing until a detailed Enhancement Plan(s) for the corresponding Enhancement Zone (as



listed below) has been submitted to and approved in writing by the Council as Planning Authority. The Enhancement Plan(s) shall clearly set out the proposed enhancement works and timescales for implementation, including detailed specifications for works associated with ecological and biodiversity enhancement, tree and hedgerow planting, fencing, information boards, footpath construction and management of existing woodland areas. All enhancement works shall be undertaken in accordance with the details and timescales stipulated within the approved Enhancement Plan(s). There shall be no deviation from the approved Enhancement Plan(s) including the timescales stated therein, unless otherwise approved in writing by the Council as Planning Authority. For avoidance of doubt, the Phases and corresponding Enhancement Zones are illustrated on drawing P2/1842/5 - Proposed Block Phasing – May 2012, and are as follows:  
Phase 2A - Enhancement Zone B.  
Phase 2B - Enhancement Zone C.  
Phase 3 - Enhancement Zone D.

*Reason: These details were not submitted at the time of the application and are required. To ensure the application site is enhanced in accordance with the approved details.*

#### Condition 8

3.50 Again the only issue raised is in relation to the inclusion or otherwise of the “red area” and I have addressed that matter above. I consider the wording as previously revised remains relevant and in accordance with the terms of the Circular.

8. That no mineral extraction operations shall commence within Phases 2A, 2B or 3, as illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, until a detailed aftercare scheme for that phase, and any other areas of the application site to be restored during the period mineral extraction operations are taking place within that phase, is submitted for the written approval of the Council as Planning Authority. The aftercare scheme shall specify the steps to be taken, the period during which they are to be taken, and who will be responsible for taking those steps to bring the land to the required standard.

*Reason: To ensure effective landscape management to bring land to the required standard for the after uses.*

#### Condition 11

3.51 The following reflects the hours of operation as set out in the Environmental Statement paragraph 1.43:

Hours of operation will be the same as existing namely;

- 06.30 to 19.00 Monday to Friday
- 06.30 to 13.00 Saturday
- 08.00 to 16.00 Sundays

There will no working on Public Holidays or Local Bank Holidays

3.52 It may be that other quarries operate under extended hours and are open on public holidays and I can understand that such restrictions can impact on the efficient operation of the business and indeed on traffic congestion at certain times. However each scheme must

be considered on its merits and I agree with the council that any proposals to amend the working hours or days on which the quarry can operate would materially alter the terms of the original proposal and could impact on the surrounding area. In addition a change to extend operational hours as suggested by the applicants has not been the subject of consultation with other agencies or with the surrounding community. Consequently, I consider that the condition as originally framed remains necessary to reflect the terms of the application as proposed and in the interests of local amenity.

11. That unless otherwise agreed in writing by the Council as Planning Authority:

(a) No haulage vehicles shall enter or leave the site; before 07.00hrs and after 17.00hrs on Mondays to Fridays, before 07.00hrs and after 13.00hrs on Saturdays and at any time on Sundays.

(b) No operations or activity (except water pumps for the management of water, security or in connection with essential maintenance within the plant site area) shall take place at the site, before 06.30hrs and after 19.00hrs on Mondays to Fridays; before 06.30hrs and after 13.00hrs on Saturdays and before 08.00hrs and after 16.00hrs on Sundays. No activities (except water pumps for the management of water, security or in connection with essential maintenance within the plant site area) shall take place on Public Holidays or Local Bank Holidays.

*Reason: To ensure that the Planning Authority retains effective control of the development and in the interests of protecting local amenity.*

#### Condition 19

3.53 The grant of planning permission for the reduced scheme would bring with it some change in the nature and extent of the current operations. In addition it includes the extant permission. Whilst this may not currently be an issue it is a potential consequence of the nature of this development and one over which I can understand the council as planning and roads authority should retain control. I consider that it remains necessary to retain a condition to address the risk of mud and debris being brought onto the public road in the interests of road safety. Consequently I consider the following condition should apply:

19. That in the event a written request is made by the Council the operator shall within 21 days of the written request being made submit, for the written approval of the Planning Authority, details setting out measures to minimise the deposit of mud and debris on the public road, including details of the timescale within which these measures will be taken. Thereafter these measures shall be implemented within the approved timescale.

*Reason: To minimise the impact on local amenity and the chances of debris being carried onto the public highway in the interests of road safety.*

#### Condition 21

3.54 Increasing the limit on the importation of materials to the site would have the effect of an increase in vehicle movements. The resulting change would not have been considered as part of the transport assessment that accompanied the original application. In any event I consider the condition as proposed can enable an increase to be sought from the council, a request which could be accompanied by the necessary supporting information to allow proper assessment of this matter. I consider that the following condition is relevant and necessary in the interests of road safety and local amenity.

21. That the importation of cement and other materials required for site processing shall not exceed 50,000 tonnes per annum without the prior written agreement of the Council as Planning Authority.

*Reason: In the interest of road safety and local amenity.*

### Conclusion

3.55 The conditions that could apply to a planning permission for the southern extension only have been considered through the various stages of this process. In light of Ministers Notice of Intention dated 18 February 2019 I have invited comments from the main parties and consultation authorities on this matter. The conditions as advised through the Reporters 2015 Supplementary Report to Ministers, which applied to the southern extension only, were used as a starting point for that process.

3.56 The above report summarises the responses received and my conclusions on the matters raised. I have taken into account the Ministers Intentions Notice, the previous evidence as rehearsed through the 2018 re-opening of the case and the submissions of all parties as well as the terms of the relevant Circulars on planning conditions and legal agreements.

3.57 From that my conclusion is that there is no need for a further legal agreement given that there is an extant agreement in place that covers the necessary matters relating to cessation of the current planning permission and to make provision to address wear and tear to the local road network. My conclusions above do not support any additional requirements for agreement to include establishment and provision for the involvement of a liaison group.

3.58 The majority of the conditions that were advised previously both in the context of the whole scheme (in so far as they remain applicable to the reduced scheme) and as advised in 2015 through the Supplementary Report prepared by Mr Jackman and Mr Edwards are agreed by all parties.

3.59 The remaining issues relate to the area to which the permission should apply (conditions 1 and 2), the application of a 50 metre buffer zone (conditions 1 and 2), the time periods that should apply (condition 3), the extent of the enhancement works (condition 7), hours of operation (condition 11), the requirement in terms of roads maintenance(condition 19) and the limit on the importation of materials(condition 21).

3.60 On these issues my conclusions above advise that further clarification of the area to which the proposed planning permission would apply is required to remove any ambiguity in that respect. I have drawn this matter to the attention of Ministers. There may be an option to reserve this matter for further consideration through the suspensive nature of condition 2. However, my advice based on the description of the original application and my understanding of Ministers Intentions letter is that all of Phase 1 is defined as the western extension. Consequently this area should be excluded from the terms of the reduced scheme. I have included wording through condition 1 to this effect.

3.61 On the matter of the 50 metre buffer zone I have no details sufficient to demonstrate that 50 metres would represent the appropriate set back in the particular circumstances of

Phase 2B. That said I consider the sensitive treatment of the western boundary is necessary and a relevant planning matter to be addressed through condition.

3.62 Consequently, I consider that the matters raised and the relevant points, in so far as they relate to amenity and the appropriate establishment of the boundary relative to sensitive areas of historic and recreational value, are most appropriately handled through a suspensive condition. In this respect I have proposed some relatively minor adjustments to condition 2 to clarify its purpose and the matters to be addressed to secure that an acceptable boundary in the interests of amenity can be secured.

3.63 The proposed timeframes for operation and restoration, as advised through Condition 3, are 2032 and 2034 respectively.

3.64 On the other matters I have found no reason to depart from the terms of the previously advised conditions. I do not consider the changes proposed by the applicant should be supported as they do not meet the terms of the Circular and/or would represent a substantive change to the application as originally submitted.

3.65 Taking all of the above into account my recommended conditions, in the context of Ministers Intentions Letter dated 19 February 2019, are as attached through Appendix 1. Given that the agreement under Section 75 has already been concluded and registered there would be no need to delay issue of the decision notice.

*Allison Coard*  
Reporter

## APPENDIX 1 RECOMMENDED PLANNING OBLIGATION AND CONDITIONS

### Planning Obligation

Note: The following heads of terms for a Planning Obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) remain relevant and are addressed by the extant obligation as agreed on 31 August 2016:

- a) An undertaking to cease, and not restart, operations under planning permission CL/11/0285, following commencement of operations under this permission.
- b) That the operator has an agreement under Section 96 of the Roads (Scotland) Act 1984 for the duration of the consent.

### Planning Conditions

1. That notwithstanding the submitted plans there shall be no development or mineral extraction within the area identified as the New Lanark World Heritage Site Buffer Zone or the Falls of Clyde Designed Landscape identified on plan number P2/1842/2 – May 2012. Accordingly, no consent is given for Phase 1 as shown on Plan P2/1842/5A – July 2013 – Proposed Block Phasing.

*Reason: To protect the New Lanark World Heritage Site buffer zone and to protect the Falls of Clyde Designed Landscape.*

2. That no development shall take place until plans have been submitted and approved in writing by the Planning Authority showing the extent of mineral extraction, landform, level details and screening along the western boundary of phase 2A and the whole of phase 2B as shown on plan number P2/1842/5A – July 2013. The approved plans shall demonstrate how appropriate boundary treatment will protect the heritage, landscape and visual amenity of the adjoining area. The approved plans shall be implemented unless otherwise agreed in writing by the Planning Authority.

*Reason: To protect the heritage, landscape and visual amenity of the adjoining area which includes the setting of the New Lanark World Heritage Site (buffer zone), the Falls of Clyde Designed Landscape, the Middle Clyde Valley Special Landscape Area and recreational access along the Drove Road.*

3. That all extraction operations on the site shall be discontinued no later than 31 December 2032 and that the entire site shall be restored in accordance with the approved restoration and enhancement plan or plans (as required by conditions 6 and 7) by 31 October 2034.

*Reason: To ensure that the Council as Planning Authority retains effective control of the development.*

4. That the extraction operations shall proceed in accordance with phases 2A, 2B and 3, illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, with each phase being worked progressively in that order.

*Reason: To provide for progressive restoration.*

5. Notwithstanding the terms of condition 3 above, in the event of extraction operations on site ceasing for a period of 12 months or more, the Planning Authority shall deem site operations to have ceased permanently, and the application site area shall be restored within a period of 24 months in accordance with the approved restoration plan or plans (as required by condition 6).

That, in the event of extraction operations on any phase of the site ceasing for a period of 12 months or more, the operator, within 2 months of the phase having been deemed to have ceased, shall submit, for the written approval of the Council as planning authority, an interim restoration scheme for that part of the site, to include timescales for restoration, and shall thereafter undertake the restoration as detailed within the approved plan in line with the approved timescales.

*Reason: To secure the satisfactory reinstatement of the site.*

6. That no mineral extraction operation shall commence within either phases 2A, 2B, or 3, as illustrated on drawing P2/1842/5A – July 2013 – Proposed Block Phasing, until a detailed restoration plan or plans for that phase, and any other areas of the application site to be restored during the period mineral extraction operations are taking place within that phase, has been submitted to and approved in writing by the Council as Planning Authority. The detailed restoration plan or plans shall include detailed information on landform levels, drainage (including ground water and surface water run-off flowpaths). Soil coverage, surface treatment, planting schedules, final boundaries, paths, signage, parking and the progressive restoration of the phase.

All restorative works shall thereafter be undertaken in accordance with the details and timescale stipulated within the approved detailed restoration plan or plans, unless otherwise approved in writing by the Council as Planning Authority.

*Reason: These details were not submitted at the time of the application and are required. To ensure the application site is satisfactorily restored in a phased manner.*

7. That no mineral extraction operations shall commence within each phases 2A, 2B or 3 as illustrated on drawing P2/1842/5A – July 2013 – Proposed Block Phasing until a detailed Enhancement Plan(s) for the corresponding Enhancement Zone (as listed below) has been submitted to and approved in writing by the Council as Planning Authority. The Enhancement Plan(s) shall clearly set out the proposed enhancement works and timescales for implementation, including detailed specifications for works associated with ecological and biodiversity enhancement, tree and hedgerow planting, fencing, information boards, footpath construction and management of existing woodland areas. All enhancement works shall be undertaken in accordance with the details and timescales stipulated within the approved Enhancement Plan(s). There shall be no deviation from the approved Enhancement Plan(s) including the timescales stated therein, unless otherwise approved in writing by the Council as Planning Authority. For avoidance of doubt, the Phases and corresponding Enhancement Zones are illustrated on drawing P2/1842/5 - Proposed Block Phasing – May 2012, and are as follows:

Phase 2A - Enhancement Zone B.  
Phase 2B - Enhancement Zone C.  
Phase 3 - Enhancement Zone D.

*Reason: These details were not submitted at the time of the application and are required. To ensure the application site is enhanced in accordance with the approved details.*

8. That no mineral extraction operations shall commence within Phases 2A, 2B or 3, as illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, until a detailed aftercare scheme for that phase, and any other areas of the application site to be restored during the period mineral extraction operations are taking place within that phase, is submitted for the written approval of the Council as Planning Authority. The aftercare scheme shall specify the steps to be taken, the period during which they are to be taken, and who will be responsible for taking those steps to bring the land to the required standard.

*Reason: To ensure effective landscape management to bring land to the required standard for the after uses.*

9. Each individual phase of mineral extraction, or such other phase as may be subsequently approved in writing by the Council as Planning Authority, shall be substantially restored in a progressive and phased manner in accordance with the provisions of the approved restoration plan or plans submitted as a requirement of conditions 6 and 7. Thereafter, the aftercare scheme submitted as a requirement of condition 8 shall be implemented in a phased manner from the first planting season following completion of each individual phase wherever practicable taking into account proposed working arrangements.

*Reason: To ensure satisfactory reclamation of the site and timeous completion of the work.*

10. That no development hereby approved shall commence until a guarantee to cover all site restoration and aftercare liabilities imposed on the expiry of this consent has been submitted for the written approval of the Council as Planning Authority. Such guarantee must, unless otherwise agreed in writing by the Council as Planning Authority:

- i. be granted in favour of the Council as Planning Authority;
- ii. be granted by a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;
- iii. be for a specified amount which covers the value of all site restoration and aftercare liabilities as agreed between the operator and the planning authority at the commencement of development;
- iv. either contain indexation provisions so that the specified amount of the guarantee shall be increased on each anniversary of the date of this consent by the same percentage increase in the General Index of Retail Prices (All Items) exclusive of mortgage interest published by or on behalf of HM Government or, in the event that that index is no longer appropriate or applicable, such other comparable index as the Planning Authority, acting reasonably, decide between the said date and such relevant anniversary. The amount shall be reviewable to ensure that the specified amount of the guarantee always covers the value of the site restoration and aftercare liabilities;
- v. come into effect on or before the date of commencement of development, and expire no earlier than 12 months after the end of the aftercare period.

No work shall begin at the site until (1) written approval of the Council as Planning Authority has been given to the terms of such guarantee and (2) thereafter the validly executed guarantee has been delivered to the Council as Planning Authority.

In the event that the guarantee becomes invalid for any reason, no operations will be

carried out on site until a replacement guarantee completed in accordance with the terms of this condition is lodged with the Council as Planning Authority.

In the event the value of the guarantee held by the Council is less than the calculated site restoration and aftercare liabilities (calculated through condition 38 below), the operator shall, within four months of the submission of the annual progress plan required through condition 38, deliver a further guarantee to cover all site restoration and aftercare liabilities. Such guarantee must, unless otherwise agreed in writing by the Council as Planning Authority, comply with parts i to v, above. If this further guarantee is not submitted within four months of the submission of the annual progress plan required through condition 38, all extraction operations shall cease until the Council confirms, in writing, receipt of an acceptable guarantee.

*Reason: To ensure that provision is made for the restoration and after care of the site.*

11. That unless otherwise agreed in writing by the Council as Planning Authority:

(a) No haulage vehicles shall enter or leave the site; before 07.00hrs and after 17.00hrs on Mondays to Fridays, before 07.00hrs and after 13.00hrs on Saturdays and at any time on Sundays.

(b) No operations or activity (except water pumps for the management of water, security or in connection with essential maintenance within the plant site area) shall take place at the site, before 06.30hrs and after 19.00hrs on Mondays to Fridays; before 06.30hrs and after 13.00hrs on Saturdays and before 08.00hrs and after 16.00hrs on Sundays.

No activities (except water pumps for the management of water, security or in connection with essential maintenance within the plant site are) shall take place on Public Holidays or Local Bank Holidays.

*Reason: To ensure that the Planning Authority retains effective control of the development and in the interests of protecting local amenity.*

12. That no development shall commence until a scheme setting out how noise from the site shall be managed and monitored has been submitted and approved in writing by the Council as Planning Authority. The scheme shall include:

- The day and night time nominal noise limits from site operations.
- Noise monitoring arrangements.
- Noise complaint process.
- Measures in relation to vehicle reversing alarms.
- Operation of vehicles, plant and machinery.
- Mitigation measures for temporary or exceptional operations.

The agreed scheme shall thereafter be implemented unless otherwise approved in writing by the Council as Planning Authority.

*Reason: To minimise noise nuisance from the operation.*



13. That no development shall commence until a detailed scheme setting out dust control and monitoring has been submitted to and approved in writing by the Council as Planning Authority. The scheme shall include:

- A dust management plan.
- Dust monitoring arrangements.
- Dust complaint process.
- Arrangements for ceasing operations if a dust nuisance is caused.
- Arrangements for dust suppression.

The agreed scheme shall be implemented unless otherwise approved in writing by the Council as Planning Authority.

*Reason: To minimise the nuisance from dust.*

14. That all aggregates laden lorries leaving the site shall be sheeted before entering the public road.

*Reason: In the interests of road safety and protection of local amenity.*

15. The operator shall at all times be responsible for the removal of mud or other materials deposited on the public road by vehicles entering or leaving the site.

*Reason: In the interests of road safety.*

16. That the visibility splays for access onto the A73 shall be maintained at 2.5 x 215 metres unless otherwise agreed in writing with the Council as Planning and Roads Authority.

*Reason: In the interests of road safety.*

17. That all mineral dispatch vehicles shall only use the site entrance onto the A73 shown on plan number P2/1842/2 – May 2012, unless otherwise approved in writing by the Council as Planning Authority.

*Reason: To ensure that the Council as Planning Authority retains effective control of the development.*

18. That prior to the use of any new internal access roads a scheme setting how they will be surfaced and maintained and how debris will be prevented from being carried from them onto the public highway shall be submitted to and approved in writing by the Council as Planning Authority. The agreed scheme shall be implemented unless otherwise approved in writing by the Planning Authority. All existing internal access roads will be maintained in accordance with a scheme of works to be submitted to and approved by the Planning Authority within 3 months of the date of permission.

*Reason: To minimise the impact on local amenity and the chances of debris being carried onto the public highway.*

19. That in the event a written request is made by the Council the operator shall within 21 days of the written request being made submit, for the written approval of the Planning

Authority, details setting out measures to minimise the deposit of mud and debris on the public road, including details of the timescale within which these measures will be taken. Thereafter these measures shall be implemented within the approved timescale.

*Reason: To minimise the impact on local amenity and the chances of debris being carried onto the public highway in the interests of road safety.*

20. That the exportation of mineral from the site shall not exceed 650,000 tonnes per annum, without the prior written agreement of the Council as Planning Authority.

*Reason: In the interest of road safety and local amenity.*

21. That the importation of cement and other materials required for site processing shall not exceed 50,000 tonnes per annum without the prior written agreement of the Council as Planning Authority.

*Reason: In the interest of road safety and local amenity.*

22. Prior to the commencement of the development hereby approved, a sign shall be erected adjacent to the exit road from the quarry, at a location to be agreed in writing with the Council as Planning Authority, warning motorists departing the quarry that they may encounter cyclists. The sign shall accord with Drawing P950 produced by the Department of Transport.

*Reason: In the interests of road safety.*

23. That, unless otherwise agreed in writing with the Council as Planning Authority, top soil shall only be stripped, stockpiled and replaced when it is in a suitably dry and friable condition (suitably dry means that the top soil can be separated from the sub soil without difficulty so that it is not damaged by machinery passing over it).

*Reason: To minimise damage to the soils and sub soils.*

24. That all suitable soils, peat and soil making material shall be recovered where practical during the stripping or excavation operations and separately stored, on site, for use during restoration.

*Reason: To minimise damage to the soils, sub soils and peat.*

25. That topsoil, sub soil, peat and soil making material mounds shall be constructed with only the minimum amount of compaction necessary to ensure stability and shall not be traversed by heavy vehicles or machinery except during stacking and removal for re-spreading during site restoration. They shall be graded and seeded with a suitable low maintenance grass seed mixture in the first available growing season following their formation. The sward shall be managed in accordance with the appropriate agricultural management techniques throughout the period of storage.

*Reason: To minimise damage to the soils, sub soils and peat.*

26. That no development shall commence until a scheme of weed control and a scheme of movement of plant, vehicles and machinery has been submitted and approved in writing by

the Council as Planning Authority. The agreed scheme shall be implemented unless otherwise agreed in writing by the Council as Planning Authority.

*Reason: To minimise damage to the soils and sub soils.*

27. That no development shall commence until a drainage plan has been submitted and approved in writing by the Council as Planning Authority. The drainage plan shall include:

- Measures to avoid contamination of surface and ground water.
- Treatment of any contamination.
- Managing any drainage from areas adjoining the site.

The agreed drainage plan shall be implemented unless otherwise agreed in writing by the Council as Planning Authority.

*Reason: In the interests of amenity and to protect watercourses from pollution.*

28. All containers being used to store liquids within the application site shall be labelled clearly to show their contents, and be located in a bund which shall be at least 110% of the capacity of the largest container stored within it. Bunds shall conform to the following standards:

- The walls and base of the bund shall be impermeable.
- The base shall drain to a sump.
- All valves, taps, pipes and every part of each container shall be located within the area served by the bund when not in use.
- Vent pipes shall be directed down into the bund.
- No part of the bund shall be within 10 metres of a watercourse.
- Any accumulation of any matter within the bund shall be removed as necessary to maintain its effectiveness and capacity.

*Reason: To ensure the safekeeping of such liquids.*

29. That prior to the commencement of development, a groundwater monitoring plan shall be submitted to and approved by the Council. The operator shall review and update the groundwater monitoring plan on an annual basis, in consultation with the Council and the Scottish Environment Protection Agency. The site operator shall monitor the levels and quality of groundwater in accordance with the approved plan for the duration of operations, unless otherwise approved in writing by the Council as Planning Authority.

*Reason: In the interests of the water environment.*

30. For the duration of extraction operations at the site, a flow meter record of any water that is abstracted from the River Clyde or from within the quarry shall be maintained on site and this record shall be made available to the Council as Planning Authority within 5 working days of a written request from the Council as Planning Authority.

*Reason: In the interests of the water environment.*

31. That not more than 3 months prior to the commencement of development within each phase of development a scheme for prestart checks shall be submitted and approved in

writing by the planning authority, in consultation with Scottish Natural Heritage. The scheme for pre-start checks shall include:

- Measures for investigating the presence of otters, bats, badgers, amphibians and reptiles, birds and invertebrates within the site and within an appropriate buffer around the site.
- Mitigation measures to address impacts on otters, bats, badgers, amphibians and reptiles, birds and invertebrates.
- An implementation programme for such measures.

The agreed scheme shall be implemented in accordance with the approved programme unless otherwise agreed in writing by the Council as Planning Authority.

*Reason: In the interests of protected species.*

32. The removal of any trees and the cutting of rough grasslands that could provide habitat for nesting birds will take place outside the bird breeding season (April to July inclusive), unless a survey to establish the presence or otherwise of nesting birds has been undertaken and, where required, appropriate mitigating measures have been carried out to the satisfaction of the Council as Planning Authority.

*Reason: In the interests of breeding/nesting birds.*

33. That prior to the commencement of the development, the Council as Planning Authority shall approve the remit and reporting frequency of an Ecological Clerk of Works (ECoW), in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. The ECoW shall be appointed prior to commencement of development and remain in post until the completion of restoration works by the operator. The scope of work of the ECoW shall include:

(1) Monitoring impacts of operations and compliance with ecological best practice and the mitigation works or measures relevant to the development, as detailed within:

- the Restoration and Enhancement Plan(s), required through Conditions 6 and 7,
- the mitigation measures identified in Chapter 13 of the Environmental Statement (Volume 2 - November 2012) and those arising from the pre-start checks required under the terms of condition 31 above;
- the supplementary information, dated 7th May 2013, and;

(ii) the Species Protection and Habitat Management Plan required under the terms of condition 34 below to:

- Advise on adequate protection of nature conservation interests and implementation of restoration on the site.
- Monitoring of the impact of the development on protected species.
- Carrying out regular National Vegetation Classification habitat surveys of the site to establish any changes in habitat type.

*Reason: In order to minimise the developments potential impact on the environment.*

34. That prior to the commencement of development, a Species Protection and Habitat Management Plan shall be submitted to and approved in writing by the Council as Planning Authority, in consultation with Scottish Natural Heritage and Scottish Wildlife Trust.

Thereafter, the operator shall comply with the Species Protection and Habitat Management Plan and implement all mitigation measures contained within the Species Protection and Habitat Management Plan to the satisfaction of the Council as Planning Authority.

*Reason: In the interests of protected, non-protected and habitats.*

35. That prior to the commencement of development the operator shall submit for the Council's approval an archaeological mitigation strategy. Thereafter the developer shall ensure that the approved strategy is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken in accordance with the approved scheme.

*Reason: In the interests of archaeology.*

36. The operator shall install a borehole between the site processing plant area and the Hyndford Crannog within 6 months prior to the commencement of extraction operations in the Phase 3, as illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing.

*Reason: In the interests of archaeology.*

37. That within 1 year of the commencement of extraction operations within Phase 2B, as illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, the operator shall submit for the written approval of the Council as Planning Authority a monitoring programme for the borehole to be installed under Condition 36 above.

*Reason: In the interests of archaeology.*

38. That on the 31st March of each year following the commencement of development and for the duration of extraction and restoration operations approved through this permission, an annual progress plan shall be submitted to the Council as Planning Authority. The annual progress plan shall detail:

- The extent of extraction operations undertaken that year.
- Areas prepared for extraction, including any soil stripping and removal of vegetation etc.
- The extent of restoration operations carried out.
- Recent topographical site survey undertaken within 1 month prior to the submission of the annual progress plan.
- Current and anticipated production figures.
- Total tonnage of minerals dispatched from the site within the preceding year.
- The total tonnage of cement and other materials imported into the site for processing
- Estimation of remaining reserve of sand and gravel material (which are likely to be exported from site).
- A calculation of the costs of restoring the area of the site disturbed by the development and the associated area of the site to be enhanced at that time.
- Progress on the implementation and success of the Habitat Management Plan.
- Compliance with statutory permissions and legal agreements.
- Site complaint log and actions taken.

- Any incidents involving pollution of watercourses.

*Reason: To enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

39. That, within three months of completion of restoration works on site, a final progress plan containing the information listed in Condition 38 above, shall be submitted to the Council as Planning Authority.

*Reason: To enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

40. That, within four weeks following the completion of extraction operations within each phase or such other phasing plan as may be subsequently approved in writing by the Council as Planning Authority, the operator shall give notice to the Council as Planning Authority of the completion of that phase.

*Reason: In order to monitor the progress of the development. In accordance with Section 27B(2) of the Town and Country Planning (Scotland) Act 1997 (as amended).*

41. That no development shall commence until a scheme of stock proof fencing or other means of enclosure (including its maintenance), for the operational boundary has been submitted and approved in writing by the Council as Planning Authority. The agreed scheme shall be implemented unless otherwise agreed in writing by the Council as Planning Authority.

*Reason: To ensure that there is adequate site security and to prevent unauthorised entry of stock onto the site.*

42. That from the date of commencement of works on the site, until completion of the final restoration, a copy of this permission, and all approved documents and subsequently approved documents, shall be kept available for inspection in the site offices during the approved working hours.

*Reason: To ensure the site operator and visiting officials are aware of the approved details.*

43. Notwithstanding the details shown on the stamped approved plans, that before any work commences on the site (including enabling works), the following details shall be submitted to and approved in writing by the Council as Planning Authority, and such details as may be approved, shall be implemented unless otherwise agreed in writing by the Council as Planning Authority prior to the commencement of extraction works:

- (a) A detailed specification of all footpaths proposed within the application site.
- (b) Details of the location, style and height of all new boundary treatment such as fences, walls, gates and bunds and signage to be erected within or around the boundaries of the site.
- (c) Details of conveyor, including design, colour and route.
- (d) Details, including location and design, of pedestrian crossing points over the conveyor, where appropriate.

*Reason: These details were not submitted at the time of the application and are required to ensure that the proposal is satisfactory.*

44. That the operator shall permit access to the site to geo-scientists to study and document the geological and geomorphological record at the site as extraction proceeds, for the duration of the extraction operations. The documentation reporting the findings of the geological and geomorphological studies shall be retained on site and shall be submitted to the Council as Planning Authority within 28 days of a written request.

*Reason: To ensure the geomorphological characteristics are recorded and made available.*

45. At no time shall the site be artificially illuminated with the exception of vehicle lighting during the permitted hours of working as set out in Condition 11(b), to the satisfaction of the Planning Authority.

*Reason: In the interests of amenity*

## APPENDIX 2: RESPONSES FROM PARTIES 2019

[Planning Authorities further written submission 22 March 2019](#)  
[Planning Authorities concluding response dated 24 April 2019](#)  
[Applicant's further written submissions dated 3 April 2019](#)  
[Applicant's comments on Conditions dated 8/12/2018 resubmitted 3 April 2019](#)  
[Applicant's attached agreement registered 31 August 2016](#)  
[Applicant's concluding response dated 12 April 2019](#)  
[Working Group's written submissions dated 2 April 2019](#)  
[Working Group's concluding response dated 24 April 2019](#)  
[Annette Leppla concluding response 25 April 2019](#)  
[SEPA response 15 April 2019](#)  
[SEPA response 2 April 2019](#)  
[Historic Environment Scotland Response 3 April 2019](#)  
[Scottish Natural Heritage Response 3 April 2019](#)  
[Transport Scotland Response 9 April 2019](#)