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Our ref: A22150398
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Dear Alison O’Kane

RE: East Ayrshire Council – Minerals Local Development Plan – Proposed Plan

Thank you for your correspondence of 27th July 2018, inviting comments on the above document. Please see below the representations from the Scottish Government:

1. Part of Plan: Unconventional Oil and Gas (UOG)

Proposed Modification: Please modify the plan to state ‘The Scottish Government announced its preferred policy position to not support the development of unconventional oil and gas in Scotland in October 2017. This preferred position is currently subject to the necessary statutory assessments, prior to finalisation.’

Reason: This modification is required to update the plan to reflect the current Scottish Government policy position on UOG.

2. Part of Plan: Policy MIN PPL1: Protecting communities

Proposed Modification: Amend policy to remove the 500 metres buffer zone.

Reason: Scottish Planning Policy (SPP) does not specify the need for a 500 metres buffer zone around communities when considering mineral extraction, other than for opencast coal. The decision regarding the need for a 500 metres buffer zone around a community who could be affected by mineral development should be undertaken on a case by case basis, taking into account local factors.

3. Part of Plan: Compliance monitoring

Proposed Modification: Include reference to the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017.



Reason: These Regulations allow a planning authority to secure a fee of £500 and £250, for active and inactive surface coal mines sites respectively. The maximum number of rechargeable visits per annum for a site is 8.

4. Part of Plan: Securing community benefits

Proposed Modification: Please insert reference to contributions being voluntary rather a mandatory commitment.

Reason: Although this section stops short of actually setting this requirement into a policy it is clear from paragraphs 6.8 to 6.11 that developers or operators are expected to place a financial contribution into a fund which will be available to any local community affected by the development. The approach being outlined takes no account of other contributions (non-financial) that the developer may be able to claim stem from the proposal.

5. Part of Plan: Policy MIN ENV 10: Protection of Built and Natural Environment Resources.

Proposed Modification: Please amend the policy to reflect the following:

‘In particular, the Council will not support proposals where they would:...

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

Reason: Modification is required so that the proposed plan aligns with SPP and reflects the Scottish Government’s Control of Woodland Removal Policy. The criteria for determining the acceptability of woodland removal and further information on the implementation of the policy is explained in the Control of Woodland Removal Policy, and this should be taken into account when preparing development plans and determining planning applications.

6. Part of Plan: Developer Obligations, paragraph 9.8

Proposed Modification: Amend paragraph 9.8 (i, ii, iii) to better reflect PAN 64 and HoPS ‘Position Statement on the Operation of Financial Mechanisms to Secure Decommissioning, Restoration and Aftercare of Development Sites’.

Reason: PAN 64 (Reclamation of Surface Mineral Working) sets out that ‘*calculation of the bond by an independent specialist, perhaps paid for by the operator, will ensure that the sum calculated takes account of the full cost of restoration and aftercare, including professional fees*’.

The Heads of Planning (HoPS) Position Statement states that it is ‘*critical that an independent professional assessment is made to establish the quantum of the financial guarantee. This assessment should also ensure that the restoration and aftercare proposals are feasible and the means of operation practicable. Planning conditions should ensure that independent professional advice is available, at the developers’ cost, for the initial assessment and for subsequent periodic reviews of the financial guarantee and restoration proposals*’.

Paragraph 9.8 (ii) of the Proposed Plan goes beyond this by setting out that the Council’s independent consultant will assess restoration plans and that the cost of this assessment will

be met by the developer through a formal legal agreement. Planning Authorities may only charge for undertaking their functions where there is an express authority to do so.

If it would be helpful to discuss the comments above, please contact that Development Plans Gateway at developmentplans@gov.scot.

Yours sincerely

Debbie McLean
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