Responding to the consultation

In addition to answering the questions set out in this document, representations can also be made on all other aspects of the draft Main Issues Report (dMIR) and if there are any big issues which are considered to be missing from the document.

A formal consultation on this dMIR begins on 28th June 2016 and ends 9th August 2016. Representations should be as concise as possible and supporting information can be submitted, preferably in electronic format to: localdevelopmentplans@east-ayrshire.gov.uk

Or alternatively in writing to:

East Ayrshire Council
Planning & Economic Development Division
Economy & Skills
The Johnnie Walker Bond
15 Strand Street
Kilmarnock
KA1 1HU

Representation forms can be found on the Council’s website at: www.east-ayrshire.gov.uk

After the consultation period has closed, all representations received will be examined and used to inform the Main Issues Report (MIR) which is due for publication in October 2016.
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1. Introduction

Welcome to East Ayrshire’s Draft Minerals Main Issues Report (dMIR)

This document represents the first stage in the preparation of our Minerals Local Development Plan (MLDP). In respect of the historic, current and potential future extraction of minerals, it sets out what we want East Ayrshire to be like in 20 years’ time and presents 36 issues for future development that we want people’s views on.

What are minerals?

Minerals are all substances in, on or under land of a kind ordinarily worked for removal by underground or surface working. Examples of minerals are coal, sand, gravel and rock.

Pre dMIR (draft Main Issues Report) Consultation

Prior to writing this report the Council undertook a combination of workshops, meetings and questionnaires with selected stakeholders including Community Liaison Groups and Technical Working Groups for existing minerals sites, Community Councils, mineral operators, neighbouring Ayrshire local authorities, government bodies and other organisations with an interest in minerals.

We have also undertaken a ‘call for priorities, issues and proposals’ which ran for 6 weeks between 19th February and 1st April 2016. This sought views on what the priorities of the MLDP should be and which issues we needed to address. It was also an opportunity for developers, landowners and other interested parties to put forward to the Council sites for development within East Ayrshire that they believe are suitable for minerals related development (only). The findings of this consultation have informed our dMIR (draft Main Issues Report) and helped us to arrive at issues and possible options.

What is a Main Issues Report, what are issues and options?

A Main Issues Report (MIR) focuses on what key planning policy changes are needed and sets out the Council’s main ideas for future development. It is site specific and sets out proposals for future development. An ‘issue’ is a specific policy
or strategy area and the ‘options’ are the choices we have for future policy or strategy direction.

A MIR does not deal with all issues, just major changes. However, we have tried to encompass as many practicable ideas as possible from the consultation responses so that the draft MIR provides stakeholders with an informed understanding of the possible content of the plan. Where issues related to existing policies are missing, it does not mean they will not be included: we will look at all the relevant existing policies in the MIR in September 2016 and make a decision as to whether they will be retained, replaced or deleted. Full public consultation will follow. A list of the relevant policies for review is in Appendix 1. The issues in the draft Main Issues Report determine the notable changes and additions to the existing Plan that we have identified a requirement for.

**What is the draft MIR?**

We have added an additional step in the statutory development planning process by having a draft MIR (dMIR). We felt this was appropriate as a result of the huge changes in minerals extraction activity that have affected East Ayrshire, primarily in opencast coal, and it allows stakeholders to have an additional opportunity to shape the plan. The dMIR sets out possible reasonable policy and spatial options for minerals related development. Where an MIR would identify the Council’s preferred options, we have not identified ‘preferred options’ in the draft Main Issues Report as we want your feedback before we decide what our ‘preferred options’ are. This is your principal opportunity to shape the plan and comment on the options which exist and to make us aware of alternative options or anything else which you feel is missing. The Council is genuinely open and willing to consider new or different ideas at this stage. We hope you take the opportunity to let us know your thoughts.

The dMIR will be followed in October 2016 by an MIR which will identify our preferred options for development based upon your feedback and our research. This dMIR stage therefore represents one of two stages you have to have your say prior to the drafting of a proposed plan, which will also be subject to formal consultation.

Your participation in this process will help us to determine the strategies, policies and sites in the proposed plan, which will follow the MIR. The dMIR and MIR will focus on key changes that have occurred since the last development plans with minerals content were adopted in 2003 and 2010 (The East Ayrshire Opencast Coal Subject Plan and the East Ayrshire Local Plan respectively).

**Remit of the MLDP**

Currently the following plans make up the development plan for East Ayrshire:
Ultimately, coal policies in the OCCSP and other minerals policies currently in the EALP will be subsumed into the East Ayrshire MLDP which will consider all minerals which include coal, sand and gravel, peat, hard rock and unconventional oil and gas.

As a result of national planning reform, there is to be no Strategic Development Plan for Ayrshire and therefore the merit of previous Structure Plan policies relating to minerals will have to be assessed and included in the MLDP where appropriate.

Remaining matters, i.e. non minerals matters such as residential or retail development, will be considered in the East Ayrshire Local Development Plan (EALDP) which is anticipated to be adopted in November 2016.

**Monitoring Statement**

A monitoring statement is published alongside this dMIR which details what has happened on the ground since the existing development plan was published and how successful its strategies have been; it forms a large part of the evidence base for the MIR.

**Strategic Environmental Assessment**

All policies and strategies of the MIR will be assessed for their likely environmental impacts through the Strategic Environmental Assessment (SEA) process to ensure that development takes place in the most appropriate locations with minimal environmental impact. A full Environmental Report will be published alongside the MIR in October 2016 and will provide full details of how the process was undertaken and highlight how environmental issues have been taken on board. The SEA process will run in parallel with the preparation of the MLDP.

For the dMIR we have prepared a scoping report which is available on the SEA Gateway.
Key documents

The following key documents have been used to inform the preparation of the Main Issues Report:

Legislation

Climate Change (Scotland) Act 2009
Environmental Impact Assessment (Scotland) Regulations 2011
Environmental Protection Act 1990: Part IIA Contaminated Land and Contaminated Land (Scotland) Regulations 2000 (SI 2000/178)
Flood Risk Management (Scotland) Act 2009
Land Reform (Scotland) Act 2003
Nature Conservation (Scotland) Act 2004
The Management of Extractive Waste (Scotland) Regulations 2010
The Water Environment (Controlled Activities) (Scotland) Regulations 2011
Water Environment and Water Services (Scotland) Act 2003
European Union Water Framework Directive 2000/60/EC
National Policy and Guidance

National Planning Framework (NPF) 3
Scottish Planning Policy (SPP), 2014
Planning Advice Note (PAN) 50: Controlling the Environmental Effects of Surface Mineral Workings
PAN 50: Annexes A-D: Controlling the Environmental Effects of Surface Mineral Workings
PAN 58: Environmental Impact Assessment
PAN 64: Reclamation of Surface Mineral Workings
PAN69: Flooding
PAN 75: Planning for Transport
PAN 81: Community Engagement
Managing Change in the Historic Environment
Scottish Historic Environment Policy

Strategic Policy and Guidance

Ayrshire Local Biodiversity Action Plan
Ayrshire Woodlands Strategy
Ayrshire Landscape Assessment
Galloway and Southern Ayrshire Biosphere Heritage Management Plan
Local Policy and Guidance

Community Led Action Plans
East Ayrshire Sustainable Development Strategy
Energy Strategy and Carbon Management Programme
East Ayrshire Proposed Local Development Plan
East Ayrshire Contaminated Land Strategy
East Ayrshire Community Plan (2015-2030)
Green Infrastructure Strategy 2015
Local Transport Strategy
2. Vision

A vision statement is required by planning legislation. A vision statement should provide a realistic expression of what the plan area, i.e. East Ayrshire, could be like in 20 years’ time.

The vision for the MLDP should link into East Ayrshire’s Community Plan (2015-2030) vision which is:

*East Ayrshire is a place with strong, safe and vibrant communities where everyone has a good quality of life and access to opportunities, choices and high quality services which are sustainable, accessible and meet people’s needs.*

The proposed vision for the Minerals Local Development Plan is that:

*East Ayrshire’s former mining sites will be restored, and will provide communities with opportunities for tourism, recreation, leisure and sustainable employment. Regeneration will reconnect communities and settlements through innovative open space projects. The need for a sustainable supply of minerals will be fulfilled through a responsible approach to extraction with appropriate restoration being considered from the outset.*

The vision centres the focus of the Plan on restoration but recognises the potential requirement for the extraction of minerals in East Ayrshire in the years to come. The Plan will provide a robust framework for the assessment of any new proposal to ensure that any new extraction and restoration is carried out properly.

**Issue 1: Vision - do you agree with the proposed vision for the Minerals Local Development Plan? If not, what would you suggest?**
3. Aims

The proposed aims underpin the vision statement.

The proposed aims of the MLDP in order to deliver this vision are:

- To support the creative, sustainable restoration of previously worked sites to promote tourism, recreation and leisure opportunities in and between rural communities
- To conserve and enhance the natural and built environment.
- To promote green networks, enhance biodiversity and create more attractive, healthy environments for people to live in and enjoy recreationally.
- To minimise the negative impacts of minerals extraction on people
- To safeguard mineral resources from sterilisation
- To ensure a sustainable supply of minerals
- To enforce excellence in working practices

Issue 2: Aims - do you agree with these aims? If not, what would you suggest?
4. **Spatial Strategy**

A Spatial Strategy is required by planning legislation and should be a broadly based statement as to the development and use of land in the area.

The Spatial Strategy will set out a framework for the East Ayrshire area to take forward the Vision and Aims of the MLDP. The Spatial Strategy builds on approaches in existing development plans and on priorities identified in SPP.

The Spatial Strategy will set out where minerals related development should and should not go. We are keen to provide certainty for communities and operators alike. It will also guide restoration and re-use proposals and lay the framework for rural placemaking through access and habitat networks between rural settlements where opportunities arise through restoration. It will work to protect and reinvigorate local distinctiveness and biological and geological diversity.

The Spatial Strategy relates to all of the aims of the LDP but specifically fulfils the following aims:

- To support the sustainable restoration of previously worked sites to promote tourism, recreation and leisure opportunities in and between rural communities
- To promote green networks, enhance biodiversity and create more attractive, healthy environments for people to live in and enjoy recreationally
- To ensure a sustainable supply of minerals.

### 4.1 Spatial Strategy – Restoration and placemaking

The collapse of the Scottish Coal Company Limited and ATH Resources resulted in substantial environmental degradation within East Ayrshire at the 9 complexes they formerly operated. As such, restoration of these legacy sites, all in the south of the Council area, requires to be considered as a main issue in the MIR.

**Consultation Findings**

Consultation undertaken to date has revealed aspirations for restoration which:

- Leaves a positive legacy
- Stimulates economic regeneration and employment opportunities, but these should not be linked to industrial development
- Enhances history, landscape and sense of belonging
• Maximises on leisure opportunities like outdoor pursuits such as watersports, cycle tracks, mountain biking, and off road driving
• Includes woodlands

Policy aspirations for a Spatial Strategy for restoration and placemaking

Placemaking is about collectively reimagining and reinventing spaces, supporting and nurturing the identity of place and capitalising on communities' potential.

Rural placemaking is also about reimagining and reinventing spaces but between settlements and in the countryside. It considers factors such as path networks, wayfinding and wildlife. It capitalises on the countryside as an asset by providing opportunities for tourism, recreation and leisure which are appropriate to their rural setting.

The legacy of unrestored land in East Ayrshire presents us with a unique opportunity to think strategically about placemaking and green infrastructure in the south of East Ayrshire, and to restore a sense of place for coalfield communities. We can use this opportunity to think about the restoration of sites as a whole rather than as individual challenges and use it to re-imagine and work to realise the potential of our area. There are opportunities to create sustainable, distinctive, attractive places which support healthy lifestyles and behaviours and connect rural places and settlements together. Rural placemaking also allows us to consider wildlife habitats and to create new habitat networks to enable species to thrive.

The Minerals Local Development Plan can be used as a tool to inspire, instigate and support placemaking, including through the restoration of previously abandoned sites. It will, through the remainder of the development planning process, start to identify particular projects, which through the action programme, and in tandem with Community Led Action Plans where these are in place, will implement restoration and placemaking aspirations.

To ensure that places work, the rural must be considered in relation to the urban and what is happening there and the work in the MLDP will connect to placemaking strategies proposed through Local Development Plan 2. The opportunities for placemaking as a result of minerals related development are concentrated in the

Restoration Bonds

Many of the unrestored sites have bonds which remain unspent whilst best value solutions are sought for restoration. As we move forwards in the MLDP process it is likely that the spending of bond money may result in some restoration prior to approval of the Plan. Indeed, bond money has already been spent at Dunstonhill, near Patna. Where this happens, we will ensure that it does not preclude placemaking opportunities.
south of the local authority area. Opportunities can be linked into the aspirations of Local Community Action Plans, where these exist, as well as the Forestry Commission’s North Kyle Forest Masterplan and aspirations of the Galloway and Southern Ayrshire Biosphere.

The unrestored worked opencast landscape is shown below in a figurative diagram (Map 1).
Map 1: Unrestored worked opencast sites in East Ayrshire.
Policy option for a spatial strategy for restoration and placemaking

Below we have outlined one approach to restoration and placemaking for comment.

We have identified 4 potential key zones which we think could form the basis for a placemaking strategy as shown below (Map 2). This plan is indicative of a strategy which could be employed and may vary dependent upon the outcomes of your responses to the different parts of the spatial strategy, including this part.

The zones are as follows:

Zone 1: Recreation zone
Zone 2: Extraction zone
Zone 3: Natural Environment zone
Zone 4: Geological zone
Map 2: Placemaking Zones

Key
- Zone 1: Recreation Zone
- Zone 2: Extraction Zone
- Zone 3: Natural Environment Zone
- Zone 4: Geological Zone

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The map (Map 2) details 4 potential zones for land use. Working from west to east, these comprise:

**Zone 1: Recreation zone**

We have identified this zone for recreation as we can build on the assets already in this area and engage in partnership working with other organisations with strategies for the area including the Galloway and Southern Ayrshire Biosphere Reserve, Galloway Dark Sky Park and North Kyle Forest Masterplan (Forestry Commission).

Some of this recreation zone is encompassed within the North Kyle Forest Masterplan, which is being led and produced by the Forestry Commission. The area covers 4000 hectares of land as denoted in map 3 below.
Map 3: North Kyle Forest Masterplan Area (Forestry Commission)
The Forestry Commission’s vision for North Kyle is:

*The North Kyle Forest is to be a place of adventure, reflection and beauty that draws in locals and visitors, attracting and sustaining enterprise and investment and generating income for the local communities.*

We propose to extend the principles of the Forestry Commission North Kyle Forest Masterplan in Zone 1 in respect of recreation, tourism, sport, leisure, amenity, education and accessibility. Zone 1 is shown in Map 4 below.

There are two aspects of the Masterplan which will require further consideration from the Local Development Planning perspective; the first is the proposed working of Benbain Remainder for opencast coal extraction, the second is the pumped hydro scheme which is proposed to work out of Benbain Remainder upon completion of opencast coal extraction. The issue of Benbain Remainder can be addressed through the spatial strategy on coal (see part 4.2.1 and associated Issue 5). Pumped hydro is a matter for the general East Ayrshire Local Development Plan and this pumped hydro proposal will be given no weight or agreement in principal through the Minerals Local Development Plan.

We would like the Minerals Local Development Plan to capitalise on maximising the potential of the Dark Sky Park and Dumfries and Southern Galloway Biosphere as well as the Galloway Dark Sky Park and we propose extending the ‘Recreation’ zone outwards to take in the former opencast coal sites of Piperhill, Netherton and Skares.

In these locations we will be looking at facilitating accessibility to the countryside through path networks, wayfinding, public art and maximising on local social history, including mining history.
Map 4: Placemaking Zone 1: Recreation Zone
Zone 2: Extraction zone

In part 4.2.1 of this Report the spatial strategy for coal is considered. The spatial strategy for restoration and placemaking (see glossary) makes room for future coal extraction areas of search in the ‘extraction zone’. This zone is subject to change on the basis of the preferred spatial strategy for coal. However, the rough scope of the area is included within each search option.

The extraction zone encompasses the areas of extraction which continue at present at the House of Water and Greenburn complexes, and which have consent (or applications in the system) to continue extracting for a varying number of years. The extraction zone can be seen in Map 5.
Map 5: Placemaking Zone 2: Extraction Zone
Zone 3: Natural environment zone

The natural environment zone (see Map 6) encompasses the Muirkirk & North Lowther Uplands Special Protection Area, and the Airds Moss Special Area of Conservation as well as other areas of important peatland. As such, it contains the areas of East Ayrshire which are afforded the most protection through legislation, and accordingly are considered the most important in environmental terms. This zone is designed to protect, conserve and enhance the natural environment and opportunities to access it.

By their nature some of these areas are less accessible to people with mobility problems or inexperienced walkers, however, they provide valuable opportunities to create habitat networks and places for communities to engage with nature in a positive manner. In this zone we would like to support the natural environment and allow people of all abilities to engage in it.
Map 6: Placemaking Zone 3: Natural Environment Zone

Map 6 - Zone 3: Natural Environment Zone

Key

- Placemaking Zone 3
- Placemaking Zone 4
  (Excluded Area)
- SPA
- SAC

Areas identified as potential peatland enhancement sites

- Designated Sites
- Undesignated Sites

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Zone 4: Geological zone

Zone 4 (Map 7) takes in the former opencast coal mine at Spireslack which demonstrates potential as a Geopark due to the visible geology exposed by the coal extraction process. A Geopark is an area that advances the protection and use of geological heritage in a sustainable way. We believe that Spireslack has the potential to become a nationally important educational and tourist facility as a result of its geological significance. The ‘geological zone’ will help foster tourism and bring visitors into East Ayrshire and have linkages with the core path network.
Map 7: Placemaking Zone 4: Geological Zone
Linkages

It is important that the zones, with the exception perhaps of the extraction zone capitalise on their linkages to each other and work in synergy. There are opportunities to look at the Core Path network and the River Ayr Way and capitalise on assets like the Ness Glen walk. Map 8 shows the existing path network, which will help us to identify where there are opportunities for new connections.
Map 8: Existing path network
Mining Trail

East Ayrshire has a long mining and industrial history which contributes to our sense of place. Much of this history we should be proud of and celebrate and we can maximise opportunities to learn about our history and educate others. Across the zones there are remnants of this history which create a trail to follow. Examples include:

- Barony ‘A’ frame / colliery
- Doon Valley Museum
- Dunaskin Glen
- Dunaskin Ironworks (Scottish Industrial Railway Centre)
- Geological SSSIs (Site of Special Scientific Interest)
- Lost Doon Mining Villages including Lethanhill
- Spireslack former opencast coal site
- Bill Shankly Memorial, near Glenbuck and football pitch
- Airds Moss Memorial

Craigengillan Estate, the Scottish Dark Sky Observatory and Dumfries House provide other notable attractions as do links to Burns and the Covenanters.

Key Places

Damellington, Patna and Cumnock are ideally sited to provide support to the zones; places where people can eat, drink and stay whilst they explore what the coalfield communities have to offer.
What can the Plan achieve?

The MLDP can lay the foundations for this process by zoning the land and supporting placemaking and certain types of appropriate uses and discouraging inappropriate uses.

The MLDP will provide more detail on placemaking but we will use the dMIR and the MIR to identify the best way forward and what needs to be examined in more detail.

Note: If we do not designate any further development opportunities on former opencast sites this cannot preclude applications coming forward for other uses. The MLDP should always be considered in tandem with the LDP.

How could this element of the Spatial Strategy be realised?

The Council can work inter-departmentally and with external stakeholders and partner organisations to secure funding and deliver development in line with the aspirations of the MLDP. A list of potential partners can be found in Box 1, and a list of potential funding opportunities in Box 2.

Subject to consultation responses, we can investigate further the potential of these zones, potential partnerships and funding opportunities as we progress through the development planning process.

---

**Box 1**

**Potential Partners**

The following organisations and individuals are stakeholders in the area and could potentially work with us to deliver this the rural placemaking strategy. We have not discussed the spatial strategy with these parties and the identification of these parties does not bind them to any future involvement, it is simply indicative of the range of people who could work together:

- Ayrshire Ramblers Association
- Ayrshire Rivers Trust
- Central Scotland Green Network Communities
- Community Councils
- Community Liaison Groups
- Coalfield Environment Initiative
- Craigengillan Estate
- Dumfries House
- East Ayrshire Woodlands
- Forestry Commission Scotland
- Galloway and Southern Ayrshire Biosphere
- Scottish Mines Restoration Trust
- Mines Restoration Limited
- Muirkirk Enterprise Group
- Nith District Salmon Fisheries Board
- Minerals Operators
- Royal Society for the Protection of Birds
- Scottish Environmental Protection Agency
- Scottish Natural Heritage
- Scottish Wildlife Trust
- Technical Working Groups
- Woodlands Trust

**Box 2**

**Potential Funding Sources**

- Creative Scotland
- Minerals Trust
- Heritage Lottery Fund
- Peatland Action Programme
- People and Communities Fund
- SEPA Water Environment Fund
- Scottish Rural Development Programme including LEADER
Issue 3: Spatial Strategy – Restoration and Placemaking 1: Do you agree with the zones we have identified? Is there anything we should add or remove?

Issue 4: Spatial Strategy – Restoration and Placemaking 2: Do you wish to see other options explored on unrestored sites? If so, what?
4.2 Spatial Strategy – Extraction

Where minerals extraction can technically take place is dictated by geology; minerals can only be won where they exist. East Ayrshire has a plentiful resource of various minerals, and their extraction can contribute to sustainable development. For example, the indigenous provision of aggregates to the local construction industry reduces transportation costs and allows the local industry to be competitive and viable. Minerals extraction creates jobs in related sectors such as construction. Sustainable development is a key element of our vision as well as the visions and policies of other related plans, policies and strategies – such as the Local Development Plan (2016), Community Plan (2015-2030) and is the fundamental principle policy of Scottish Planning Policy (2014).

There are various constraints to extraction, such as settlements and important environmental sites. It is of paramount importance that the winning of minerals is carried out in a responsible manner and that the impacts of extraction on our local communities, our environment and our built and natural heritage are minimised. The Minerals Local Development Plan has an important role to play in this.

Our proposed spatial strategy takes into account Scottish Planning Policy as a means of contributing to an efficient and effective planning system and thus the spatial framework differentiates between construction aggregates, coal and unconventional oil and gas projects.

4.2.1 Spatial Strategy – Coal

The extant plans which will be replaced by the Minerals Local Development Plan do not contain spatial strategies as they pre-date the legislation which makes a spatial strategy a legislative requirement. However, they do consider land use zoning in a similar fashion to what is now required.

Spatially, in terms of coal, Potential Coal Extraction Areas were designated to guide the extraction of coal although policies allowed development outwith these areas subject to specific criteria being met. Further information can be found in policies MIN1 and MIN2: New Opencast Developments and MIN3: Extensions to Existing Opencast Sites. The existing potential coal extraction areas can be found in map 9.
In terms of coal, Scottish Planning Policy (SPP) states that local development plans:

*should identify areas of search where surface coal extraction is most likely to be acceptable during the plan period and set out the preferred programme for the development of other safeguarded areas beyond the plan period, with particular emphasis on protecting local communities from significant cumulative impacts.*

(para 239)

Whilst Scottish Planning Policy is not statutory it reflects Scottish Ministers’ expectations of an efficient and effective planning system.

Consultation Findings

In the course of our consultation we have discussed the requirement for areas of search for coal extraction with the Scottish Government. Although the factors affecting coal extraction have changed markedly since SPP was written, there remains a firm expectation that areas of search will be designated.

The engagement undertaken so far has found that:

- There is a level of community apathy to any future coaling; others point to the socio economic benefits of and need for coaling
- There is some appetite to define a specific area or area(s) of search
- There is some appetite for a local authority wide area of search underpinned by a constraints and criteria based approach
- There is some desire to see new coaling linked to the restoration of existing sites; others think this is unreasonable
- There is anxiety that any future permitted extraction may lead to further unrestored land

Engagement has revealed a desire to see:

- Any future coaling conducted in less prominent locations
- Any future coaling conducted in less sensitive locations
- Any filtering process recognising flooding as a constraint

**Policy options for a spatial strategy for coal**

We have identified a number of options for a spatial strategy for coal:

1. Start with the whole of East Ayrshire coalfields (Using Coal Authority Data (Surface Coal Resource Areas)), then apply constraints mapping to eliminate, for example important natural and built heritage features (e.g.
Special Protection Area, Special Area of Conservation, Sites of Special Scientific Interest), settlements etc., thereby resulting in preferred areas of search. This is similar to the approach taken in the OCCSP but may potentially result in a spread across the whole of the local authority area, rather than the south of the area only. This is because the sieving exercise which we undertake may use different constraints than those identified for the OCCSP (the constraints specified here are not intended to be exhaustive). Map 10 gives an indication of what this might look like.
Map 10: Spatial strategy for coal - Option 1
2. Have a criteria and constraints based policy only, with no particular areas mapped as areas of search (the ‘area of search’ in theory would therefore be the East Ayrshire coalfield in its entirety, subject to constraints such as no development in close proximity to settlements or on sites with environmental designations (SPA, SAC, SSSIs)), Map 11 gives an indication of what this might look like.
Map 11: Spatial strategy for coal - Option 2
3. Designate the remainder of the existing 2003 potential coal extraction areas and existing and consented sites as the 'areas of search' only. This option excludes all restored, unrestored and worked sites. Map 12 gives an indication of what this might look like.
Map 12: Spatial strategy for coal – Option 3
4. Designate a small number of sites or areas, reflective of the current operational climate, in consultation with operators, thus limiting the potential for applications outwith these areas. These areas would be designated also taking into account constraints.

Map 13 below is based on operator consultation and has been further adjusted to take into account important areas of peat and other environmental constraints (SPA, SAC, SSSIs).
Map 13: Spatial strategy for coal – Option 4
5. Designate ‘Zone 2: Extraction zone’ from the spatial strategy for restoration and placemaking. This would essentially look like option 4 (Map 13) without the land parcel identified to the east of Cumnock.

We have not included an option to have no ‘area(s) of search’, as our discussions with the Scottish Government have established that this is not a reasonable option.

Many of the options in this document overlap and have implications on each other. In this instance, if option 5 is not the preferred option, this will require some amendments to the placemaking zones identified in the restoration and placemaking strategy to incorporate further areas for extraction.

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**Issue 5: Spatial Strategy – Coal: Which option do you prefer, do you have an alternative suggestion?**

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4.2.2 Spatial Strategy – aggregates

Scottish Planning Policy provides a framework for minerals extraction. It states that local development plans:

*should support the maintenance of a landbank of permitted reserves for construction aggregates of at least 10 years at all times in all market areas through the identification of areas of search. As an alternative, a criteria-based approach may be taken, particularly where a sufficient landbank already exists or substantial unconstrained deposits are available.*

(para 238)

We have defined construction aggregates as:

- Sand
- Gravel
- Brick Clay
- Felsite
- Quartz dolerite
- Diorite
- Basalt
- Greywacke
• Limestone
• Sandstone

The existing policy approach to minerals (excluding coal and peat) in the EALP is to limit extraction to existing sites and otherwise to only permit extraction where a need for the specific mineral is identified.

Determining whether a new policy approach is warranted requires baseline data to understand whether there is a sufficient landbank – this in turn determines the strategies available to us. The Monitoring Statement outlines the results of an Ayrshire wide operator’s survey conducted by the three Ayrshire authorities (North, South and East).

In terms of pan Ayrshire results, although the survey response rate was not 100%, (it was for construction aggregates in East Ayrshire) the data which we have compiled shows that 90% of construction aggregates remain within Ayrshire, with the remaining 10% being distributed to South Lanarkshire, East Renfrewshire & Renfrewshire and the Central Belt (2.5%, 2.5% and 5% respectively). On this basis, the evidence collected presents a strong case for the development planning process identifying an Ayrshire wide market area.

In an Ayrshire market area, the reserves of construction aggregates (known aggregates with planning consent, usually with associated estimated tonnages) in the three Ayrshire authorities would be amalgamated in order to determine whether there is a need for areas of search for specific aggregates or whether in some or all cases, we can adopt a criteria based approach given the existing landbank of supplies. The evidence we have gathered demonstrates a plentiful supply of all construction aggregates with the exception of clay for at least a fifteen year period (see Table 1). Clay supplies are anticipated to expire in 2023. East Ayrshire’s supply of clay is largely confined to the coal seams (fireclay) and thus opportunities to extract clay are likely to occur only in tandem with coal extraction. Fireclay is not normally economic to recover on its own.

<table>
<thead>
<tr>
<th>Type of mineral</th>
<th>Tonnage minded to grant applications (Mt)</th>
<th>Latest expiry date of consent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Igneous rock</td>
<td>12.1</td>
<td>2036</td>
</tr>
<tr>
<td>Sedimentary rock</td>
<td>3.7</td>
<td>2042</td>
</tr>
<tr>
<td>Clay</td>
<td>0.9</td>
<td>2023</td>
</tr>
<tr>
<td>Sand and gravel</td>
<td>11.1</td>
<td>2036</td>
</tr>
</tbody>
</table>

Table 1: Aggregated data on tonnage of construction aggregates across East, North and South Ayrshire local authority areas. (Mt = Million tonnes)

Consultation Findings

The community engagement undertaken so far has identified concerns:
• The community do not want to see East Ayrshire as a “dumping ground” for aggregate extraction.

Policy options for a spatial strategy for construction aggregates

On the basis of the above findings we have the option, as per SPP, to develop either a criteria based approach for construction aggregates with no area of search or, alternatively to designate areas of search.

The options for a spatial strategy for aggregates therefore are:

1. On the basis that there is a plentiful supply of construction aggregates, we adopt a ‘criteria-based’ approach to policy where applicant will have to demonstrate a proven requirement for a particular construction aggregate. In tandem with this opportunities to extract fireclay in conjunction with coal will be encouraged where, first and foremost, the application for coal is acceptable in all other respects. No area(s) of search would be designated and planning assessments of proposals would be determined of the basis of a proven need for the particular aggregate(s).

2. Designate an area(s) of search where aggregate extraction would be acceptable in principle in land use terms.

Issue 6: Spatial Strategy – aggregates: Which option do you prefer, or can you suggest an alternative option? If you would prefer an area of search to be designated, do you have any suggestions as to where this should be? And for which construction aggregates?

4.2.3 Spatial Strategy – Unconventional Oil and Gas

A UK Petroleum Exploration and Development Licence (PEDL) allows a company to pursue a range of oil and gas exploration activities, subject to necessary drilling/development consents and planning permission. There are no extant Petroleum Exploration and Development Licences (PEDL) in East Ayrshire. In the 14th onshore round of petroleum licencing administered by the Department for Energy & Climate Change (DECC) which was completed in 2015 there were blocks on offer within East Ayrshire (and all of the Central Belt of Scotland), however, following discussion with prospective licensees, and in accordance with the new devolution settlements set out in the Scotland Bill which received Royal Assent on 23rd March 2016, the UK Government decided that no new PEDLs would be awarded in Scotland as part of the 14th Round. Notwithstanding this, the Scottish Government, in late January 2015, announced a moratorium on granting consents
for unconventional oil and gas developments in Scotland until further research and a public consultation is carried out. At present there is no timetable as to how long the moratorium will continue, however, it will remain in place until at least summer 2017 when the Scottish Government concludes its consultation and evidence gathering on the issues that these developments raise.

This means that it is extremely unlikely that any development will take place during the plan period as future activity is dependent on, in turn, the moratorium being lifted (mid 2017 at the earliest); the Scottish Government then offering new licenses in Scotland (the DECC process took around 5 years to conclude); a successful bid being received in East Ayrshire; and positive results from initial exploratory work. Current interest in unconventional oil and gas in Scotland is centred around the Forth Estuary.

There is research which summaries the general likelihood of a proposal for unconventional oil and gas coming forward in East Ayrshire. Present studies (DECC (Department for Energy and Climate Change) & BGS (British Geological Survey), 2014) indicate that East Ayrshire does not have significant prospects for shale oil or gas in comparison with other areas within the Midland Valley area of Scotland. However, this does not mean that proposals for East Ayrshire will not come forward in the future. The potential for coal bed methane extraction is poor due to the shallow depths and thicknesses of the coal combined with the number of faults. Hence, it is likely that other areas outwith East Ayrshire will be targeted first. The Department of Energy and Climate Change and the British Geological Survey state that commercial interests in Scotland’s potential coal bed methane (CBM) industry are currently small. This is partly attributed to the availability of North Sea gas and otherwise to the low permeability of UK coal seams.

The same DECC and BGS studies explain that prospects for underground coal gasification and carbon dioxide sequestration are limited due to the extensive nature of previous underground mining activity, however, there are a number of small areas with good potential within East Ayrshire.

**Policy options for a spatial strategy for unconventional oil and gas**

As a result of the current political situation we propose the following three strategy options in respect of unconventional oil and gas:

1. In the event that a proposal does come forward during the plan period, development will not be permitted if it would have a significant adverse effect on communities, sensitive uses or the environment. Any proposal would be assessed against any updated planning guidance produced by the Scottish Government and also in terms of a suite of overarching safeguarding policies which will apply to all minerals related development. In line with SPP, the Council will ensure that conditions prevent hydraulic fracturing from taking place where consent for such operations is not sought in the original
application. It would be our intention to provide Supplementary Guidance on unconventional oil and gas.

2. Proposals for unconventional oil and gas will only be permitted where there is no significant adverse impact on the environment or the local community. Proposals will be assessed against other relevant policies and the following factors:

- Impact on local communities, including cumulative impacts;
- Impact in terms of noise, dust and vibration;
- Landscape and visual impact;
- Impact on the natural and historic environment;
- Impact on agricultural land and carbon rich soils and peat;
- Impact on the water environment;
- Impact on air quality;
- Impact on the local road network; and
- Any positive economic or environmental benefits accruing from the proposal including restoration of abandoned/derelict minerals sites and local employment opportunities.

3. No unconventional oil and gas proposals will be supported during the lifetime of the Minerals Local Development Plan until such time as the moratorium is lifted and national policy is published. Thereafter should any PEDL licences be granted in East Ayrshire, the Council will prepare, consult on and adopt Supplementary Guidance to include spatial guidance prior to determining any application.

Policies would apply to:

- Hydraulic fracturing (fracking)
- Underground coal gasification
- Coal bed methane extraction
- Carbon dioxide sequestration
- Other technologies as they come forward.

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**Issue 7: Spatial Strategy – Unconventional Oil and Gas: Which option do you prefer? Do you have an alternative suggestion?**
5. Conserving and enhancing the natural and built environment

East Ayrshire benefits from a diverse environment, with its wide breadth of natural and built heritage features helping to shape the character and culture of the area. By protecting and enhancing our environment in an effective and meaningful way, we are better able to create successful places which, in turn, attract investment, new visitors and contribute significantly to the quality of life for local residents.

5.1 Peat

Peat is a diverse mixture of decomposed plant material that has built up in a water-saturated environment and in the absence of oxygen. Deep peat soil has a surface peat layer of at least 50cm depth while carbon rich soils are any soils with a surface peat layer with no minimum depth (includes peat soils and peaty soil types).

Peat contained in wetlands is a major carbon store. Bogs are wetland habitats that contain peat soils which provide essential ecosystem services such as carbon storage and natural flood management and are important for wildlife. Carbon-rich soils and peatland areas provide multiple benefits for humans and nature, for example providing climate change adaptation, supporting biodiversity and delivering good water quality.

In general terms, healthy peatlands act as a sink for greenhouse gases, while degraded peatlands can act as a large source of carbon dioxide. Peat also holds large reserves of carbon which can be released into the atmosphere as carbon dioxide should the peat be disturbed.

Peatlands are damaged through a range of land management practices, including mineral extraction. While peatlands are threatened by current mineral activities in some locations, substantial damage has been caused by historic activities. Even where these minerals sites have been abandoned, damaged peat will continue to cause substantial net emissions of carbon dioxide into the atmosphere.

Peatland in East Ayrshire

Whilst commercial peat extraction is not permitted in East Ayrshire, peat has been disturbed through other development and extraction. The significant amount of wind
farm development and opencast coal extraction which has taken place in East Ayrshire in recent years has, in some instances, involved the displacement or removal of peat, for example, at the South West Scotland Interconnector development in Ayrshire. None of this peat has been exploited commercially by the wind farm developers or by open cast coal operators.

The most serious damage to peat has occurred within the Muirkirk and North Lowther Uplands Special Protection Area with a consequent loss of supporting habitat. The opencast sites at Powharnal and Grievehill as well as the Glenmuckloch Conveyor have contributed to this damage.

In the past, when peat was moved or stored we understood that it retained much of its ecological value; we now know that this is not the case. Peat that has been exposed to the elements through the removal of the top layer of vegetation rapidly oxidises which decreases its ability to store water and releases stored carbon.

The Coalfield Environment Initiative (CEI) and partners have been working to improve bog habitats in East Ayrshire since 2013 and have delivered 300 hectares of bog enhancement work across the following three sites:

- Airds Moss (part of Muirkirk and Lowther Uplands SPA; RSPB Reserve; SSSI)
- Dalmellington Moss (SSSI & SWT Reserve)
- Tappethill Moss (west of Dalgig)

There is the potential for future peatland enhancement work at a number of other sites throughout East Ayrshire, such as at Glaisnock Moss (north of Dalgig) and Low Moss (south of Carbellow). The map below shows potential peatland enhancement sites (Map 14). Designated sites refer to sites with an environmental designation – such as a SSSI.
Map 14: Potential Peatland Enhancement Sites

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To help identify MIR options it is important to review current planning policy both at national level and local level.

SPP paragraph 205 states that where peat and other carbon rich soils are present, applicants should assess the likely effects of development on carbon dioxide (CO₂) emissions. Where peatland has been drained or otherwise disturbed, there is likely to be a release of CO₂ into the atmosphere. Any proposed developments should aim to minimise this release.

Paragraph 241 of SPP states that development plan policies should protect areas of peatland and only permit extraction in areas suffering from historic, significant damage through human activity and where conservation value is low and restoration is impossible.

In the OCCSP, policy MIN11: Extraction of Related Minerals seeks to conserve all areas of active peat bog, retain removed peat on site for restoration and does not support export of peat from sites for commercial purposes. The EALP prohibits the commercial extraction of peat in policy M6 and provides for small scale extraction for domestic and private needs in Policy M4.

There is also a presumption against peat extraction within or affecting the area’s SPA (Special Protection Area), SACs (Special Areas of Conservation), SSSIs (Sites of Special Scientific Interest), confirmed and provisional wildlife sites, natural and built heritage resources, water catchment areas and other areas of nature conservation/ornithological interest or importance.

The East Ayrshire proposed LDP contains policy ENV10: Carbon Rich Soils which outlines a presumption against development that would result in the destruction of peatland considered to be of significant value, both ecologically and in terms of carbon management. ENV10 also supports and promotes the restoration of peatland habitats, where there is potential for such habitats to become active carbon stores and helps to reduce net carbon emissions.

However, the policy states that development may be permitted for renewable energy generating developments in shallow peat areas where it can be demonstrated that the balance of advantage in terms of climate change mitigation lies with the energy generation proposal.

Consultation findings

In terms of peat, comments received through early consultation so far focus on the loss of peat within East Ayrshire and the detrimental impact that this loss can have on the environment.
Policy options for the protection of peat

A number of policy options have been identified to protect areas containing peat within East Ayrshire:

1. Continue with the existing policy framework to conserve all areas of active peat bog within the boundaries of a surface coal mining development site. All peat which requires to be removed in order to access the coal reserves on site will require to be retained on site for future use in restoration of the area with storage being carried out to the satisfaction of the Council and Scottish Natural Heritage in purposely designed storage areas. The Council will not support any export of peat from the site for commercial purposes.

2. Conserve all areas of active peat bog within the boundaries of a minerals development site. All peat which requires to be removed in order to access the minerals reserves on site will require to be retained on site for future use to restore the area. All storage must be carried out to the satisfaction of the Council and Scottish Natural Heritage, and be undertaken in purposely designed storage areas. The Council will not support any export of peat from the site for commercial purposes. Where peat and other carbon rich soils are present, applicants should assess the likely effects of the removal of peat and carbon rich soils on carbon dioxide (CO₂) emissions and submit this information with their application. Supplementary Guidance will provide more detailed guidance in relation to what is required to assess the potential impacts.

3. Prohibit extraction on the potential peatland enhancement sites (as seen in Map 14) as well as SPA, SACs and SSSIs. On other sites with peat, the Council will not support any export of peat from a site for commercial purposes. Where peat and other carbon rich soils are present, applicants should assess the likely effects of the removal of peat and carbon rich soils on CO₂ emissions and submit this information with their application. Supplementary Guidance will provide more detailed guidance in relation to, what is required to assess the potential impacts, where limited extraction might be acceptable, the storage and transfer of extracted peat.

Issue 8: Policy options for peat - do you agree with any of these options? If not, can you suggest another option?
5.2 Water Environment

The water environment covers all surface water, ground water and wetlands. Water is a valuable resource, which has multiple uses, for example, potable water supply, ecology and conservation and recreation. There is robust regulation in Scotland which regulates activities to protect the water environment and this has led to an improvement in water quality across Scotland and East Ayrshire. The MLDP aims to complement the existing legislative framework.

In the OCCSP, flooding is covered by Policy MIN31: Protection of Water Resources. Since the publication of this plan, various pieces of key legislation have emerged which mean that we need to provide an up-to-date strategy.

Consultation Findings

Engagement undertaken so far has revealed views that:

- More emphasis should be placed on the potential impact of minerals operations on flood risk
- Uses for water voids need to be considered carefully particularly in relation to the introduction of water species for leisure purposes
- Consideration should be given to risks to groundwater dependent terrestrial ecosystems

Engagement so far has revealed a desire to see:

- The possibility of flood extent maps being used as part of constraints mapping

The water environment issue does not cover new uses for water voids left as a result of legacy sites: these will be dealt with through the spatial strategy for restoration and placemaking.

5.2.1 Flooding

Flood risk is a key consideration in the siting and design of minerals extraction proposals. The effects of climate change mean that more areas are increasingly under threat from flooding. The MLDP therefore has a key role to play in ensuring that new minerals development is, as far as possible, located in areas free from flood risk and where this is not possible that satisfactory mitigation measures can be put in place. The Flood Risk Management (Scotland) Act 2009 takes a sustainable and comprehensive approach to managing flood risk, which means looking at all sources of flooding. Up to date information on areas of flood risk and Flood Risk Management Strategies are prepared by SEPA.
The Flood Risk Management Strategy for Ayrshire was published in December 2015. The strategy for the majority of watercourses in East Ayrshire is contained in LPD 12 - Ayrshire, whilst the strategy for New Cumnock (River Nith) is contained in LPD 14 – Solway. SPP takes full account of the Flood Risk Management (Scotland) Act 2009 and sets out national policy on managing flood risk and drainage. As well as meeting with the requirements of any policy in the MLDP, developers will also need to ensure that their proposals meet with all SPP principles.

Policy options for mitigating flood risk

We have identified two options for determining the way we deal with flooding issues in the plan:

1. That the extent of flooding, as mapped by SEPA, forms part of the spatial strategy and no minerals development shall be permitted therein

2. That flooding constraints do not form part of the spatial strategy but that proposals are considered unacceptable where they give rise to an unacceptable increase in flood risk either during the workings or in the restoration proposals; either on or off site

In terms of restoration:

Applicants will be asked to consider the provision of climate change mitigation such as greater flood storage capacity.

Issue 9: Policy options for flood mitigation – which option do you prefer or do you have an alternative suggestion?

5.2.2 Water bodies and ground water

In line with the Water Framework Directive, the Council will give priority to maintaining and improving the quality of all water bodies and ground water. There will be a presumption against any development that will have an adverse impact on the water environment in terms of pollution levels and the ecological value of water habitats.

Policy options for the protection of water bodies and ground water

In order to protect water bodies, we propose the following additions to existing policy MIN 31: Protection of Water Resources:
• That further detail on water quality is mapped to prevent mineral extraction in close proximity to water bodies (ground and surface) identified with negative trends (poor or bad) by SEPA.

• Developers will be required to identify all sources of private water supply and any mitigation measures should be comprehensively detailed and be implemented where necessary, which may include sourcing an alternative supply.

In terms of restoration:

• There will be a presumption against the creation of deep waterbodies where previously there were none
• Wetland habitats will be supported in restoration proposals. Such proposals will seek to protect and enhance wetland habitats (For clarification, wetland habitats are land areas that are saturated with water, either permanently or seasonally, such that they take on the characteristics of a distinct ecosystem. They host aquatic plants. Most voids left by opencast workings would not qualify as wetland habitats as they are unable, due to the way in which they have been engineered (for example in terms of depth, slope gradient and hydrology) to support flora and fauna ).
• Uses for water bodies which include the introduction of non-indigenous species shall not be permitted where there is connectivity to other water courses.
• Existing water bodies will require to be effectively managed, particularly in terms of water level and water quality.

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**Issue 10: Policy options for the protection of water bodies and ground water – what do you think of the potential additions to existing policy? Can you suggest anything further?**

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**5.3 Geological Interest**

Geology essentially describes the study of the earth’s crust. Geology gives us insights into the earth’s history and has value scientifically, educationally, culturally and ecologically. Geology can also prove to be a recreational and tourism asset.

Minerals extraction is one way in which geological features can be revealed. The extent of extraction, particularly coal mining, has revealed geological features of merit.
Some geological features are protected at national level as SSSIs (Sites of Special Scientific Interest). East Ayrshire has 19 SSSIs with earth science features. These will be protected through the policies of the MLDP. A further 32 Geological Conservation Review sites exist in East Ayrshire which may become SSSIs in the course of time.

In the OCCSP, geological features are not protected, except where they form part of SSSIs which are designated for their nature conservation value. Where they are part of SSSIs, Policy MIN26 applies: Protection of Areas of Nature Conservation Interest, where there is a presumption against development which could adversely affect them. In the EALP, SSSIs are protected by strategic policy ENV2, as well as natural heritage policies ENV13 and ENV14.

Consultation Findings

Engagement undertaken so far has revealed views that:

• Spireslack offers significant potential as a geological resource of international importance

Engagement so far has revealed a desire to see:

• Geological features recognised and protected through the plan.

Three of East Ayrshire’s unrestored sites in particular contain important geological features and, we believe, warrant further protection through the Minerals Local Development Plan. We therefore propose to designate sites at Dalfad, Ponesk/Grasshill and Spireslack as Regionally Important Geological Sites, with a view to investigating the possibility of Spireslack being placed on the Geological Conservation Review, and ultimately designated as a SSSI.

As outlined in the spatial strategy, we believe that Spireslack has the potential to become a nationally if not internationally important educational and tourist facility as a result of its geological significance. East Ayrshire Council will seek to work with partners to assist with studies to develop such proposals for the site.

Policy options for conserving, enhancing and protecting geological interest

In light of the geological interest in the area we have developed the following options:

1.

• Spireslack former surface coal mine shall be safeguarded for development related to the educational, tourist and leisure facilities required on site to maximise the site’s potential as a geological resource. No other type of development will be permitted unless required in respect of health and safety. All geological features set out in BGS commercial report CR/15/126 in respect of Spireslack shall be retained and afforded appropriate protection;
And;

- Development shall not be permitted which adversely impacts upon the geological features identified at Dalfad, Grasshill and Ponesk former surface coal mines (as detailed in BGS Commercial Report CR/16/029 and forthcoming Dalfad report) unless required in respect of health and safety. Development proposals on these sites should be accompanied by supporting documentation showing how the geological features have been protected and, if possible, made accessible as educational and tourist resources.

Or

2.

- Development shall not be permitted which adversely impacts upon the geological features identified at Dalfad, Spireslack, Grasshill and Ponesk former surface coal mines (as detailed in BGS Commercial Reports CR/15/126 and CR/16/029 and forthcoming Dalfad report) unless required in respect of health and safety.

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**Issue 11: Policy options for the conservation, enhancement and protection of geological interest – Which option do you prefer? Can you think of any alternative options?**
6. Minimising the negative impacts of minerals extraction on people

The following issues support the aim to minimise the impacts of minerals extraction on people and the communities where they live and/or work.

6.1 Cumulative Impacts

The map below (Map 15) shows cumulative land uses in East Ayrshire in respect of windfarms, landfill, solar, quarry and opencast extraction. Although the Minerals Local Development Plan only deals with matters relating to minerals, this visual tool allows us to look, in one manner, at how East Ayrshire and its communities are cumulatively affected by certain types of development.
Map 15: Cumulative Land Use
Cumulative impacts…on communities

In the OCCSP, cumulative impacts upon communities are taken into account. Policies relating to this include MIN12: Cumulative Effects of Development, which seeks to ensure that a proliferation of opencast sites within close proximity to any one particular community or within one particular area does not occur, as well as policies MIN22 to MIN25 which are concerned with the protection of amenity. Policy MIN 23 introduces a 500m buffer around communities and limits extraction periods to 10 years for a single site or extensions to approximately 5 years.

The opencast policy only considers the cumulative impacts of opencast.

In respect of other minerals, Policy M4 in the EALP states that minerals workings should not result in unacceptable cumulative impact caused by the development, either concurrently or successively, in association with other similar developments in the vicinity of the site.

The minerals policy arguably considers all minerals developments in cumulative terms.

No policy considers the cumulative impacts on communities of various types of land use together.

Cumulative impacts…on landscape

In the OCCSP, cumulative impacts upon landscape are taken into account. Policies relating to this include MIN12: Cumulative Effects of Development, MIN28: Protection of Landscape, MIN29: Protection of Tourism and Recreational Resources.

As can be expected, these policies are only concerned with the impacts of development related to opencast.

In respect of the EALP, Policy M4 is concerned with impacts upon the natural and built environment as well as alternative economic initiatives such as tourism facilities.

This policy only relates to minerals workings.

Consultation Findings

Engagement undertaken so far has revealed views that:

- In the past the protective measures outlined in policy in respect of opencast coal have been ignored or offset in planning decisions by anticipated benefits – which did not materialise

- The south of East Ayrshire has been exploited and communities experience cumulative impacts of opencast and wind developments.
Engagement so far has revealed a desire to see:

- East Ayrshire Council taking due regard of the cumulative effect of decades of mineral extraction on the same geographical areas.
- The cumulative effects being better considered with the impact of other landscape interventions such as wind turbines.

**Policy options for cumulative impacts on communities**

We have identified a number of options for spatially protecting communities from all types of minerals extraction development through the importance of buffer zones. It should be noted that any policy on buffer zones will be underpinned by the adopted spatial strategy:

1. Determine a single buffer size for all types of mineral development through the application of one standardised measurement *from the application boundary outwards* within which no occupied dwellings should be affected.

2. Determine a single buffer size for all types of mineral development through the application of a standardised measurement *from a settlement boundary outwards*. This will be equal to or greater than 500m. Additional criteria would be set to protect hamlets and individual dwellings.

3. Determine *different buffers sizes*, dependent upon the type of operation, with each different type of extraction having a standardised width it must be distant *from settlements*.

4. Determine *different buffers sizes*, dependent upon the type of operation, with each different type of extraction having a standardised width *from the application boundary outwards* within which no occupied dwellings should be affected.

5. Determine *appropriate buffers on a case by case basis* with due regard given to:
   - The nature of the extractive activity
   - The duration of works
   - The geographic location
   - The topography
   - The cumulative surrounding land uses

(further guidance would require to be developed to give all stakeholders a level of certainty in respect of the likely boundary required)
**Issue 12: Policy options for cumulative impacts on communities – which option is your preferred option? Do you have an alternative suggestion?**

**Policy options for cumulative impacts on landscape**

Landscape is important to communities as it is one contributor to establish sense of place, belonging and identity.

We have identified a number of options for avoiding cumulative impacts where landscape capacity is breached which would apply to all types of minerals extraction development and these are detailed below. As with other matters, any policy on landscape will be underpinned by the adopted spatial strategy.

1. Have two separate polices as at present; one for coal, and one for other minerals and continue to only consider cumulative impacts in terms of each of these categories exclusively.
2. Have one policy which considers the cumulative impacts of current minerals extraction exclusively.
3. Have one policy which considers the cumulative impacts of minerals extraction, both past and present, therefore encompassing unrestored and partially restored minerals sites.
4. Have a policy which considers proposals for minerals related development in cumulative terms with all major landscape interventions including minerals, renewables and waste.

It should be noted that in devising a policy we will have regard to siting, design and mitigation measures designed to reduce cumulative impacts.

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**Issue 13: Policy options for cumulative impacts on landscape – which option is your preferred option? Do you have an alternative suggestion?**

**Cumulative impacts…on settlements as a result of durations of permissions**

Whilst the OCCSP aimed to protect communities from long term impacts of surface coal mining operations it is clear that as a result of extensions to extraction sites and unrestored land communities have endured and continue to have to endure long term impacts associated with minerals extraction. This is a situation which we think should stop and we require policy to support this. The current plan specifies that:

‘the Council is likely to consider opencast developments unacceptable where……the proposal involves a substantial area for extraction over a period in excess of 10 years…..or……the proposal is likely to be subject to repeated extensions, perpetuating disturbance to local communities or a period substantially longer than five years’.
Some of the long term impacts which communities continue to suffer from emerge from sites which originated prior to the OCCSP. Some communities, notwithstanding the policy, have experienced disturbance for more than ten years. The impacts are not solely visual, they also relate to issues such as noise and traffic.

However, there are operational advantages to having long term sites in terms of infrastructure and start-up costs.

**Policy options for addressing cumulative impacts on settlements as a result of durations of permissions (opencast only)**

We have identified a number of options for avoiding cumulative impacts as a result of durations of permissions for new opencast developments (only):

1. Have a time limit for extraction of 10 years on any single site, including extensions with no return for a total of 5 years.
2. Have a time limit for extraction of 10 years on any single site, including extensions. Further, extraction will not be permitted on adjoining sites such that extraction will not endure in the same locale for longer than 10 years. Adjoining sites will mean those proposed within 2 kilometres of existing working sites / sites with a valid planning permission. This would apply regardless of whether the sites were proposed by the same or a different operator.
3. Have a time limit for extraction of 10 years on any single site, including extensions and new adjoining sites within 2 kilometres. In addition, extraction will not be permitted on sites within 2 kilometres of any unrestored sites or sites undergoing restoration where this would mean that land would be in an unrestored or active working state for longer than 10 years.
4. No time limit for extraction.

This policy would not be intended to apply to existing operational sites nor preclude restoration of sites, even if the restoration was facilitated by extraction.

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**Issue 14: Policy options for addressing cumulative impacts on settlements as a result of durations of permissions - which option is your preferred option? Do you have an alternative suggestion? Could development start again? After how long?**

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**6.2 Community Benefit**

Community benefits present an opportunity for communities to share in the benefits of minerals extraction. They are a voluntary contribution given to local communities
and East Ayrshire Council has no control over whether payments are made or not. However, many developers choose to make these payments.

Where a proposal is acceptable in land use terms, and consent is being granted, negotiations may be undertaken to secure community benefit. Community benefit is entirely separate from developer contributions which are secured through a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 or other form of agreement, and might address infrastructure or environmental improvements necessary as a result of development. Currently, as specified in the OCCSP, via policies MIN 32, MIN 33 and MIN 34, monies may be made available to communities via the Minerals Trust Fund. The Minerals Trust Fund only covers the old Cumnock and Doon Valley area and only covers contributions from opencast developments. Community benefits are a goodwill contribution and whilst the Council cannot make operators contribute to the Minerals Trust Fund or use this as a material consideration in the determination of any planning application, all opencast operators to date have contributed. The rate is set 27.5p per tonne of coal extracted and is linked to the retail price index as of 1 January 2008. The Retail Price Index has been reviewed, however, the rate has never increased in practice from 27.5p per tonne.

Separate community benefit arrangements exist for quarries. For example, there is the Tincornhill Quarry Trust. Volume 2 of the EALP sets out in Policy M8 that the Council will require developers (for minerals developments other than opencast coal) to contribute to an appropriate fund which will be used for the implementation of appropriate community projects.

Consultation Findings

The community engagement undertaken so far has revealed community concerns that:

• Funds collected in the past have left little, if any, legacy; and

• The promise of community benefits has been at the expense of the environment and as a result has destroyed the sense of place and belonging felt by residents of communities affected by opencast development, in visual terms or otherwise. Hence opencast development has been to the disadvantage of communities.

Community engagement so far has revealed a desire to see, via ‘community benefit’:

• Projects with environmental (habitat), recreational (access), social and community benefit and educational enhancements

• Long term legacy projects, not short term projects with no long term gain

• Community led project planning in selecting projects
• Equality in spending, including rural areas and proper identification of those in need

• All minerals operators contributing

Operators

Operators have told us that:

• Additional levies for aggregates should not be applied as the aggregates industry is already heavily taxed and any community benefit must take into account the contributions already paid via taxes.

Policy options for the mechanism for collecting community benefit

We have identified a number of options which could be used to collect community benefit:

1. Continue with the existing trust funds and create an additional fund for other mineral related development not currently covered by the existing schemes

2. Establish a new independent scheme (existing schemes would not be disbanded but would no longer be actively advocated)

3. Establish a new Council led scheme (existing schemes would not be disbanded but would no longer be actively advocated)

4. Seek specific contributions for specific projects (which can be defined later in the development planning process) from specific applications

5. Establish no new scheme and allow developers to interact with communities independently of the planning process

6. Establish a legacy restoration fund as an alternative to community benefit, monies from which would contribute towards unrestored land.

7. Establish a fund from which 50% goes to a Council managed fund (similar to the existing Renewable Energy Fund) for allocation for community benefit and 50% goes directly to communities

8. A combination of these options (please specify combination)

Issue 15: Policy options for the mechanism for collecting community benefit - which option is your preferred option? Do you have an alternative suggestion?
Policy options for the contribution rate for community benefit

We have identified a number of options for the rate or amount of benefit collected:

1. Continue seeking a set price per tonne (or other measurement) of mineral removed from site, linked to the retail price index (each mineral would have a different rate). We propose to review the contribution rate.
2. Seek a lump sum on a case by case basis
3. Set fees/the required amount of benefits based on the site area disturbed
4. Set fees/the required amount of benefits based upon the duration of works
5. A combination of these options (please specify combination)

Monies could be collected as a single payment or as an annual or other staged payment.

Issue 16: Policy options for the contribution rate for community benefit - which option is your preferred option? Do you have an alternative suggestion?

Policy options for the spending of community benefit

Locational Strategies

Monies should be spent:

1. Within a specific radius of the site (as determined by nature of extraction activity, duration, location and topography)
2. Within a radius of an unrestored / partially restored site or on an unrestored / partially restored site.
3. As existing, for coal, within the Cumnock and Doon Valley area

Issue 17: Policy options for the locational distribution of community benefit monies – which option do you prefer? Or do you have an alternative suggestion?

The following is a list of possible ways of defining the types of projects that could be eligible to be considered for funding via the allocation of monies. Most of the types of projects outlined below are listed under the existing Renewable Energy Fund’s eligibility criteria.
Type of project

1. **Environmental Projects**: For example, woodland planting and maintenance, town/village streetscape projects, community allotments, community gardens, environmental art projects, environmental education projects, landscape schemes, cycle tracks and path networks.

2. **Environmental Education Projects for Schools**: For example, school sensory gardens, weather stations, woodland planting, environmental education packs, for local nature reserves.

3. **Community Led Service Provisions**: For example, new initiatives that help improve the environment such as rural community transport initiatives where there is demonstrable case that the project will reduce carbon footprint and/or improve the environment.

4. **Community Based Social Enterprises**: Capital and revenue support is available for new or existing social enterprises to develop their project or expand their operation/geographical area of operations to the benefits of communities in East Ayrshire.

5. **Employability and Training Programmes**: Employability support and small business up-skilling programmes co-ordinated by East Ayrshire Employability Forum to enable members of the local community to access jobs either in renewables, engineering or other sectors of the economy where there are local job opportunities.

6. **Community led sports and leisure**: For example, capital projects, such as, improvements to sports/community land or buildings, pitch improvements, floodlighting, new sports related initiatives.

7. **Income Generating Projects**: Support for projects whose main focus is income generation to support community activity.

8. **Restoration projects**: Support for projects which tackle vacant and derelict land associated with minerals related activities.

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**Issue 18: Policy options for the types of projects funded by community benefit - which option(s) do you agree with? Are there any options missing?**
6.3 Transport

The transportation of minerals generally accompanies their extraction, except in developments where borrow pits are used. The transportation of minerals can have impacts on residential amenity as the minerals travel to their end destination. The transport of minerals from extraction sites can involve the use of Heavy Goods Vehicles (HGV) on roads, railway wagons and, depending upon the scarcity of the mineral or its economic value, by boat. Local communities can be affected by heavy lorry movements through towns and the consequent dust, vibration and noise and damage to local roads. Communities can be affected simultaneously by lorry movements from various sites and projects.

Contributions are secured from operators to offset road repairs costs caused by the additional HGV movements. Current contributions to roads repair range between 10p and 30p per tonne of transported minerals depending upon the length of the journey on public roads. Contribution rates have not been reviewed since 2003.

Scottish Planning Policy recommends that the planning system minimises the impacts of extraction on local communities, the environment and built and natural heritage. It also states that LDPs should set out the factors that specific proposals will need to address including transport impacts.

The OCCSP recognises the effects of opencast mining in terms of transportation. It recognises that the duration of these effects are long term occurring throughout the entire duration of coal mining operations and that they might occur beyond the site boundaries. The OCCSP contains a coal transport route map which identified key roads under pressure and traffic flows. The Plan identifies the need to encourage rail transportation in the area. However, due to the decline in demand for coal, Crowandsgate coal disposal point has closed and there is currently only one Coal Disposal Point (Killoch) which would allow for rail transportation. Policies MIN 18-21: Transportation encourage haulage of materials from site to point of dispatch by internal haul roads only; use of defined routes agreed with the Council if using the public road system to transport materials and monitoring of routes.

The EALP provides policy provision for all minerals except coal. Policy M3 requires all applicants for minerals developments to upgrade, maintain and repair at their own expense road where damage is shown to have been caused by vehicles serving their developments; to strictly observe an appropriate separation distance between the operative site and nearby settlements and dwellings; and to service the extraction site, if considered feasible by rail. Policy M5 requires applicants proposing extensions to developments to have minimum adverse impact on nearby residents and the residents of properties located along agreed haulage routes to and from the site.
Consultation Findings

The community engagement undertaken so far has revealed concerns that:

• Many of the rural roads in East Ayrshire have been damaged by HGVs.
• Local communities are affected by congestion in their towns with heavy traffic movements.
• Communities are disgruntled with the impacts of noise and dust from minerals traffic.
• If lorries do not travel through towns, this will incur extra mileage and emissions.
• Operators should not have to pay for the upkeep of “A” roads as these roads were designed for heavy use vehicles.

Community Engagement suggested that:

• The use of railways should be encouraged and the network expanded.
• Operators should contribute to specific access and road projects (passing bays, upgrade roads) to facilitate heavy vehicle movements.
• Operators should be able to use public roads within strict working hours.
• The Council should designate permitted routes/sensitive areas that can/cannot be used by heavy use vehicles.
• New extraction sites must provide a Transport Assessment detailing all alternative routes that could be used around towns.

Policy Options for the routing of the transportation of minerals

We have identified a number of options for the routing of the transportation of minerals:

1. Identify ‘sensitive routes’ which mineral traffic will be prohibited from and ‘preferred routes’ which mineral traffic will be limited to unless there is clear evidence that alternative routes need to be used (through a Transport Assessment). In addition, promote and encourage haulage routes and the transportation of minerals by rail for any new minerals sites which come forward.

2. Allow travel only by mutually agreed routes when applications for new sites are submitted. Each site would therefore have an individually agreed route(s) to which
transportation was restricted. In addition, promote and encourage haulage routes and the transportation of minerals by rail for any new minerals sites which come forward.

**Issue 19: Policy options for the routing of the transportation of minerals – which suggestion do you prefer? Can you think of any alternative options?**

**Policy options for operator contribution rates towards the maintenance of local roads**

We have identified two options for the rate or amount which operators should contribute towards the upkeep of roads (excluding trunk road and ‘A’ class roads):

1. Retain the contribution rate as it is at present (10p – 30p per tonne)
2. Alter the contribution rate, subject to review and consultation conducted through the MIR process

**Issue 20: Policy options for operator contribution rates towards the maintenance of local roads - which option do you prefer? Is there anything you would add?**

**Policy options in terms of the cumulative impacts of minerals related traffic**

We have identified a number of options for assessing new mineral sites in relation to existing transport movements:

1. Proposals will be assessed with regard to the cumulative effects of existing mineral and renewables related traffic movements in the locale and their impact upon settlements and individual properties outwith settlements (in respect of wind farms under construction or consented and not yet built, quarries and opencast coal sites). Applicants will be required to assess cumulative impacts in their submissions.

2. Proposals will be assessed by comparing other aggregate or opencast coal sites depending on the workings proposed. Proposals will be assessed with regard to the existing mineral related traffic movements in the locale and their impact upon settlements and individual properties outwith settlements. Applicants will be required to assess cumulative impacts in their submissions.

3. As existing, proposals will be assessed on a site by site basis only with no regard given to cumulative impacts.
Issue 21: Policy options for addressing cumulative impacts of minerals related traffic - which option do you prefer? Is there anything you would add or amend?
7. Ensuring a sustainable supply of minerals

It is important that East Ayrshire aims to provide appropriate and accessible sources of aggregates and other minerals to meet the needs of the construction industry. This section expands on options not covered in the Spatial Strategy and details policy options which aim to secure a sustainable supply of minerals whilst protecting communities and the environment from the adverse impacts associated with minerals extraction.

7.1 Borrow Pits

A borrow pit is an area where minerals (sand, gravel, rock) are extracted and used within the site or adjacent to a site. Borrow pits are often found on windfarms and close to major construction / infrastructure projects. The voids created by borrow pits are restored by backfilling with surplus or unusable material. Historically borrow pits were created on small and localised sites but increasingly they are used on large scale projects, for example, wind farms and the South West Scotland Interconnector.

Scottish Planning Policy states that borrow pits should only be permitted if there are significant environmental or economic benefits compared to obtaining material from local quarries; they are time-limited; tied to a particular project and appropriate reclamation measures are in place (paragraph 243).

Environmental and economic benefits may ensue due to a reduction in HGV movements on local roads transporting materials to site.

At present there are no specific East Ayrshire policies for borrow pits in East Ayrshire, however, we think that it is an issue which should be explored. Within East Ayrshire, borrow pits are usually linked to applications for windfarms. Borrow pits have been granted consent as part of the overall planning permission of a wind farm, subject to the application proving acceptable. Within the Environmental Statement, specific details are usually given on the number of borrow pits, the volume of material being extracted, their location and the proposed restoration scheme. Depending on the site, borrow pits may have their own restoration bond separate from the turbines. Compliance monitoring regimes will regulate the infilling of the pits. However, if the land were to slump or erode after restoration had been completed, there is no process or policy on what the next stages should be.

Consultation Findings

The engagement undertaken has identified some concerns:
• Borrow pits should be site specific and located within the site boundary of an application.
• There should be a specified size limit to a borrow pit (which should have a site specific purpose) so that it does not become a quarry.
• There should be stringent conditions attached to the planning application about restoration processes.
• Business could be driven away from quarries if too many borrow pits are granted.
• Extraction can affect natural drainage and can cause water pollution if borrow pits are not restored correctly.

The consultation engagement has suggested that:

• Borrow pits should be welcomed where construction is in an area remote from an appropriate quarry
• Borrow pits reduce the volume of construction traffic on the roads which is welcomed by communities.
• There should be a cap on the number of borrow pits within one site so that the site is not peppered with voids.
• The promotion of borrow pits could be a means of promoting sustainable development.

Policy options for the location of borrow pits

We have identified an option for criteria for determining where borrow pits may prove acceptable:

1. Borrow pits will be required to be within the planning application boundary of the project the mineral is to be used for.

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Issue 22: Policy options for the location of borrow pits (part 1) – Do you agree with this option? Or can you think of an alternative?

Subject to the following considerations, useable supplies in one borrow pit will require to be exhausted and the borrow pit restored prior to the formation of an additional borrow pit:

1. The distance between the borrow pit and the location of works
2. The number of vehicle movements which will be avoided
3. Carbon assessments
4. The quality of the materials to be extracted
5. Environmental considerations, such as impact on the water environment etc.
Issue 23: Policy options for the location of borrow pits (part 2) Do you agree with these proposals? Is there anything you would add to or delete from this?

Non-location based assessment criteria

We have identified a number of options for criteria for determining when borrow pits may prove acceptable:

In addition to being assessed against the broader provisions of the plan, in line with all minerals proposals, proposals for borrow pits will be considered in relation to:

1. the needs of particular construction projects
2. the distance of the project from suitable quarries
3. the number of vehicle movements which will be avoided
4. carbon assessments
5. the duration of the excavation and
6. site specific proposals for restoration

Supporting evidence in respect of the above will be required to accompany any application which involves borrow pits.

Issue 24: Policy options for borrow pits (non-location based assessment criteria) - do you agree with all or some of this criteria? Is there anything you would add?

7.2 Recycled and Secondary Aggregates

Scottish Planning Legislation sets out the importance of maintaining an adequate supply of aggregates for the minerals industry. SPP states that local development plans should safeguard all workable mineral resources which are of economic or conservation value and plans should support the maintenance of a landbank of permitted reserves for construction aggregates of at least 10 years.

There is growing pressure on the minerals industry to move towards more sustainable construction methods and reduce the consumption of primary aggregates by using recycled and secondary aggregates. Recycled and secondary materials now account for 29% of Great Britain’s aggregates market (Minerals Product Association, The Mineral Products Industry at a glance, 2015). However, it should be noted that recycled and secondary aggregates can never entirely replace primary aggregates as they do not always demonstrate the required properties for applications. Examples of recycled materials include: construction and demolition waste, asphalt planings (e.g. from roads surfaces), railway ballast (the chipped stones found along edges of the railway track) and clean concrete. Examples of
secondary materials include: power station ash (residue of coal production) and slate. Secondary materials can be further sub-divided into manufactured (such as pulverised fuel ash) and natural (slate) depending on their source. Materials, variously, can be used to form, for example concrete and asphalt. These examples are not specific to East Ayrshire, and not all examples will be found in the area. Recycled and secondary aggregates are a means of assisting in meeting demand for aggregates and of encouraging innovative construction techniques. Recycled and secondary aggregate industries require infrastructure – this might mean a factories, plant or sites.

The Scottish Government is supportive of a more circular economy with more materials being reused. The introduction of the Landfill Tax and the Aggregates Levy has acted as a driver in reducing the amount of recyclable materials going to landfill.

One potential recycled / secondary aggregate source is bings. Bings are waste heaps which arise from various types of mineral working. Bings from former mineral extraction which contain residual mineral deposits may have been in place for some time and natural regeneration may have occurred. Nevertheless, the material may be suitable to use as secondary aggregates. Appropriate restoration and monitoring would have to be carried out should the opportunities to extract from these sources prove viable. Many bings have undergone naturalisation and support a variety of flora, and their environmental value would have to be assessed in any proposal to extract minerals.

At present, there are no planning policies for Recycled and Secondary Aggregates within East Ayrshire, apart from Policy MIN 14 of the OCCSP 2003 which considers the reworking of spoil heaps. We think that recycled and secondary aggregates should be given a greater consideration in development planning and is an issue which should be explored.

Consultation Findings

The consultation undertaken so far has identified some concerns:

- The communities would not like to see East Ayrshire as a “dumping ground” for aggregate extraction
- The communities do not want an increase in traffic movements.
- Communities are keen to ensure the appropriate protection of the natural environment.

The engagement suggested:

- Recycling of aggregates would be welcomed where appropriate.
- Recycling offers potential for employment opportunities in the area.
- We should utilise existing minerals workings or industrial sites for construction and demolition waste and identify opportunities to recycle construction and
demolition waste either close to where it arises with mobile crushing plant on site or at a permanent processing site.

- The promotion of secondary and recycled aggregates could be a means of promoting sustainable development
- Reclaiming deep mining bings could be an opportunity for recycling.

**Policy Options for recycled aggregate facilities**

We have identified a number of options in respect of the allocation of sites for facilities to recycle aggregates:

1. Promote permanent facilities for the recycling of aggregates on minerals sites (only)
2. Promote permanent facilities for recycling of aggregates at waste sites
3. Promote permanent facilities for the recycling of aggregates facilities on standalone sites
4. No specific promotion of sites for recycling aggregates
5. A combination of above.

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**Issue 25: Policy options for recycled aggregate facilities - do you agree with all or some of these options? Is there anything you would add?**

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**Policy options for the reworking of deep mining bings**

We have identified a number of options in respect of the use of deep mining bing material:

1. Reclaiming bing material should be supported in the plan, subject to them meeting other policies of the plan in respect of environmental impact.
2. Reclaiming bing material should not be supported in the plan.
3. Reclaiming bing material should only be supported where the material can aid restoration through infill of voids in other sites.

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**Issue 26: Policy options for the reworking of deep mining bings - Which option do you agree with? Do you think there are other options?**

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**Policy options for the extraction of secondary aggregates**

We have identified a number of options for the extraction of secondary aggregates

1. The extraction of secondary materials with a primary mineral should not be supported through policy. Secondary materials should be put back in the ground.
2. The extraction of fireclay as a secondary material (normally to coal) should be supported as East Ayrshire’s aggregates supply of fireclay is less than 10 years.

3. The extraction of secondary materials with primary materials should be supported subject to sufficient material being present for restoration purposes and appropriate consents being sought.

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**Issue 27: Policy options for the extraction of secondary aggregates - which option do you agree with? Can you think of any other reasonable options?**
8. Enforcing excellence in working practices

It is essential that minerals operations are effectively regulated. This section of the dMIR considers how we can monitor works on sites and enforce good working practices. Aftercare monitoring is considered in this section but aftercare itself is not included. However, the Proposed Minerals Local Development Plan will have policies on aftercare, and compliance monitoring will regulate the implementation of aftercare measures. Existing policies in the OCCSP will be considered and amended where appropriate in respect of restoration and aftercare (MIN15 – 17).

8.1 Compliance Monitoring

Compliance monitoring in respect of minerals refers to checks carried out to ensure that progress on sites adheres to approved schemes and methods of working, as specified in planning consents.

In the OCCSP, Policies MIN 35 and MIN 36 set out that the Council will require a regular assessment of restoration operations to be carried out by an independent consultant, selected through an appropriate tendering process and who is financed and funded directly by the opencast developer. The consultant will be required to provide the Council with an ongoing assessment of the degree of compliance with the approved restoration plans through the submission of updated restoration drawings and with a detailed assessment of restoration costs recalculated on a six monthly basis. Similarly applications are subject to policies on the Monitoring of Sites generally, as set out in Policy MIN38, MIN39 and MIN40. These policies set out requirements for monitoring of vehicular movements, noise, vibration and dust levels, and for the preparation of annual ‘mining progress plans’ and annual Environmental Audits.

Compliance Monitoring procedures were strengthened in 2013, with a new procedure as follows:

Stage 1: Planning Assessment

As part of the assessment of any application, the proposed scheme will be assessed by an Independent Mining Engineer, paid for by the applicant, to confirm that the scheme is technically deliverable, environmentally acceptable and financially feasible. This information, in the form of a formal report, would then be utilised by the
Planning Authority to inform their assessment of the planning application and the setting of the level of the required restoration guarantee cover.

Appointed independent mining engineers are required to have professional indemnity insurance to a level deemed appropriate.

Stage 2: Compliance Monitoring

- The provision of an Independent Mining Engineer’s Monitoring Assessment of the compliance of the mining operations and associated restoration costs to verify against the restoration guarantee for the development (MIN 35-36)
- The provision of monitoring reports on coal haulage arrangements, noise, vibration and dust (MIN 38)
- The provision of an Annual Mining Plan to verify compliance with the Planning Consent (MIN 39), and
- The provision of an Environmental Audit of the site operations to verify compliance with the environmental conditions (MIN 40). This considers the following matters:-
  - The effects of development on the environment including noise, vibration, dust and water impacts;
  - The measures taken to complement the operational, restoration and aftercare provisions of the consent insofar as they affect the environment; and
  - The effectiveness of mitigation measures promoted in Environmental Impact Assessments to reduce adverse environmental impacts.

Current frequency of compliance monitoring

Opencast Sites have a compliance visit once a month with reports produced every two months. Quarry compliance visits are less frequent and take place every six months/year dependent upon the mineral being extracted. Sand and gravel quarries are worked more quickly than stone quarries and hence are visited more frequently.

Consultation Findings

Engagement so far revealed views that:

- Previously compliance monitoring was not conducted in accordance with the OCCSP
- Some people thought that the new compliance monitoring regime was working
- Others were of the view that the Council appears to be struggling keeping the public up to date in respect of the reports and there are concerns that there are insufficient resources to properly assess the reports
Engagement so far has revealed a desire to see:

- Groundwater and surface water monitoring added to compliance monitoring
- Environmental baseline monitoring on the site itself and on adjacent areas (and the success of off-site mitigation)
- Exploration of potential links with SEPA monitoring and Extractive Waste Regulations monitoring requirements to enable joined up thinking
- Specification of what measures the Council will take as a result of non-compliance
- Better links between Community Liaison Groups and Technical Working Groups including reporting compliance monitoring results to the groups and allowing the Technical Working Groups to be involved in the assessment of reports submitted for compliance monitoring
- Re-consideration of the frequency of visits, including differentiating frequency dependent upon type of extraction
- Linking frequency of compliance monitoring of coal to coal prices
- Publication of the assessment of the proposed scheme prior to determination of any planning application to allow consideration of the report by interested parties.
- Continuously compliant sites / operators less stringently monitored

**Policy options for the frequency of compliance monitoring**

We have identified a number of options for the frequency of compliance monitoring:

1. Standardise frequency of compliance monitoring across all types of extraction
2. Standardise frequency of compliance monitoring by type of extraction (mineral extracted)
3. Have a minimum compliance monitoring standard for all sites but incentivise continuously compliant sites with less frequent visits (albeit sufficient visits to correct any deviation from approved plans timeously)
4. Review the frequency of compliance monitoring at each monitoring date dependent upon the phase of the site workings
**Issue 28: Policy options for the frequency of compliance monitoring – Which option do you agree with? Or do you have a different suggestion?**

Policy options for the remit of compliance monitoring

Compliance monitoring currently covers:

- Noise
- Blasting
- Air quality
- Compliance with conditions
- Restoration liabilities

**Issue 29: Policy options for the remit of compliance monitoring – Can you think of anything else that should be monitored?**

Policy options for the assessment of compliance

We have identified a number of options for the assessment of compliance:

1. Continue to use Independent Mining Engineers to assess compliance prior to approval by East Ayrshire Council
2. Pass each compliance report prepared by the operator through the relevant Technical Working Group prior to approval by East Ayrshire Council
3. Ask Community Liaison Groups members to raise any issues prior to the date that a compliance monitoring visit takes place to enable consideration of potential issues.

**Issue 30: Policy options for the assessment of compliance – Which of these options do you agree with? (Note all that apply) Can you think of any additional or alternative measures?**

Policy options for additional monitoring measures

Current monitoring looks at application or operational sites only before and during operations and when a site is in aftercare. It does not consider the impacts on the margins of sites or on the sites in the longer term.
We have identified a number of possible additional monitoring exercises which may be worth pursuing:

1. Annual Environmental Audit pro-formas to ensure a high and consistent quality of submission from all operators
2. Off-site environmental mitigation monitoring (to monitor the impacts of the site on surrounding areas)
3. Long term post restoration and aftercare annual monitoring (to inform us which measures are successful and which are not)

These options do not identify who conducts and pays for the monitoring. It may be that the responsibility will be on the applicant / operator, however, there are potential sources for funding for environmental research and habitat (network) projects or links with partners including higher education establishments and environmental organisations and records centres.

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**Issue 31: Policy options for additional monitoring measures – do you support the implementation of any of these monitoring regimes? Can you think of any additional or alternative measures?**

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**8.2 Financial Guarantees**

Planning conditions and / or legal agreements attached to planning consents for specific developments can require appropriate restoration, aftercare and mitigation financial guarantees to be put in place. The purpose of these financial guarantees is to ensure that if the development has not been carried out in accordance with the approved planning consent, and, having been given the opportunity, the developer has not rectified the breach, the Planning Authority can, as part of a wider range of actions to mitigate the breach, call on either all or part of the financial guarantee to rectify the breach. A fundamental of this concept is that the value of the financial guarantee must be sufficient to cover the outstanding works required to rectify the breach. Similarly, should an operator become insolvent, the financial guarantee will require to be utilised to allow for the Planning Authority to arrange for the site to be restored to its approved end use.

The OCCSP sets out requirements for financial guarantees in Policies MIN35 and MIN36. The provisions include cover for aftercare.

Following the liquidation of the Scottish Coal Company Limited and of Aardvark TMC Limited in 2013, financial guarantees were reassessed with particular attention given
to the difficulties associated with the sufficiency and settlement of existing restoration bonds.

The Council’s current position relative to all such guarantees (not just for minerals related development) is set out in a Cabinet paper from 21st May 2014 (Decommissioning, restoration, aftercare and mitigation financial guarantees) which can be found online¹.

This has been incorporated into Supplementary Guidance for the Proposed Local Development Plan which is currently with Scottish Ministers at examination in respect of wind energy developments, waste management installations and electrical infrastructure projects.

It remains to produce policy and guidance for minerals related development. The process at present for wind energy developments, waste management installations and electrical infrastructure projects is as follows.

To secure an appropriate financial guarantee the following steps will be followed:

1. All applications for the types of developments listed above (wind energy developments, waste management installations and electrical infrastructure projects) will require to be accompanied by detailed proposals for decommissioning and site restoration, in accordance with the Environmental Statement. This must include a detailed breakdown of costs and confirmation of the restoration guarantee proposed.

2. The proposed decommissioning and restoration plans will be assessed by the Council’s independent consultant, who shall review the proposed scheme and provide the Council with an independent assessment of the costs of decommissioning, restoration and aftercare throughout the life of the proposed development (including the operational, restoration, aftercare and mitigation periods). The cost of this assessment will be met by the developer through a formal legal agreement under Section 69 of the Local Government (Scotland) Act. The maximum decommissioning, restoration, aftercare and mitigation figure, as provided by the independent consultant and taking account of inflation, will be used by the Council as the required amount (quantum) in any financial guarantee to be provided.

3. Table 1 below outlines the mechanisms available for providing the financial guarantee alongside a risk rating associated for each form of guarantee. The risk rating is intended to be used to inform consideration of the appropriateness and acceptability of each mechanism in the context of individual planning applications. Financial guarantees with a high risk rating are unlikely to be acceptable to the Council, unless supported by an alternative agreement and/or additional compensatory arrangements that may be put forward by the operator.

¹ http://docs.east-ayrshire.gov.uk/crpadmin/2012%20agendas/cabinet/21%20may%202014/Decommissioning,%20restoration,%20aftercare%20and%20mitigation%20financial%20guarantees.pdf
<table>
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<tr>
<td>Pay as you go Escrow / bond</td>
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Table 1: Mechanisms available for providing financial guarantees

Compliance monitoring regimes check adherence against the agreed scheme and are hence inextricably linked to financial guarantees.

The Scottish Opencast Coal Task Force, led by the Scottish Government, in the paper ‘Surface Coal Mine Restoration – Towards Better Regulation’ states that short term insurance bonds (i.e. surety bonds) should not be used in isolation. Recommendation 23 of the paper sets out that further work will be done at a national level to produce a template for surface coal mine restoration guarantees. This is not yet available.

Consultation Findings

Engagement so far revealed views that:

- The Council should consider the Welsh government guidance prepared by the Coal Authority
- Financial guarantees should be site specific not developer specific
- Financial guarantees should not be based upon company share prices which are subject to fluctuation
- There is concern that the existing Supplementary Guidance is not being followed in respect of minerals
- ESCROWs are welcomed

Engagement so far has revealed a desire to see:

- Linkages between the environmental liability of a site and the financial liability (water treatment was the example given)
- Communities being empowered to be able to scrutinise the acceptability of the restoration bond values and liabilities
- Independent scrutiny of the financial viability of any company and project paid for by the Scottish Government
- Transparent links between the processes of compliance monitoring and decision over the calling in of bonds where required
- Auditing of development proposals and associated costs in relation to viability.
• Pay as you go bonds being implemented / upfront cash sum plus phased payments tied into phasing of consent. Permission to progress to the next stage contingent on lodging of restoration funds for that phase of the project
• Provision for varying bond values upwards if liabilities on site require it.

Some of these matters require national resolution, and the Scottish Opencast Coal Task Force work will progress many of these matters.

Policy options for the acceptability of financial guarantee products

We have identified a number of options for the acceptability of financial guarantee products. Note that the following options exclude any calculation of the value of coal on a site:

1. Continue with current matrix
2. Continue with current matrix excluding short term surety bonds
3. Continue with current matrix, only allow short term surety bonds where they are used in conjunction with another product
4. Continue with current matrix, but only allow high risk products to be used when in conjunction with another lesser risk product
5. Continue with current matrix but add pay as you go bonds tied to phasing as an option
6. Allow introduction of new types of guarantee, subject to scrutiny and assigning a level of risk, if they become available
7. Support only the lodgement of up front phased payments into ESROW accounts in line with and prior to phases of the proposed works.
8. Continue only with guarantees which have been subject to extensive market testing which allow us to take a view as to the associated risks

Issue 32: Policy options for the acceptability of financial guarantee products - which option or combination of options do you support? Or can you think of another option? Are there other types of guarantee within the matrix which you deem unsuitable?
Policy options for linkages between compliance monitoring and financial guarantees

We have identified a number of options for linkages between compliance monitoring and financial guarantees:

1. Financial guarantee milestones should be monitored and progress towards / deviation from milestones should be assessed by the independent compliance monitor and the Planning Authority prior to restoration guarantee adjustments

2. Financial guarantee milestones should be monitored and progress towards / deviation from milestones should appear in compliance monitoring reports prior to restoration guarantee adjustments

3. Financial guarantee milestones should be monitored and progress towards / deviation from milestones should appear in compliance monitoring reports and be discussed at technical working group and community liaison group meetings prior to restoration guarantee adjustments

Issue 33: Policy options for linkages between compliance monitoring and financial guarantees - which option, if any, do you support? Or can you think of another option?

Policy options for the revision of restoration liabilities

We have identified two options for the revision of restoration liabilities (upwards or downwards):

1. In line with pre-determined phasing (for example, when an application is approved phasing will be agreed by condition and / or legal agreement. Once each phase of the development is complete the restoration liabilities will be assessed and independently verified. Thereafter, they will be adjusted as appropriate. This approach allows a tailored approach to each site).

2. In line with a range of triggers as will be set out in the MLDP (all applications will be subject to checks on works on site against restoration liabilities at specific points. These might be, for example, time related. This would mean all applications would be assessed in a consistent manner)
Issue 34: Policy options for the revision of restoration liabilities - which option, if any, do you support? Or can you think of another option?

a. Excess Soils

Soils are an important and valuable resource in regenerating the landscape. The mismanagement of soils can affect the reclamation of land. Soils are disturbed as part of mineral extraction and previously have been improperly stored meaning that they have not been available for restoration. Many of the unrestored former opencast sites have insufficient soils for restoration purposes. On sites where soils are absent or insufficient, it may be possible to create an adequate soil profile by using material from fill or overburden – this is called soil making material.

Scottish Planning Policy states that the planning system should seek to protect soils from damage. In the OCCSP, there are no policies which specifically safeguard soils on mineral extraction sites.

Since the publication of the OCCSP, the Scottish Government have adopted a Zero Waste policy in which planning authorities are asked to consider the opportunities to recycle waste.

Through restoration which is currently being carried out, opportunities have been identified to reuse soils from other development sites originally destined for landfill to assist in restoration objectives. This can be mutually beneficial as the developer does not have to pay landfill taxes and the soil can be put to beneficial use. An example of this was soil destined for landfill as a result of the South West Scotland Interconnector project which was diverted to Ponesk former opencast coal mine.

It is important that the soils used are of good quality and this ‘issue’ considers displaced soils rather than alternatives such as sewage sludge.

It is also important to note that this issue is not about removing soils from sites where they will eventually be required.

Consultation Findings

Engagement undertaken so far has revealed that:

1. Recycling of excess materials would be welcomed.
2. East Ayrshire should not become a “dumping ground” for materials.
Policy options for the reuse of excess soils

We have identified a number of options in relation to excess soil on mineral extraction sites:

1. Set out a policy direction such that where opportunities arise, applicants will be encouraged to divert excess soils to restoration projects rather than landfill. Supplementary Guidance will provide direction in terms of soil storage and transfer.

2. Set out a policy direction such that where opportunities arise, applicants will be encouraged to divert excess soils from landfill to sites which would benefit from soils in the longer term, post restoration works. Supplementary Guidance will provide direction in terms of soil storage and transfer.

3. Set out no policy direction for excess soils

Issue 35: Policy options for the reuse of excess soils – which option are you in favour of? Can you think of an alternative option?

8.4 Sewage sludge

Sewage sludge is a by-product of the waste-water treatment process which can be useful in agriculture and in land restoration. There are various benefits to using sewage sludge in restoration as it has nutrients (e.g. nitrogen, phosphate, potash, magnesium and sulphur) which are essential to plant and animal growth, and it is recognised as a good substitute for peat in land reclamation projects. It enhances peatland areas and is readily available from sewage treatment centres. Further, it is a relatively inexpensive product and therefore it can assist in producing best value solutions for legacy sites where there is insufficient money available for restoration to the approved scheme.

Sewage sludge has been the subject of complaints from local communities surrounding reclamation project sites in other areas due to the odour. However, a study by the Scottish Government stated that there has found to be no health risk associated with the spreading of sewage sludge to local communities. (Review of the Storage and Spreading of Sewage Sludge on Land in Scotland, (The Sludge Review), February 2016.)

Before sewage sludge is allowed to be spread on land, the operator must register for and obtain a licence from SEPA (who monitor the spreading of sewage sludge) and thereafter carry out an assessment of the soil conditions of the on-site material. Reclamation projects which are well managed and spread the appropriate amount of sewage sludge to meet habitat needs can support the land to recover from previous development. However, reclamation projects that are badly managed and spread too
much sewage sludge can cause adverse impacts on the environment such as heavy metal accumulation in the soil, leaching and increased production of greenhouse gases. Therefore, it is essential that the on-site material is analysed prior to the application of the sewage sludge.

Sewage sludge is not used at present on restoration projects in East Ayrshire; but it is used in neighbouring authority areas. This issue considers whether or not it should be used in East Ayrshire; subject to the necessary standards being met.

**Policy options for the use of sewage sludge**

1. Sewage sludge can be used in the restoration of existing legacy sites where there are inadequate soils to allow regeneration of fauna
2. Sewage sludge can be used in restoration of all sites, existing and in the future
3. Sewage sludge is not deemed to be an appropriate material in restoration and its use will not be supported.

**Issue 36: Policy options for the use of sewage sludge – which option are you in favour of? Can you think of an alternative option?**
4 Conclusion

The draft Main Issues Report presents 35 issues which East Ayrshire Council believes are of relevance to the forthcoming Minerals Local Development Plan. The draft report will be available on the Council’s website and copies will be deposited at all libraries and key Council offices. In addition, it is intended to hold workshops to explore key areas of the draft Main Issues Report. Following consultation on the dMIR, comments received will inform the final Main Issues Report and assist in determining the preferred options and reasonable alternative options for each minerals topic area. Thereafter, a Main Issues Report is anticipated to be published in October 2016 which will set out the Council’s preferred options for policy and alternatives. Dependent upon responses to this consultation, new issues or options may be identified and other options are likely to be eliminated. The Minerals Local Development Plan is scheduled for adoption in December 2018.
Appendix 1 – List of relevant policies for review

This pro forma will be completed for the MIR once feedback has been received on the dMIR.

**East Ayrshire Opencast Coal Subject Plan 2003**

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### East Ayrshire Local Plan 2010

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## List of Acronyms

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SWT – Scottish Wildlife Trust
Glossary of terms

**Aftercare** – Measures necessary to bring restored land up to the required standard for the intended after-use.

**Aggregates (construction aggregates)** - Material from the ground used in construction including sand, gravel and stone.

**Bings** – heaped waste from mining.

**Biodiversity** - The variety of life on earth, the range of different species (types) and variations within them.

**Bonds (financial)** – money held in security; in the case of minerals it is held for restoration in case restoration does not take place.

**Buffer Zones**- an area of land separating mineral development from adjoining sensitive land uses and settlements to ensure that communities are not directly affected by such forms of development.

**Carbon dioxide sequestration** – the storage of carbon dioxide underground.

**Coal bed methane** - natural gas extracted from coal beds.

**Cumulative Impacts**- the extra impacts caused by a proposed development in combination with other developments as the combined effect of a set of developments taken together.

**Development plan** - spatial plan(s) about place which guides future land use.

**Fracking** – see hydraulic fracturing

**Green network** - a network of high quality green spaces, wildlife habitats, paths and other environmental infrastructure.

**Habitat** - an ecological or environmental area that is inhabited by a particular species of animal, plant, or other type of organism.

**Hydraulic fracturing** – is the process in which rock is fractured by a pressurized liquid through a drilled pipe within a well to release natural gas.

**Landbank**- a stock of approved and / or implemented planning permissions, in this case for the winning and working of minerals.

**Local Development Plan** – local spatial plan about place which guides future land use.
**Main Issues Report** – A report for consultation which sets out a Council’s general proposals for development and in particular where development should and should not take place and provides alternative options.

**Minerals** – are a naturally occurring substance that is usually solid and inorganic, formed as a result of geological processes.

**Minerals Trust Fund**- A fund to which minerals operators are requested to contribute and which will be used to provide community benefits to communities most affected by the operations concerned.

**Overburden** – the waste from mining that lies above or adjacent to the area being worked.

**Petroleum Exploration and Development Licence (PEDL)** - a licence which gives the holder the right to search, bore for and get any mineral, oil or natural gas.

**Policy**- A statement that expresses the Council’s views on a given topic, and provides standards or criteria against which proposals for development will be judged.

**Placemaking**- The process of creating successful places, which have 6 qualities in common: a distinct identity, safe and pleasant, easy to move around, welcoming, adaptable and resource efficient.

**Restoration**- a process in which a damaged natural resource/area is renewed or reinstated after a period of mineral extraction.

**Rights of Way**- a route along which the public have a right of passage.

**Site of Special Scientific Interest (SSSI)** - Designated by Scottish Natural Heritage, SSSIs contain the best examples of particular species, habitats, geology or geomorphology.

**South West Scotland Interconnector (also known as South West Scotland Connections Project)** - a new transmission network will enable new sources of renewable energy to connect into the electricity transmissions systems on the borders of East Ayrshire, South Ayrshire and Dumfries and Galloway.

**Special Area of Conservation (SAC)** - A European designation which protects rare and threatened species and habitats listed in the Habitats Directive.

**Special Protection Area (SPA)** - A European designation which protects rare or threatened birds listed in the Birds Directive and migratory birds which are regular visitors, together with their habitats.

**Spatial strategy**- The part of the Local Development Plan which sets out the scale and location of new development and infrastructure.
Spoil - the overburden of other waste removed during mining

Sterilisation – when a change of use, or the development, of land prevents possible mineral exploitation in the foreseeable future.

Sustainable Development - Development that meets the needs of the present without compromising the ability of future generations to meet their own needs (The Brundtland Definition. Our Common Future, The World Commission on Environment and Development, 1987)

Transport Assessment - A process that sets out transport issues relating to a proposed development and identifies the measures to be taken to deal with the anticipated transport impacts.

Unconventional oil and gas - is natural oil and gas which has been obtained from sources of production that are considered to be new or different. (This includes coalbed methane, methane clathrate, shale gas, oil shale and tight gas.)

Underground coal gasification - is an industrial process in which coal is converted into gas while still in the coal seam, which can then be used.

Vision - a statement which gives a broad view of the future aspirations for an area.