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South Lanarkshire Council  
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154 Montrose Crescent  
Hamilton  
ML3 6LB



Our ref: LDP-380-1

18 January 2012

Dear Ms Gaddis

**SOUTH LANARKSHIRE COUNCIL – SOUTH LANARKSHIRE PROPOSED  
MINERALS LOCAL DEVELOPMENT PLAN  
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT PLANNING)  
(SCOTLAND) REGULATIONS 2008**

I refer to my appointment by the Scottish Ministers to conduct the examination of the proposed South Lanarkshire Minerals Local Development Plan. I have completed the examination, and now submit my report, enclosing one bound and one unbound copy.

I find that the council has conformed to the participation statement in the context of section 19(4) of the Town and Country Planning (Scotland) Act 1997 (as amended) and has carried out the necessary procedures for consultation and publicity under that Act and the 2008 Regulations.

In my examination, I have considered all issues arising from the unresolved representations as identified by the council. In each case I have taken account of the summaries of the representations and the responses, as prepared by the council, and the original representations, and I have set out my conclusions and recommendations in relation to each issue in my report. I have generally considered the matters raised under the issues identified by the council, but where I have departed from this, or otherwise where necessary, I include appropriate cross-referencing in the text.

The examination process did not require the undertaking of any site inspections because there are no site specific proposals in the local development plan. However, a hearing was held on 17 November 2011 to examine search areas for minerals and the reserves for construction aggregates, in the context of the spatial strategy contained in Policy MIN 1. Apart from this, no further information was requested from the council or any other party.



Subject to the limited exceptions as set out in section 19 of the Town and Country Planning (Scotland) Act 1997 (as amended) and in the Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009, the council is now required to make the modifications to the proposed local plan as set out in my recommendations. However, I have set out my recommended modifications in such a manner which allows the council appropriate flexibility and discretion to present the policies, the supporting text and the proposals map as it deems most appropriate, whilst maintaining the substance of my recommendations, in the context of section 19(10) of the Town and Country Planning (Scotland) Act 1997 (as amended).

I have also included consequential modifications where I have identified them, but the council should also make any consequential modifications to the text or maps which arise from my modifications where I have not identified them, and may also make any necessary non-material corrections to the plan. Separately, the council will require to make any necessary adjustments to the Strategic Environmental Assessment (Environmental Report) and to the Habitats Regulations Appraisal.

A letter will be issued to all those who submitted representations to inform them that the examination has been completed and that the report has been submitted to the council. It will advise them that the report is now available to view at our web site at:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/PlanInquiries>

and at the council's offices at Montrose Crescent Hamilton; Civic Centre, East Kilbride and South Vennel, Lanark

and that it will also be posted on the council's web site at:

[www.southlanarkshire.gov.uk](http://www.southlanarkshire.gov.uk)

The documents relating to the examination should be retained on the council's web site for a period of six weeks following the adoption of the plan by the council.

Yours sincerely

*Lance R Guilford*

Reporter



**REPORT TO SOUTH LANARKSHIRE COUNCIL**

**LOCAL DEVELOPMENT PLAN EXAMINATION  
SOUTH LANARKSHIRE PROPOSED MINERALS  
LOCAL DEVELOPMENT PLAN**

Reporter: Lance R Guilford

Date of Report: 18 January 2012

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<b>Issue 1</b>	<b>General Comments</b>	
<b>Development plan reference:</b>	Minerals Local Development Plan - General Comments	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
Aggregates Industries (255) Minerals Products Association (273/274) Scottish Natural Heritage (148/171) Mark Stephens (308/309) Strathaven Community Council (118) Tarmac (222/223/226) The Coal Authority (127) The Forestry Commission (181)		
<b>Provision of the development plan to which the issue relates:</b>	General comments relating to the plan.	
<b>Planning authority's summary of representation(s):</b>		
<p><b>255, 274</b>                  The Minerals Local Development Plan (MLDP) needs to be seen in context with Scottish Planning Policy (SPP) the Glasgow and Clyde Valley Strategic Development Plan (GCVSDP) and the South East Scotland Strategic Development Plan (SESPlan).</p> <p><b>273</b>                  The overall impression of the document is that it presents an unbalanced view of the minerals industry with an over use of photographs depicting very large opencast coal sites. No description is given, for example, of what "Broken Cross" is. This is obviously at one end of the scale of mineral development and a parallel picture of a small sand pit would better show the range. No sense of scale or proportion is depicted by for example positive images of biodiversity or landscape enhancement.</p> <p><b>148</b>                  The natural heritage sections of the plan need to be strengthened in order to reflect the importance and sensitivity of the wildlife and landscapes of South Lanarkshire.</p> <p><b>171</b>                  The Local Plan does not include any policy related to the protection of the wider landscape resource outwith designated areas. Such a policy is also absent from the proposed Minerals Local Development Plan, although the current Minerals Plan contains policies relevant to this issue (MP5 and MP30). Sensitive landscape features (landform or landcover) that contribute to the sense of place, sensitive or important views, sensitive skylines and horizons, Wild Land and areas with characteristics of wildness, should be protected from adverse impacts. The final plan should include a policy position on the wider landscape resource, informed by the findings of the Landscape Character Assessment. Such a policy would assist in the assessment of the plan against the Strategic Environmental Appraisal (SEA) objective of preventing landscape characteristics from being undermined.</p>		

**308**

Individual policies in the proposed Minerals Local Development Plan are short, and vague. If a policy is to be any use at all to the people who have to implement it (the officers and councillors) then it must be sufficiently detailed to enable predictable, consistent and justifiable decisions.

**309**

The potential health impacts of minerals extraction is neglected in the proposed Minerals Local Development Plan. Buffer zones are not shown in the proposed Minerals Local Development Plan. Buffer zones are consistent with national guidance and should be included and the distances increased, at the very least the 250 m distance should be increased to 500 metres.

**118**

The Minerals Local Development Plan (MLDP) has watered down the environmental protection issues with regard to mineral extraction. Both the existing Minerals Plan (2002) and the Main Issues Report paid more attention to issues such as visual intrusion; landscape impact; public access to the countryside; property surveys; etc; none of which appears to be considered in any detail in the present document. In addition the MLDP makes no reference to other important issues such as hours of working. The result is that the document appears to be favouring mineral extraction over the concerns of local communities and the protection and/or improvement of the environment. It is appreciated that a balance has to be struck when preparing a document such as the MLDP and that it would not be possible or appropriate to cover all possible considerations. However, when the omissions are quite so significant it is suggested that the Council has got the balance wrong and that it needs to reconsider the policy content of the document, if local communities are to have adequate protection from such developments. The inclusion of such matters as policy considerations within the MLDP should not necessarily impact upon the well written, well presented, clear and concise nature of the document for which the Council has to be commended.

**222**

The National Planning Framework (NPF2) has not been given sufficient weight within the Minerals Local Development Plan.

**223**

Issues covered within the proposed Minerals Local Development Plan are also covered within the South Lanarkshire Local Plan. It is unclear how these are applied to minerals applications.

**226**

There is no mention in the proposed Minerals Local Development Plan regarding extensions to existing sites. Extensions are more likely than new sites for environmental and economic reasons.

**127**

A reference to the range of potential public safety issues relating to the legacy of coal mining within the South Lanarkshire area should be included in the proposed Minerals Local Development Plan. Potential hazards include: collapse of shallow mine workings; collapse of mine entries; gas emissions from coal mines; transmission of gases into adjacent properties; coal mining subsidence; and water emissions from coal mine workings. These hazards may currently exist, be caused as a result of development, or

occur at some time in the future; and appropriate general policies/policy criteria requiring new development proposals to take account of any risks associated with former coal mining activities and, where necessary, incorporate suitable mitigation measures to address them should be included.

**181**

A section should be included in the plan relating to forestry woodlands and trees.

**Modifications sought by those submitting representations:**
**171**

Seeks an additional policy relating to the 'non-designated' landscape (wider landscape resource).

**222**

National Planning Framework for Scotland 2 (NPF2) should be given more weight within the plan.

**226**

The plan should contain policy direction on extensions.

**127**

Seeks an additional policy on public safety relating to the legacy of coal mining.

**181**

A section should be included in the plan relating to forestry, woodlands and trees.

**Summary of responses (including reasons) by planning authority:**

The Minerals Local Development Plan (MLDP) has been prepared in accordance with Scottish Planning Policy (SPP) **(CD 12)** and the Glasgow and the Clyde Valley Structure Plan (GCVSP) **(CD 30)**. The Glasgow and the Clyde Valley Strategic Development Plan (GCVSDP) is at the proposed plan stage and was not published at the time of writing the proposed Minerals Local Development Plan. The SESPlan has no bearing on plans in South Lanarkshire since this does not form part of our development plan.

The plan contains photographs of coal, hard rock, peat and sand & gravel extraction operations which are ongoing in South Lanarkshire Council. There are also photographs of a bing, the New Lanark World Heritage Site and an area contained within the Special Landscape Area. Only two photographs of large open cast coal sites are contained within the plan. Picture 7.1 relates to a sand and gravel operation. The Council is satisfied that the photographs within the plan provide a reasonable balanced picture of the minerals industry.

The Council is satisfied that the plan provides an even balance between the need for minerals and protection of the environment, however our response to the specific comments made by SNH are provided in other Schedule 4's.

Policy ENV 29 in the South Lanarkshire Local Plan (SLLP) **(CD 33)** is designed to protect the designated and non-designated landscapes of South Lanarkshire. The SLLP **(CD 33)** and the Minerals Plan **(CD 34)** taken together with the Structure Plan **(CD 30)** forms the Development Plan for South Lanarkshire and should all be read together when

considering any developments in South Lanarkshire.

The Council considers the wording of the policies in the proposed Minerals Local Development Plan to be concise, relevant and robust enough to allow assessment of individual planning applications to be made.

The use of “*seek to*” in policy MIN 2 reflects the fact that the onus is placed on the developer to demonstrate the extent to which controlling criteria can be satisfied. It is then the duty of the Planning Authority to consider if the extent to which a test can be satisfied is sufficient to allow the appropriate level of protection for the environment or the community, whilst having regard to the needs of the industry and the economy. The planning system is designed to be as flexible as possible whilst still offering levels of protection to the communities and the environment. The Council is satisfied with the wording of the policies in this regard.

The aim of the minerals plan is to facilitate minerals development whilst protecting the environment and communities. There is no particular emphasis on commercial interests nor are there any particular areas where more emphasis should be placed on balancing the interests of people. Every policy in the plan is aimed at protecting the environment or the communities through mitigation or enhancement whilst still allowing for the commercial extraction of minerals.

A Health Impact Assessment (HIA) **(CD 36)** was carried out and used as a background document for both the MIR **(CD 36)** and MLDP. The HIA **(CD 36)** considered in detail the potential impact of minerals development on human health with particular regard to the following;

- Noise
- Air quality
- Impact on roads including road traffic accidents
- Impact on certain equalities groups e.g. older people, people with disabilities, gypsy travellers
- Reduction in outdoor physical activity
- Potential for community benefit
- Economic impact from employment opportunities

Paragraph 1.13 of the MLDP acknowledges the HIA **(CD 36)** which concludes that it is “most unlikely that opencast sites would have any long-term effects on the health of local communities”.

In terms of buffer zones, these are set out in Policy MIN2, Table 3.1 and are illustrated on the proposals maps.

The Council is satisfied that the plan strikes an even balance between the protection offered to the communities and the environment and the need for continued provision of minerals. The Council is satisfied with the wording of the plan and policies in this regard.

Hours of working are dealt with under individual planning applications and an assessment of their impact on the surrounding area and as such are not included as a policy in the plan.

The Council is satisfied that the MLDP takes full account of National Planning Framework



for Scotland 2 (NPF2) **(CD 11)** by identifying the need for aggregates within the local and regional area.

Both the South Lanarkshire Local Plan **(CD 33)** and the Minerals Local Development Plan (MLDP) form the basis of the Local Development Plan for South Lanarkshire. These plans should be read in conjunction with the Glasgow and the Clyde Valley Strategic Development Plan (GCVSDP) and form the development plan for South Lanarkshire. The plans are therefore not mutually exclusive.

Extensions should be considered equally with new sites since in some cases the extensions can be larger than the original consented area. Extensions can raise more issues by prolonging both perceived and actual impact on local communities and the environment.

It is not a requirement for every development proposal to be assessed against the three tests in policy MIN 2, only those likely to have a significant adverse effect on a designation.

In relation to representation 127 the need to identify potential public safety issues is not considered necessary for this plan – it is a guide to developers and an assessment tool for planning officers and not a public safety document.

This plan is specifically for the subject of minerals. Issues relating to forestry, woodland and trees will be given specific consideration within the forthcoming South Lanarkshire Local Development Plan (SLLDP), which will be relevant when determining minerals planning applications.

The Council is satisfied that the MLDP provides sufficient provision for the protection of trees, when read in conjunction with the SLLP **(CD 33)** and the provisions to be contained within the SLLDP.

### **Reporter's conclusions:**

1. Many of these general issues relate to the specific policy headings in Issues 3 to 18 below, and where I have also addressed the issue raised elsewhere under these policy headings I provide an appropriate cross reference. I have noted some general comments submitted on behalf of the Scottish Government, Built Environment Directorate, which are included in the covering letter accompanying its representations, and are stated as being "for consideration during the remainder of the Minerals Local Development Plan process". The council has not included these comments within the summary of issues. For the avoidance of doubt I agree with this, and do not therefore take these general comments into account.

### **Context for the local development plan**

2. I commence with the context for the Minerals Local Development Plan, which is the Scottish Planning Policy, National Planning Framework 2 and the approved Glasgow and the Clyde Valley Joint Stricture Plan 2006 (together with the emerging strategic development plan where this is relevant). In addition, at a more local level, the South Lanarkshire Local Plan also provides a context, because the policies therein relate to minerals development as well as other development.

Scottish Planning Policy

3. The Scottish Planning Policy addresses minerals development generally within paragraphs 225 to 235, and surface coal in paragraphs 239 to 247. This is particularly important when considering the spatial strategy in Policy MIN 1 and the supporting text, and protecting the environment through Policy MIN 2 and the supporting text.

4. The Scottish Planning Policy is referred to in respect of both these issues (and also other issues where appropriate). I am satisfied that, taking into account the modifications which I recommend, the policy framework within this local development plan is consistent with the Scottish Planning Policy.

National Planning Framework

5. The National Planning Framework 2 in paragraph 69 states: “adequate supplies of minerals must be available to the construction industry if Scotland’s infrastructure investment plans are to be realised and housing and business needs met. The identification of appropriate local sources of material will be particularly important in the Central Belt, where demand is likely to remain significant. Sourcing minerals locally reduces the distances over which they have to be transported”.

6. South Lanarkshire’s mineral resources are generally within the Central Belt and from the mineral deposits map it can be seen that construction aggregates feature strongly within these deposits. This matter is addressed in Policy MIN 1 and the supporting text and, taking account of my recommendations set out under Issue 3, I am satisfied that the local development plan is consistent with the provisions of the National Planning Framework 2.

Glasgow and the Clyde Valley Joint Structure Plan 2006

7. I take into account the provisions of the approved structure plan (and where appropriate the emerging strategic development plan) under Issue 3, in considering the spatial strategy for minerals development. Again, taking account of my recommendations relating to this matter set out under Issue 3, I am satisfied that the local development plan is consistent with the provisions of the approved structure plan.

South Lanarkshire Local Plan

8. Because of the nature of minerals development, and their importance within South Lanarkshire, the council has adopted a separate minerals local plan which is now being reviewed through this local development plan; but this plan still has to be considered within the context of the South Lanarkshire Local Plan. It appears to me that when a minerals development proposal is being prepared, it is necessary to prepare this in the context of the policies of both plans; the former providing a more general context for development, and the latter providing a more specific and detailed context for minerals development.

9. I refer to the South Lanarkshire Local Plan as appropriate in relation to specific issues, but I have found no significant inconsistency between the 2 plans. The plans appear to me to relate well together as long as their relationship is understood. However, I find that there is a need for a slightly more accurate representation of the relationship within the second bullet point in paragraph 1.3 of the introduction, in that this should not include the

phrase “with the specific exception of minerals development”. This is in my view not consistent with the remainder of the paragraph which in fact goes on to explain where the plan may indeed relate to minerals development.

10. Furthermore, the South Lanarkshire Local Plan does not state that its policies exclude minerals development. The council recognises that the plans are not mutually exclusive in its response above and indeed in table 3.1 there is actually a cross reference to the relevant policies of the South Lanarkshire Local Plan. The deletion of the phrase I have referred to would more correctly reflect the relationship of the 2 plans.

### **Balanced approach in providing a spatial strategy**

11. I do not agree that there is an unbalanced approach focusing more on the need for minerals than the environment, or alternatively presenting an unbalanced view of the minerals industry. The photographs are merely an illustration of the type of minerals development that exists in South Lanarkshire, and it is inevitable that these tend to show an adverse visual impact. It is important to recognise that the policies of the South Lanarkshire Local Plan also relate to minerals development. There would be no point in simply repeating the provisions of the South Lanarkshire Local Plan that apply to minerals development.

12. I find that the minerals local development plan generally achieves the right balance, and whilst I make recommendations under subsequent issues to address specific deficiencies in the policy framework, I commend the council for its overall spatial strategy for facilitating minerals development (in the context of paragraph 69 of the National Planning Framework 2) whilst protecting the environment from the adverse effects of minerals development as far as this is reasonably possible.

13. I accept that there is no requirement for specific proposals to be identified. Specific proposals would be identified through the development management process in the context of the detailed policy framework provided by this local development plan. I also consider it helpful that the policies are generally succinct and focused, and do not unnecessarily repeat the provisions of the South Lanarkshire Local Plan.

14. I find that the use of the term “seek to” is appropriate because the council to some extent relies on the actions of others to implement the policies referred to. I have no objection to the use of this term throughout the policies of the local development plan.

### **Protecting the environment**

15. The matters raised in representations (from Scottish Natural Heritage and others) in relation to the environmental policies are addressed under other issues, and particularly Issue 5. I acknowledge that modifications to Policy MIN 2 are required. However, I find that the South Lanarkshire Local Plan adequately addresses the general environmental effects of minerals development, and I therefore find it logical that Policy MIN 2 concentrates on the specific effects of minerals development on designated resources. Even these are cross referenced to the relevant policies within the South Lanarkshire Local Plan.

16. I agree with the council that Policy ENV 29 of the South Lanarkshire Local Plan sufficiently protects the non-designated landscapes of South Lanarkshire. In addition, whilst I understand the concerns expressed by the Forestry Commission, forests and

woodland are sufficiently covered in the South Lanarkshire Local Plan through the same policy together with Policy ENV 10, and other than ancient woodland or designed landscapes (included in table 3.1) do not therefore require to be specifically protected in the context of Policy MIN 2.

**Communities**

17. Concern is expressed that the local development plan (when compared with the existing adopted minerals local plan) represents a shift away from the interests of people towards commercial interests. I do not agree that this is the case. I would not describe the policies as vague. Indeed, I find that the policies are concise but remain relevant to protecting the interests of communities. Using this term as opposed to “residents” does not signify any lack of protection and Policy MIN 7 (combined with Policy MIN 2) provides the necessary protection for communities and residents.

18. My specific findings and recommendations relating to Policies MIN 7 and MIN 2, including buffer zones, are included within Issues 10 and 5 respectively, but the suggestion that the local development plan has “watered down” the policies in the existing adopted minerals plan is therefore unconvincing. A robust policy framework does not necessarily depend on wide coverage or great detail.

**Public health**

19. I note that the council has undertaken a health impact assessment as part of the strategic environmental assessment process. This is acknowledged in paragraph 1.13. I accept the council’s evidence to the extent that this has covered the areas listed in its response above, and I find that Policy MIN 7 is essentially the vehicle for considering the effects from minerals extraction on the health and well-being of communities. Hours of working would normally be covered by the conditions imposed on any planning permission for minerals development, where this is a relevant matter for consideration. The matter of buffer zones around settlements is addressed within Issue 5.

20. I note that the Coal Authority has raised a number of concerns relating to the legacy of former mining operations. However, I find that addressing these in the local development plan would generally be out of context. This plan is concerned with the approach to minerals development which requires planning permission. As such it would not be appropriate to include policies to address issues resulting from former mining operations. To the extent that these raise land use issues they should be considered in the context of the South Lanarkshire Local Plan.

**Extensions to existing mineral workings**

21. I agree with the council that there should be no particular emphasis placed on extensions to mineral workings, and I consider this matter further under Issue 3.

**Reporter’s recommendations:**

1. Paragraph 1.3 should be modified by the deletion of the phrase “with the specific exception of minerals development” from the first sentence of the second bullet point.

<b>Issue 2</b>	<b>Chapter 1 - Introduction</b>	
<b>Development plan reference:</b>	Paragraph 1.2 Figure 1.1 Paragraph 1.9 Paragraph 1.11 Paragraph 1.17	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
Patersons of Greenoakhill Ltd (191) Scottish Natural Heritage (149/150/151/152) Scottish Coal (182)		
<b>Provision of the development plan to which the issue relates:</b>	Paragraph 1.2 Figure 1.1 Paragraph 1.9 Paragraph 1.11 Paragraph 1.17	
<b>Planning authority's summary of representation(s):</b>		
<p><b>191</b> The Minerals Local Development Plan totally understates the significance of sand and gravel in South Lanarkshire which is of importance to the economy of the entire Central Belt and not just "<i>the local economy</i>".</p> <p><b>149</b> Figure 1.1 - The legislative and policy context for the Minerals Local Development Plan should include reference to relevant natural heritage legislation and policy, such as the Wildlife &amp; Countryside Act 1981 (as amended), the Nature Conservation (Scotland) Act 2004 and the Conservation (Natural Habitats, &amp;c.) Regulations 1994 ('the Habitats Regulations').</p> <p><b>150</b> Paragraph 1.9 - the 1999 Landscape Character Assessment (LCA) has not been superseded by the 2010 version in its entirety. The 1999 document contains a significant amount of useful information on the development of the landscape in the chapters preceding the descriptions/guidelines for individual landscape types. The following text was to be added in the introduction to the 2010 document: "However, for a detailed description of the historical development of the landscape and a general overview of forces for change which have previously affected the landscape, refer to the 1999 LCA". This paragraph should be amended in the final plan to reflect the complementary nature of the two documents.</p> <p><b>151</b> Paragraph 1.11 - The document submitted with the Main Issues Report (MIR) was not an 'appropriate assessment', but part of the 'HRA'. The conclusion in the document should have referred to the correct Natura test by identifying whether or not the MIR had an adverse impact on the integrity of Natura sites, rather than whether there would be significant effects. The conclusion did not fully reflect regulation 49 of the Habitats Regulations as it made no reference to the need to consider alternatives before projects</p>		

which would adversely affect the integrity of Natura sites could be considered for approval.

**152**

Paragraph 1.17 - While reference is made to the Habitats Directive, it would also be appropriate to include reference to domestic law (i.e. the Habitats Regulations).

**182**

The Scottish Government's Draft Electricity Generation Policy Statement published in 2010 (Draft Electricity Generation Policy Statement 2010: Scotland - A Low Carbon Economy November 2010) makes clear the continuing need for thermal generation plant in order to provide continued and secure electricity generation for many years to come. Tables in the Statement show how coal fired generation will continue to form an important part of Scotland's generation mix.

### Modifications sought by those submitting representations:

**149**

Figure 1.1 - include reference to the Wildlife & Countryside Act 1981 (as amended), the Nature Conservation (Scotland) Act 2004 and the Conservation (Natural habitats, &c.) Regulations 1994 ('the Habitats Regulations').

**150**

Paragraph 1.9 - should be amended in the final plan to reflect the complementary nature of the two landscape documents.

**151**

Paragraph 1.11 - 'appropriate assessment', should be renamed as 'Habitats Regulations Appraisal'.

**152**

Paragraph 1.17 - include a reference to domestic law (i.e. the Habitats Regulations).

**182**

Include a reference in paragraph 1.27 to the Draft Electricity Generation Policy Statement 2010: Scotland - A Low Carbon Economy November 2010.

### Summary of responses (including reasons) by planning authority:

All of the representations to the Introductory chapter request that a modification be made. The Introduction outlines the position at the time of production of the proposed Minerals Local Development Plan (MLDP) and would require to be updated to give the position for the final version of the plan. The Council therefore invite the Reporter to:

- Allow the Council to update the Introductory chapter of the plan to reflect the final position of the plan including any changes to legislation or new documentation that may be introduced.
- to add the requested natural heritage legislation to the 'legislation' section of Table 1.1.
- add the following to paragraph 1.9 for clarity. Delete the last sentence and replace with "The South Lanarkshire LCA (**CD 37**) was used to inform the preparation of "Validating Local Landscape Designations" (**CD 38**)
- add a reference to the Habitats Regulations (**CD 1**) within paragraph 1.17.

- add a reference to the Draft Electricity Generation Policy Statement 2010: Scotland - A Low Carbon Economy November 2010 (**CD 13**) document to paragraph 1.27.
- amend Habitats Regulations Assessment to Habitats Regulations Appraisal.

In terms of representation **191** the MLDP is not aimed to be a statement of significance regarding the deposits of minerals in South Lanarkshire. Nevertheless, a number of statements are contained within the MLDP which acknowledge the significant mineral deposits within SLC. Paragraph 1.24 states that

*“South Lanarkshire..... is rich in economic mineral deposits”.*

Paragraph 1.25 notes that

*“sand and gravel continues to be important to the local economy”.*

Paragraph 1.26 acknowledges the existence of

*“sand and gravel deposits which provide natural aggregates for the construction industries”.*

#### **Reporter’s conclusions:**

1. The importance of sand and gravel is reflected in paragraphs 1.25 and 1.26 of the local development plan, where the council has accurately described in its response above the parts of these paragraphs which specifically relate to sand and gravel. I consider that this is sufficient in the context of the whole of the section entitled “Minerals in South Lanarkshire” (paragraphs 1.24 to 1.26), which sets out the extent of the various mineral reserves in South Lanarkshire, giving appropriate recognition to both the extent and the importance of sand and gravel to the local economy.

2. The same representation also refers to paragraph 1.29 which in turn refers to the direction in the Scottish Planning Policy for local development plans to identify “areas of search” for minerals, and then indicates that due to the extensive range and geographical location of economically viable mineral reserves, the whole of South Lanarkshire should be treated as an area of search. This matter is examined in more detail under Issue 3, and I refer to my recommendations there which include appropriate modifications to paragraph 1.29.

3. With respect to natural heritage, the council considers (following the representations from Scottish Natural Heritage) that some amendments to the introduction should be made. I agree with both Scottish Natural Heritage and the council that the relevant natural heritage legislation should be added to the “legislation” section of figure 1.1. I also agree that the last sentence of paragraph 1.9 should be amended to reflect the South Lanarkshire Landscape Character Assessment more accurately. Furthermore, paragraph 1.17 should be amended to refer more correctly to the Habitats Regulations 1994, and should be termed “Habitats Regulations Appraisal 2010”, which is in fact the title of the document. The appraisal clearly concludes: “the policies individually or in combination will not significantly affect the European sites identified through the appraisal”. Therefore an appropriate assessment of the plan is not necessary (as explained in figure 1.1 of the appraisal).

4. However, the issues raised in relation to paragraph 1.11 are in my view not quite so

straightforward. Although I accept that this should also have been a habitats regulations appraisal (similar to that referred to in paragraph 1.17 in relation to the proposed plan), the published document is entitled “appropriate assessment”. So the first point is that changing the title to habitats regulations appraisal would cause confusion.

5. Furthermore, table 1 clearly indicates that an appropriate assessment is required with respect to the spatial strategy; which is different to that in the proposed plan. So there is no doubt that an appropriate assessment is included within the appraisal. I accept that the incorrect test is referred to in the conclusions, and that this should have been “adverse effect” rather than “significant effect”.

6. However, this position is now effectively superseded by the habitats regulations appraisal of the proposed plan. On balance, therefore, I find that the existing heading and wording of paragraph 1.11 should be retained. If thought appropriate, the council could explain the error in terminology (perhaps through an asterisk and note), but I do not consider this to be essential in the circumstances, and leave this matter to the discretion of the council.

7. With respect to the representation relating to the continued contribution of coal in supplying energy to the national economy referred to in paragraph 1.27, I agree with the council that a reference to the Scottish Government’s Draft Electricity Generation Policy Statement should be included, together with Scottish Coal’s assessment of how this relates to the continuing need for coal.

8. The council has requested that it be allowed to update the introduction to the plan in order to reflect the final position of the plan, including any changes to legislation or new documentation that may be introduced. I agree with this, but I do not consider that any formal recommendation from me is necessary for this to take place. I have tried to cover any obvious consequential changes that may follow from my recommendations, but where such have not been included, the council can make appropriate changes in the context of section 19(10)(ii) of the Town and Country Planning (Scotland) Act 1997 (as amended). The council may of course refer to this finding as authority to make appropriate changes should this be considered necessary.

#### **Reporter’s recommendations:**

1. Figure 1.1 should be modified by the addition of the following to the list of relevant legislation:

Wildlife & Countryside Act 1981 (as amended)  
 Nature Conservation (Scotland) Act 2004  
 Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations).

2. Paragraph 1.9 should be modified in similar terms to the following:

#### *South Lanarkshire Local Landscape Character Appraisal*

The South Lanarkshire Landscape Character Assessment (LCA) updates the 1999 Glasgow and Clyde Valley Regional LCA and provides greater detail on the local landscape character. This was used to inform the preparation of the document entitled “Validating Local Landscape Designations”.



3. Paragraph 1.17 should be modified in similar terms to the following:

*Habitats Regulations Appraisal 2010*

A report has been prepared which presents the findings of the Habitats Regulations Appraisal (HRA) screening exercise, undertaken in compliance with the Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations) for the proposed plan. The HRA screening concludes that there are no likely significant effects from the proposed plan on Natura sites in the area.

4. Paragraph 1.27 should be modified by the addition of text in similar terms to the following:

In addition, the Scottish Government's Draft Electricity Generation Policy Statement published in 2010 (Draft Electricity Generation Policy Statement 2010: Scotland - A Low Carbon Economy November 2010) makes clear the continuing need for thermal generation plant in order to provide continued and secure electricity generation for many years to come. Tables in the statement show how coal fired generation will continue to form an important part of Scotland's generation mix.

<b>Issue 3</b>	<b>Policy MIN 1 Spatial Framework</b>	
<b>Development plan reference:</b>	MIN 1 Spatial Framework	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregate Industries (255)          ATH Resources (241)          British Aggregate Industries (299/303)          Confederation of Coal Producers (138)          Minerals Products Association (274)          Patersons of Greenoakhill Ltd (192/193/194)          Savills/CRAG (251)          Scottish Natural Heritage (153)          Mark Stephens (310)          Tarmac Ltd (24/225)          The Coal Authority (19/120)</p>		
<b>Provision of the development plan to which the issue relates:</b>	<p>Policy MIN 1 Spatial Framework          Paragraph 1.29          Paragraph 2.1          Paragraph 2.3          Paragraph 3.16</p>	
<b>Planning authority's summary of representation(s):</b>		
<p><b>255, 299, 303, 274, 192, 251</b>          This representation is concerned that South Lanarkshire has been identified as an area of search in its entirety with restrictions imposed by policies relating to the natural and built environment. There is a need for areas of search to be identified due to the pressure for other land uses on the rural area such as renewable energy developments. There should be a presumption in favour of mineral development within these search areas subject to adequate mitigation to reduce environmental impact. There should be no "<i>areas where mineral extraction will not be allowed</i>".</p> <p>Identifying areas of search gives the minerals industry a focal point when identifying sites in South Lanarkshire and can help in ensuring a continued supply of material over the plan period. Also, identifying areas of search helps to protect areas which require significant protection.</p> <p><b>255, 299, 274, 193, 225</b>          It is difficult to assess whether the spatial strategy will provide for an adequate and steady supply of minerals and a ten year landbank in accordance with Scottish Planning Policy and the Glasgow and the Clyde Valley Strategic Development Plan. There is a shortfall in the 10 year landbank of sand and gravel and this should be addressed by identifying appropriate sites in the plan and introducing a policy requiring a 10 year landbank of sand and gravel reserves to be maintained.</p> <p><b>194</b>          This representation is concerned that policy MIN 1 relates to "<i>all planning applications for</i></p>		

*mineral development*". The policy does not differentiate between an application for a green field development, an extension to an existing operation or a Section 42 application to modify an extant condition.

**153**

This representation is concerned that policy MIN 1 appears to be more general than specific to the spatial framework described in the proposed Minerals Local Development Plan. It is not clear why the Policy makes reference to having regard to policies in the South Lanarkshire Local Plan but not to the Policies contained within the Minerals Local Development Plan. Policy MIN 2 will, for example, be directly relevant to the assessment of minerals development proposals. In the final plan Policies MIN 1 and MIN 2 should be combined to covers both the general aspects of the Planning Authority's approach to minerals applications and the specific approach which will be taken in relation to Category 1, 2 and 3 sites. The text of the policy should be amended to read "*...having particular regard to the policies and guidance contained in this plan and the South Lanarkshire Local Plan...*".

**310**

This representation requests that the words "seek to" are deleted from Policy MIN 1 and replaced by "ensure".

**224**

This representation suggests that the aims of Sustainable Development and scope for identification and promotion of good environmental options through robust Environmental Impact Assessment should be included within policy MIN 1. In addition the MLDP objectives set out in Table 2.1 should also acknowledge paragraph 69 of NPF2.

**225**

The important role of identifying sand and gravel resources to serve the Glasgow and the Clyde Valley Strategic Planning Authority area is touched on in Policy MIN 2 but only within the context of justifying development in Category 2 & 3 sites and not as an underlying objective. Given the likely rural location of sand and gravel sources it would be a difficult task to assign economic benefit to a local level. There is certainly direct employment and important service sector benefits especially where long term activities are permitted. The economic benefit at a very local level is not however likely to be easily assigned and the principal policy might not be couched in a way that is seen to require fruitless time and effort. To a great extent the economic benefit from mineral supply is encompassed at Strategic Plan Level and this is perhaps what is intended in Policy MIN 1. Policy MIN 1 should be amended as follows.

*"In considering all planning applications for mineral development the Council will balance the need for the mineral within the strategic area and adjacent strategic areas; against potential impacts on the environment and local communities. Attention will be paid to the promotion of sustainable development and scope for good environmental options identified through EIA. The Council will seek to ensure....."*

**Supporting Reps****119, 120, 138, 241, 224**

These representations support the local development plans objectives and the overall spatial framework towards minerals which seeks to balance the various competing planning issues and supports the whole local development plan area being an area of search.

<b>Modifications sought by those submitting representations</b>
<p><b>310</b> The words "seek to" are deleted from Policy MIN 1 and replaced by "ensure".</p> <p><b>153</b> Policies MIN 1 and MIN 2 should be combined so that the policy covers both the general aspects of the Planning Authority's approach to minerals applications and the specific approach which will be taken in relation to Category 1, 2 and 3 sites. The text of the policy should be amended to read "...having particular regard to the policies and guidance contained in this plan and the South Lanarkshire Local Plan...".</p> <p><b>225</b> Policy MIN 1 should be amended as follows. <i>"In considering all planning applications for mineral development the Council will balance the need for the mineral within the strategic area and adjacent strategic areas; against potential impacts on the environment and local communities. Attention will be paid to the promotion of sustainable development and scope for good environmental options identified through EIA. The Council will seek to ensure....."</i></p>
<b>Summary of responses (including reasons) by planning authority</b>
<p>Minerals can only be extracted where they are found. South Lanarkshire contains a wealth of minerals of a variety of types which are located across a substantial part of the Council Area. Known mineral deposits are shown on the proposals maps alongside known environmental constraints. The aim of the plan is to avoid sterilising reserves through introducing restrictive policy. This approach was introduced in the 2002 Minerals Local Plan (MLP) <b>(CD 33)</b> and provides clarity on how mineral proposals will be considered and assessed. This approach has been shown to be both practical and relevant and as such has worked well over the 10 year period. The Council considers the wording of the policy gives opportunity and stability to mineral operators and the public. Scottish Planning Policy (SPP) <b>(CD 12)</b> does not implicitly state that there is a presumption in favour of mineral operations within areas of search. Designating the whole of South Lanarkshire as an area of search for minerals allows for flexibility and opportunity for mineral development. Designating specific areas of search within South Lanarkshire would restrict areas where mineral development would be allowed and may sterilise areas where the level of mineral deposit has not been established.</p> <p>The Council has identified the whole of its administrative area as an 'Area of Search' subject to the provisions of policy MIN 2, Table 3.1 and the proposals maps. This is considered to be consistent with SPP <b>(CD 12)</b> and the MLP <b>(CD 33)</b>.</p> <p>It is important to avoid the industrialisation of the rural environment. The forms of development most likely to create this impact are minerals development, renewable development or other large scale development in rural areas. Other large scale developments can include factories, warehousing and large agricultural buildings.</p> <p>Cumulative impacts are not restricted to landscape. There are cases where there can be an impact on a habitat, species or water environment depending on the proximity of developments. In addition cumulative impacts on transport and communities have the potential to be an issue particularly if development of such sites takes a few years and impacts on the road network.</p>

The use of “*seek to*” in policy MIN 1 reflects the fact that the onus is placed on the developer to demonstrate the extent to which controlling criteria can be satisfied. It is then the duty of the Planning Authority to consider if the extent to which a test can be satisfied is sufficient to allow the appropriate level of protection for the environment or the community, whilst having regard to the needs of the industry and the economy. The planning system is designed to be as flexible as possible whilst still offering levels of protection to the communities and the environment. The Council is satisfied with the wording of the policies in this regard.

The MLDP has to conform to National Planning Framework for Scotland 2 (NPF2) **(CD 11)** and this is highlighted in Figure 1.1 and paragraph 1.5. Table 2.1 sets out the MLDP’s themes and objectives identified within the Main Issues Report (MIR) **(CD 36)**. It illustrates which policies within the MLDP apply to these themes and objectives. Reference to NPF2 **(CD 11)** is not considered appropriate within Table 2.1

In terms of sustainable development the minerals plan has been prepared taking account of the sustainable development framework set out in the NPF2 **(CD 11)** and SPP **(CD 12)** and as set in the South Lanarkshire Local Plan (SLLP) **(CD 33)** . Policy MIN 1 reflects the aims of sustainability balanced against the need for economic growth.

#### **Reporter’s conclusions:**

##### **Search areas for minerals development**

1. This started out as an apparent key issue of contention within the representations made to the local development plan. However, it appears to me that through the hearing process (the statements before the hearing and the discussion at the hearing) there has been considerable movement towards a consensus on this matter. To some extent it still remains an unresolved issue, however, and I therefore need to be satisfied that the policy framework for search areas is consistent with the provisions of the approved structure plan and Scottish Planning Policy.
2. Within the hearing statements, where there is some movement towards a consensus with the council from the aggregate minerals industry, there is also a concern expressed about the approach within the policies of the local development plan towards extensions to existing sites. However, I clarified at the hearing that this indeed relates to the text of the policies (particularly Policy MIN 1 and Policy MIN 2) and not the concept of search areas. This matter is therefore addressed separately, in connection with Policy MIN 1 (paragraph 20 below) and Policy MIN 2, under Issues 4 and 5. It is also addressed as a general matter within Issue 1.
3. The Glasgow and the Clyde Valley Joint Structure Plan 2006 (GCVSP) in Schedule 8 identifies search areas in South Lanarkshire; the whole of the area being identified as a search area for sand and gravel (a significant element of construction aggregates) and Hamilton/East Kilbride, the Douglas Valley and Wilsontown/Forth being identified as search areas for open cast coal (also with the whole of Lanarkshire being identified as a search area for brick making clay).
4. This local development plan in paragraph 2.1 relating to the spatial framework identifies the whole of South Lanarkshire as an “area of search”, and this relates to all minerals. With respect to surface coal therefore, and somewhat unusually, the local development plan provides a less detailed search area than the GCVSP. However, the deposits and

operational sites map shows the main coalfields, which relate well to the 3 search areas identified in the GCVSP. At the hearing, it was explained that there are small areas of surface coal deposits outwith the main coalfields, and that some flexibility is required in this respect. Indeed, the council considers it important that there is not too strict an interpretation of search areas related to the main coalfields shown on the map, which may be misleading. In overall terms, I am therefore satisfied that the local development plan is sufficiently consistent with the GCVSP in its consideration of the whole of South Lanarkshire as an “area of search”.

5. Paragraph 226 of the Scottish Planning Policy appears to relate to all minerals, although the council considers that for surface coal paragraph 240 is the more relevant paragraph, and I do not disagree with this. However, paragraph 226 additionally states that authorities should liaise with operators and neighbouring planning authorities and use verifiable sources of information to identify search areas, and I consider this to be equally applicable to surface coal. In any event, both paragraphs require the identification of appropriate search areas.

6. Following on from the above, I believe that the Scottish Planning Policy intends that search areas should be based upon where the minerals are located and the economic and environmental feasibility of extraction. However, the difficulty of assessing the economic feasibility of extraction was discussed at the hearing. Apart from the specific operational or consented sites (which are shown on the deposits and operational sites map), the economic feasibility of extracting minerals is not generally known, and indeed is unlikely to be ascertained until a detailed assessment of potential sites for extraction is carried out.

7. Furthermore, it is clear from the deposits and operational sites map that there are extensive areas of South Lanarkshire underlain with aggregates and coal which logically form the basis of the search areas. The areas of mineral deposits are probably so extensive that it is also logical to define the whole of South Lanarkshire as a search area. I am also conscious of the requirement for flexibility referred to in paragraph 4 above.

8. I am therefore inclined to accept that identifying the whole of South Lanarkshire as an “area of search” in paragraph 2.1 of the local development plan is consistent with paragraphs 226 and 240 of the Scottish Planning Policy. Furthermore, I do not consider that it is necessary to refer to search areas in the text of Policy MIN 1. I appreciate the need for flexibility, and that it is important not to mislead anyone by defining search areas too rigidly to the areas of known mineral deposits. Whilst these represent the most up to date information, I recognise that there may be deposits outwith these areas unknown at the present time.

9. However, I find that it is also necessary, in defining the whole of South Lanarkshire as an “area of search”, to provide a clearer correlation between the location of the mineral reserves shown on the deposits and operational sites map and the potential for extraction. Whilst flexibility needs to be apparent, the likelihood of mineral extraction taking place in any particular area should also be apparent. I find that paragraph 2.1 should be reworded to make this clearer by correlating the area of search with the deposits and operational sites map, but emphasising that minerals may also be extracted outwith these areas, should additional deposits be found. An appropriate wording for this is suggested within my recommendations below.

10. A further matter to consider is how the search area for the whole of South Lanarkshire relates to the environmental protection provided through Policy MIN 2. In the first

instance, whilst I accept the overarching nature of Policy MIN 1, I find that the necessary environmental protection is in fact addressed in its entirety by Policy MIN 2, which I examine in detail within Issues 4 and 5 below. I also find, however, that there should be no apparent conflict between Policy MIN 1 (which is the overarching policy) and Policy MIN 2, and identifying the whole of South Lanarkshire as a search area raises potential conflict.

11. The council states in paragraph 2.1 that the whole of South Lanarkshire is considered an “area of search” but within this there are areas where it is considered that no minerals development should take place. This element of paragraph 2.1 remains a concern within the representations. The council’s explanation of its preferred option in the Main Issues Report of April 2010 is that the search areas were intended to cover those areas which were not subject to significant environmental constraints. However, the council has essentially reversed its approach to the proposed plan by identifying instead those areas where development should not take place (Category 1 sites from table 3.1), and those areas otherwise particularly sensitive to minerals development (Category 2 and 3 sites from table 3.1) and these are all referred to in paragraph 2.1. The approach one way or the other is somewhat academic, and despite the fact that the council stated at the hearing it would have no objection to this, I have decided that it is unnecessary to explain this within paragraph 2.1.

12. The difficulty is that paragraph 2.1 appears to be in something of a vacuum, whereas it should specifically refer to the effect of implementing Policy MIN 2, because that is where the restrictions come from. They are not independent of that policy. I therefore find that paragraph 2.1 needs to be more precise about the overall nature of the restrictions resulting from Policy MIN 2 (not just the Category 1 sites) and their relationship to the search area for the whole of South Lanarkshire. I appreciate that there are already references to the 3 categories and table 3.1, but in my view the paragraph should be more explicitly related to the content of Policy MIN 2. An appropriate revised text is provided in my recommendations below. A related and more precise reference should also be included within the last 2 sentences of paragraph 1.29 of the introduction.

### **Reserves for construction aggregates**

13. The GCVSP states in Schedule 7 (d) that although there should be sufficient supply to meet demand, consideration has been given to the desirability of establishing the longer-term sand and gravel aggregates requirements in the Structure Plan area. It is further stated that in accordance with Strategic Policy 8(c) and Schedule 8, South Lanarkshire Council has evaluated the scope for a limited range of additional locations for sand and gravel extraction subject to environmental and local planning considerations. There is however no quantified data on this in the GCVSP.

14. The emerging Glasgow and the Clyde Valley Strategic Development Plan (proposed plan June 2011) states in paragraph 4.60 that within the plan period to 2035, there are sufficient hard rock operational reserves to meet demand. However, consented reserves of sand and gravel are constrained beyond the first ten year period into the longer-term, post 2021. As a result, it is stated that additional locations will be required across the city-region to ensure that distances from source to market are, where possible, reduced. Whilst the additional need appears to be beyond the period of this local development plan, it nevertheless demonstrates the importance of facilitating and maintaining an adequate supply of minerals.

15. Paragraph 225 of the Scottish Planning Policy states that an adequate supply of minerals is essential to support sustainable economic growth, and paragraph 227 requires that a land bank of permitted reserves for construction aggregates of a minimum 10 years of extraction is available at all times and in all market areas. I consider it important that this is reflected within the policy framework setting out the spatial framework for minerals development in South Lanarkshire. In addition, I have some sympathy with the view that it is difficult to assess whether the spatial framework will provide sufficiently for aggregate minerals. There is no assessment of the demand for or the supply of minerals in the local development plan.

16. The Main Issues Report of April 2010 includes a preferred option not to set specific supply requirements as South Lanarkshire mineral sites supply a wider Glasgow and Clyde Valley market area and also serve more disparate markets. The alternative identified is to establish a proportion of the Glasgow and Clyde Valley construction aggregate requirement to be met from South Lanarkshire and seek to ensure a minimum 10 year supply is maintained at all times. Although the council has followed its preferred option through to the proposed plan, it is clear that this does not have the full support of the aggregates industry, given the representations submitted in relation to this matter and the subsequent discussion about aggregate reserves, particularly for sand and gravel, at the hearing.

17. The council presented statistical information to the hearing showing the extent of the reserves within operational and consented sites, and those awaiting the issue of planning permission dependent upon legal agreements being concluded. I am entirely satisfied that it is reasonable to take into account the latter. Nevertheless, the council's assessment of the available land bank of up to 15.4 years may be an over estimate because it is based upon 2011 production levels, and I accept that such may rise in the future if the markets for aggregates increase. On the other hand, I find that the statistical information provided by aggregate operators, indicating that there may be a shortfall of reserves, are only estimates which will in reality depend upon the state of future markets for aggregates. I also note that the council does not intend to resist planning applications for minerals development based upon any perceived sufficiency of reserves.

18. Taking into account all of the above, and following the discussion at the hearing, I find that it is not necessary to quantify the existing reserves in the plan or how many years demand these are expected to meet. This would only be a snapshot in time, and I accept that the industry is dynamic and that it is very difficult to specify the actual need for construction aggregates over the next 10 years. However, I find that there is a requirement to ensure a steady supply of minerals in accordance with paragraph 225 of the Scottish Planning Policy, and maintain the thrust of Policy MP24 in the adopted local plan requiring the local plan to maintain a land bank equivalent to at least 10 years extraction. This is in the context of paragraph 227 of the Scottish Planning Policy, and is part of the balance that needs to be achieved through Policy MIN 1. So this should be stated at the beginning of Policy MIN 1, the implementation of this being to balance the economic benefit from the minerals development against the impact on the environment and local communities.

19. In addition, the supporting text in paragraph 2.3 should refer to paragraph 227 of the Scottish Planning Policy (in addition to paragraphs 225 and 226) and state that in balancing the economic benefit from minerals development against the potential impacts on the environment and local communities, in the context of Policy MIN 1, the council will take into account the need to maintain a land bank at all times within South Lanarkshire



equivalent to at least 10 years extraction, based upon the most up to date information available. A suggested text for the revised policy and paragraph 2.3 is included in my recommendations below.

### **Other matters raised in the representations**

20. With respect to other specific matters raised, there should be no policy distinction between extensions and new minerals development sites, because there may be cases where an extension may have a more significant effect on environmental resources than a new site, so Policy MIN 1 should apply to all applications for minerals development. On the other hand, I accept that there will be cases where the extension of an existing working would be preferable to starting a completely new extraction site. However, the weight to be given to extensions should depend on the circumstances of the case.

21. I do not consider that there is any requirement to further revise Policy MIN 1, with the exception that I am recommending inclusion of a reference to the policies contained in this plan (as suggested on behalf of Scottish Natural Heritage) as well as the South Lanarkshire Local Plan. I consider that both sets of policies should be referred to in this context. There is no need to refer to the strategic area or adjacent strategic areas; in my view both will be taken into account when assessing the need to maintain sufficient mineral reserves at all times for a 10 year period based upon the most up to date information available at the time, in accordance with my suggested text for paragraph 2.3.

22. Whilst the plan should be consistent with the National Planning Framework 2 (NPF2), there is no need to explicitly refer to paragraph 69. Including NPF2 as part of the national policy and guidance set out in paragraph 1.5 and figure 1.1 is sufficient. I am quite satisfied that Policy MIN 1 (with my suggested revisions) is consistent with NPF2. The environmental impact assessment of minerals development proposals is a tool by which the proposal can be measured against the terms of the local development plan policies, and this is referred to in more detail in paragraph 33 of Issue 5. The need for such an assessment will be based upon the nature and scale of the minerals development, and this does not need to be stated within Policy MIN 1. Meeting the provisions of Policy MIN 1 (and subsequent policies) will ensure that sustainable development is achieved.

23. I am not in favour of combining Policies MIN 1 and MIN 2 because the link between the policies can be satisfactorily expressed in the text, and I find that 2 distinct policies are necessary for the spatial framework (an overarching policy setting out the strategy for minerals development) and the protection of the environment. There is the potential for confusion if these 2 distinct matters are coalesced into a single policy. With respect to the use of the term “seek to” I refer to my findings on this matter within Issue 1.

### **Reporter’s recommendations:**

1. Policy MIN 1 should be modified in similar terms to the following:

#### **Spatial Framework**

The council will seek to ensure an adequate and steady supply of minerals, and maintain a land bank for construction aggregates equivalent to at least 10 years extraction. In considering all planning applications for minerals development, the council will balance the economic benefit from the minerals development against potential impacts on the environment and local communities. The council will seek to ensure that any development

proposals for extraction, processing and deposition of material minimises and mitigates impact, having particular regard to the relevant policies and guidance contained both within this local development plan and the South Lanarkshire Local Plan on the protection of the natural and built environment.

2. Paragraph 2.1 should be modified in similar terms to the following:

The spatial framework for the minerals local development plan is contained within Policy MIN 1 which sets out the council's strategy for future minerals development. The whole of South Lanarkshire is considered to be an "area of search" (see also paragraph 2.3 below), but minerals are only able to be worked where they are found, and the deposits and operational sites map shows where these are located based on the most current information. These are the areas where new minerals development is most likely to take place, but it is emphasised that there may be additional deposits elsewhere that are unknown at this time.

In addition, all minerals development must be environmentally acceptable, and must therefore also accord with the provisions of Policy MIN 2 "protecting the environment". This is likely to result in no minerals development occurring within the highest category of environmental protection (Category 1) and limited minerals development occurring within the other categories defined under Policy MIN 2 (categories 2 and 3 and additional specific categories referred to within the text of Policy MIN 2) notwithstanding that they are within the area of search which is the whole of South Lanarkshire. Policy MIN 2, table 3.1 and the environmental constraints map set out the relevant categories of environmental protection to which Policy MIN 2 applies. Any proposals for mineral extraction outwith the remit of Policy MIN 2 will still have to take account of the remaining policies contained within the plan.

This strategy will ensure that:

- Development will be directed to the most appropriate locations making it clear to communities and to the industry where future development might arise.
- The potential effects of minerals operations on communities can be considered and areas excluded from development.
- Sensitive environmental assets and landscapes can be identified and protected from development.
- Implications for transportation can be assessed and appropriate improvements considered.

3. Paragraph 2.3 should be modified (possibly into 2 paragraphs) in similar terms to the following:

Scottish Planning Policy states: "an adequate and steady supply of minerals is essential to support sustainable economic growth" (paragraph 225). In addition "search areas, or where appropriate specific sites, should be identified and safeguarded in development plans and the criteria to be satisfied by development proposals set out" (paragraph 226). Furthermore, Scottish Planning Policy states: "planning authorities should ensure a land bank of permitted reserves for construction aggregates of a minimum 10 years extraction is available at all times in all market areas" (paragraph 227).

In response to this, South Lanarkshire Council seeks through Policy MIN 1 to ensure that a supply of minerals continues to be available to serve local, national and international

markets and so contribute to delivering sustainable economic development. In this context, the council will take into account the need to maintain a land bank at all times within South Lanarkshire equivalent to at least 10 years extraction, based upon the most up to date information available. At the same time, this objective has to be balanced against consideration of environmental issues and the potential effect of mineral extraction on communities.

4. The last 2 sentences of paragraph 1.29 of the introduction should be modified in similar terms to the following:

However, within this area of search there are areas which are either unsuitable for minerals development, or suitable for only limited minerals development, because of their environmental sensitivity.

<b>Issue 4</b>	<b>Policy MIN 2 – Environmental Protection Hierarchy (General Comments)</b>	
<b>Development plan reference:</b>	Policy MIN 2 – Environmental Protection Hierarchy	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregates Industries (263)          ATH Resources (242)          British Aggregates Association (302)          Glasgow City Council (322)          Minerals Products Association (276)          Patersons of Greenoakhill Ltd (203/200)          Scottish Natural Heritage (154/155/156/157/158/160)          Scottish Wildlife Trust (1)          Shell UK (147)          Mark Stephens (311)          Strathaven Community Council (113)</p>		
<b>Provision of the development plan to which the issue relates:</b>	<p>Chapter 3 – Protecting the Environment          Policy MIN 2 – Environmental Protection Hierarchy          Figure 3.1          Paragraph 3.4          Paragraph 3.8          Paragraph 3.9          Paragraph 3.10          Paragraph 3.12          Paragraph 3.15          Paragraph 3.22          Table 3.1</p>	
<b>Planning authority's summary of representation(s):</b>		
<p><b>263, 276, 203</b>          These representations are concerned that a new classification of a Special Landscape Area has been created which precludes all developments in all categories.</p> <p><b>242</b>          This representation is concerned that it may not be possible to serve local or even regional markets for coal produced in South Lanarkshire. Changing the wording of section (a) to include nationally important markets would enable a non bias assessment mechanism for section (a) of policy MIN 2.</p> <p><b>302</b>          This representation seeks wording to be included in Policy MIN 2 which recognises the ability to mitigate impacts of mineral extraction on designated sites.</p> <p><b>322</b>          This representation seeks a sentence to be added at the end of this policy as follows "<i>This includes those where there would be significant indirect impact such as from disturbance out with the boundary of the mineral site</i>".</p>		

**200**

This representation argues that impacts on protected species from mineral development should be determined through the Environmental Impact Assessment process.

**154**

This representation suggests that "...and protected species" could be removed without altering the meaning of paragraph 3.1. Alternatively, it could be changed to "...including protected species".

**155**

This representation seeks a reference to "enhancement" in paragraph 3.2

**156**

This representation seeks a reference in paragraph 3.5 to the two Natura sites which lie outwith South Lanarkshire but which could be affected by development within the area.

**157**

This representation would like Figure 3.1 to show that part of Craigengar Special Area of Conservation (SAC) that lies within South Lanarkshire since this appears to be omitted from the Figure. However the representation goes on to say that it may be too difficult due to the size of the Figure and the small area of the site that lies within South Lanarkshire.

**160**

This representation suggests rewording of paragraph 3.15 as follows "A number of animal and plant species found in South Lanarkshire are protected by legislation such as the Wildlife & Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992 (as amended). In addition, the Habitats Regulations 1994 (as amended) provide protection for species including otters, bats and great-crested newts as European protected species. Protected species are considered under Policy [policy reference]."

**1**

This representation states that Local Nature Conservation Sites (LNCS) have not been identified in this plan and this weakens efforts to protect the Natural Heritage of the area. However the representation then suggests that a range of LNCS should be included in the next review of the South Lanarkshire Local Plan.

**147**

This representation seeks that the North West ethylene pipeline is shown on both the Environmental Constraints Map and Deposits and Operational Sites Map of the Proposed Plan. In addition Consultation Zones should be indicated with further explanatory information within the text to notify prospective users of the existence of Consultation Zones around the pipeline. A further additional section within the plan should be included on - "Protection of Existing Pipeline/Utilities" and the pipeline should be included in the list of special environment designations which are to be protected from Mineral development proposals.

**311**

This representation seeks clarification on the meaning of the terms "*significantly adversely affect*"; "*impacts*" and "*improvement*".

**113**

This representation seeks an amendment to the wording of policy MIN 2 paragraph (a) as

follows “: (a) there is a proven over-riding need for the mineral to serve regionally or locally important markets...”.

## Support

### 158

This representation supports the inclusion of Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs) as 'Category 2' sites.

## Modifications sought by those submitting representations:

### 242

Change the wording of section (a) to include nationally important markets.

### 302

Included wording in Policy MIN 2 which recognises the ability to mitigate impacts of mineral extraction on designated sites.

### 322

Add at the end of policy MIN 2 "*This includes those where there would be significant indirect impact such as from disturbance outwith the boundary of the mineral site*".

### 154

"...and protected species" could be removed without altering the meaning of paragraph 3.1. Alternatively, it could be changed to "...including protected species".

### 155

Refer to "*enhancement*" in paragraph 3.2

### 156

Refer in paragraph 3.5 to the two Natura sites which lie outwith South Lanarkshire.

### 157

Figure 3.1 to show that part of Craigengar Special Area of Conservation (SAC) that lies within South Lanarkshire.

### 160

Rewording of paragraph 3.15 as follows "*A number of animal and plant species found in South Lanarkshire are protected by legislation such as the Wildlife & Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992 (as amended). In addition, the Habitats Regulations 1994 (as amended) provide protection for species including otters, bats and great-crested newts as European protected species. Protected species are considered under Policy [policy reference].*"

### 147

North West ethylene pipeline should be shown on both the Environmental Constraints Map and Deposits and Operational Sites Map of the Proposed Plan. Consultation Zones should be indicated with further explanatory information within the text to notify prospective users of the existence of Consultation Zones around the pipeline. A further additional section within the plan should be included on - "Protection of Existing Pipeline/Utilities" and the pipeline should be included in the list of special environment designations which are to be protected from Mineral development proposals.

**113**

Amend the wording of policy MIN 2 paragraph (a) as follows “: (a) *there is a proven over-riding need for the mineral to serve regionally or locally important markets...*”.

**Summary of responses (including reasons) by planning authority:**

With regard to special landscape areas these have been introduced to replace Regional Scenic Areas (RSA's) and Areas of Great landscape Value (AGLV's). Paragraph 3.13 of the ‘*South Lanarkshire: Validating Local Landscape Designations*’ (VLLD) (CD 56) document established Special Landscape Areas. VLLD (CD 56) was undertaken in response to Policy ENV9 of the South Lanarkshire Local Plan (SLLP) (CD 43), which states that ‘*The Council will undertake an assessment of the landscape character of South Lanarkshire Council's area and a review of related landscape designations for the Council area*’. This document has been approved by the Council.

When assessing planning applications which are supported by Environmental Statements (ES), there is often ambiguity in relation to what constitutes ‘significant effect’, for example in terms of landscape and visual impact. The Council therefore has to make an informed judgement on the basis of the available information when determining development proposals. New development relates to all new minerals development, which requires the benefit of planning permission. All ‘other development’ which has the potential to result in a cumulative impact should be considered when considering cumulative impact

If minded to do so the Council invites the Reporter to include the word ‘*nationally*’, between the words ‘*serve*’ and ‘*regionally*’ in part (a) of policy MIN2.

Mitigation measures will be considered when assessing development proposals and the impact on protected species. Policy MIN 2 resists development where there would be a continued significant adverse effect on protected species following implementation of mitigation measures.

As regards the statement about Special Landscape Areas these are not unique to South Lanarkshire Council but based on guidance provided by SNH and the designation has been afforded the appropriate level of protection. These have replaced the Regional Scenic Areas and Areas of Great Landscape Value. SPP (CD 12) states in paragraph 139 that “*local designations should be clearly identified and protected through the development plan*”. The Council invites the Reporter to consider paragraphs 139 and 140 of SPP (CD 12) and SNH Guidance on Local Landscape Designations 2005 (CD 40) paragraph 6.

The Council recognises the importance of the EIA process. Environmental Statements are however a tool for considering a development's environmental impact and there is often ambiguity over the findings of ES between the authors and the regulatory authorities/consultees. This can result in the Council being required to make a decision based on conflicting viewpoints.

The Council do not consider it necessary to alter paragraphs 3.1 and 3.2 since the change makes no difference to the meaning of the text. The Council is of the opinion that the addition suggested for paragraph 3.5 is not necessary since this would not add any further value to the plan. However if minded to do so the Council invites the Reporter to add the following to paragraph 3.6 (not 3.5 as stated by the representation) “*Furthermore there are sites on or adjacent to the boundary of South Lanarkshire and any proposals that are likely to affect these will be taken into consideration*”.

In reference to adding the part of Craigengar to the small figure 3.1 this is impossible due to the size of the figure. The designation barely shows up on the large scale maps since such a small part is within the Council area.

If minded to do so the Council invites the Reporter to refer to the relevant legislation referred to by SNH in Figure 1.1. In addition the Council invites the Reporter to amend paragraph 3.15 to read

*“A variety of legislation (see Figure 1.1) provides protection to certain animal and plant species. Relevant species in South Lanarkshire include bats, otters and great crested newts. These are protected under Policy MIN 2”*

The Council acknowledges that Local Nature Conservation Sites (LNCS) are not mapped. Work is currently being undertaken to digitise and verify the sites for inclusion in the South Lanarkshire Local Development Plan. The omission from the plan does not weaken the intention to protect and enhance these sites since they are still offered the same level of protection as other Category 3 sites. Inclusion of these sites on the environmental constraints maps would provide greater clarity however there is currently a review of the sites and until this is completed the extent of the sites is subject to change. The inclusion at this stage could therefore result in misleading information being presented.

The North West Ethylene Pipeline (NWEPE) has been shown on both plans and will continue to be shown. Development proposals which have a potential to affect the NWEPE will be subject to consultation with Shell UK however a consultation zone on the environmental constraints map is not considered necessary. If minded to do so the Council invites the Reporter to include the pipeline as a category 3 site on Table 3.1

Environmental statements should identify any ‘significant impacts’ resulting from mineral development on communities and the environment. These statements will be subject to review by the Council and consultees when determining specific planning applications. The results of this assessment will determine whether a development proposal will have a significant impact.

#### **Note to Reporter:**

The Council has reconsidered its position in relation to policy MIN 2 and is of the opinion that some of the wording of the policy could be open to misinterpretation. In order to rectify this and if minded to do so, the Council invites the Reporter to consider the alternative wording as follows:

#### **“Policy MIN 2 – Environmental Protection Hierarchy**

*The Council will seek to protect important natural and built heritage sites and features as listed in Table 3.1 from mineral development.*

*Development within or which will adversely effect the integrity of any Category 1 sites following the implementation of mitigation will not be permitted.*

*Development within or which will significantly adversely effect any Category 2 sites following the implementation of mitigation will only be permitted if the development is nationally important and that there is an over-riding need for the mineral to serve nationally important markets.*



*Development within or which will significantly adversely effect any Category 3 sites following the implementation of mitigation will only be permitted if the development is regionally and/or locally important and that there is an over-riding need for the mineral to serve regionally and/or locally important markets.*

*Applications for development proposal likely to adversely effect any sites listed in Table 3.1 shall set out measures to mitigate and off-set adverse impact on the site and shall fully consider opportunities to improve any Category 1, 2, & 3 sites.*

*Development which will significantly adversely effect Internationally and/or Nationally protected species will not be permitted.”*

### **Reporter’s conclusions:**

1. My findings below relate to the matters set out by the council under this issue. However, they are then taken forward as appropriate into Issue 5, where all of my recommended changes relate to the matters raised under both Issue 4 and Issue 5.

#### **Special Landscape Areas**

2. These result from the amalgamation of the former Regional Scenic Areas and Areas of Great Landscape Value. They are Category 3 designations, and my recommended revisions to Policy MIN 2 and the supporting text ensure that they have an appropriate level of priority; which is below that of national significance.

#### **New sites and extensions to existing sites**

3. The council has clarified that minerals development covered by Policy MIN 2 relates to all development requiring planning permission, and that this includes extensions as well as new sites. I consider that this is the correct approach, because in some cases extensions may have a more significant effect on environmental resources than new sites. I include clarification on this matter in the supporting text for Policy MIN 2 within my recommendations under Issue 5.

#### **Markets**

4. I recommend clarifying within the supporting text that serving a market of national importance would also meet the requirement for Category 3 sites. This is clearly the intention of the policy but clarifying this in the supporting text would remove any doubt.

#### **Protected species**

5. I am satisfied with the council’s explanation that mitigation will be considered within the development management process; it is only after mitigation that a judgement need be made as to whether or not there would be a significant adverse effect on protected species. However, I recommend clarifying this in the policy and supporting text. Furthermore, I recommend an addition to the supporting text to cover any indirect effects, such as from transport to and from the site. I refer to the role to be played by the environmental impact assessment process under Issue 5. I see no reason to amend the reference to protected species within the examples given in paragraph 3.1. However, I recommend that paragraph 3.15 be modified following the representations from Scottish Natural Heritage. I agree that this paragraph could be more fully worded to reflect the

relevant legislation.

### **Enhancement of environmental resources**

6. The possible enhancement of environmental resources is in fact covered through Policy MIN 2 in test (c), but this may be additional or alternative to the simple mitigation of adverse effects. In relation to minerals development, Policy MIN 2 is essentially about protecting the environment. The enhancement of the environment is covered elsewhere through the policies of the South Lanarkshire Local Plan. Paragraph 3.2 in my view accurately sets out what the policies in this local development plan seek to achieve.

### **Category 1 sites outwith South Lanarkshire**

7. I recommend an additional sentence within the supporting text to cover internationally designated sites outwith the council's administrative area. As a result of this addition, I find that it is not necessary to show on the map any such sites (or parts of such sites) that may be outwith the council's administrative area.

### **Local nature conservation sites**

8. Local nature conservation sites are protected under Category 3, but they are not shown on the environmental constraints map. Of the remaining Category 3 designations, several categories are not shown on the environmental constraints map. These are archaeological remains, local nature conservation sites, tree preservation orders and wildlife corridors. This is possibly because they are too numerous to justify inclusion. I also note that the council has indicated that they are subject to change. The environmental constraints map already has many overlapping designations, and although I am recommending the deletion of the settlement buffers, there remains a great deal of information. I do not think it would be wise to add more information. However, it is quite important that a note is added to the key stating that this information can be obtained upon request from the council.

### **North West Ethylene Pipeline**

9. Notwithstanding the representation on this matter, I note that this pipeline is shown on both the environmental constraints map and the deposits and operational sites map. However, whilst I do not consider that a recommendation is necessary on this matter, I would expect the council to ensure that the line of this pipeline is correctly designated in the context of the map provided by Shell UK with its representation. I do not consider that it would be appropriate to include such a utility within the designations set out in table 3.1 because it is not a natural or built heritage site. It would therefore be out of place, and moreover I am satisfied that the interests of this pipeline would be satisfactorily addressed through the development management process. The fact that the pipeline is shown on the environmental constraints map highlights its importance. There is no need to refer to consultation zones as the planning authority is able to ensure that appropriate consultation takes place through the development management process.

### **Definition of terms**

10. The terminology used within the policies and supporting text, including "significantly adversely affect", "impact" and "improvement" will be interpreted according to the circumstances of the case, and any general definitions would be unhelpful.

**Proven need**

11. The supporting text should clarify that the onus is on the prospective developer to demonstrate that the markets are of national importance, and that serving these markets in the circumstances clearly outweighs any adverse impact. I consider that this would provide sufficient emphasis upon what is required in order to comply with the provisions of Policy MIN 2.

**Council's suggested rewording of Policy MIN 2**

12. I have taken account of the council's suggested rewording of Policy MIN 2, and I have partly implemented this, following my consideration of all of the representations set out under Issue 5 below. My reasoning for the changes to Policy MIN 2 is also set out under Issue 5.

**Reporter's recommendations:**

My recommendations relating to all of the above matters are included under Issue 5.

<b>Issue 5</b>	<b>Policy MIN 2 – Environmental Protection Hierarchy – Specific Issues</b>	
<b>Development plan reference:</b>	Policy MIN 2 – Environmental Protection Hierarchy	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregates Industries (262)  British Aggregates Association (300/301)  East Renfrewshire Council (326)  Federation of Coal Producers (139)  Minerals Products Association (275)  Patersons of Greenoakhill Ltd (201/195/196/197/198/199/206)  RSPB (178)  Savills/CRAG (248/254/252/258)  Scottish Coal (183)  Scottish Government (172)  Scottish Natural Heritage (159/161)  Tarmac (227)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Chapter 3 – Protecting the Environment Policy MIN 2 – Environmental Protection Hierarchy Paragraph 3.4 Paragraph 3.8 Paragraph 3.9 Paragraph 3.10 Paragraph 3.12 Paragraph 3.15 Paragraph 3.22 Table 3.1	
<b>Planning authority's summary of representation(s):</b>		
<p><b>262, 275, 199, 201, 195, 172, 161, 178</b>  These representations are concerned that there is no distinction made between the level of protection afforded to category 2 and 3 sites. They consider that the degree of protection for the environmental designations should be consistent with national policy or guidance. Locally designated sites should not be afforded the same protection as national or international sites.</p> <p>In their representation the Scottish Government invites the Reporter(s) to reconsider the wording of policy MIN 2 and the designations within each category in order to ensure that important natural and built heritage sites are appropriately protected. They consider that the policy should provide an explanation to how the designations in each category can be balanced against the need for minerals development. For example, no development can occur in areas covered by Category 1 designations, nationally important development may override Category 2 designations and regionally important development may override Category 3 designations. The designations in each Category should then be reconsidered to fit the reworded policy.</p>		

**262, 275, 139, 227**

These representations are concerned that it is unrealistic for any development to be able to meet test c) which requires developments likely to significantly adversely affect category 2 and 3 sites to result in an improvement to these sites. The policy should be redrafted as follows. *"The Council will seek to protect important natural and built heritage sites and features as listed in Table 3.1. Development within or which will adversely affect the integrity of Category 1 sites will not be permitted. There will be a presumption against extraction proposals likely to significantly adversely affect Category 2 sites unless it can be shown (a) The development is an extension to an existing site or there is a clear need for the mineral to serve regionally or locally important markets and (b) that any significant adverse impacts of the development can be mitigated to a reasonably acceptable degree within the balance of all environmental aspects. Development likely to affect Category 3 sites must ensure that these aspects are suitably assessed and any impacts mitigated as far as practicable"*

**262, 275, 301, 248, 198, 172, 326**

These representations are all concerned with the proposed buffer zones. Firstly, the proposed buffer zones around settlements do not take into account the fact that the impacts from mineral extraction are site specific and as a result standoffs need to be site specific. The imposition of buffer zones around settlements not only contradicts Scottish Government Planning Policy but also fails to recognise the existence of the Environmental Impact Assessment process. Buffer zones around settlements should not be included within the Category 2 designation.

An alternative view of buffer zones was given where it was suggested that buffer zones around settlements for non-blasting workings should be increased to 500 metres to bring them in line with Coal operations. In addition buffer zones should be designated and extended around the prominent hills and the views from these to protect them from Cumulative Visual Impact. In addition a neighbouring authority suggested that the plan should include buffers for settlements outwith the South Lanarkshire area to afford them the same degree of protection as settlements within South Lanarkshire.

**139, 183, 227**

These representations consider that the word "*and*" should be substituted by "*or*" at the end of tests (a) and (b) within policy MIN 2.

**300, 196, 206, 258, 254**

These representations are concerned about the inclusion of the functional floodplain within the Category 2 designation. The comments in paragraph 3.8 about sedimentation and pollution are unnecessary as watercourses are strictly policed by SEPA. The policy protection of the water environment is adequately achieved through MIN 5 and the Controlled Activities Regulations licensing process.

In addition one of the representations seeks the functional floodplain to be redesignated as a category 1 site.

**252**

This representation requests that the statement "*In some exceptional circumstances extraction might be beneficial in alleviating flood risk by creating additional flood storage capacity.*" of paragraph 3.8 should be removed. This could be used as an argument by operators for quarries on the flood plain. Flood capacity of a flood plain would be compromised during the operational phase of the quarry.

**197**

This representation objects to the inclusion of prime agricultural land within the Category 2 designation. The determination of the environmental impact of mineral extraction should be assessed through the Environmental Impact Assessment process.

**199**

This representation refutes the need to have Category 3 sites. Any potential environmental impacts from minerals development on the designations detailed in Table 3.1 should be determined through the Environmental Impact Assessment process.

**159**

This representation seeks 'ancient woodland' to be redesignated as a 'category 2' site as a result of paragraph 146 of Scottish Planning Policy. In addition landscape character areas sensitive to mineral development should be identified in the hierarchy.

**161**

This representation seeks an amendment to the policy to read *"Development within or where it can not be ascertained will not adversely affect the integrity of Category 1 sites will not be permitted"*

With regard to protected species, a clearer policy context should be given, particularly to make the requirements in relation to European Protected Species more explicit. The text should be amended to include a specific cross reference to the relevant local plan policy or the inclusion of the following wording in the policy: *"The Council will give full consideration to the impact of development proposals on internationally and nationally protected species. Proposals which have significant detrimental effects shall not accord with the plan. For those animals and plants listed on Annex IV of the Habitats Directive, planning permission will not be granted unless it is demonstrated that: a) The species will not be impacted by the development, or b) The three tests set out in Regulation 44 of the Habitats Regulations are likely to be satisfied."*

If the elements of Policy MIN 2 relating to category 1, 2 and 3 sites were incorporated with the proposed Policy MIN 1, Policy MIN 2 could be left to solely refer to protected species.

### **Modifications sought by those submitting representations:**

**159**

'ancient woodland' should be redesignated as a 'category 2' site

**161**

The policy should read *"Development within or where it can not be ascertained will not adversely affect the integrity of Category 1 sites will not be permitted"*

The text should be amended to include a specific cross reference to the relevant local plan policy or the inclusion of the following wording in the policy: *"The Council will give full consideration to the impact of development proposals on internationally and nationally protected species. Proposals which have significant detrimental effects shall not accord with the plan. For those animals and plants listed on Annex IV of the Habitats Directive, planning permission will not be granted unless it is demonstrated that: a) The species will not be impacted by the development, or b) The three tests set out in Regulation 44 of the Habitats Regulations are likely to be satisfied."*

**227**

The policy should be redrafted as follows. *“The Council will seek to protect important natural and built heritage sites and features as listed in Table 3.1. Development within or which will adversely affect the integrity of Category 1 sites will not be permitted. There will be a presumption against extraction proposals likely to significantly adversely affect Category 2 sites unless it can be shown (a) The development is an extension to an existing site or there is a clear need for the mineral to serve regionally or locally important markets and (b) that any significant adverse impacts of the development can be mitigated to a reasonably acceptable degree within the balance of all environmental aspects. Development likely to affect Category 3 sites must ensure that these aspects are suitably assessed and any impacts mitigated as far as practicable”*

**252**

The statement contained in paragraph 3.8 *“In some exceptional circumstances extraction might be beneficial in alleviating flood risk by creating additional flood storage capacity”* should be removed.

**178**

Part (a) of policy MIN 2 should be amended to say *“there is an over-riding need for the mineral to serve nationally important markets”*

**Summary of responses (including reasons) by planning authority:**

Paragraph 3 of Scottish Planning Policy (SPP) **(CD 12)** sets out the purpose of the planning system in Scotland and makes it clear that one of the key principles of the planning system is to protect and enhance the natural and built environment. Policy MIN 2 reflects this principle and relates it specifically to minerals development. Policy MIN 1 states that the *‘Council will balance the economic benefit from mineral development against potential impacts on the environment’*. If minded to do so the Council invites the Reporter to include the word *‘nationally’*, between the words *‘serve’* and *‘regionally’* in part (a) of policy MIN2.

There is a distinction between category 2 and 3 in the supporting text but the Council invites the Reporter if minded to do so to reword or add additional wording to the policy to make the distinction clearer. Paragraph 3.12 notes that *‘Category 3 sites are ‘not considered to be as sensitive as Category 1 and 2 sites’*.

It is not a requirement for every development proposal to be assessed against the three tests in the policy, only those likely to have a significant adverse effect on a designation. The Council expects that where applicable mineral proposals give the opportunity for enhancement of designations. One of the key principles of the planning system is to protect and enhance the natural and built environment.

In the Minerals Local Plan 2002 (MLP) **(CD 34)**, buffer zones were designated and have successfully operated. The Council recommends no change to this position and acknowledges that there are some types of ancillary development that can take place within buffer zones. In the 2002 plan, the 250m buffer zones between residential properties and non-blasting quarry operations operated successfully. The Council considers that the suggested increase in buffer zones for non-blasting is not warranted. In addition the provision of buffer zones around settlements outwith South Lanarkshire Councils boundary would only be relevant if a reciprocal arrangement was being made by the authority itself to protect all its settlements from the effects of minerals development. It

is not logical to draw a boundary up to the edge of the South Lanarkshire area which then reverts to a different policy zoning in the neighbouring authority.

The Council recognises the importance of the Environmental Impact Assessment (EIA) process. Nevertheless Environmental Statements (ES) are a tool for considering a development's environmental impact and there is often ambiguity over the findings of ES between the authors and the regulatory authorities/consultees. The EIA process will be used to inform the assessment of development proposals against policies. Not all minerals applications or all aspects of an application are supported by an ES.

The use of the word '*and*' in the policy is correct as all three tests should apply to any proposals for development which would significantly adversely affect category 2 & 3 sites. The test of significant adverse effect would be assessed with proposed mitigation measures in mind.

The Council consider the inclusion of floodplains as Category 2 sites within Table 3.1 is necessary as an appropriate form of protection for these designated areas. Category 1 sites relate only to those with international designations. The Council is satisfied that protection afforded to category 2 sites reflects the sensitivity of floodplains. The wording of paragraph 3.8 and associated policies on the water environment are accepted by SEPA as being the correct policy approach for the Minerals Local Development Plan (MLDP). Whilst it is accepted that every minerals planning application should be considered on its own merits, local development plans are necessary to guide the decision making process.

Paragraph 3.8 acknowledges the benefits excavation could bring in relation to alleviating flood risk by creating additional flood storage capacity. Nevertheless, the flooding of a sand and gravel extraction area has the potential to create significant adverse impacts on river systems as a result of sedimentation and pollution. For this reason, the development of quarries on the flood plain is considered to be inappropriate, unless they meet the tests set out in Policy MIN 2.

Prime agricultural land is identified in Scottish Planning Policy (SPP) **(CD 12)** as a finite national resource (paragraph 97) and "mineral extraction may be acceptable where restoration proposals will return the land to its former status". The maps show the prime agricultural land as identified by the Macaulay Institute as defined within SPP **(CD 12)** page 55 Glossary.

The Council is satisfied that the MLDP provides sufficient provision for the protection of trees, when read in conjunction with the South Lanarkshire Local Plan (SLLP) **(CD 33)** and the provisions to be contained within the South Lanarkshire Local Development Plan (SLLDP).

**Note to Reporter:**

Please see suggested revised wording of Policy MIN 2 in Issue Paper 4.

**Reporter's conclusions:**

**Categories of designation**

1. I firstly consider the 3 categories of designation and what should be included in each. I note the representations suggesting that Category 3 designations should not be given policy status, because of their essentially local importance and common appearance throughout the plan area. They are however in my view significant enough to be identified



as environmental constraints to development, albeit of lesser importance than internationally and nationally important designations.

2. I find that there should be 3 categories of designation, these being, in order of importance:

- internationally important designations;
- nationally important designations;
- locally important designations which require some level of protection.

3. It is of course important to assess the appropriate level of control in relation to these designations, and this is further considered commencing in paragraph 19 below. I would also mention at this point that all development (including outwith these designations) would still be subject to assessment against the remaining policies within this local development plan and the environmental policies in the South Lanarkshire Local Plan. This should be reflected in the text of Policy MIN 2.

4. Following my examination of the representations, I consider the requested changes to the designations commencing in paragraph 5 below. I consider whether or not sufficient protection is provided relative to the importance of the designation and/or whether there should be more flexibility; and confirm the most appropriate category for the designation. Where I consider that there should be more explanation of the effect of the designation on proposed minerals development I take this into account in considering the supporting text commencing in paragraph 27 below.

#### World Heritage Site at New Lanark

5. This site is of international importance, and it is necessary to ensure that any minerals development has no adverse effect on the integrity of its setting, as well as on the site itself. Policy ENV 22 of the South Lanarkshire Local Plan refers to a buffer, but it is not shown on the proposals map. I regard the buffer as being equivalent to the setting of the world heritage site, and I therefore find that this should be included with the world heritage site under Category 1; although I accept that there may be no requirement to define this buffer on the environmental constraints map.

#### Ancient Woodland

6. Paragraph 146 of the Scottish Planning Policy states: “ancient and semi-natural woodland is an important and irreplaceable national resource that should be protected and enhanced, as should other native and long established woodlands with high nature conservation value”. I am satisfied that other native and long established woodland will either be covered by other designations; or will be sufficiently protected through the environmental policies of the South Lanarkshire Local Plan. However, I note that Scottish Natural Heritage (SNH) considers that the importance of ancient woodland justifies its inclusion within Category 2. This is a finite resource which would be very difficult to replace if it were lost, and I therefore agree with SNH on this matter and find that it should be included within Category 2.

#### Prime agricultural land

7. This is referred to in paragraph 97 of the Scottish Planning Policy which states: “prime agricultural land is a finite national resource. Development on prime agricultural land

should not be permitted unless it is an essential component of the settlement strategy or is necessary to meet an established need ...". There is limited prime agricultural land within South Lanarkshire, and I am quite satisfied that this should be retained within Category 2.

#### Landscape character areas

8. My understanding is that special landscape areas cover the former regional scenic areas and areas of great landscape value. These require additional protection and it is right that they are included in Category 3. Protection for these areas would also be afforded under Policy ENV 29 of South Lanarkshire Local Plan. However, the remaining landscape within South Lanarkshire should fall to be considered under the relevant policies in the South Lanarkshire Local Plan as stated in Policy MIN 1, and in this context the landscape character areas should be taken into account.

#### Settlement buffer zones

9. The Scottish Planning Policy in paragraph 233 states: "authorities should not impose standard buffer zones between sites and settlements since distances will need to take account of the specific circumstances of individual proposals including size, duration, location, method of working, topography and the characteristics of the various environmental effects likely to arise and the mitigation that can be implemented".

10. Although standard buffer zones are part of Policy MP11 in the adopted plan, and the council has stated that these have operated successfully, to be consistent with the Scottish Planning Policy standard buffers of 250 metres and 500 metres should not be imposed for the reasons indicated in paragraph 233. I therefore find that these should be removed from the environmental constraints map and the deposits and operational sites map. However, the concept of buffer zones around settlements remains valid because mineral workings may have significant adverse effects on existing communities, and this needs to be addressed, even within search areas.

11. The proper course of action is in my view to consider a buffer zone appropriate to the case when assessing proposals for minerals development. This would satisfactorily take into account the provision within paragraph 244 of the Scottish Planning Policy that proposed site boundaries for open cast coal working would be unlikely to be acceptable within 500 metres of the edge of a community. To this end, one option is to remove the buffer zones from the maps, but retain the settlements and their buffers within one of the 3 categories.

12. The difficulty is that settlements and their buffers do not constitute an environmental designation that fits logically into one of the 3 categories. They could not be included as a Category 1 designation, but at the same time an adverse effect on a community should probably not depend upon the importance of the markets for the extraction of the minerals concerned. I therefore find that it would be better to take settlements and their buffers out of the list of designations in table 3.1 altogether, and instead include a specific paragraph within the policy to afford appropriate protection to settlements. My suggested text for such a paragraph is included within my recommendations below.

13. Settlements outwith South Lanarkshire should be considered equally with settlements within as far as the protection afforded to settlements is concerned. However, this is satisfactorily addressed by removing the buffer zones from the maps and including a specific paragraph within Policy MIN 2, as indicated in the preceding paragraph. I would

take this opportunity to mention in passing that there is no basis for buffer zones around prominent hills. This is a matter that is more appropriately regulated by the landscape designations.

#### Areas of flood risk

14. My understanding is that the areas of flood risk (designated as flood plains in the plan) shown on the environmental constraints map include all significant areas with a flood risk greater than a 1:200 year event, and that this information is taken from the most up to date Scottish Environment Protection Agency (SEPA) flood risk maps. I understand that this is the most accurate available information base. Within these areas there requires to be a presumption against development, with such not being permitted unless it is shown that there would be no significant increased risk of flooding on the actual site or elsewhere as a result of the proposed minerals development. As the council indicates, however, there may be instances where the capacity of the flood plain during a flood event could actually be increased, either during extraction or after restoration, and as long as any flooding on the site is managed during the period of the mineral extraction to ensure the health and safety of the workforce and others, this may provide a benefit justifying development which is appropriate to refer to both in the policy and the supporting text. It is probably therefore necessary in the test to also refer to the risk of flooding on the site as being an “adverse” risk.

15. This is another category of environmental designation which does not fit logically into any of the 3 categories listed in table 1. In fact, whilst it would not be appropriate to include flood plains within Category 1, the aim should be to ensure that the flood risk is appropriately managed irrespective of the importance of the markets served by the minerals extracted. Where it cannot be appropriately managed development should not take place. It is a matter of public health and safety. A flood risk assessment should always be undertaken for proposed minerals development in these sensitive areas, and this should determine the nature of any minerals development that can take place.

16. I therefore find that 1:200 year flood plains should be removed from the list of designations, and that a specific paragraph should be included within Policy MIN 2 including a requirement for a flood risk assessment to be undertaken within all areas where a flood risk greater than a 1:200 year event exists, and a presumption against development in the terms indicated in paragraph 14 above. I also find that, whilst such areas should be retained on the map and based upon the most accurate information available at the time, the policy provision should not be directly linked to these mapped areas, because they are likely to change during the life of the plan. My suggested text for an appropriate paragraph in Policy MIN 2 relating to flood risk is included within my recommendations below, however the precise wording of this paragraph (particularly in the context of paragraph 14 above) and the associated supporting text should be agreed with SEPA before it is finalised.

#### Other designations

17. I find that conservation areas generally have a local justification rather than a national justification, and that therefore these should be included within Category 3 rather than Category 2. The only exception to this is perhaps that outstanding conservation areas could be retained within Category 2, and the council may use its discretion to do this if it so desires. Otherwise, retaining them within Category 2 would in my view create an anomaly in that all the other designations I am suggesting retention of or inclusion within

Category 2 are nationally justified designations.

18. Otherwise, I am satisfied that the designations properly reflect international, national or local resources. I note that some of the local designations are not shown on the map, and I consider this in more detail in paragraph 8 of Issue 4. I do not consider that there is any need to distinguish regional resources from local resources in the context of the hierarchy of protection within Policy MIN 2.

### **The wording of Policy MIN 2**

19. Several suggestions for the text of Policy MIN 2 have been made within the representations; some of these seek a stronger emphasis on environmental protection, particularly for international and national designations, whilst others seek more flexibility. The council has in fact suggested that a revised text (provided under Issue 4 above) may be considered to avoid misinterpretation. I have considered all of the representations made, and suggest an appropriate wording for Policy MIN 2 in my recommendations below. My reasoning for the suggested policy wording is set out in the following paragraphs.

20. Firstly, I refer to the view expressed that it is unrealistic to expect any development to meet test (c). I accept that an improvement to Category 2 and 3 sites would be unlikely as a result of minerals development in most cases. However, there may be instances where, following restoration, there is a benefit to a Category 2 or 3 site. An example might be the planting of woodland with native species that adds to the biodiversity of the area and may benefit local nature conservation sites or rights of way. Because of such potential benefits, whilst I note that the council actually suggests the deletion of this test in its revised policy; on balance I find that there is no requirement for its deletion.

21. I therefore find that this test should remain, but since it would not be possible to provide such an improvement in most cases, “and/or” should be put before test (c). The policy would not be workable with the word “and” only, which would require an improvement to Category 2 and 3 sites in every case. Also, the word “net” should be inserted into (c) to require a net benefit of positive over adverse impacts, taking into account the impacts assessed under either or both criteria (b) and/or (c), as appropriate. I accept that this may appear to be quite complicated, but I believe that it is necessary to provide an opportunity to mitigate the effect on, and/or improve, an environmental resource appropriate to the case.

22. Secondly, representations criticise the fact that there is no distinction in the policy between Category 2 and 3 designations. This point is in fact raised by those seeking stronger protection, and those seeking more flexibility; obviously of course going in one direction or the other in making an appropriate distinction. The council makes a valid point in stating there is already a distinction between Category 2 and 3 sites; not in the policy, but in the supporting text. This is acceptable to a point, but I find that there needs to be a stated policy distinction between Category 2 and 3 sites.

23. I have taken a line similar to that proposed by the council in its suggested revisions to the policy to the extent that I recommend distinguishing markets of national importance for Category 2 sites and markets of regional or local importance for Category 3 sites. I have considered the possibility of referring to an over-riding “economic benefit” instead of an over-riding need to serve markets, in the context of the Scottish Planning Policy, but defining markets is a more specific and probably a more relevant test for minerals

development. However, there does not need to be a demonstration of the actual development's importance as well, because this should be self evident once there is a satisfactory demonstration of an over-riding need for the minerals to serve the appropriate markets. This would in my view only be needed if there were no market test in the policy.

24. Furthermore, and again notwithstanding the council's proposed revised policy, I believe that the second test should also be retained for Category 2 and 3 sites. This is because although there may be an adverse impact following the implementation of mitigation measures, such measures should still ensure that the development is mitigated to an acceptable degree. The term "adverse impact" should be used for Category 2 sites but "significant adverse impact" would be more appropriate for Category 3 sites. The policy can be structured more simply, with a single paragraph setting out the difference between Category 2 and 3 sites.

25. I leave some discretion to the council in that it would also be acceptable to structure the policy by retaining the distinction to be drawn between Categories 2 and 3 in sequence, as in the council's proposed revised policy. However, it appears to me that a clear policy distinction can be set out following the tests in a single paragraph.

26. Finally, I agree with the representations made to the extent that the test should be an adverse effect on the resource (the integrity of the resource for international designations to accord with the 1994 regulations); just being within is not the appropriate test. I accept that there may be few, if any, minerals developments located within that would not adversely affect the resource; but nevertheless the test should be an adverse effect on (the integrity of) the resource rather than simply its location. I note that this test is in fact more correctly applied in Policy MP2 of the adopted plan.

### **Supporting Text**

27. The reasoning for Policy MIN 2 should be fully explained in the supporting text, and my recommendations for this are set out below. The test for Category 1 sites should refer to the effect rather than the location, as with the policy itself. This test in my view correctly reflects the provisions of the 1994 Habitats Regulations. Following the submission on behalf of SNH on this matter, I find that it would be appropriate to include a presumption of adverse effect from minerals development sites within or adjacent to Category 1 sites, unless shown otherwise (through an environmental report or the development management process if no such report is required). However, this is more a point of clarification, and would therefore be better in the supporting text than the policy. The application of Policy MIN 2 to Category 1 sites outwith the council's administrative area should also be covered. In addition a further explanation of the world heritage site buffer should be provided.

28. The important function of the supporting text in relation to Category 2 sites is to correctly reflect the level of importance of these sites and explain what this means in terms of the nature of the assessment that requires to be undertaken. The paragraph then needs to explain clearly what is required when an adverse effect is identified; namely that development will only be permitted if there is an over-riding need for the minerals to serve markets of national importance, and that the adverse impact must be capable of being mitigated to an acceptable degree, and/or that there is a net improvement to the resource (the onus being on the developer to demonstrate these matters). The supporting text in relation to Category 3 sites should simply explain the difference from Category 2 sites, and the different tests, namely serving markets of regional or local importance and the impact

being a “significant adverse impact”. It is unwise to quantify the resources because these are likely to change during the period of the plan.

29. Following the removal of “settlements and their buffers” and “1:200 year flood plains” from Category 2, paragraphs 3.8 and 3.10 should be deleted, and replaced by new paragraphs which are separate from the 3 categories of environmental resources in the hierarchy. In the paragraph on flooding, whilst the reference to the functional flood plain should be retained, the paragraph should essentially explain the need for a flood risk assessment and how this will affect the outcome of the planning application. The environmental constraints map should be regarded as indicative only, because of the scale of the map, and the fact that up to date SEPA flood maps will need to be consulted. The sentence about the effect on river systems is superfluous as this is more relevant to the matters covered by Policy MIN 5.

30. The paragraph relating to settlements should essentially explain the position relating to buffers around settlements, and that these will depend upon the circumstances of the case. A useful reference from paragraph 244 of the Scottish Planning Policy can be drawn, but there should be no reference to standard settlement buffers in the text, which would be misleading. The paragraph should explain that the key element of the policy is the application of Policy MIN 7 to determine whether or not there will be any significant adverse effect on the settlement concerned.

31. The text suggested by SNH for protected species should in my view be incorporated into paragraph 3.15 of the supporting text, rather than the policy itself. I agree that this information should be provided as a clearer justification for the policy. However, I am satisfied that the existing text of the policy is clear, and that this meets the requirements of the 1994 Habitats Regulations, although the policy should include the phrase “following the implementation of any mitigation measures”.

32. Finally, there should be a paragraph relating to general provisions at the end of the supporting text. This should clarify that all minerals development will also be assessed where appropriate against the remaining policies of this local development plan and the policies of the South Lanarkshire Local Plan, and that the policies of the latter that are relevant to the categories of development listed in table 3.1 are cross referenced in the table. I also find that the council’s suggested additional text, clarifying that mitigation measures and opportunities to improve the environmental resources should be submitted with planning applications for minerals development, would be better included within the supporting text rather than the policy itself, and I suggest an appropriate wording for this.

### **Environmental Impact Assessment**

33. Several representations refer to the content of policies reducing the importance of the environmental impact assessment (EIA) that would generally need to be carried out for minerals development proposals. However, in the first instance, I accept the council’s point that not all minerals development would necessarily require the submission of an environmental report; it may be screened out through the development management process. In addition, whilst the EIA is an important tool for measuring the environmental effects of a proposal in the context of a policy framework, the EIA does not replace the need for this policy framework in the local development plan in order to guide development appropriately in the context of its environmental impact. This is one of the reasons for a strategic environmental assessment of the policies within the development plan.

**Reporter's recommendations:**

Note: these recommendations follow from my conclusions relating to Issue 4 and Issue 5.

1. Policy MIN 2 should be modified in similar terms to the following:

**Environmental Protection Hierarchy***Category 1, 2 and 3 Sites*

The council will seek to protect important natural and built heritage sites and features as listed in Table 3.1 from the adverse effects of minerals development. Development which will adversely affect the integrity of Category 1 sites following the implementation of any mitigation measures will not be permitted.

Development which will adversely affect Category 2 and 3 sites following the implementation of any mitigation measures sites will only be permitted if:

- (a) there is an over-riding need for the minerals to serve appropriate markets, and
- (b) it is shown that the adverse impact of the proposed development can be mitigated to an acceptable degree, and/or
- (c) the proposed development will result in a net improvement to the Category 2 or 3 site.

The distinction to be drawn between Category 2 and 3 sites is that for Category 2 sites the appropriate markets must be of national importance, whereas for Category 3 sites they may be of regional or local importance only. In addition the adverse impact for Category 3 sites will be evaluated as "significant adverse impact".

*Protected Species*

Development which will significantly adversely affect internationally and nationally protected species following the implementation of any mitigation measures will not be permitted.

*Flood Risk Areas*

Development proposed within areas of risk greater than a 1:200 year flood event shall be the subject of a flood risk assessment, and any such development where the flood risk cannot be appropriately managed to prevent a significant increase in the risk of flooding on the site (where such is determined to be an adverse risk) or elsewhere will not be permitted. However, opportunities to increase the capacity of a flood plain through mineral extraction and subsequent restoration will be encouraged where any flood risk during the course of operations can be satisfactorily managed as stated above.

*Settlements*

Development will only be permitted where there are no significant adverse effects on the settlements shown on the environmental constraints map, following the implementation of any mitigation measures. The test will be the application of Policy MIN 7 to all development proposals which may adversely affect these settlements and the communities contained therein. There will normally be a buffer zone around settlements within which there will be no extraction of minerals, but the extent of this will depend upon

the circumstances of the case.

### *Other Policies*

All development will have regard to the relevant policies and guidance contained elsewhere in this local plan, and in the South Lanarkshire Local Plan, on the protection of the natural and built environment including settlements and the communities contained therein.

Note: the council is of course free to present the policy as it considers appropriate, and the separation of the policy into the headings shown in italics is therefore at the council's discretion.

2. Table 3.1 should be modified by deleting "Buffer of World Heritage Site" from Category 2 and adding to Category 1 "World Heritage Site and its Buffer". Ancient Woodland should be deleted from Category 3 and inserted within Category 2. Conservation areas should be deleted from Category 2 and inserted within Category 3. Settlements and their buffers and 1:200 year Flood Plains should be deleted from Category 2.

3. The environmental constraints map and the deposits and operational sites map should be modified by the deletion of the settlement buffers. The settlement boundaries should be retained. The 200 year fluvial flooding event boundaries should be retained on the environmental constraints map, but a note should be added in similar terms to the following: "this data was correct when the map was prepared but is subject to change. The up to date SEPA flood maps should be consulted when any minerals development is proposed". In addition a note should be added to the environmental constraints map in similar terms to the following: "Archaeological remains, local nature conservation sites, tree preservation orders and wildlife corridors are not shown on this map. However, this information can be obtained upon request from the council".

4. The supporting text should be modified in similar terms to that stated in paragraphs 5 to 15 below.

### **Category 1 Sites**

5. The last sentence of paragraph 3.5 should be modified:

Development which will adversely affect the integrity of these sites will not be permitted. In applying this test, the council will exercise a presumption that development within or adjacent to such sites will have an adverse effect unless it is demonstrated through an environmental report or otherwise through the development management process that there will be no adverse effect.

6. A sentence should also be added to paragraph 3.5:

For the avoidance of doubt, the first paragraph of Policy MIN 2 will also apply to any minerals development which will adversely affect the integrity of any internationally protected site which is outwith the council's administrative area.

7. An additional paragraph should be added after paragraph 3.6:

The setting of the world heritage site also requires protection, and so any development



which adversely affects the setting of the world heritage site will not be permitted. This is a matter that will be assessed in the circumstances of the case. To be consistent with the South Lanarkshire Local Plan, the setting is referred to as a buffer within table 3.1, but for the avoidance of doubt the meaning of “buffer” in this case is equivalent to “setting”.

### **Category 2 Sites**

8. Paragraph 3.7 should be modified:

Category 2 sites are all considered to be environmental resources of national importance. There are a substantial number of sites and buildings in South Lanarkshire which are in this category, and they are shown on the environmental constraints map. These sites and buildings have the potential to be particularly sensitive to development. A rigorous assessment is therefore required to manage minerals development proposals on or adjacent to these sites, following which any development that is considered to have an adverse impact on these sites after the implementation of any mitigation measures will only be permitted if there is an over-riding need for the minerals to serve markets of national importance. The onus is on the prospective developer to demonstrate that the markets are of national importance; and that serving these markets in the circumstances clearly outweighs the adverse impact. In addition, the adverse impact must be capable of being mitigated to an acceptable degree in the circumstances of the case, and/or the development may be permitted if it results in a net environmental improvement to the resource affected. The net improvement may be informed by any adverse effects being outweighed by positive ones. Again, the onus is on the prospective developer to demonstrate how this would be achieved.

9. Paragraphs 3.8 and 3.10 should be deleted.

### **Category 3 Sites**

10. Paragraph 3.12 should be modified:

Category 3 sites are considered to be environmental resources of local importance, and whilst they are not as important as those resources within Category 2, they are nevertheless sensitive to development and significant impacts thereon require careful consideration. The same process requires to be undertaken as in the case of nationally important resources (paragraph 3.7) but in this case the markets need only be of regional or local importance (although of course markets of national importance would also satisfy the requirement) and any adverse impact need only be “significant adverse impact”.

11. Paragraph 3.14 should be deleted after the first sentence.

### **Protected Species**

12. Paragraph 3.15 should be modified:

A number of animal and plant species found in South Lanarkshire are protected by legislation such as The Wildlife and Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992 (as amended). In addition the Habitats Regulations 1994 (as amended) provide protection for species including otters, bats and great crested newts as European protected species. The council will give full consideration to the impact of minerals development proposals on all internationally and nationally protected species and

proposals which will have significant adverse effects following the implementation of any mitigation measures will not be permitted. This includes any indirect effects from outwith the minerals extraction site, for example transport to and from the site. The council will not normally grant planning permission where there is a significant adverse impact on European protected species unless it is demonstrated that the tests set out in Regulation 44 of the 1994 Habitats Regulations are likely to be satisfied.

### **Flood Risk**

13. New paragraph after that for protected species:

The functional flood plain contains high quality sand and gravel deposits which are in demand by the construction industry. The capacity of the flood plain during a flood event could be diminished as a result of mineral extraction, resulting in flooding downstream. However, there may also be instances where extraction might be beneficial in alleviating flood risk by creating additional flood storage, and this is recognised in Policy MIN 2. This may be acceptable as long as any flooding on the site is managed during the period of the mineral extraction to ensure the health and safety of the workforce and others. In any event, all proposed minerals development within areas of risk greater than a 1:200 year flood event requires a flood risk assessment, and any such development where the flood risk cannot be appropriately managed to prevent a significant increase in the risk of flooding on the site (where such is determined to be an adverse risk) or elsewhere will not be permitted. Areas of flood risk are shown on the environmental constraints map, but these are indicative, and because they may be out of date when the minerals development is proposed, and also because of the small scale of the map, it is necessary as a matter of course to consult the latest available SEPA flood maps before the submission of a planning application.

### **Settlements**

14. New paragraph after that for flood risk:

Settlements and their surrounding environment require protection from the adverse effects of minerals development. Settlements are shown on the environmental constraints map, and there will normally be a buffer around settlements within which minerals development will not be permitted. However, some ancillary developments may be acceptable and indeed beneficial within this buffer such as tree planting, visual screening mounds, noise attenuation buffers or reclamation of derelict or despoiled land. The extent of buffers will be dependent upon the circumstances of the case. For example, surface coal extraction areas will not normally be acceptable within 500 metres of settlement boundaries (paragraph 244 of the Scottish Planning Policy). A similar distance may be required for quarry blasting operations. Otherwise, a buffer of considerably less distance may be acceptable, but this will always be dependent upon the circumstances of the case, and the actual environmental effects resulting from extraction. Ancillary development such as that referred to above may reduce the distance required. The key element of the policy is that development will only be permitted where significant adverse effects on the settlements shown on the environmental constraints map are avoided. The test will be the application of Policy MIN 7 to all minerals development proposals which may adversely affect settlements and the communities contained therein, and this will in practice determine the extent of the buffer that is considered appropriate.

**General provisions**

## 15. New final paragraph:

Planning applications for minerals development proposals likely to have an adverse effect on any of the environmental resources listed in table 3.1, or otherwise referred to above, shall be accompanied by measures to mitigate this adverse impact and shall fully consider opportunities to improve the environmental resources affected. These may be included within an environmental report where this is required. All minerals development will also be assessed where appropriate against the remaining policies of this local development plan and the policies of the South Lanarkshire Local Plan, and the policies in the latter which are relevant to the categories of development listed in table 3.1 are cross referenced in the table. It should also be noted that Policy ENV 12 of the South Lanarkshire Local Plan applies to minerals development in flood risk areas. For the avoidance of doubt, minerals development for the purpose of Policy MIN 2 includes both development on new sites and extensions to existing sites, where planning permission is required.

<b>Issue 6</b>	<b>Policy MIN 3 – Cumulative Impacts</b>	
<b>Development plan reference:</b>	MIN 3 – Cumulative Impacts	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregates Industries (263)          ATH Resources (243)          British Aggregates Association (303)          Glasgow City Council (323)          Mineral Products Association (276)          Patersons of Greenoakhill Ltd (202/203)          Savills/CRAG (256)          Scottish Coal (184)          Mark Stephens (312)          Tarmac (228)          The Coal Authority (121)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Paragraph 3.16 Policy MIN 3 – Cumulative Impacts	
<b>Planning authority's summary of representation(s):</b>		
<p><b>263, 276, 203, 228</b>          These representations seek clarification as to what the expression "<i>new mineral development</i>" actually means. Does it refer to Greenfield sites alone or does it refer to all minerals development, including extensions and Section 42 applications?</p> <p><b>184, 263, 276, 228</b>          These representations are seeking clarification on the definition of "<i>other development</i>" and are concerned that the criteria that will be used to determine if an assessment should be undertaken are not defined in the plan. Representation 184 is also concerned about the inconsistency between Policy MIN 3 and its introductory statement, where the latter makes reference to '<i>..and agricultural development</i>' and MIN 3 refers to '<i>.. other large scale developments</i>.'</p> <p><b>202, 243, 303, 203, 121</b>          These representations are concerned about the requirement under the policy for the cumulative impact of minerals development to be assessed against other forms of development. This will disadvantage mineral proposals unfairly when the same cumulative assessment will not apply conversely to renewable energy proposals or other large scale countryside developments. This sets out an unfair and uneven planning background which will disadvantage mineral developments.</p> <p><b>263, 276, 202, 228</b>          All these representations express concern that the Environmental Impact Assessment process is undermined through the statement that "<i>Applications for new mineral development which, in the opinion of the Council, will result in an unacceptable cumulative impact from current or approved mineral developments, renewable energy development or other large scale developments will be resisted.</i>"</p>		

**312**

This representation states that the use of the word "*unacceptable*" requires some benchmark, otherwise it is meaningless.

**323**

A form of wording to be inserted in this policy that considers the wider cumulative impacts outwith the South Lanarkshire Council boundary. Perhaps it might say "*impact that concentration of development may have on particular areas, the wider ecological landscape and on the existing road network*".

**256**

This representation supports Policy MIN 3 in relation to Cumulative Impact.

**Modifications sought by those submitting representations:****323**

Add "*, the wider ecological landscape*" between "*areas*" and "*and*" within Policy MIN 3.

**Summary of responses (including reasons) by planning authority:**

Policy MIN 3 relates to all mineral development which has the potential to create cumulative impact, whether they are applications for new sites, extensions or Section 42 applications to amend conditions. All 'other development' which has the potential to result in a cumulative impact should be considered when considering cumulative impact. Paragraph 3.16 provides examples of development types which may result in cumulative impact. Agricultural development would fall within the category of other large scale developments so it is not considered that the supporting text and policy are inconsistent.

Scottish Planning policy (SPP) (**CD 12**) states in paragraph 242 that "*planning authorities should consider cumulative impact*" and refers to text within paragraph 222 (which relates to landfill). Para 222 states "...such sites could include minerals or opencast coal sites". SPP (**CD 12**) does not provide an exhaustive list of development types which should be considered as having a cumulative effect on the landscape and viewpoints. It considers the types of development that could have a cumulative impact with landfill operations and cites mineral development as an example. Cumulative impact should be assessed by considering all development in the area that could have an effect on the environment and communities. Paragraph 222 states that "*if adverse cumulative impacts cannot be mitigated adequately, permission should be refused*".

Environmental Impact Assessment (EIA) is not mandatory for all minerals development proposals. The Council recognises the importance of the EIA process which will, where it has been carried out, be used to inform the assessment of development proposals against policies. Environmental Statements (ES) are however a tool for considering a developments' environmental impact and there is often ambiguity over the findings of the ES between the authors and the regulatory authorities/consultees. This can result in the Council being required to make a decision based on conflicting viewpoints. Policy MIN 3 states that "*applications for new mineral development, which, in the opinion of the Council, will result in unacceptable cumulative impact...will be resisted*". Each planning application must be considered on its own merits and the "unacceptable" test will be applied accordingly by the Council. The grounds for refusal would also be required to specify the basis for a development being considered "unacceptable".

The scope of policy MIN 3 is designed to consider the impact that a development will have on the wider area which can in some instances include areas outwith the Council's administrative boundary. Whilst the Council cannot make policies specific to areas outwith their jurisdiction it can ensure that any cumulative effects particularly relating to transportation networks and the environment are considered when any application for mineral development is being determined. Adjoining authorities would also have the opportunity to comment on applications.

#### **Reporter's conclusions:**

1. Policy MIN 3 states that in assessing all minerals proposals, the council will consider the cumulative impact that concentration of development may have on a particular area and the road network. The policy refers to "new development", and by definition this must relate to development over which the council has control, and this is essentially where there is a requirement for planning permission, or where the conditions of an existing minerals permission are reviewed under section 42 of the Act.
2. I find that there is no requirement to draw a distinction between different types of minerals development; and particularly between development proposed on a new site or an extension of a site already being worked for minerals. The effect will depend on the circumstances of the case, and there may be instances where an extension (for example in close proximity to an existing settlement or natural heritage designation) has more impact than development on a new site, cumulatively with existing development.
3. Cumulative impact is particularly relevant to minerals development, and this essentially results from the nature of the development. Large scale surface mineral extraction may take up a considerable area of countryside. This has the potential to cause significant effects during the period of operation, and particularly visual effects on sensitive landscape areas; and more than one such development within close proximity may therefore be particularly relevant in this context.
4. Another significant factor is the need to transport minerals extracted by road, unless there is a convenient rail link, which does not appear to be the case for the majority of surface mineral extraction, which may not have an existing rail link close by and the provision of such a link for a temporary period would not be feasible. During this temporary period there is the potential for significant adverse effects from heavy goods vehicles using existing roads within nearby settlements. Cumulative transport impact is further considered under Issue 15.
5. One of the key matters raised within the representations is the scope of cumulative impact under Policy MIN 3. There is nothing to prevent the council considering the cumulative impact of minerals development with other forms of development, where this is relevant to the circumstances of the case and in so far as this is standard practice when examining large scale development within the countryside. However, the key factor for the local development plan is in my view the potential for significant combined environmental effects from multiple minerals development (or landfill developments as referred to in paragraph 6 below) in close proximity to communities, natural heritage designations or landscapes.
6. Paragraph 222 of the Scottish Planning Policy relates primarily to landfill sites; but states that the policy on cumulative impact also applies to mineral extraction sites and open cast coal sites. The Scottish Planning Policy seeks to ensure that new landfill sites

or extensions to existing landfill sites do not lead to a disproportionate burden of negative environmental impacts on nearby settlements or other sensitive receptors such as the landscape. This is stated to be particularly important if there are already two or more operational or consented sites that could raise similar impacts within 5 kilometres of a nearby settlement.

7. Following on from the above, I find that Policy MIN 3 should more closely reflect the Scottish Planning Policy, and relate specifically to the cumulative impact of minerals development and landfill development on sensitive receptors. Including other developments may weaken the focus of the policy. I recognise that other forms of development (wind farms being notable in this context), may also have a significant visual impact, but the impact is different, and does not necessarily relate so well to the purpose of this policy. I therefore recommend a change to the policy to delete the reference to renewable energy or other large scale developments from the policy, with an associated change in the supporting text. The supporting text should also refer to the content of paragraph 222 of the Scottish Planning Policy to provide the context.

8. However, I would emphasise that this is more to focus on the cumulative impact of minerals development than to offset any perceived disadvantage as a result of Policy MIN 3 to prospective minerals development, although I accept that such a focus would provide a more level playing field for considering the environmental effects of minerals development.

9. I have considered whether there is a better phrase than “unacceptable cumulative impact” within Policy MIN 3. However, this will clearly depend on the circumstances of the case. Essentially, Policy MIN 3 requires the application of the other policies of the plan not just in relation to the subject site but also development with which it may have a cumulative impact. For example if, cumulatively with the other development, the development does not meet the tests set out in Policy MIN 2, then it should be expected that the development being applied for will be resisted. The environmental impact assessment (where there is a need for one) will provide the measurement for this (paragraph 14 below).

10. On balance, I consider that the term “unacceptable cumulative impact” should therefore be retained in the policy. Whether or not any cumulative impact is unacceptable will depend upon the circumstances of the case. However, I also find that the key resources (embracing those referred to in Policy MIN 2) should be stated in the policy, so that it is clear what the “unacceptable cumulative impact” refers to. The road network is one resource already referred to but I find that others should be added, and I include these additions within my recommendations below. I also refer to my conclusions relating to cumulative transport impact and Policy MIN 12 under Issue 15 below.

11. I understand the concerns expressed on behalf of Glasgow City Council relating to cumulative impacts outwith the council’s administrative area. Whilst development outwith the council’s area is not within the control of the council, cumulative impact with such development would need to be taken into account. Resources outwith the council’s administrative area would also need to be taken into account. The arrangements for consultation with neighbouring planning authorities should ensure that such occurs; and when 2 developments are being applied for simultaneously, but within different planning authority areas, then the 2 authorities need to liaise closely in order to consider the cumulative impact.

12. However, I think that the local development plan should clarify that cumulative impact applies to developments and resources outwith the council's administrative area. It doesn't need to be stated within the policy itself. I suggest an appropriate insertion within paragraph 3.16 in my recommendations below.

13. As to the suggested addition of the phrase "wider ecological landscape" to the policy, I find that this would introduce terminology which does not relate well to the list of categories under Policy MIN 2 and table 3.1. I therefore do not recommend the inclusion of this phrase. However, the additional resources (paragraph 10 above) that I recommend be included in the policy may extend into other administrative areas. In addition, there is a specific reference to the impact on special landscape areas in the final sentence of the policy.

14. I do not accept that the environmental impact assessment process is undermined by having a policy on cumulative impact. This is a recurring theme in the representations relating other policies as well, and I refer to my findings in paragraph 33 of Issue 5 on this matter, and which are equally applicable here. I however agree with the view expressed in one of the representations that the phrase "in the opinion of the council" is unnecessary.

#### **Reporter's recommendations:**

1. Policy MIN 3 should be modified in similar terms to the following:

##### **Cumulative Impact**

In assessing all mineral proposals, the council will consider the cumulative impact that concentration of development may have on communities, natural or built heritage designations, sensitive landscapes, the existing road network, and other resources referred to in Policy MIN 2. Applications for new minerals development which will result in an unacceptable cumulative impact on these resources taking into account current or approved minerals development and landfill development will be resisted. Particular regard will be given to the cumulative impact of minerals development within Special Landscape Areas.

2. Paragraph 3.16 should be modified in similar terms to the following:

Paragraph 222 of the Scottish Planning Policy relates primarily to landfill sites, but states that the policy on cumulative impact also applies to mineral extraction sites and opencast coal sites. The Scottish Planning Policy seeks to ensure that there is no disproportionate burden of negative environmental impacts on nearby settlements or other sensitive receptors such as the landscape. This is particularly important if there are already two or more operational or consented sites that could raise similar impacts within 5 kilometres of a nearby settlement. South Lanarkshire includes large accessible rural areas, interspersed with many settlements, which provide opportunities for mineral extraction because of their geographical location, geology and topography. In order to prevent an unacceptable concentration of development in a particular area and to minimise the potential impact on community and environmental interests, any proposals for mineral extraction will have to take into account cumulative effects with current or approved minerals development and landfill development. This process may include developments and resources outwith the council's administrative area.



<b>Issue 7</b>	<b>Policy MIN 4 - Restoration</b>	
<b>Development plan reference:</b>	Policy - MIN 4 Restoration	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregates Industries (264)  British Aggregates Association (304)  Dalglish Associates (130/131)  Mineral Products Association (277)  Patersons of Greenoakhill Ltd (204/205)  Scottish Natural Heritage (162)  Mark Stephens (313)  Tarmac (229)  ATH Resources (244)  Savills/CRAG (257)  The Coal Authority (122)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Paragraph 3.19 Policy MIN 4 – Restoration	
<b>Planning authority's summary of representation(s):</b>		
<p><b>204, 205, 229, 277, 304</b>  These representations suggest the requirement for developers to provide a financial guarantee fund is contrary to Circular 1/2010. Current government policy would suggest that legal agreements are unnecessary when development can be satisfactorily controlled by planning conditions. In the event that a bond is required then these can readily be catered for by the use of conditions as in the recent case by the Reporter Michael J P Cunliffe, Planning Appeal Reference PPA-270-2023, Date of appeal decision: 29 June 2010</p> <p><b>313</b>  This representation seeks restoration bonds to be required in all cases since the "<i>when necessary</i>" clause is imprecise and allows too much leeway.</p> <p><b>130, 131, 205, 264, 304</b>  These representations consider that the Council should accept industry guarantee bonds and this should be reflected in policy MIN 4. This fund is endorsed and supported by the Scottish Government. It is now broadly accepted by planning authorities across the country and has proven to be a very successful means of providing assurance for local authorities that restoration and aftercare requirements will be fulfilled.</p> <p><b>162</b>  This representation is seeking an amendment to the wording of policy MIN 4 with the addition of "<i>and landscape character</i>" after "<i>community recreation and access</i>". Restoration of minerals sites also has the potential to contribute to the Central Scotland Green Network and address issues of habitat fragmentation. Greater emphasis should be</p>		

placed on restoration which contributes to Integrated Habitat Networks and the development of the Central Scotland Green Network

**244, 257, 122**

These representations support the approach taken by the Council to restoration.

#### **Modifications sought by those submitting representations:**

**131**

To recognise the Mineral Products Association Restoration Guarantee Scheme the fourth sentence in Policy MIN 4 should be amended to read: "*The Council will require, where necessary, applicants to provide a restoration and aftercare bond or industry guarantee ...*"

**162**

"*and landscape character*" should be added after "*community recreation and access*".

#### **Summary of responses (including reasons) by planning authority:**

Paragraph 235 of Scottish Planning Policy (SPP) (**CD 12**) notes that '*Planning authorities should ensure that consents are associated with an appropriate financial bond unless the operator can satisfactorily demonstrate that their programme of restoration, including the necessary financing, phasing and aftercare of sites, is sufficient*'. Paragraph 3.19 in the proposed plan highlights that the Council "*will require, where necessary.....*" the provision of a financial guarantee bond. This requirement is consistent with SPP (**CD 12**) paragraph 235.

Policy MIN 4 requires a suitable restoration guarantee bond to be provided by a minerals operator, where deemed necessary by the Council. The Council has previously considered the terms of the Quarry Products Association/Mineral Products Association (QPA/MPA) bond and has found it unsuitable for the following reasons;

- 1) The Bond can only be called up if the failure to restore arises from insolvency. The Bond would not be effective against anything else, for example intransigence, receivership, cash flow problems short of insolvency etc.
- 2) The amount of cover is restricted to £500,000 for any one claim, £1,000,000 in any one year. The £1,000,000 annual claims limit would mean that if multiple claims were received in the year the claim is made (3 would be required) the fund is unlikely to meet the full cost of restoration. Accordingly the amount of cover cannot be guaranteed.
- 3) The fund requires that an Enforcement Notice is issued and not complied with. This differs from the provisions of the Council's standard Restoration Bond which can be called up without the necessity of an Enforcement Notice.
- 4) There is a time limit for claims of 12 months from the date the Enforcement Notice takes effect. However as the claim cannot be made until there is default in implementing the works required in the Enforcement Notice, and as these may take some considerable time, the time limit, in practice, will be significantly less than 12 months. Clearly 5 years aftercare could not be carried out within 12 months of an Enforcement Notice.

- 5) There is no mention of aftercare which can only conclude that aftercare is not covered at all. Whilst aftercare is usually far cheaper than the actual restoration, it nevertheless plays a very significant role in returning a minerals site to appropriate after use.

The Council understands that there have been no changes made to the terms of the QPA/MPA scheme since the previous review. For the reasons stated above, the QPA/MPA bond scheme is not considered to adequately provide for restoration. The Council therefore invites the Reporter to clarify within the Minerals Local Development Plan (MLDP) that bonds from the industry guarantee scheme will not be accepted by the Council.

In response to comments made by Scottish Natural Heritage (SNH) the Council invites the Reporter, if minded to do so, to add the word “landscape” between “recreation” and “and” in third sentence of Policy MIN 4.

### **Reporter’s conclusions:**

#### **Context**

1. Full restoration and after care requires to be implemented following the extraction of minerals. There will generally be an adverse environmental impact from surface mineral extraction in the countryside during the period of operation. The most sensitive environmental resources are protected through Policy MIN 2, though some of these may also be affected where there is an over riding need for the minerals. Whilst these sensitive environmental sites are the most important, mineral extraction sites generally within the countryside require full remediation and after care once the mineral extraction has been completed in order to remedy the adverse environmental impact that will have occurred.
2. I agree with the content of paragraph 3.18 of the local development plan to the extent that most remediation in the past has restored the land to an agricultural or forestry after use, and there is no reason why this form of restoration should not continue. In many cases these will still be the most appropriate after uses. However, I accept that it is desirable to investigate whether or not biodiversity, community recreation, and access to the countryside can be improved either in conjunction with the above uses or separately. I am satisfied that the current wording of Policy MIN 4 in this respect would cover restoration which contributes to integrated habitat networks and the development of the Central Scotland Green Network, referred to on behalf of Scottish Natural Heritage (SNH), but I do not consider that the policy or supporting text requires this level of detail.
3. Restoration incorporating biodiversity, community recreation, and access to the countryside could probably often be achieved without incurring significant additional costs; but in any event once a scheme has been agreed it will be necessary to implement it otherwise the credibility of the planning system would be undermined.

#### **Landscape Character**

4. I note that SNH seeks the addition of the term “landscape character” within the text of Policy MIN 4, and I agree with this in principle. However, I consider that the restoration or enhancement of landscape character is a matter that should always be observed, and therefore it would be more appropriate to include a reference to this within the second

rather than the third sentence of the policy (particularly with the latter essentially covering after uses). I suggest an appropriate addition in my recommendations below.

### **Legal Agreements**

5. Most of these representations are concerned with the process of ensuring that the restoration and after care of the site is implemented. Firstly, concern is expressed about the use of legal agreements (which would normally be agreements under section 75 of the 1997 Act). I note that the council has only inserted an oblique reference (in brackets) to this within the policy, and the matter is not referred to at all in the supporting text.

6. Whilst there may be exceptional cases where a legal agreement may be required (for example if there are circumstances where the minerals operator does not have full control over the implementation of the proposed after use on the site), I agree with the representations to the extent that such should not normally be required. Although I accept that a requirement for legal agreements is not necessarily inconsistent with the Scottish Planning Policy, there is no requirement for legal agreements contained within paragraph 235.

7. A financial restoration and after care bond, or other financial provision, agreed before planning permission is granted, should in most cases be sufficient to ensure the restoration of the site. I note that a condition imposed in allowing an appeal for the extraction and processing of sand and gravel within Highland requires exactly this. I therefore consider that the oblique reference to legal agreements should be removed from Policy MIN 4. I also consider this matter further under Issue 16 in the context of Circular 1/2010.

### **Financial Guarantee Bonds or Industry Guarantee Scheme**

8. Secondly, concern is expressed within the representations that it is not necessary for financial guarantee bonds to be agreed before planning permission is granted, but rather an industry guarantee scheme, which includes a fund endorsed by the Scottish Government, should be used to guarantee the implementation of restoration and aftercare.

9. The council has set out in detail the reasons why this industry guarantee scheme is not considered to be appropriate. However, I find that the council's interests on this matter could be preserved whilst allowing the option of this industry guarantee scheme to be considered in appropriate cases. Paragraph 235 of the Scottish Planning Policy states: "planning authorities should ensure that consents are associated with an appropriate financial bond unless the operator can satisfactorily demonstrate that their programme of restoration, including the necessary financing, phasing and aftercare of sites, is sufficient. This could include reliance on an established and properly funded industry guarantee scheme. Financial guarantees need to reflect the scale and type of mineral extraction proposed and avoid imposing costs on operators beyond that necessary".

10. My interpretation of the Scottish Planning Policy is that the industry guarantee scheme could be a means of satisfactorily demonstrating that the programme of restoration, including the necessary financing, phasing and aftercare, is sufficient. I therefore find that "other financial provision" (which would cover the industry guarantee scheme) should be added to Policy MIN 4, and that this should be explained in the supporting text in terms consistent with paragraph 235 of the Scottish Planning Policy. This would still retain the council's discretion not to accept the industry guarantee scheme

where it would not be sufficient. The explanation should also include the purpose of seeking such financial provision.

11. On the other hand, and particularly for smaller schemes, it would allow the industry guarantee scheme to be used instead of a financial guarantee bond, where this may be more efficient. Policy MP20 of the adopted minerals local plan allows for the industry guarantee scheme to be used. My suggested wording for this is included within my recommendations below. I note that the council has referred to its use of the phrase “will require where necessary”, but in my view this would be interpreted as relating to the principle of requiring a financial provision to ensure restoration, and this is further considered below.

12. There is a representation to the effect that the use of the term “where necessary” in requiring restoration and after care bonds renders the policy imprecise. I have some sympathy with this viewpoint, because it is difficult to envisage a situation where restoration would not be required following the extraction of minerals; and this would normally impose a financial burden. Aftercare would certainly be needed in the vast majority of cases, because the restoration would normally involve planting which would need attention until it becomes established.

13. However, the council may be satisfied that conditions imposed requiring the restoration of very small scale mineral extraction without a financial provision is acceptable. Such should not be seen as inconsistent with the local development plan, and I therefore find that the requirement does need to be qualified. However, it would be more precise to say “will normally require” and I therefore suggest that this term is used; together with an additional explanation of the meaning of this within the supporting text. My suggestions for this are included within my recommendations below.

#### **Reporter’s recommendations:**

1. Policy MIN 4 should be modified in similar terms to the following:

##### **Restoration**

The council will only grant planning permission for mineral extraction where proper provision has been made for the restoration and aftercare of the site. Restoration proposals should take account of the specific characteristics of the site and its locality and restore and/or enhance the landscape character of the area. Any opportunities for enhancing biodiversity, community recreation and access should be considered. The council will normally require applicants to provide a restoration and aftercare bond or make other financial provision to ensure full restoration and reinstatement of the site should the developer fail to implement the previously agreed restoration plan.

2. Paragraph 3.19 should be modified in similar terms to the following:

To ensure that restoration and aftercare proposals are carried out, the council will normally require developers to provide a financial guarantee bond or make other financial provision, of a sum to be agreed with the council, to cover any failure to implement restoration proposals in accordance with the conditions imposed on the grant of planning permission. The only exception to this requirement will be where the council considers that the restoration proposals have such limited financial requirements as to make such a financial provision unnecessary. The financial guarantee bond or other financial provision will be

made before permission is granted. With regard to the type of financial provision, the council will require a financial guarantee bond unless, in the context of paragraph 235 of the Scottish Planning Policy, the operator can satisfactorily demonstrate that another arrangement, such as an industry guarantee scheme, will be sufficient to ensure the implementation of the restoration proposals, including the necessary financing, phasing and aftercare of the site.

<b>Issue 8</b>	<b>Policy MIN 5 Water Environment</b>	
<b>Development plan reference:</b>	Policy - MIN 5 Water Environment	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Glasgow City Council (324)  Patersons of Greenoakhill Ltd (207)  SNH (163)  Mark Stephens (314)  The Coal Authority (128)  Aggregates Industries (265)  Mineral Products Association (278)  SEPA (326)  Savills/CRAG (258)  Tarmac (230)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Paragraphs 3.20 to 3.22 Policy MIN 5 – Water Environment	
<b>Planning authority's summary of representation(s):</b>		
<p><b>207</b>  The definition of "<i>significant adverse impact</i>" is a matter for the EIA process. Any development proposed that will have an impact on the water environment should be adequately assessed as per paragraph 3.22 of MLDP.</p> <p><b>314</b>  Flood risk estimates should be made on the basis of future predicted rainfall patterns, i.e. taking into account the higher and more intense rainfalls patterns predicted as a result of climate change.</p> <p><b>128</b>  The Coal Authority is in the process of scoping out and undertaking feasibility work in relation to a Minewater Treatment Scheme in the Douglas area to address minewater related issues. During the plan period a scheme may need to be constructed in this area to address minewater related pollution and the Minerals LDP should reflect not only the presence of potential minewater issues but also include positive support in principle for any solution that may be devised by The Coal Authority to tackle the issue.</p> <p><b>163</b>  "<i>...birds, aquatic species and biota</i>" could be removed without altering the meaning of this paragraph.</p> <p><b>324</b>  An addition to this policy which considers the impacts on the function of the ecosystem and says "<i>which will have a significant adverse impact on the water environment, the catchments of water courses or wetland networks and the important species they support, will not be permitted</i>".</p>		

<p><b>207, 230, 258, 265, 278, 326</b></p> <p>These representations support the approach taken by the Council to the water environment.</p>
<p><b>Modifications sought by those submitting representations:</b></p>
<p><b>128</b></p> <p>The Coal Authority considers that the Minerals LDP should reflect not only the presence of potential minewater issues but also include positive support in principle for any solution that may be devised by The Coal Authority to tackle the issue.</p> <p><b>324</b></p> <p>Glasgow City Council are seeking an amendment to policy MIN 5 to add</p> <p><i>“, the catchments of water courses or wetland networks and the important species they support,” between “environment” and “will” within Policy MIN 5.</i></p>
<p><b>Summary of responses (including reasons) by planning authority:</b></p>
<p>Environmental Impact Assessment (EIA) is not mandatory for all minerals development proposals. The Council recognises the importance of the EIA process which will, where it has been carried out, be used to inform the assessment of development proposals against policies. Environmental Statements (ES) are however a tool for considering a development’s environmental impact and there is often ambiguity over the findings of ES between the authors and the regulatory authorities/consultees. This can result in the Council being required to make a decision based on conflicting viewpoints. Policy MIN 5 states that <i>“Any proposals for mineral development which will have a significant adverse impact on the water environment will not be permitted”</i>. Each planning application must be considered on its own merits and the <i>“significant adverse impact”</i> test will be applied accordingly by the Council. The grounds for refusal would also be required to specify the basis for a development being considered <i>“unacceptable”</i>.</p> <p>The flooding data illustrated on the Minerals Local Development Plan (MLDP) was provided by SEPA and is considered to be relevant and correct at the time of preparing the plan. This is consistent with paragraph 204 of Scottish Planning Policy (SPP) <b>(CD 12)</b>. SEPA were consulted on the plan and advise that any issues they may have had with the Main Issues Report (MIR) <b>(CD 36)</b> have been addressed in the proposed plan and they have no further comments to make.</p> <p>The issue of minewater treatment plants should not be considered in the MLDP since this is not specifically a minerals operation and would be treated like any other type of built development and assessed under the appropriate policies in the South Lanarkshire Local Plan (SLLP) <b>(CD 33)</b>.</p> <p>Whilst we note the content and meaning of paragraph 3.21 would not be affected by deleting <i>“...birds, aquatic species and biota”</i> the Council is satisfied with the wording of the paragraph.</p> <p>Glasgow City Council would like additional wording added to the policy however the Council are satisfied with the wording as it stands. In addition SEPA are content with the protection that this policy affords and have not sought any amendment to the policy as drafted.</p>



**Reporter's conclusions:**

1. In the first instance, I note that there is substantial support for Policy MIN 5 expressed within the representations. There are nevertheless some suggested changes to the policy or the supporting text (mainly for clarification purposes) which I go on to consider in my findings below. However, I find that there is nothing within the representations that questions the principle of Policy MIN 5 relating to the water environment.

2. The first matter raised above is that, in common with representations on other issues, the environmental impact assessment should be the place to assess "significant adverse impact". I refer to my findings on this matter in paragraph 33 of Issue 5 and find that the wording for Policy MIN 5 in this respect is appropriate.

3. With respect to flooding, whilst I agree that this should be included in the list of matters to which consideration will be given in relation to the water environment, I really consider that this policy defers to Policy MIN 2, which identifies flood risk as an important environmental constraint that needs to be properly assessed. Policy MIN 2 (in the form I have suggested within my recommendations relating to that policy) would state that development proposed within areas of risk greater than a 1:200 year flood event shall be the subject of a flood risk assessment, and any such development where the flood risk cannot be appropriately managed to prevent a significant increase in the risk of flooding on the site (where this is an adverse risk) or elsewhere will not be permitted. Such areas are shown on the environmental constraints map.

4. However, I have also suggested that a note be added to the environmental constraints map, to the effect that "this data was correct when the map was prepared but is subject to change. The up to date Scottish Environment Protection Agency (SEPA) flood maps should be consulted when any minerals development is proposed". In this respect, I have confidence that the SEPA flood mapping is updated on a regular basis taking into account such matters as future rainfall patterns and climate change. I therefore find that the concern raised under this issue about flooding is addressed by my recommendations relating to Policy MIN 2, and that no changes are required to Policy MIN 5 or the supporting text.

5. I note that SEPA is content with the provisions of the local development plan relating to flooding, and I do not consider that my suggested changes in relation to Policy MIN 2 will raise any further issues that SEPA would be concerned about. This is particularly the case since I am allowing for SEPA's input to the precise wording of the policy. The changes seek to clarify that flood risk should not be related to the economic case for mineral extraction; if the risk cannot be properly managed the development should not be allowed. I also find that this fully addresses the representation seeking the inclusion of flood plains in Category 1.

6. The Coal Authority refers to a mine water treatment scheme in Douglas, and considers that this local development plan should reflect the presence of potential mine water issues, and include positive support in principle to solutions devised by the Coal Authority to tackle the issue. I am sure that the council does indeed support such solutions, but I agree with the position of the council that this matter is not about minerals development; it is more about alleviating pollution from former mine workings. To this extent it is more appropriate that such schemes should be considered in the context of the policy framework set out in the South Lanarkshire Local Plan. I therefore find that there should be no addition to the local development plan to cover this issue.

7. I note the comments of Scottish Natural Heritage referred to above, and whilst I agree that the removal of the words referred to would not alter the meaning paragraph 3.21, there is at the same time no significant reason to remove these words from the paragraph. I therefore find that no change to this paragraph is necessary.

9. Glasgow City Council seeks an addition to Policy MIN 5 to refer to the catchments of water courses or wetland networks and the important species that these support. I agree that there should be a further clarification of the extent of the water environment. However, I do not consider it necessary to change the policy. An abridged addition to paragraph 3.20 which defines the water environment as including the catchments of watercourses and wetland networks would suffice, and I recommend such an addition below. Paragraph 3.21 sufficiently highlights the important role that the water environment plays in supporting natural species.

**Reporter's recommendations:**

1. Paragraph 3.20 should be modified in similar terms to the following:

The water environment is made up of groundwater, surface water and watercourses. It also includes the catchments of watercourses and wetland networks. Minerals development should not have a significant adverse impact on any part of the water environment. SEPA is the regulatory authority responsible for ensuring that water quantity and quality is protected and maintained.

<b>Issue 9</b>	<b>Policy MIN 6 - Peat</b>	
<b>Development plan reference:</b>	Policy MIN 6 - Peat	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
Pearson Planning (145/146) RSPB Scotland (179/180) Scottish Coal Ltd (185) Scottish Natural Heritage (164) Mark Stephens (315) Tarmac Ltd (231)		
<b>Provision of the development plan to which the issue relates:</b>	Paragraph 3.23 Paragraph 3.24 Policy MIN 6 - Peat	
<b>Planning authority's summary of representation(s):</b>		
<p><b>145</b> This representation objects to the inclusion of the words "<i>no new sites for peat extraction will be permitted</i>" in policy MIN 6 since this does not reflect national policy in SPP. SPP states that peat extraction will be acceptable in areas of degraded peatland; significantly damaged by human activity; of low conservation value where restoration is impossible. SPP does not state that only extensions of existing operations should be permitted.</p> <p><b>146</b> The representation states that the narrative accompanying policy MIN 6 does not give sufficient explanation as to what is meant by '<i>degraded, damaged by human activity or what constitutes low conservation value</i>'. As a result the wording suggests that '<i>low conservation value</i>' could be non-designated land outwith categories 1-3 on Table 3.1.</p> <p><b>180, 164</b> This representation is concerned that whilst paragraph 3.24 recognises that it is almost impossible to successfully maintain peat structure following extraction, that the policy ignores this. Stronger protection to discourage the ancillary extraction of peat for other mineral or other developments could be achieved by including deep peat sites as Category 2 designation in table 3.1.</p> <p>The policy should read "<i>For ancillary extraction of peat associated with other mineral development, the Council will seek to ensure best practice is used. Details of how the handling, storage and restoration of peat, reflecting current best practice and showing how potential degradation will be avoided and active peat formation promoted will therefore be required</i>" In accordance with paragraph 133 of SPP applicants should be required to assess the likely effects of disturbance to peatlands associated with development.</p> <p><b>185</b> This representation states that peat can be used in mineral site restoration to create habitats which are not actively 'peat forming' but which nonetheless have value and interest for nature conservation purposes e.g. wet heath. It is suggested that the words: '<i>...or the creation of habitats of nature conservation interest</i>' are inserted after '<i>active peat</i></p>		

*formation'.*

**315**

This representation would like the phrase "seek to ensure" to be replaced by "ensure" since the Council should ensure that best practice is observed.

**231**

This representation would like it made clear that while applying best practice; disproportionate management is not required for insignificant pockets of peat or peaty soil.

**179**

Supports the recognition that peat is not only damaged by direct extraction but can also be seriously adversely affected by other mineral development.

**Modifications sought by those submitting representations:**

**180**

Deep peat sites should be included as Category 2 designation in table 3.1.

**185**

The words: '*...or the creation of habitats of nature conservation interest*' should be added after '*active peat formation*'.

**315**

The words "*seek to ensure*" should be replaced by "*ensure.*"

**164**

The policy should read "*For ancillary extraction of peat associated with other mineral development, the Council will seek to ensure best practice is used. Details of how the handling, storage and restoration of peat, reflecting current best practice and showing how potential degradation will be avoided and active peat formation promoted will therefore be required*"

**Summary of responses (including reasons) by planning authority:**

Given that the plan has a set lifespan of 5 years and that there are already sufficient peat landbanks/operational sites in South Lanarkshire to cover this period the Council considers the policy protects valuable peat resources as carbon sinks (Scottish Planning Policy (SPP) **(CD 12)** paragraph 133). Any future review will reassess the position.

This policy is designed to protect peat resources and avoid unnecessary removal of this valuable asset. The content also reflects the narrative in paragraph 230 of SPP **(CD 12)**. Planning applications will require to establish the condition of the peat resource and this will need to be approved by both consultees and the Council through the planning process. The Council does not agree that areas of low conservation value should be land outwith categories 1 – 3.

Policy MIN 6 recognises the fragility of peat but also refers to the need to ensure an adequate supply of other minerals to serve the local, regional and national markets. Peat overlays vast areas of valuable economically viable mineral deposits and should not be used as a reason to sterilise areas of reserve. The policy therefore tries to ensure that any removal of peat is as sensitive as possible and that the resource can be saved and

restored successfully where possible. In addition it was not intended to apply this policy to every area of peat or peaty soil found across the Council area only the large areas where there is potential to destroy a valuable asset.

The use of “*seek to*” reflects the fact that the onus is placed on the developer to demonstrate the extent to which controlling criteria can be satisfied. It is then the duty of the Planning Authority to consider if the extent to which a test can be satisfied is sufficient to allow the appropriate level of protection for the environment or the community, whilst having regard to the needs of the industry and the economy. The planning system is designed to be as flexible as possible whilst still offering levels of protection to the communities and the environment. The Council is satisfied with the wording of the policies in this regard. However, if minded to do so the Council invites the Reporter to consider adding the words ‘...or the creation of habitats of nature conservation interest’ after ‘active peat formation’ in policy MIN 6 since this gives further clarity to the treatment of peat associated with other types of mineral development.

### **Reporter’s conclusions:**

1. Paragraph 230 of the Scottish Planning Policy states that commercial peat cutting raises particular environmental concerns, and will only be acceptable in areas of degraded peat which have been significantly damaged by human activity, and where the conservation value is low and restoration is not possible. All areas of peat land that retain a high level of natural heritage conservation interest, archaeological interest or are of value as carbon stores should be protected through development plans and development management decisions.

2. I therefore agree with the basic principle of retaining peat both as a natural habitat and carbon sink, and only extracting this resource where the peat land is degraded and has been significantly damaged to the extent that the conservation value is low and restoration is not possible. In addition, when peat is removed as part of the overburden to allow the extraction of other minerals, its conservation value may be significantly diminished. It is therefore necessary that both of these matters form the basis of Policy MIN 6 and the supporting text.

3. However, I cannot see how this justifies a different approach to new sites from extensions to existing sites. It may be more likely that extensions to existing sites relate to degraded peat land, but this will not always be the case. On the other hand, there may be new sites where the peat land has already been significantly damaged, for example as a result of agricultural operations; and in such cases it appears to me that the extraction of the peat would accord with the provisions of paragraph 230 of the Scottish Planning Policy.

4. Furthermore, the spatial framework set out within Policy MIN 1 does not draw any distinction between new minerals development and the extension of existing mineral development sites, and I see no basis to depart from that principle here. The council refers above to the fact that there are already sufficient peat land banks and/or operational sites in South Lanarkshire to cover the local plan period. However, there is no reference to this within the supporting text of the policy, and I have no substantial evidence before me relating to the demand for and supply of peat within South Lanarkshire, the strategic development plan area, or beyond. There is therefore no justification for the first sentence of the policy. The policy should simply read: “Proposals for the extraction of peat will only be permitted where ...”.

5. I do not consider that there is any requirement to further explain what is meant by “degraded” peat land or “damaged by human activity”, in the context of paragraph 230 of the Scottish Planning Policy. It is in my view clear that such is to an extent that the conservation value is low and restoration is not possible, as stated in the third bullet point of the policy. This would have to be determined according to the circumstances of the case. It may be that for substantial proposals an environmental report would be required, which would measure the quality of the peat so that an appropriate judgement could be made.
6. I accept that peat reserves could be included as one of the categories within table 3.1. It has been suggested that deep peat sites could be included within Category 2. On balance, however, I find that the conservation value of peat is very specific and relates directly to proposals to extract the peat or other underlying minerals, and that it is best for this matter to be addressed entirely through Policy MIN 6. Conservation value is essentially protected through the tests of the policy that require to be met. Otherwise, the categories within table 3.1 do not relate to the quality of any peat land contained therein, and I therefore find that it would not be appropriate to define areas of peat of low conservation value as being those outwith the areas related to the 3 categories contained within table 3.1 of Policy MIN 2.
7. The suggestion that peat could be included within Category 2 of table 3.1 stems from concern about the ancillary extraction of peat, to the effect that that it is almost impossible to successfully maintain the peat structure following extraction. This is essentially what is already expressed in paragraph 3.24. It may therefore seem somewhat anomalous to include a requirement for best practice within the policy. Nevertheless, it appears sensible to ensure best practice in the handling, storage and restoration of the peat to minimise the potential degradation and promote active peat formation, however difficult this may be.
8. Scottish Natural Heritage suggests additional text within the policy requiring the submission of information to show how this best practice will be achieved. I agree with this in principle, but I think that this would be better included at the end of paragraph 3.24, where it would provide advice to prospective developers about the information required when proposals involving the ancillary extraction of peat are submitted. A reference to paragraph 133 of the Scottish Planning Policy would however be out of context, because this is not necessarily related to minerals development, and would therefore be more a matter to be addressed by the South Lanarkshire Local Plan.
9. My findings above also take account of the fact that peat overlays vast mineral resources, and that the conservation of peat cannot be used as a justification for the non-extraction of mineral resources which are required in the context of Policies MIN 1 and MIN 2. I also agree with the council that it would be beneficial to add to the end of Policy MIN 6 the creation of habitats of nature conservation interest where appropriate, to the extent that this is a separate matter from peat conservation. However, a small addition to the end of paragraph 3.24 is also required to explain this.
10. I do not consider that there is any need to add that disproportionate management is not required for insignificant pockets of peat or peaty soil. I am satisfied that best practice will ensure that the management of the peat extracted is proportionate to the extent of the peat within the overburden. With respect the phrase “seek to ensure”, I refer to my findings on this matter within Issue 1.

**Reporter's recommendations:**

1. Policy MIN 6 should be modified in similar terms to the following:

**Peat**

Proposals for the extraction of peat will only be permitted where:

- they do not conflict with any other policies in this plan and the \*SLLP;
- the peat land is already degraded or significantly damaged by human activity; and
- the conservation value is low and restoration is not possible.

(\* South Lanarkshire Local Plan)

For ancillary extraction of peat associated with other minerals development, the council will seek to ensure that best practice is used for the handling, storage and restoration of the peat, in order to minimise potential degradation and promote active peat formation, and where appropriate the creation of habitats of nature conservation interest.

2. Paragraph 3.24 should be modified in similar terms to the following:

In many cases peat overlies other mineral resources and therefore requires removal to allow that mineral to be reached. The peat often becomes another part of the 'overburden' that requires to be stored on site. The extraction and storage of peat destroys its integrity and the carbon stored in the peat is released. In addition its biodiversity and water storage functions are damaged. Furthermore, when the top layer of peat is removed it is almost impossible to maintain a living and functioning layer and keep the underlying layers wet so that they retain their structure and so reduce the potential for carbon loss. Land management practices related to the extraction and storage of peat as a result of mineral activities should aim to protect and enhance peat organic carbon. In this context, all proposals for the extraction and storage of peat should be accompanied by details showing how the handling, storage and restoration of the peat will reflect current best practice and how potential degradation will be minimised and active peat formation promoted. Opportunities should also be taken to create habitats of nature conservation interest irrespective of this requirement where appropriate, and to the extent that this is separate from the conservation of peat.

<b>Issue 10</b>	<b>Policy MIN 7 – Controlling Impacts from Extraction Sites</b>	
<b>Development plan reference:</b>	Policy MIN 7 – Controlling Impacts from Extraction Sites	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>ATH Resources (245)  Glasgow City Council (325)  Patersons of Greenoakhill Ltd (208)  Scottish Coal (187)  Scottish Natural Heritage (165)  Mark Stephens (316)  The Coal Authority (129)  Aggregates Industries (266)  Minerals Products Association (280)  Tarmac Ltd (232)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 7 – Controlling Impacts from Extraction Sites Paragraph 4.4	
<b>Planning authority's summary of representation(s):</b>		
<p><b>245</b>  This representation seeks clarity between the environmental constraints map and this policy. The map shows the 500m and 250m buffer zones around settlements but no reference is made to distances within policy MIN 7 and its associated wording. The representation seeks clarity to be given within policy MIN 7.</p> <p><b>325, 165</b>  These representations seek a change to the wording of policy MIN 7 as follows "<i>will not create an unacceptable impact or disturbance through the generation of noise, dust, vibration, air and light pollution particularly where they affect sensitive land uses including hospitals, schools, dwellings and recreation facilities or important habitats and species</i>". And for an addition to the list of sensitive land uses with the addition of "<i>and recognised nature conservation sites</i>" to paragraph 4.4.</p> <p><b>208</b>  This representation is concerned that the plan is being prescriptive in stating that "<i>applications for mineral development will include monitoring and mitigation measures</i>". This paragraph should be redrafted to ensure that on the basis of the EIA appropriate monitoring regimes are put in place through the use of planning conditions.</p> <p><b>316, 187</b>  "<i>Unacceptable</i>" requires a benchmark against which it can be assessed, otherwise it is meaningless. In addition the representation requests that monitoring regimes run by operators should be subject to frequent and regular audit by the Council at the operators' expense and that resident complaints should trigger automatic audit. Clarity is required in</p>		



respect of the policy reference to '*light pollution*' in terms of period of operation and the thresholds/criterion for an '*unacceptable impact*'.

**129**

This representation states that the 500m buffer zones around settlements are shown on the environmental constraints map but are not specifically referred to in the policy. The approach to defining 500 metre buffer zones around communities in relation to coal extraction does follow the principle of the advice in SPP paragraph 244, however they stop short of reflecting the balance of national planning policy set out in paragraph 245 of SPP, which highlights circumstances where coal extraction within the 500 metre buffer zones around communities may be acceptable, for example where it may tackle mining legacy and ground stability. There may also be appropriate circumstances where the prior extraction of coal resources may be appropriate ahead of new development in urban areas or in urban extensions to prevent the unnecessary sterilisation of the coal resources in accordance with the advice in SPP paragraph 241.

**266, 280, 232**

These representations endorse this Policy.

**Modifications sought by those submitting representations:****325**

Policy MIN 7 should be reworded as follows "*will not create an unacceptable impact or disturbance through the generation of noise, dust, vibration, air and light pollution particularly where they affect sensitive land uses including hospitals, schools, dwellings and recreation facilities or important habitats and species*".

**165**

Addition "*and recognised nature conservation sites*" to paragraph 4.4.

**Summary of responses (including reasons) by planning authority:**

Paragraph 3.10 and Policy MIN 2 clearly explain the Councils position on buffer zones whilst policy MIN 7 is more concerned with noise, dust, vibration, air and light pollution that may have an impact on sensitive land uses. Policy MIN 2 protects communities generally but MIN 7 is designed to be more specific about long term impacts from mineral operations. In addition Policy MIN 2 and Table 3.1 sufficiently protect species and Local Nature Conservation Sites (Category 3 sites). Paragraph 3.10 also explains the difference between the 250 and 500 metre buffer and acknowledges that ancillary development may be acceptable within the buffers. The policy refers to the categories rather than the individual elements within each category.

Each planning application must be considered on its own merits and the "unacceptable" test will be applied accordingly by the Council when determining a planning application. There is national guidance available on what levels are acceptable for noise and vibration. In addition Guidance is contained within Planning Advice Note 50 – Controlling the Environmental Effects of Surface Mineral Workings (PAN 50) **(CD 15)** in relation to the assessment of minerals development.

An Environmental Impact Assessment (EIA) is not mandatory for all minerals development proposals so could not be applied uniformly as suggested. Nonetheless, planning applications for mineral development do, based on the experience in South Lanarkshire,

all contain certain measures to mitigate adverse impact.

The Council are satisfied that the policy and accompanying text are sufficiently robust.

### **Reporter's conclusions:**

1. The protection given to communities is generally synonymous with that given to settlements, and my findings are therefore phrased accordingly. However, I recognise that Policy MIN 7 must also cover isolated uses that are not within settlements. For the avoidance of doubt, I find that it is therefore entirely correct that Policy MIN 7 refers to the general impact of minerals development on communities, and particularly on sensitive land uses which will mostly, but not exclusively, exist within settlements.
2. I recommend the deletion of the standard buffer zones around settlements under Issue 5, but the concept of buffer zones around settlements remains valid because mineral workings have the potential to cause significant adverse effects on existing communities, and this needs to be addressed, even within search areas. In this context I find that a buffer zone appropriate to the case is necessary when assessing proposals for minerals development.
3. There is therefore a close link between giving appropriate protection to settlements under Policy MIN 2, and controlling the impact of mineral extraction sites on communities under Policy MIN 7, and to this end I recommend under Issue 5 that there is a reference to Policy MIN 7 within Policy MIN 2 which states: "the test will be the application of Policy MIN 7 to all development proposals which may adversely affect these settlements and the communities contained therein. There will normally be a buffer zone around settlements within which there will be no extraction of minerals, but the extent of this will depend upon the circumstances of the case".
4. Following on from the above, I consider that any lack of clarity about how these 2 policies work together to protect the settlements (and their communities) shown on the environmental constraints map, in terms of buffer zones, is now removed. I am satisfied that my suggested supporting text for Policy MIN 2 (under the heading of settlements) makes appropriate reference to potential buffer zones for surface coal working, which is consistent with paragraph 244 of the Scottish Planning Policy. Ancillary development consistent with paragraph 245 of the Scottish Planning Policy is also referred to.
5. I also consider that my suggested addition: "a buffer of considerably less distance (than 500 metres) may be acceptable, but this will always be dependent upon the circumstances of the case, and the actual environmental effects resulting from extraction" gives appropriate flexibility to reflect advances in technology and techniques which may reduce the effect of such mineral extraction. I have noted the comments of the Coal Authority relating to paragraph 245 of the Scottish Planning Policy, but I do not consider that either Policy MIN 2 or Policy MIN 7 (or the supporting text) requires this level of detail. I therefore find that no changes are required to Policy MIN 7 or the supporting text on this matter.
6. Policy MIN 7 is about protecting communities, and so a reference to habitats and species or nature conservation sites would probably in general terms be out of place, even though I note that there is a reference to wildlife in paragraph 4.4. This is presumably in so far as the presence of wildlife is beneficial to communities. There is in any event no basis to expand upon this. I agree with the council that these matters are sufficiently

addressed through the application of Policy MIN 2. I also find that there is no basis to add the term “disturbance” as this is in my view covered by the use of the term “impact”.

7. The council points out that not all minerals development proposals will require an environmental impact assessment. However, in such cases mitigation measures to minimise the impact on any nearby local communities will still be required. Where an environmental report is submitted with a planning application, mitigation measures that arise from this report will need to be submitted with (or subsequent to) the planning application, and before such is determined. The inclusion of mitigation measures within paragraph 4.4 is therefore entirely appropriate.

8. I consider that the monitoring of minerals development is an extremely important process; it is a matter of fact that such will relate to the necessary mitigation measures identified in any environmental impact assessment that has been undertaken. The monitoring process is to ensure that the mitigation of expected environmental effects sufficiently protects communities, but also has to ensure that if there are unexpected effects; procedures are in place to effectively deal with these. This monitoring process is sufficiently important to include within the text of the policy, and I am satisfied with the existing wording. I do not agree that it is too prescriptive, although it should of course relate to the conclusions of the environmental report where one has been submitted. I therefore find that it is necessary, for clarification, to refer to this within paragraph 4.4, and my recommendations below include suggested wording for this.

9. Light pollution is a clearly a potential adverse effect on nearby communities, and needs to be included within the policy. I appreciate that the term “unacceptable Impact” requires a point of reference. However, there is recognised guidance available in the form of Planning Advice Notes and other publications. For substantial developments an environmental impact assessment will be undertaken and this will measure the impact of the development in the context of this guidance. Whether an impact is unacceptable or not will depend on the circumstances of the case, and I do not think it would be reasonable to expect the council to provide more information on this within Policy MIN 7 or the supporting text.

10. The endorsement of the policy within several representations is noted.

#### **Reporter’s recommendations:**

1. Paragraph 4.4 should be modified in similar terms to the following:

Any applications for minerals development will include monitoring and mitigation measures necessary to address community and environmental issues that might arise, both on and off-site, particularly where local amenity and wildlife would be affected. Where an environmental report has been provided, the monitoring and mitigation measures should reflect the conclusions contained therein.

<b>Issue 11</b>	<b>Policy MIN 8 Community Benefit</b>	
<b>Development plan reference:</b>	Policy MIN 8 – Community Benefit	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregate Industries (267)          ATH Resources (246)          British Aggregates Association (305)          Confederations of Coal Producers (141/140)          Minerals Products Association (281)          Patersons of Greenoakhill Ltd (209/210/211)          Scottish Coal (186/188)          Scottish Government (173)          Mark Stephens (317)          Stodarts Solicitors (175)          Strathaven Community Council (116/115)          Tarmac Ltd (233)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 8 - Community Benefit Paragraph 4.5	
<b>Planning authority's summary of representation(s):</b>		
<p><b>267, 209, 210, 305, 281, 211, 233</b>          These representations are concerned with the validity of policy MIN 8 in light of Circular 1/2010 since this guidance makes it clear that planning agreements should only be sought in limited circumstances. Policy MIN 8 is therefore considered to be contrary to Scottish Government Guidance. Paragraph 4.5 is confusing and does not make any case on how national government advice is followed through to arrive at this Policy. The Policy should allow for alternatives.</p> <p><b>173</b>          The Scottish Government invites the Reporter(s) to either remove Policy MIN 8, or amend it to clarify that such payments will either be (a) voluntary and will not influence the outcome of the planning application, or (b) will only be required where the tests in Circular 1/2010 are met. The Scottish Government has concerns regarding the intention and wording of Policy MIN 8 and supporting text in paragraphs 4.5 - 4.8 of the Proposed Plan. Minerals developers are able to contribute to funds for community benefits outwith the planning system and without the use of Section 75 Agreements where such benefits are not directly related to the planning application. Policy MIN 8 and supporting text are not clear what community benefits would be paid for and whether these would relate to the development or be reasonable as set out in Circular 1/2010. It is not clear how the rates set out in Policy MIN 8 are derived and what the planning justification is for these figures. The difference in rates between coal and other minerals is not explained.</p> <p><b>141</b>          This representation from CoalPro is of the view that the rate of contributions and any</p>		

increase mechanism needs to take account of economic circumstances. CoalPro considers that the rate and any increase mechanism should be considered at the next review of the Minerals Plan.

**186, 188**

This representation from Scottish Coal agrees with the basic mechanism for collecting contributions but that these should be ring-fenced in some way within the single mechanism to ensure that it is those communities which are physically proximate to the operational mining sites which benefit. The name of the REF should be altered to better reflect the anticipated range of contributing organisations.

Rather than index linking the per-tonne rates, any review of the rates should, if required, be undertaken at the next Plan review. So the words '....index linked to 2010' should be removed from the policy.

**317**

This representation is concerned that decisions really are made independently of proposed contributions.

**175**

South Lanarkshire Rural Communities Trust (SLRCT) seek clarification on a number of points related to the wording of policy MIN8 mainly related to the administration and operation of a mechanism to collect and distribute any community contribution from minerals operators.

**116**

This representation is concerned that the amount of financial contribution that is being sought from the mineral operators seems rather light. SLC should examine the 'going rate' elsewhere in the country before adopting the plan.

**Supporting Representations:**

**115**

Strathaven Community Council fully supports the aims of SLC to distribute any funds generated using the REF mechanism and that it is seen to be open and accountable. The distribution of financial contributions must be equitable and fair and geared towards helping those communities most affected by the minerals operations.

**246**

ATH Resources believes engagement with communities and understanding local requirements is vital to successful mineral developments. This is an important mechanism for delivering community benefits and considers the values set are acceptable.

**140**

CoalPro agrees with the proposed methodology for the collection and distribution of financial contributions related to coal sites but considers it important to ensure that the Fund is ring fenced and that the way it is distributed is transparent.

**Modifications sought by those submitting representations:**

**188**

The words '....index linked to 2010' should be removed from the policy.

**Summary of responses (including reasons) by planning authority:**

Paragraphs 4.5 – 4.8 of the Proposed Minerals Local Development Plan (MLDP) clearly set out the issues in relation to community benefit, how it sits with Scottish Government Planning Policy and the Council's historical approach to the matter. In turn, it is considered that it would be unrealistic and impractical not to refer to this issue in the proposed plan and how the Council intends to deal with it in the future. Further, it could be argued that if the Council did not refer to the issue it would be criticised for not setting out a policy position on the matter. Therefore the suggested deletion of Policy MIN 8 is not based on experience or indeed practical.

The rates applied are based on historical figures and therefore provide a reasonable approach. It is noted that no alternative rates have been suggested or rationale for setting rates. The use of index link based on 2010 figures allows the figures to be reviewed annually to ensure that they remain up-to-date rather than waiting for 5 years for the review of the local development plan. It should be noted that depending on the index figure the rate may go up as well as down. Therefore in the absence of any positive alternatives there is no basis to change the rates applied.

The approach adopted in Policy MIN 8 is based on experience and expectations placed on the planning system. It is noted that the representations suggest that the policy should allow for alternatives. It is noted that no alternative approaches have been suggested or rationale for alternatives. Therefore in the absence of any positive alternatives there is no basis to change the approach set out. Notwithstanding, the policy and supporting text does not exclude alternatives should they be brought forward through individual planning applications.

Paragraph 4.5 of the proposed MLDP makes it clear that any contributions are not treated as material considerations and in turn have no bearing on the assessment of the planning application.

It is considered that the issues raised deal more with the mechanics of how the funds are collected and distributed rather than principle of the proposed approach. It is considered that it would not appropriate for this level of detail to be reflected in the proposed plan.

**Reporter's conclusions:****Principle of Policy MIN 8**

1. I note that Policy MIN 8 essentially continues the practice of seeking contributions set out in Policy MP14 of the existing adopted Minerals Local Plan, and I recognise that there will be an expectation on behalf of communities that this established policy will continue. However, I consider that I have to review Policy MIN 8 in the light of the representations made, and in the context of the Scottish Planning Policy, to ensure that it is consistent with national policy.

2. Paragraph 234 of the Scottish Planning Policy states: "to offset impact on local communities, benefits in the form of new community facilities or community trust funds may be proposed by the developer or suggested by the planning authority. Such benefits should only be treated as a material consideration if they meet the tests set out in Circular 1/2010 Planning Agreements. Attempts to secure unreasonable provision not directly related to the proposed development or securing general benefits for the wider community

should not be taken into account in decision making on planning applications”.

3. In my view Policy MIN 8 is generally consistent with the first sentence of paragraph 234, and this justifies the basic principle of the policy. So notwithstanding the representations made, I find that there is no reason to delete the policy. I agree with the council's position to the extent that the representations are in the main concerned about the mechanics of securing these community benefits rather than the principle of the policy.

4. However, whilst not recommending the deletion of the policy as sought within several of the representations, I find that it is very important that the policy is justified in the supporting text. I actually consider that there is insufficient justification for Policy MIN 8 contained within the existing supporting text. Paragraph 4.5 states that there is an expectation that contributions will be made at the planning application stage.

5. However, the paragraph does not explain why contributions to provide community benefit are sought. I find that it is necessary to provide some text which gives further justification for Policy MIN 8 at the very beginning of the paragraph, before going on to cover the other matters raised in the representations and referred to in my findings. This should relate to the need for contributions to compensate for the effects of minerals development which are not covered by the remaining policies of the local development plan. I provide appropriate text for this in my recommendations below.

6. The second sentence of paragraph 234 clearly states that such community benefits should only be treated as a material consideration (in the development management process) if they meet the tests set out in Circular 1/2010. Contributions to a trust or other fund, which, as referred to in paragraph 4.6 of the supporting text appears to be the mechanism used by the council for collecting contributions, are obviously designed to secure a wider community benefit. In a parallel situation relating to renewable energy, paragraph 186 of the Scottish Planning Policy refers to the use of trust funds for community benefit, and so I find that such a mechanism is entirely appropriate.

7. However, I have no doubt that the community benefit sought under Policy MIN 8 would not meet the tests in Circular 1/2010 of being directly related to the proposed development or being necessary to make the development acceptable. Such should not therefore be treated as a material consideration in the development management process. There would be no point in requiring the community benefits sought to meet the tests within Circular 1/2010, because they could simply not do this.

8. Furthermore, this means that section 75 agreements are not the most appropriate mechanism for securing such benefits, although I note that these have been used in the past and some appear to be still in effect. Where they are already in effect, I accept that revising such agreements to meet the current situation may be more practical than working outwith this process. However, no new section 75 agreements should be entered into, because this would not in my view be consistent with the provisions of Circular 1/2010.

9. I recognise that the council states in paragraph 4.5 that community benefits under Policy MIN 8 should not be treated as a material consideration and seek to influence the outcome of the planning application. However, it is probably necessary for a stronger statement than this in the supporting text, to make it absolutely clear that the process of securing such community benefits is outwith the development management process. The existing text states that there is an expectation of a financial contribution at the planning

application stage. The last sentence refers (I recognise that this is stated to be one side of an argument) to the planning application process remaining the most appropriate mechanism to manage these contributions. These links to the development management process need to be removed. I have no difficulty with the process being within the planning system as a whole and being set out in a local development plan; but it must be outwith the development management process. I also agree with the representation that this paragraph is confusing and should be clearer about how the policy is seen as being consistent with the Scottish Planning Policy.

10. The views expressed in some of the representations appear to suggest that the contributions are enforced by the council through the development management process, whereas the policy does no more than encourage contributions. The perception of the implementation of the policy is therefore quite different to what it states. One of the difficulties here is that using the term “encourage” may mean that some operators will not contribute, and this may result in an uneven level of contribution leading to a perception of unfairness. However, this cannot be avoided because contributions can only be made on a voluntary basis. I agree with the council that the policy does not exclude alternatives.

11. In addition, a clear distinction probably needs to be made between Policy MIN 8 and Policy MIN 13, with the latter being completely separate and not applying to community benefits sought through Policy MIN 8. Policy MIN 13 should only apply to matters directly relating to the proposed minerals development. Furthermore, it is misleading to state within the policy “if minded to grant planning permission” because this implies a link which does not, or should not, exist. Also, the term “operators” should probably be more fully described. Otherwise, my findings above should be reflected in the supporting text, and my suggestions for this are contained within my recommendations below.

### **Text of Policy MIN 8 and the mechanisms referred to**

12. As far as the representations specifically referring to the detailed wording of the policy and the mechanisms for collecting contributions are concerned, there are a few matters that need to be addressed. I have some concern about stating rates per tonne within the policy. There is no explanation of this in the supporting text, and it must surely be subject to change within the period of the local development plan, which in my view means that there should simply be a general statement in the policy, further explained in the supporting text, and I suggest such an approach in my recommendations below. I do not think it is a matter of waiting until the review of the local development plan to set out rates, I think they should simply not be included in the plan.

13. I note that the South Lanarkshire Rural Communities Trust sought further clarification about the process which is essentially set out in paragraph 4.8. I have no information as to whether or not this was provided, or about any further response on behalf of the Trust. I considered the possibility of making a further information request, but on balance have decided that it would be better simply to conclude paragraph 4.6 with a more general statement about the alternatives available, and delete paragraph 4.8.

14. After all, Policy MIN 8 provides for the various alternative mechanisms set out in paragraph 4.6, and I consider that paragraph 4.8 goes into too much detail about the process, and certainly beyond that which is required to justify the policy. In a similar vein to the rates per tonne, it provides information which is too detailed for the local plan, in that it may need to be the subject of frequent reviews. Paragraph 4.7 in my view then becomes superfluous and can also be deleted; the second and third bullet points being



addressed by my findings above, and the first being satisfactorily covered by my suggested revised supporting text below.

15. Whilst the council has listed the comments of Strathclyde Partnership for Transport (SPT) under Issue 15, it is relevant to note its interest in supporting community transport here, because such may be a beneficiary of contributions to the funds referred to in Policy MIN 8. I also note the comments that contributions should be ring-fenced to ensure that they benefit the communities most proximate to the operational sites, and that their distribution should be equitable and fair, but I find that this is not a matter for the local plan; it is a matter for the mechanisms for the collection of contributions to address.

#### **Reporter's recommendations:**

1. Policy MIN 8 should be modified in similar terms to the following:

##### **Community Benefit**

The council will encourage mineral operators working within South Lanarkshire to contribute to the South Lanarkshire Rural Communities Trust, Quarry Fund or the council's Renewable Energy Fund or another similar mechanism as appropriate. Contributions will be based upon an appropriate rate per tonne of minerals worked to be agreed between the operators and the council, and this will be reviewed as appropriate during the period of the local development plan.

2. Paragraph 4.5 should be modified in similar terms to the following (possibly splitting into 2 paragraphs as shown):

Notwithstanding the importance of mineral extraction to the South Lanarkshire and wider economy, this process generally involves surface mineral extraction which may have a significant impact on the environment in which it is located. Other policies of this local development plan address the direct impact of such development, to the extent that the visual and other adverse impacts of minerals development are avoided or minimised, and Policy MIN 2 (environmental protection), Policy MIN 4 (restoration) and Policy MIN 7 (controlling the impacts on communities) are significant in this context. However, even with appropriate mitigation, there will normally be some residual visual, transport or other impact on local communities, because of the nature of the development involved. Paragraph 234 of the Scottish Planning Policy states that, to offset impact on local communities, benefits in the form of new community facilities or community trust funds may be proposed by the developer or suggested by the planning authority. The purpose of Policy MIN 8 is to encourage mineral developers to contribute to such funds for the reasons set out above.

However, paragraph 234 of the Scottish Planning Policy also states that such benefits should only be treated as a material consideration if they meet the tests set out in Circular 1/2010 (planning agreements), and that attempts to secure unreasonable provision not directly related to the proposed development or securing general benefits for the wider community should not be taken into account in decision making on planning applications. In this context, the council recognises that these funds are to provide wider benefits to communities, must be managed outwith the development management process, and must be completely separate from the direct management of minerals extraction through the policies referred to in the preceding paragraph. In addition, apart from for practical reasons where such already exists, agreements under section 75 of the 1997 planning act

are not the most appropriate mechanism for providing contributions for community benefit and therefore Policy MIN 13 does not apply to contributions made under Policy MIN 8.

3. Paragraph 4.6 should be modified in similar terms to the following:

Nevertheless, a key aspect of the community benefit issue is the mechanism through which financial contributions are collected and distributed. This is currently directed through the South Lanarkshire Rural Communities Trust (SLRCT) for coal extractions while contributions related to aggregates workings are directed through the council's Quarry Fund, although this has limited contributions to date. Since the inception of the SLRCT in 1997 its scope and role has evolved in particular with arrangements put in place to pass the management of the Coalburn Leisure Centre to South Lanarkshire Leisure Trust. During the same period the scope and range of grant funding for local groups from other sources such as wind farm development has increased. In turn, this has involved South Lanarkshire Council's Regeneration Services in managing grant funding as well as providing advice to local groups in identifying and applying for grant funding. Within this context the council has established the Renewable Energy Fund (REF) which provides a mechanism to collect and distribute funds associated with wind farm development. The REF has proved to be an efficient and effective mechanism to collect and distribute financial contributions. All of these represent feasible options for the collection and distribution of funds, and the council will develop a more detailed approach to using these mechanisms in consultation with the relevant parties, during the period of the local development plan.

4. Paragraphs 4.7 and 4.8 should be deleted.

<b>Issue 12</b>	<b>Policy MIN 9 – Bing Reclamation</b>	
<b>Development plan reference:</b>	Policy MIN 9 – Bing Reclamation	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Scottish Natural Heritage (166) The Coal Authority (123) Mark Stephens (318)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 9	
<b>Planning authority's summary of representation(s):</b>		
<p><b>166</b> This representation highlights that Bing 15 (Law - Shawgill) is within 500m of the Clyde Valley Woods SAC. Any proposals for this site may therefore require to be subject to detailed assessment to ensure their compliance with other policies in the plan, notable Policy MIN 2.</p> <p><b>123</b> This representation supports recognition of the contribution that reworking old colliery spoil tips (Bings) can make to the provision of secondary materials. However the policy should also recognise that addressing mining legacy risks may be a legitimate and appropriate reason for reworking former workings or spoil tips and the policy should be amended to allow for this potential. <i>"Bing Reclamation Proposals for the reworking of old colliery spoil tips for coal or secondary materials will only be permitted where they are environmentally acceptable or seek to remediate mining legacy risks in accordance with other policies in this plan and the SLLP. Applications will be supported..."</i></p> <p><b>318</b> Supports Policy MIN 9</p>		
<b>Modifications sought by those submitting representations:</b>		
<p><b>123</b> The policy should be reworded to included as follows <i>"Bing Reclamation Proposals for the reworking of old colliery spoil tips for coal or secondary materials will only be permitted where they are environmentally acceptable or seek to remediate mining legacy risks in accordance with other policies in this plan and the SLLP. Applications will be supported..."</i></p>		

**Summary of responses (including reasons) by planning authority:**

The issue relating to the bing, which is located within 500m of the Clyde Valley Woodlands Special Area of Conservation (SAC) would be dealt with if any planning application was forthcoming for its redevelopment and removal. The Council is not aware of any proposals in the short to long term. If an application were forthcoming it would be assessed against the policies in both the Minerals Local Development Plan and the South Lanarkshire Local Plan (SLLP) **(CD 33)**. This would apply to any bings located within the Council area.

The Council is happy to accept the changes proposed by the Coal Authority in this respect if it makes the policy clearer. The Council therefore invites the Reporter, if minded to do so, to accept the wording changes proposed since this makes no material change to the policy.

**Reporter's conclusions:**

1. I note the representation from Scottish Natural Heritage (SNH) referring to a particular Special Area of Conservation (SAC) and a bing in close proximity to this SAC. The concern expressed is in my view satisfactorily addressed by the first paragraph of Policy MIN 9. This clearly states that proposals for reworking colliery spoil tips will only be permitted where they are in accordance with the other policies of this plan. Policy MIN 2 is particularly relevant in this regard, because it includes SACs as Category 1 sites, where development which will adversely affect the integrity of such sites will not be permitted.
2. Also, my recommended modifications relating to the supporting text for Category 1 sites under Policy MIN 2 (Issue 5), clarify that development which will adversely affect the integrity of these sites will not be permitted, and that in applying this test, the council will exercise a presumption that development within or adjacent to such sites will have an adverse effect unless it is demonstrated through an environmental report or otherwise through the development management process that there will be no adverse effect. This is also a modification that stems from concern expressed on behalf of SNH. I am therefore satisfied that the combination of Policy MIN 2 and Policy MIN 9 relating to bing reclamation is sufficiently robust to address the issues arising from any proposed reworking of old colliery spoil which is in close proximity to any SAC, including the one highlighted by SNH.
3. With respect to the reworking of colliery spoil in order to remediate mining legacy risks, the issue is the extent to which this might override the provisions of Policy MIN 2, because the suggested wording on behalf of the Coal Authority is framed as an alternative to being environmentally acceptable. In addition, the suggested addition would not make sense without some further clarification in the supporting text, because there are no other policies in the plan that refer to the reworking of colliery spoil to remediate mining legacy risks.
4. I note however that the council is content for such an addition to the policy, and I therefore accept that an addition should be made, but with additional text within paragraph 5.2 which explains that the issue of the remediation of any mining legacy risk must be balanced against the environmental impact of the proposal in the context of Policy MIN 2, and specifies the circumstances where this would override that policy. Appropriate text for this is provided within my recommendations below.

**Reporter's recommendations:**

1. The first paragraph of Policy MIN 9 should be modified in similar terms to the following (with the remainder of the policy being retained as existing):

**Bing Reclamation**

Proposals for the reworking of old colliery spoil tips for coal or secondary materials will only be permitted where they are environmentally acceptable or seek to remediate mining legacy risks in accordance with other policies in this plan and the South Lanarkshire Local Plan.

2. Paragraph 5.2 of the supporting text should be modified in similar terms to the following:

The minerals plan aims to address these issues whilst respecting any wildlife or habitats which may have become a feature of the bing. In addition, it is recognised that there may be valid reasons for reworking old colliery spoil tips in order to remediate mining legacy risks. However, such must be evaluated and balanced against the requirements of Policy MIN 2. Any such development which is not consistent with the provisions of Policy MIN 2 would require to be justified on health and safety grounds sufficient to override the provisions of that policy. Otherwise all the requirements of the other policies in this plan and the South Lanarkshire Local Plan would require to be met.

<b>Issue 13</b>	<b>Policy MIN 10 – Aggregate Recycling</b>	
<b>Development plan reference:</b>	Policy MIN 10 – Aggregate Recycling	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
Mark Stephens (319)		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 10 – Aggregate Recycling	
<b>Planning authority's summary of representation(s):</b>		
<p><b>319</b> The use of the terms "<i>significant adverse effect</i>" and "<i>adverse impact</i>" is vague.</p>		
<b>Modifications sought by those submitting representations:</b>		
<b>Summary of responses (including reasons) by planning authority:</b>		
<p>Environmental statements should identify any '<i>significant adverse impacts</i>' or any '<i>adverse impact</i>' resulting from mineral development on communities and the environment. Subsequent planning consultation will be used to assess levels of effect and this will be used in determining any application.</p>		
<b>Reporter's conclusions:</b>		
<p>1. The use of the terms "significant adverse effect" and "adverse impact" in Policy MIN 10 reflect established practice in using such terminology, and I am satisfied that they are appropriate. Whether such would occur requires a judgement in the circumstances of the case, but this judgement would in many cases be informed by an environmental impact assessment, and where one is not required, would be informed by the more general requirement for information to be submitted with a planning application for proposed minerals development. This would apply to any proposals for aggregate recycling as well as other types of minerals development.</p>		
<b>Reporter's recommendations:</b>		
No change should be made to the proposed Minerals Local Development Plan.		

<b>Issue 14</b>	<b>Policy MIN 11 – Supporting Information</b>	
<b>Development plan reference:</b>	Policy MIN 11 – Supporting Information	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregates Industries (268)  Minerals Products Association (282)  Patersons of Greenoakhill Ltd (212)  Savills/CRAG (259)  Scottish Natural Heritage (167/168)  Tarmac Ltd (236)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 11 – Supporting Information Paragraph 6.1	
<b>Planning authority's summary of representation(s):</b>		
<p><b>268, 282, 212, 236</b>  These representations all raise concerns regarding the second paragraph of Policy MIN 11. This paragraph is unclear since it appears to suggest that applicants should assess future development opportunities which do not have the benefit of planning consent or zoning within the development plan. Applicants are being asked to second guess what may or may not happen in the future regarding potential impacts. An application needs to be considered on its own merits not on what might it be if further consents were granted. An operator might confirm that a site is (as often might be the case) part of larger geological deposit and the development might then be opposed and/or ultimately refused as a result of fear. If this is the case the wording appears to be ultra vires as these developments should only be dealt with subsequently and assessed through Environmental Impact Assessment (EIA) at the time of any planning application. The second paragraph has no explanation in the supporting preamble and is therefore impossible to interpret.</p> <p><b>167</b>  This representation seeks additional wording to be added to paragraph 6.1 and suggests that "<i>and visual amenity</i>" should be added after "<i>landscape</i>"</p> <p><b>168</b>  This representation seeks the inclusion of "<i>landscape and visual impact assessment</i>" in the list of examples in paragraph 6.1.</p> <p><b>259</b>  This representation supports Policy MIN 11 but requests text to be added that minerals operators should carry out early pre-application discussions with the Council and carry out appropriate EIA screening and scoping to confirm the level of supporting information required.</p>		

**Modifications sought by those submitting representations:****167**

Additional wording to be added to paragraph 6.1 add "*and visual amenity*" after "*landscape*"

**168**

Include "*landscape and visual impact assessment*" in the list of examples in paragraph 6.1.

**Summary of responses (including reasons) by planning authority:**

The Council has worded this policy to support Scottish Planning Policy (SPP) (CD 12) paragraph 242 which states "*When submitting planning applications operators should indicate their understanding of the location of coal reserves in surrounding land and their likely future plans relating to future extensions (vertical and lateral) and their interest in adjacent sites*". This should be applicable to all mineral reserves to allow the Council to fully consider the potential impact of mineral development. The Council are content that the second paragraph in MIN 11 is consistent with this policy.

If minded to do so the Council invites the Reporter to add the proposed wording "*and visual amenity*" to paragraph 6.1 since this will make no material change to the paragraphs meaning. However the Council are of the opinion that it is not necessary to add "*landscape and visual impact*" to the list of examples since this is already covered if the suggested addition of "*and visual amenity*" is made.

Scoping environmental statements is an optional process which operators can enter into with the Council should they wish to. The Council recognises the importance of pre-application discussions with minerals operators and will meet to discuss potential applications as required.

**Reporter's conclusions:**

1. Paragraph 242 of the Scottish Planning Policy refers specifically to surface coal extraction, and I recognise that all of the representations relating to the second paragraph of Policy MIN 11 are concerned with construction aggregate extraction. The last sentence of paragraph 242 states: "when submitting planning applications operators should indicate their understanding of the location of coal reserves in surrounding land and their likely future plans relating to future extensions (vertical and lateral) and their interest in adjacent sites". However, I find that the provisions of the last sentence of the paragraph could equally apply to construction aggregates, if that term is substituted for coal.

2. Essentially, this is about assessing cumulative impact, which may be even more important if it is directly related to the site of the proposed minerals development. In principle therefore I support the council's position in requiring details about plans for future development. However, this should be related to clear plans for future extensions, or future phases of development, which are not the subject of the current planning application. I consider that the term "future development opportunities" is too vague in this context. I therefore suggest an appropriate alternative wording in my recommendations below.



3. I think that it is quite important to add the words “and visual amenity” to paragraph 6.1, but having agreed with this, I do not agree with the council that modification of the policy itself is not needed. The supporting statement refers to the type of impact, but the policy itself refers to the type of information that is required. Having agreed that landscape and visual amenity is important; I actually find that it is necessary to include the submission of a “landscape and visual impact assessment” within Policy MIN 11.

4. I agree that pre-planning application discussion is an important part of the planning process, and no less so for minerals development. However, the council indicates that this is normal practice. Part of the discussion would obviously be related to the information that may be required. It may be desirable to refer to pre-planning application discussion in the supporting text, but on balance I do not consider that it is a deficiency in the plan that justifies a modification to either the policy itself or the supporting text.

#### **Reporter’s recommendations:**

1. Policy MIN 11 should be modified in similar terms to the following:

#### **Supporting Information**

Minerals applications submitted to the council must be accompanied by sufficient information and supporting documents to enable the application to be assessed and determined. This information should include, for example, statement of intent, method of working, measures to protect local amenity, landscape and visual impact assessment, details of restoration and aftercare and any ecological surveys necessary.

In addition the applicant(s) must include details about any plans for future extensions, or subsequent phases of development, that are not included within the current proposals and that may result in a cumulative impact, including likely timescales.

2. Paragraph 6.1 should be modified by adding “and visual amenity” after “landscape” within the fifth line of the paragraph.

<b>Issue 15</b>	<b>Policy MIN 12 - Transport</b>	
<b>Development plan reference:</b>	Policy MIN 12 - Transport	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregate Industries (269)  British Aggregates Association (306)  Minerals Products Association (283)  Network Rail (250)  Patersons of Greenoakhill (213/214)  Savills/CRAG (260/256)  Scottish Coal (189)  SPT (261)  Mark Stephens (320)  Tarmac Ltd (237)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 12 Transport Paragraph 6.2 Paragraph 6.3	
<b>Planning authority's summary of representation(s):</b>		
<p><b>269, 283, 189</b>  These representations are concerned that policy MIN 12 does not define the "<i>local road network</i>". In the third line of paragraph 6.2 reference is made to '<i>a proposed haulage route to the nearest trunk road</i>'. It unclear whether the reference to trunk roads is meant to be a generic reference to 'A' class roads or to actual trunk roads, bearing in mind that not all 'A' class roads are classified as trunk roads and not all traffic from mineral sites will ultimately use a trunk road, either in part or whole, to reach their customers or a transshipment point.</p> <p><b>269, 283, 213, 237</b>  There is no reference made to the use of Section 96 of the Roads (Scotland) Act and related agreements. Section 96 of the Road (Scotland) Act 1984 already provides for recovery of costs for extraordinary wear.</p> <p><b>269, 283, 237</b>  These representations seek clarity on who defines "<i>a significant adverse traffic and transportation impact</i>". In addition it raises the issue as to whether Environmental Impact Assessment (EIA) should be used to inform this assessment.</p> <p><b>283</b>  This representation request clarification as to the meaning of "<i>an agreed haul route</i>". There can be no such prescribed route to a variety of customers throughout the market area.</p> <p><b>306, 213</b>  This representation states that operators are not required to pay towards the upkeep of</p>		

the public road network; they are required to upkeep the entrance outside their site and many operators do contribute to the B roads that lead from their sites. The cost of upkeep of public roads should be met from the road fund licence, not private industry.

**250**

This representation recommends that the rail infrastructure should be considered as a potential beneficiary in a developer contribution policy, or Supplementary Planning Guidance, where it can be shown that the railway infrastructure needs to be enhanced, or protected, to facilitate mineral development.

**214**

This representation states that only those proposals which, despite mitigation methods, are considered by the Environmental Impact Assessment (EIA) process likely to result in an unacceptable traffic and transportation impact should not be supported.

**260**

This representation requests that the A702 is classified as an accident risk route and a high use HGV route. It is not clear in the Proposed Plan how the Local Transport Strategy will be incorporated into the final Minerals Local Development Plan.

**256**

This representation seeks cumulative impact to be mentioned within policy MIN 12.

**261**

This representation supports the policy wording in MIN12 to ensure that recognised mechanisms are in place for financial contributions to be collected and distributed. A specific reference has not been made in paragraph 6.2 or Policy MIN 12 to encourage the minerals industry to consider alternatives to road haulage for transportation.

**320**

This representation thinks that the words "*seek contributions*" are feeble and should be replaced with "*required*".

#### **Modifications sought by those submitting representations:**

**320**

"*seek contributions*" should be replaced with "*required*".

#### **Summary of responses (including reasons) by planning authority:**

If minded to do so the Council invites the Reporter to include a reference to Section 96 of the Roads (Scotland) Act 1984 (**CD 5**) in the supporting text to Policy MIN 12.

What constitutes a significant adverse traffic and transportation impact can be considered when assessing a planning application and its impact on the surrounding area. Environmental Impact Assessment (EIA) is not mandatory for all minerals development proposals. Nonetheless, Environmental Statements (ES) are a valuable tool when considering a development's environmental impact. There can however be ambiguity over the findings of ES between the authors and the regulatory authorities/consultees. This can result in the Council being required to make a decision based on conflicting viewpoints. The ES would be used when establishing the impact of the development on a particular

environmental resource; however the Council's or consultee's findings may differ from those set out in the ES. Policy MIN12 clearly states that proposals will not be supported by the Council if they are considered to create a significant adverse traffic and transportation impact. Policy MIN 12 requires an assessment of traffic and transportation. The assessment should reflect the extent and scale of the anticipated traffic and transportation impact.

The Council can only take contributions towards maintenance of public roads required as a direct result of the extraordinary wear and tear due to mineral extraction activity. This could however cover a larger section of the road than just the access from the sites.

In terms of an 'agreed haul route', the Council would expect an operator to set out a route from the minerals site to a main transportation route within the Council area such as an 'A' class road or trunk road. In this plan Trunk road does include 'A' class roads.

Policy MIN12 refers specifically to the powers set out in Section 96 of the Roads (Scotland) Act 1984 (**CD 5**) which enables roads authorities to recover extraordinary expenses in repairing roads damaged by heavy vehicles etc. Policy MIN 8 relates to developer contributions towards community projects. Neither of these collection mechanisms caters for collection of money to provide for railway improvements. No powers are specifically available to the Council to insist on payments from mineral operators towards railway improvements. Impacts of mineral development on railway infrastructure will be considered on a case by case basis and consultation will continue to be undertaken with Network Rail where particular impacts on railway infrastructure are considered possible.

Paragraph 6.3 and Policy MIN12 clearly state that the Council will seek contributions towards the maintenance of public roads from operators of sites which are likely to create extraordinary wear and tear to the local road network. This is entirely consistent with Section 96 of the Roads (Scotland) Act 1984 (**CD 5**). Paragraph 14 of Circular 1/2010 (**CD 28**) suggests that Section 96 agreements are a reasonable way of controlling contributions towards road maintenance resulting from extraordinary wear and tear of a public road due to HGV movements.

The accident risk routes shown on the deposits and operational sites map are as defined by the roads and transportation service. The A702 was not identified as a risk route.

The Local Transport Strategy 2006 (LTS) (**CD 35**) is produced independently from the development plan and is considered Council policy relating to roads and transportation. The MLDP takes into account the most up to date policy stance relating to roads.

The Council does not consider it necessary to include cumulative impacts in policy MIN 12 as this is already covered in policy MIN 3.

Policy MIN 8 relates to developer contributions towards community projects. Neither of these collection mechanisms caters for collection of money to provide for community transport services. In response to representation 261 no powers are specifically available to the Council to insist on payments from mineral operators towards community transport services.

The Council are satisfied with the wording of Policy MIN 12.

**Reporter's conclusions:****Definition of local road network**

1. I do not consider that it is necessary to define the local road network within Policy MIN 12 or the supporting text. The local road network relates to those public roads within the vicinity of the proposed minerals development which are likely to be used by transport associated with the proposed development.

**Haul Route**

2. It is also quite logical to establish and maintain an appropriate haul route to the nearest major road which is generally designed to accommodate the level of heavy goods vehicles proposed. I agree however that this should so defined in the supporting text, thus extending the definition from trunk roads to include A or B class roads where these are to a sufficient standard. It should be noted in this respect that the B7078 is accepted by the council as being to a higher standard than many A roads. I thus recommend under Issue 19 that it should be shown on the environmental constraints and deposits and operational sites maps.

3. A haul route may not always be required, for example, where the minerals are needed close to the point of extraction; but it will be required in the vast majority of cases. Although I accept that markets may be varied and in opposite directions, there will normally be a single haul route to the nearest road of a sufficient standard (trunk, A or exceptionally B) from where the routes would be expected to diverge. The policy sufficiently covers the exceptions by the use of the term "where appropriate".

4. The routing of minerals traffic is an area where I accept within paragraph 5 of Issue 16 that a planning agreement may be necessary, and so the use of such an agreement or other legal agreement to define a haul route may be appropriate. However a suspensive planning condition relating to a haul route being agreed with appropriate parties, or another form of agreement, may still also be appropriate. The possibility of such should therefore be specifically referred to within the supporting text, but having defined the type of agreements likely to be appropriate there; I find that it is unnecessary, and possibly confusing, to retain the last sentence of the second paragraph of Policy MIN 12. This also applies to the issue of contributions examined in the following 2 paragraphs.

**Contributions**

5. Contributions to the maintenance of public roads are appropriate where there is extraordinary wear and tear resulting directly from the extensive use of such roads by minerals related heavy goods vehicle traffic; and that is what the policy states. It does not relate to the normal maintenance of these roads. I am not convinced that this should be left to the road fund licence. The fact that operators already contribute to the upkeep of B roads running from their site is an example of what is sought through Policy MIN 12.

6. Section 75 agreements could be used to secure contributions. Paragraph 14 of Circular 1/2010 refers to the use of section 75 agreements where there is a requirement to bind successors in title, and this might apply where there are phased contributions over a significant period of time. However, I find that more emphasis should be on one-off or annual payments agreed between the planning authority and the operators wherever this is considered to be sufficient. In this context, the possible recovery of costs for

extraordinary maintenance under section 96 of the Roads (Scotland) Act 1984 is referred to in the representations, and accepted on behalf of the council as an option. The options available should therefore be explained in the supporting text.

### **Transportation impact**

7. The term “significant adverse traffic and transportation impact” is used to define the circumstances where proposals for minerals development would not be supported by the council, and so this needs to be an accurate phrase as it is the crucial test within the policy. The definition of the term “significant” is in fact a recurring theme within the representations, but as I have found in relation to other issues, the term is a well established measuring tool.

8. Significant adverse impact would clearly depend on the circumstances of the case, and would be measured within an environmental impact assessment, or other assessment submitted with a planning application. To this extent, it is indeed the case that it is only those developments where an unacceptable (significant adverse) impact is defined through the environmental impact assessment (or other assessment) which would not be supported by the council. The term does not require further definition in the policy.

9. As far as “traffic and transportation” is concerned, I find that this is quite appropriate. Whilst for the majority of cases it would be a traffic impact on local roads, I consider that the policy has to allow for impact on other forms of transport as well, and particularly where rail transport might be used as an alternative to road transport.

### **Rail transport**

10. I accept that the opportunity should be taken wherever possible to use alternative forms of transport to heavy goods vehicles on public roads. Rail transport is the main alternative. This may not be practical in the majority of cases, but wherever it is an option it should be considered. I find that it is not necessary to state this within the policy, as it is covered by the requirement for an “assessment of potential traffic and transportation impact”. However, it should be covered within the text of paragraph 6.2, and I include appropriate wording for this in my recommendations below. Contributions to rail transport would inevitably be covered by the appropriate arrangements where such is possible, and as such I do not consider that specific reference to rail contributions is required within paragraph 6.3.

### **Cumulative impact**

11. As far as the cumulative impact on the existing road network is concerned, I accept that this is specifically referred to in Policy MIN 3, and I refer to my conclusions on this under Issue 6. However, that is a general policy relating to cumulative impact overall, and I consider that the potential cumulative effect on the existing road network is a specific impact which is very important, particularly where proposed routes may traverse existing settlements. I therefore find that this should be specifically referred to in the policy, and further explained in the supporting text. It is not just duplicating an existing requirement; it is a specific requirement relating to road transport.

### **Local transport strategy**

12. I accept the council’s position that the local transport strategy has been taken into

account in the preparation of this local development plan. I find that there is no need for any specific reference to this within Policy MIN 12 or the supporting text. I also accept in this context that the accident risk routes shown on the deposits and operational sites map are defined by the council's roads and transportation services. The A702 has not been identified as a risk route, and it would therefore be inappropriate to identify it as such within this local development plan.

### **Other matters**

13. Comments have been made relating to community transport, but as the council has indicated these relate more to the matters examined under Issue 11 in relation to Policy MIN 8. Policy MIN 12 is to address the direct transport impact of minerals development. With respect to the phrase "seek contributions", I refer to my findings on this matter within Issue 1, which I consider to be equally relevant to the matter raised under this issue.

14. Consultation with Network Rail on proposals in close proximity to rail infrastructure is essentially a matter for the development management process, and does not require specific reference within the local development plan. I appreciate the concern expressed about the impact of minerals development (extraction or haulage by road) on rail infrastructure, such as bridges and level crossings. I consider level crossings under Issue 19, but otherwise I find that this is a matter to be addressed through the development management process.

### **Reporter's recommendations:**

1. Policy MIN 12 should be modified in similar terms to the following:

#### **Transport**

The council will require an assessment of potential traffic and transportation impact of any new proposal to accompany the application for planning permission. Such an assessment will need to take account of any cumulative impact arising from the proposed development when related to other minerals or landfill developments. Proposals will not be supported by the council if they are considered to create a significant adverse traffic and transportation impact, either alone or in conjunction with other minerals or landfill developments.

The council will seek contributions towards the maintenance of public roads from operators of mineral developments which are likely to create extraordinary wear and tear to the local road network. In addition, and where appropriate, the council will seek agreement with the operator to establish, control and maintain an agreed haul route.

2. Paragraph 6.2 should be modified in similar terms to the following:

When considering proposals for mineral development an assessment of the local transport network is essential. Where appropriate, applicants must submit a Transport Assessment in support of their planning application. This should take account of any cumulative impact arising from the proposed development when related to other minerals or landfill development (existing or committed). Where possible, options for rail transportation should be considered. Where this is not possible, the transport assessment should include a proposed haulage route to the nearest major road shown on the environmental constraints map sufficient to accommodate the level of heavy goods vehicle traffic

proposed, taking account of the suitability of the road network and also avoiding where possible areas of high conservation value, accident risk routes and air quality management areas. Where this can be covered by a suspensive planning condition or simple agreement between the operator and the planning authority, then this may be sufficient, but where necessary, the council will seek to enter into an agreement under section 75 of the 1997 Planning (Scotland) Act, as amended, or other legal agreement, to establish, control and maintain an agreed haul route.

3. Paragraph 6.3 should be modified in similar terms to the following:

The use of the public road network by significant numbers of heavy goods vehicles and their interaction with other road users can lead to a variety of issues such as spillage, noise, dust and damage to the carriageway. The council will expect the mineral operators to operate a drivers' code of conduct to mitigate many of these issues. The council will also, where appropriate, seek contributions towards the maintenance of public roads, from operators of minerals developments, where the traffic directly related to such development is likely to create extraordinary wear and tear to the local road network. The council will seek these contributions through agreements with the operator, which may be agreements for the recovery of costs under section 96 of the Roads (Scotland) Act 1984, or where appropriate, agreements under section 75 of the 1997 Planning (Scotland) Act, as amended.



<b>Issue 16</b>	<b>Policy MIN 13 – Legal Agreements</b>	
<b>Development plan reference:</b>	Policy MIN 13 – Legal Agreements	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregate Industries (270)  British Aggregates Association (307)  Minerals Products Association (284)  Patersons of Greenoakhill Ltd (214/215/216)  Tarmac Ltd (238)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 13 – Legal Agreements Paragraph 6.4	
<b>Planning authority's summary of representation(s):</b>		
<p><b>270, 284, 307, 214, 215, 216, 238</b>  All of these representations are of the opinion that policy MIN 13 – Legal Agreements should be deleted as it is contrary to Government guidance and policy, in particular Circular 1/2010. Under this guidance legal agreements should now only be required in very few cases where relevant planning conditions cannot be drafted. Reference to the decision by the Reporter, Michael J P Cunliffe, in the case of Planning Appeal Reference PPA-270-2023, which decided on 29 June 2010 to grant planning permission for a sand and gravel site in Highland. In the decision letter Mr Cunliffe confirms that in accordance with Circular 1/2010 planning authorities "<i>should firstly consider whether the required restriction can be achieved by planning condition</i>" and determined that in the circumstances of the site in question the provision of financial guarantees to cover landscaping, restoration and the reinstatement of road verge damage attributable to quarry traffic could be achieved by suitably worded planning conditions.</p> <p>In addition under new or proposed planning controls, an immediate stop notice can be enforced if planning conditions are not being adhered to. The list of internal and external effects detailed in paragraph 6.4 can all be achieved through appropriately worded and enforceable planning conditions. There should be no requirement to use legal agreements to secure the provision of any aspect of a proposed mineral development. Therefore it is now unnecessary to enter into some form of costly legal agreement as the regulations can be used to ensure compliance with planning conditions. Legal agreements should be only be used where absolutely necessary and where the same end clearly cannot be achieved through planning conditions.</p>		
<b>Modifications sought by those submitting representations:</b>		

**Summary of responses (including reasons) by planning authority:**

The Council acknowledge the content of Circular 1/2010 (**CD 28**). However, minerals applications create complex issues as a result of their scale and nature. These issues cannot always be satisfactorily controlled through planning conditions alone and may require to be addressed through legal agreements. Legal agreements are not there to ensure planning conditions are adhered to. Circular 1/2010 (**CD 28**) states that “*Planning agreements have a limited but useful role to play in the development management process where they can be used to overcome obstacles to the grant of planning permission. An agreement may mean that development can be permitted or enhanced whilst potentially negative impacts on land use; the environment and infrastructure could be reduced, eliminated or compensated for. Planning agreements should, however, always be between willing parties.*” This is the approach taken in the Minerals Local Development Plan (MLDP). Planning conditions will be used in the first instance and legal agreements will only be used where they are deemed necessary. This is reflected in policy MIN 13.

The Council will seek to control developments through the use of planning conditions as far as practicable. Nonetheless, the Council consider that there remain issues which can only be adequately controlled through legal agreements. This includes contributions, off-site mitigation works, routing of minerals traffic, provision and maintenance of restoration bonds etc. Policy MIN 13 requires these agreements “*where necessary*”. The Council are satisfied with the wording of the policy.

**Reporter’s conclusions:**

1. Most legal agreements would be under section 75 of the 1997 Act. Although I accept that other legislation may be used, the reference to planning agreements in my findings below generally relates to such agreements under section 75 of the Act. In any event, my findings would probably also generally apply to formal agreements under other legislation.
2. The council correctly indicates in its response above that it will seek to control minerals development through the use of planning conditions as far as practicable. The council then however refers to circumstances where this may not be possible, and indeed the last sentence of paragraph 6.4 of the local development plan gives examples where it is considered that a planning agreement may be required. I find that these examples are generally not convincing in the context of Circular 1/2010.
3. Circular 1/2010 states in paragraph 9 that planning agreements have a limited but useful role to play in the development management process, where they can be used to overcome obstacles to the grant of planning permission. The tests for a planning agreement are then set out in paragraph 11, and I accept that the examples given in the last sentence of paragraph 6.4 of the local development plan would be likely to accord with these tests, with the exception of the first test. This is however an important test; whether or not the agreement is necessary to make the proposed development acceptable in planning terms.
4. With respect to the matters listed in the last sentence of paragraph 6.4, I would not normally expect a planning agreement to meet this test because there are other, more appropriate, means to control these matters. In the majority of cases, the matters listed could be sufficiently covered by conditions and/or a financial guarantee bond or other financial provision secured before planning permission is granted. My findings in relation

to Policy MIN 4 are also therefore relevant in this respect. I recognise that there may be exceptional cases where it is not possible to sufficiently cover the matters listed in the last sentence of paragraph 6.4, but I would still expect the need for a section 75 agreement to occur very infrequently, and I find that such should therefore only be used as a means of last resort.

5. The exceptional cases where a planning agreement may be necessary are most likely where mitigation is required external to the site, and the operator does not have full control over the required mitigation. In fact, 2 examples of this are given by the council in its response above; these being off site mitigation works and the routing of minerals traffic. Both of these are likely to involve areas outwith the control of the mineral operator. However, even here, suspensive planning conditions may be possible, although I accept that a planning agreement may be the most effective means of dealing with these matters.

6. Following on from the above, and with only a small proportion of proposed mineral workings likely to require a planning agreement, I have given serious consideration to the deletion of Policy MIN 13 and its supporting text. There is in any event a policy within the South Lanarkshire Local Plan) this being Policy STRAT 10 relating to developer contributions. There is some ambiguity as to the extent to which the council considers this policy to apply to minerals development, because minerals development is not one of the types of development listed that are likely to make use of this policy. However, the policy does refer to transport and environmental mitigation.

7. There is no statement that the policy does not apply to minerals development, and in the absence of such there is no reason to treat this policy differently from all the other policies listed in table 3.1. Policy STRAT 10 refers to the tests for a planning agreement, and states that such an agreement will be sought where contributions cannot be satisfactorily secured through planning conditions. The policy also states however that contributions will generally only be required where there is a need to provide for a direct shortfall in infrastructure, or mitigate a specific impact. This would in my view relate quite well to the exceptional cases referred to in paragraph 5 above.

8. In addition, the policy clarifies that contributions could cover direct implementation of works by developers, or contributions to off site provisions by third parties or the council, which would again relate quite well to the requirements of the exceptional cases referred to in paragraph 5 above. I therefore find that in overall terms Policy STRAT 10 of the South Lanarkshire Local Plan is likely to relate quite well to all potential cases of mineral extraction for which a planning agreement is necessary.

9. Following on from the above, I find that Policy MIN 13 adds only marginally to the application of Policy STRAT 10 of the South Lanarkshire Local Plan to minerals development. However, I also find that there is no inconsistency with Policy STRAT 10, nor is there any significant deficiency in the wording of Policy MIN 13 in the context of Circular 1/2010. In addition, it would be helpful to set out the relevance of the use of planning agreements specifically to minerals development. This is however mainly through the supporting text rather than the policy, and I also find that the supporting text requires modification in order to be consistent with the provisions of Circular 1/2010.

10. Accordingly, I find that Policy MIN 13 should be retained, with a slight amendment to also refer to a financial guarantee bond or other financial provision under Policy MIN 4, as well as planning conditions. However, the supporting text should be modified to reflect my findings above. In addition it would be beneficial to link this policy to Policy STRAT 10 of

the South Lanarkshire Local Plan through the supporting text, and to include a specific reference to Circular 1/2010. An appropriate rewording of Policy MIN 13 and paragraph 6.4 is therefore set out in my recommendations below.

#### **Reporter's recommendations:**

1. Policy MIN 13 should be modified in similar terms to the following:

##### **Legal Agreements**

The council will require, where necessary, an applicant to enter into a legal agreement to control aspects of the development which cannot be satisfactorily controlled through planning conditions and/or a financial guarantee bond or other financial provision under Policy MIN 4. Costs associated with the preparation of the legal agreements shall be borne by the applicant.

2. Paragraph 6.4 should be modified in similar terms to the following:

In certain instances it may not be possible for the potential adverse environmental impacts of mineral extraction to be sufficiently mitigated by means of planning conditions and/or a financial guarantee bond or other financial provision under Policy MIN 4. In exceptional circumstances, it may be more appropriate to enter into a planning agreement under section 75 of the Town and Country Planning (Scotland) Act 1997, as amended, or a legal agreement under other legislation to provide the necessary mitigation. Such agreements will however be used as a means of last resort, generally in instances where the operator does not have full control over the necessary mitigation, for example in relation to required off-site works or the routing of minerals traffic along public roads. In addition, any planning agreement will need to satisfy the terms of Policy STRAT 10 of the South Lanarkshire Local Plan, and meet the tests set out in Circular 1/2010.

<b>Issue 17</b>	<b>Policy MIN 14 - Protection of Resources</b>	
<b>Development plan reference:</b>	MIN 14 – Protection of Resources	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
Aggregate Industries Ltd (271) ATH Resources (247) Confederation of Coal Producers (142) Minerals Products Association (286) Paterson’s of Greenoakhill Ltd (217) Strathaven Community Council (117) The Coal Authority (126)		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 14 –Protection of Resources	
<b>Planning authority’s summary of representation(s):</b>		
<p><b>271, 286</b>          These representations suggest that Policy MIN 14 requires to be clarified as to whether tests (c) and (d) are exclusive or cumulative. In addition it should also consider other longer term developments which could possibly result in sterilisation.</p> <p><b>247</b>          This representation questions how over-riding need or the practicality of extraction of mineral reserves prior to development will be assessed. Further clarity needs to be given to how developers will be required to engage with minerals companies to fully assess if the mineral extraction prior to development is practical or uneconomic to extract.</p> <p><b>142</b>          This representation considers that even where there is an over-riding need for the development to be undertaken, prior extraction should still be considered.</p> <p><b>217</b>          This representation states that through the use of the word "or", only one of the four tests quoted in this policy is required to be satisfied before agreeing to the sterilisation of a mineral deposit. Contrast that with Policy MIN 2 in which the mineral operator has to satisfy all three tests to ensure a mineral development will be permitted. The Council's presumption against mineral development is clear.</p> <p><b>117</b>          This representation suggests that the wording of the policy needs to be strengthened in paragraph (a) to read: <i>“there is a proven over-riding need for the development to be undertaken”</i>.</p> <p><b>126</b>          This representation supports the overall policy approach towards the safeguarding of mineral resources from sterilisation and the need to consider the prior extraction of minerals ahead of development.</p>		

**Modifications sought by those submitting representations:****117**

Paragraph (a) should be amended to read “*there is a proven over-riding need for the development to be undertaken*”.

**Summary of responses (including reasons) by planning authority:**

Tests (c) and (d) outlined in policy MIN 14 are exclusive as stated by the use of the word ‘or’ rather than ‘and’ before the last bullet point.

The policy relates to where built development is proposed over known mineral reserves. The reference to development in (a) of the policy relates to built development, not mineral development. The policy could be clarified by the addition of the words ‘economically viable’ between ‘*known*’ and ‘*mineral*’ in the first paragraph. If minded to do so the Council invites the Reporter to consider this amendment.

Policy MIN 14 does not state that prior extraction will not be considered where there is an overriding need for the development. Instead, Policy MIN 14 notes that development which will sterilise mineral resources will only be supported by the Council where there is an overriding need for it.

Whilst the issue of sterilisation of mineral deposits is an important issue which requires careful consideration, there are very few instances where it has arisen in South Lanarkshire.

Nevertheless, the Council do not consider that there is any relationship between the exclusive tests in MIN 14 compared to the tests in MIN 2 and cannot be seen as a presumption against mineral development.

**Reporter’s conclusions:**

1. It is necessary to protect the reserves of known mineral deposits as shown on the deposits and operational sites map. In this context the primary test for any development which would sterilise such reserves is whether or not there is an over riding need for the development. I do not consider that any more explanation can be given about this in Policy MIN 14 or the supporting text because there are too many possible subject areas and it will depend on the circumstances of the case. Adding the word “proven” is unnecessary. A judgement will require to be made by the planning authority in each case as to whether the development is more important than the protection of the reserves or vice-versa. In addition, the appropriate time to consider this test is upon the submission of a planning application, irrespective of whether it is long term or short term development. There is no appropriate mechanism which could otherwise cover longer term development

2. The representation that only one of the four tests in Policy MIN 14 requires to be met shows the current ambiguity in the policy, and this requires to be clarified, but I do not think that it is intended to be interpreted in this way. Part of the difficulty is that the current criterion (b) is surely expected to be met in every case, but is anomalous to the extent that it does not relate to the protection of mineral deposits. It is a requirement that development must meet, not in complying with the policies of this local development plan, but in complying with the policies of the South Lanarkshire Local Plan.

3. Whilst I make no recommendation about whether or not criterion (b) should be included, because this would not in my view sufficiently relate to the representations, I believe that the criterion should be clarified in the context of the representation referred to in the previous paragraph. It requires to be met in every case, and it is essentially referring to these matters in the context of the policies of the South Lanarkshire Local Plan. Both of these matters are clarified within my recommendations relating to Policy MIN 14 below.
4. There is also a further representation seeking clarification as to whether criteria (c) and (d) are exclusive or cumulative. Between these criteria the policy uses the term “or”, which indicates that they are intended to be mutually exclusive. However, the issue is wider than that because the relationship of these 2 criteria with the remaining criteria is different and needs further clarification.
5. I agree with the representation that even where there is an overriding need for the development, it is necessary to consider the possibility of prior extraction. The policy in effect already covers this as long as criterion (c) is considered to be cumulative with criterion (a). Criterion (d) on the other hand could be considered to be either cumulative or mutually exclusive with criterion (a). There are probably a number of ways of clarifying these issues raised within the representations, but I would suggest the following approach.
6. Because criterion (c) always needs to be considered, it could be specifically addressed in the policy separately from the identified criteria. I take account of the representation seeking further clarity on the engagement of developers with the minerals industry in my recommendations relating to the supporting text below. Criterion (d) is in my view essentially a sub-criterion of criterion (a) and could simply be part of the assessment as to whether or not there is an overriding need for the development. So this criterion could be deleted and the matter referred to in the text of the policy, and explained in the supporting text. This is emphasised by the council’s suggestion that the term “economically viable” could be included between the words “known” and “mineral” in the first sentence of Policy MIN 14. However, this addition is not required if the consideration of economic viability is included in the text of the policy and explained in the supporting text.
7. I provide appropriate wording for the policy and the supporting text which I consider would be both robust and much clearer than the current wording of the policy. However, if the council has an alternative which it considers meets my findings under this issue, then that would in my view be acceptable.

#### **Reporter’s recommendations:**

1. Policy MIN 14 should be modified in similar terms to the following:

#### **Protection of resources**

The council will only be minded to grant planning permission for development which would result in the sterilisation of reserves of known mineral deposits where:

- (a) there is an over-riding need for the development to be undertaken; and
- (b) there would be no significant adverse effect on local communities or the environment in the context of the policies of the South Lanarkshire Local Plan.

In assessing whether or not there is an over riding need for the development the economic viability of extracting the minerals will be taken into account. In addition, where the above criteria are satisfied, and unless extracting the minerals is shown not to be economically viable, it will be necessary to consider the prior extraction of the minerals before development takes place. Without prior extraction, development will only be permitted where it is demonstrated that the prior extraction of the minerals is not feasible.

2. An additional paragraph should be added after paragraph 6.5 in similar terms to the following:

In assessing whether or not there is an over riding need for the development the economic viability of extracting the minerals will be taken into account. Where the mineral deposits are shown not to be economic to extract or to be of minimal value this may be sufficient to show that the need for the development is over riding in the context of Policy MIN 14. If the minerals are economically viable, it will also be necessary to consider the feasibility of extracting the minerals prior to development taking place, and development will only be allowed without prior extraction if such is shown not to be feasible. Where any proposed development is within the areas of mineral deposits shown on the deposits and operational sites map, the developer will be advised and requested to provide the appropriate evidence to show that the tests within Policy MIN 14 are met. In providing this evidence, it will be necessary to engage with the minerals industry in order to assess the economic viability of the minerals, and if they are economically viable, the feasibility of extraction prior to development taking place.



<b>Issue 18</b>	<b>Policy MIN 15 – Site Monitoring and Enforcement</b>	
<b>Development plan reference:</b>	Policy MIN 15 – Site Monitoring and Enforcement	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Aggregate Industries Ltd (272)  Confederation of Coal producers (143)  Minerals Products Association (288)  Patersons of Greenoakhill Ltd (219/218)  Scottish Coal (190)  Mark Stephens (321)  Tarmac Ltd (240)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Policy MIN 15 – Site Monitoring and Enforcement Paragraph 6.6	
<b>Planning authority's summary of representation(s):</b>		
<p><b>272, 288</b>  These representations consider that policy MIN 15 is not acceptable since a policy aimed at requiring a financial contribution to the costs of monitoring minerals developments was considered by a Reporter into West Lothian Local Plan (August 2006- February 2007). The reporter recommended that "<i>it would be inappropriate to request contributions to the funding of a West Lothian Council staff resource through planning agreements</i>". In this regard this aspect of MIN 15 has previously been tested at Public Inquiry and found to be inappropriate.</p> <p><b>272, 288</b>  These representations are of the view that it is unnecessary for the Council to seek to enter into a legal agreement to hold Community Liaison Committees. PAN 81 Community Engagement uses an example from the quarrying industry as best practice in organising and running a liaison group. Given that the Scottish Government deems it adequate that Good Neighbour Agreements are voluntary the Council should not be seeking a more formalised and expensive method of achieving a liaison group.</p> <p><b>143, 190</b>  With regard to the financial contribution towards the monitoring of mineral sites, these representations are concerned that the Scottish Government may also introduce a charging regime which may result in operators having to pay twice. There should be recognition in paragraph 6.6 or Policy MIN15 that if such a Scotland wide charging regime were introduced at any time in the future then mineral operators would not be required to pay twice for monitoring.</p> <p><b>219, 218, 240</b>  These representations state that it is wholly inappropriate for the Council to request contributions to the funding of a staff resource or Council function through planning</p>		

agreements. The emphasis for the policy should be for the Council to encourage the formation of Community Liaison Committees. The requirement that the Council "*will seek to enter into legal agreements*" for the formulation of such Liaison Committees is contrary to Circular 1/2010. It is the function of the Council to ensure the monitoring and enforcement of mineral permissions. The requirement for mineral operators to contribute to the costs associated with this monitoring activity is contrary to Government guidance and may be ultra vires. Any proposals of this nature should be dealt with at a national policy level.

**321**

This representation requests that the words "*seek to enter*" should be replaced with "*will require*" in Policy MIN 15.

**Modifications sought by those submitting representations:****321**

"*seek to enter*" should be replaced with "*will require*"

**Summary of responses (including reasons) by planning authority:**

The Scottish Government has not yet introduced any charging regime for the monitoring of minerals sites. If it were to do so the Council would reconsider policy MIN 15 to ensure that operators were not charged twice for monitoring costs. However in the absence of a national charging regime the Council will seek to implement Policy MIN 15.

The Council has found Community Liaison Groups to be a useful forum for the Council, mineral operators and the public to discuss issues relating to minerals development. As paragraph 6.7 states, participation in these groups is expected for developments most likely to cause impact on communities. The use of a Section 75 agreement to control the formation and participation in a Community Liaison Meeting is considered by the Council to meet the tests set out in Circular 1/2010 (**CD 28**) which are Necessity, Planning Purpose, Relationship to Proposed Development, Scale and Kind and Reasonableness.

Mineral operations, unlike other forms of development, continually evolve over time. In addition, as a result of the nature and scale of some minerals development, it has the potential to significantly affect the amenity of an area. As a result, minerals development requires close monitoring which takes a significant amount of Council time and resources. The Council consider it appropriate to expect mineral operators to contribute to a proportion of that monitoring.

The use of "*seek to*" reflects the fact that the onus is placed on the developer to demonstrate the extent to which controlling criteria can be satisfied. It is then the duty of the Planning Authority to consider if the extent to which a test can be satisfied is sufficient to allow the appropriate level of protection for the environment or the community, whilst having regard to the needs of the industry and the economy. The planning system is designed to be as flexible as possible whilst still offering levels of protection to the communities and the environment. The Council is satisfied with the wording of the policies in this regard.

**Reporter's conclusions:**

1. I note the reference to the consideration of this matter at the West Lothian Local Plan Inquiry, and I also find that it would be inappropriate to include a policy in this local development plan seeking a financial contribution to cover the monitoring of mineral extraction sites by the council. I appreciate that the nature of these sites is that they may often require extensive monitoring to ensure compliance with the conditions imposed, particularly for different phases of extraction and their subsequent restoration. However, I am not convinced that the degree of monitoring is significantly different from other types of major development. This is particularly the case if community liaison groups are established, which no doubt would make a significant contribution to the ongoing monitoring and enforcement process. It obviously depends on the circumstances of the case.

2. In any event, it does not appear to me to be necessary to include such a provision in the local development plan, and I note that although there is a detailed policy for the monitoring of mineral workings in the adopted local plan, there is no reference to financial contributions from developers towards this process. There is nothing drawn to my attention from recent cases or national policy and advice which would provide a basis for this, and indeed the reverse is probably the case. I note the council's position that if a charge was introduced by the Scottish Government, it would review Policy MIN 15. However, it appears to me that this matter would in any event best addressed outwith the policy framework set out in the local development plan. I therefore find that the final sentence of the first paragraph of the policy should be deleted, together with the last 2 sentences of paragraph 6.6.

3. However, I am much more sympathetic towards the establishment of community liaison groups or committees. These could be based upon good neighbour agreements in the context of paragraph 62 of Planning Advice Note (PAN) 3/2010 (which supersedes PAN 81), and would be valuable in the process of monitoring and enforcement, because they would include those who are likely to be most directly affected by minerals development and at the same time provide an effective mechanism for drawing to the attention of the planning authority the need for any urgent enforcement action. Hopefully, the process would more often result in appropriate action on the part of the minerals operator to render formal enforcement action unnecessary.

4. Paragraph 6.7 fully reflects the provisions of PAN 3/2010 in its reference to both community liaison committees and good neighbour agreements. However, I find that the last paragraph of Policy MIN 15 with its reference to legal agreements with operators requiring community liaison communities goes beyond what is necessary. Good neighbour agreements are defined in paragraph 62 of PAN 3/2010 as voluntary arrangements between a community body and developer or site operator. The paragraph states that there is no obligation on either party to enter into such an agreement, however, where there is a shared commitment to set a framework for liaison around how a site operates then good neighbour agreements can have a number of benefits.

5. I do not rule out the possibility of a legal agreement being necessary in specific instances, but this would surely be the exception rather than the rule, and would be covered by Policy MIN 13. I suggest a wording for the final paragraph of Policy MIN 15 which more closely reflects the content of paragraph 6.7 in my recommendations below.

6. Notwithstanding the above, the reference to legal agreements within the first paragraph

of Policy MIN 15 in my view is sufficiently consistent with Policy MIN 13 and should be retained. With respect the phrase “seek to enter”, I refer to my findings on this matter within Issue 1, which I consider to be equally relevant to the matter raised under this issue. However, my suggested terminology avoids the use of this phrase altogether, in providing a more appropriate wording for the final paragraph of Policy MIN 15.

**Reporter’s recommendations:**

1. Policy MIN 15 should be modified in similar terms to the following:

**Site monitoring and enforcement**

The council will monitor mineral developments to ensure they are carried out in accordance with planning legislation, approved plans, conditions and, where appropriate, legal agreements. Priority will be given to the monitoring of development proposals most likely to have an impact on local communities or the environment.

In this context, the council will expect operators, where appropriate, to enter into good neighbour agreements and hold Community Liaison Committees.

2. The last 2 sentences of paragraph 6.6 should be deleted.

<b>Issue 19</b>	<b>Proposals Maps</b>	
<b>Development plan reference:</b>	Proposals Maps	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
<p>Libberton and Quothquan Community Council (176/177)  Network Rail (253)  Savills/CRAG (249)  Scottish Government (174)  Alex Sneddon (112)</p>		
<b>Provision of the development plan to which the issue relates:</b>	Proposals Maps	
<b>Planning authority's summary of representation(s):</b>		
<p><b>176, 177</b>  This representation is concerned about a buffer zone around the Falls of Clyde Nature Reserve. If a buffer zone were to be set up (at least 500m) around the reserve this would help alleviate any adverse effects if mineral/aggregate extraction were to occur up to the boundary. A buffer zone should be set around the entire nature reserve to ensure water quality/volume is maintained.</p> <p><b>253</b>  This representation is concerned about any increase in use of level crossings and would like the Environmental Constraints Map to be expanded to include consideration of sensitive railway infrastructure. Particular parts of the infrastructure such as level crossings are generally not designed to be used by large volumes of traffic and again need to be flagged as needing particular consideration.</p> <p><b>249</b>  This representation is concerned about the designation of the land at the southern bank of the Clyde to the A702 Road between Coulter and Lamington. The Environmental Constraints map in the Minerals Plan identifies Prime Agricultural Land only covering part of this land. The Macaulay Institute designations should be reassessed at this location to ensure the Environmental Constraints map represents the correct agricultural land designation.</p> <p><b>174</b>  This representation has raised an issue that has been omitted erroneously from the Environmental Constraints Map. The Scottish Government invites the Reporter(s) to recommend that Chatelherault Designed Landscape is included on the Environmental Constraints Map. It states that: 'Planning authorities have a role in protecting, preserving and enhancing gardens and designed landscapes included in the current Inventory and gardens and designed landscapes of regional and local importance. Relevant policies should be included in local development plans'. Chatelherault Designed Landscape is missing from the Environmental Constraints Map.</p>		

**112**

This representation requests that the deposits and operational sites plan should be amended to include the B7078 - this omission stems from having selected motorways and A class roads for highlighting on the plan, but the B7078 is clearly a higher standard road than many A roads in the area.

**Modifications sought by those submitting representations:****176/177**

A buffer zone should be set around the Falls of Clyde Nature Reserve

**174**

Chatelherault Designed Landscape should be included on the Environmental Constraints Map.

**112**

The B7078 should be included on the Deposits and Operational Sites Map

**Summary of responses (including reasons) by planning authority:**

The Falls of Clyde National Nature Reserve (NNR) includes an area to the south of New Lanark. This area has recently been designated as a NNR and was not contained within the original data used to create this layer on the local plan. The full extent of the Clyde Valley Woodlands NNR is now shown on the Environmental Constraints Map.

It is not considered necessary to provide a buffer round the NNR, given the terms of policy MIN2, which restricts development likely to significantly adversely affect Category 2 sites from being permitted unless proposals meet the three tests described in the policy.

The Council are only aware of one level crossing in South Lanarkshire which is not on a recognised route that minerals operators would use. It may be that this could be shown on the map by way of a symbol.

In terms of the prime agricultural land the correct area is shown on the map but due to the large number of layers on the map the floodplain data has been put on top of the prime agricultural land layer.

The Chatelherault Designed Landscape should be included on the Environmental Constraints Map and the Council invites the Reporter to rectify this omission.

The B7078 is noted to be a high quality road that is capable of accommodating traffic associated with minerals development and can be identified on the Deposits and Operational Sites map.

**Reporter's conclusions:**

1. It should be emphasised at the outset that the proposals map in this case contains 2 maps headed "environmental constraints" map and "deposits and operational sites" map. These maps are referred to within the policies of the local development plan, and within my report as appropriate. Since there are no proposals in this local development plan, the

proposals map required under Regulation 8 in this case comprises the above 2 maps to illustrate the plan's policies spatially. Whilst I find that in the circumstances this accords with Regulation 8, I also consider that this should be explained within the introduction to the local development plan, for the avoidance of any doubt. Whilst not referred to above, East Renfrewshire Council considers that the linkage of the policies to these maps should be more explicit within the policy wording. However, inserting an explanation in the introduction would in my view be sufficient. I therefore include a suggested revision within my recommendations below.

2. National nature reserves (NNR) are shown on the environmental constraints map. In accordance with my recommendations under Issue 5, these would be retained as Category 2 sites, where development likely to adversely affect such sites would only be permitted in very specific circumstances. It is clear that any proposed minerals development adjacent to such sites would have to be examined in this context, such that there is no need for any buffer areas to be designated. To designate buffers for only one such site would in any event be anomalous and therefore inappropriate. It would have to be done for all such sites. I note that this NNR has been extended as now shown on the environmental constraints map.

3. I agree that sensitive railway infrastructure needs careful consideration. In the event of any rail transport being used to haul minerals, I am satisfied that this would be properly taken into account in the circumstances of the case. Most haulage is however likely to be by road, which does bring to light the potential effect on railway level crossings. I note that there is only one such crossing within South Lanarkshire, and I agree that it would be prudent to show this by a symbol on the environmental constraints and the deposits and operational sites maps.

4. With respect to the Macaulay Institution's designation of prime agricultural land, I accept the council's explanation that this is in fact correctly shown on the environmental constraints map in the vicinity of the River Clyde and the A702. The council has however acknowledged that the Chatelherault Designed Landscape is missing from the environmental constraints map. This is clearly an error which needs to be rectified.

5. The council has also accepted that the B7078 should be shown on the environmental constraints and deposits and operational sites maps, because this is a higher standard of road than many A class roads. I agree therefore that it should be shown, but to avoid confusion, it should be shown on the key with a separate notation "major B road" or similar term. Paragraph 6.2 requires a slight modification in this respect, and I incorporate my suggested wording for this under Issue 15.

6. Though not referred to above, I note that Scottish Natural Heritage has referred to a number of presentational issues relating to the deposits and operational sites map and the environmental constraints map. I am quite satisfied that these separate maps are required and that it would not be practical to overlay the latter onto the former, as this would result in too much information related to the scale of the map. Furthermore, I do not consider that these comments justify any specific recommendations, but I would ask the council to ensure that the information shown on these maps is as comprehensive and accurate as possible, accepting of course the restrictions imposed by the scale of the maps.

#### **Reporter's recommendations:**

1. The penultimate sentence of paragraph 1.15 of the introduction should be modified in

similar terms to the following:

The proposals map comprises 2 maps entitled “environmental constraints map” and “deposits and operational sites map”, and these illustrate the plan’s policies spatially, indicating the location of known mineral resources and the areas of protection.

2. The following should be shown on the environmental constraints and deposits and operational sites maps:

The railway level crossing within South Lanarkshire (by an appropriate symbol);

The Chatelherault Designed Landscape (only on the environmental constraints map);

The B7078 as a “major B road” or similar term.



<b>Issue 20</b>	<b>James Hamilton</b>		
<b>Development plan reference:</b>	Minerals Local Development Plan	<b>Reporter:</b> Lance Guilford	
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>			
James Hamilton (8 to 107)			
<b>Provision of the development plan to which the issue relates:</b>	Refer to planning authority's summary.		
<b>Planning authority's summary of representation(s):</b>			
These are the comments received from Mr Hamilton and the Council has not attempted to summarise them.			
<b>8</b>	Paragraph	1.2	Not sustainable to date
<b>9</b>	Paragraph	1.4	Not good so far
<b>10</b>	Paragraph	1.7	Ah well
<b>11</b>	Minerals Local Development Plan		Very suspicious of current concept & context
<b>12</b>	Preface		Don't believe to be sustainable
<b>13</b>	Paragraph	1.2	Don't believe sustainable
<b>14</b>	Paragraph	1.4	Dubious of same
<b>15</b>	Legislative and Policy Context	Figure 1.1	Lacking credibility historically
<b>16</b>	Paragraph	1.7	Suspicious
<b>17</b>	Paragraph	1.8	Historical lack of effective monitoring
<b>18</b>	Paragraph	1.9	Credibility?
<b>19</b>	Paragraph	1.1	Not sure of point
<b>20</b>	Paragraph	1.11	Doubt it
<b>21</b>	Paragraph	1.12	Disagree
<b>22</b>	Paragraph	1.14	Debatable
<b>23</b>	Paragraph	1.15	History was different
<b>24</b>	Paragraph	1.17	Interesting
<b>25</b>	Paragraph	1.18	Suspicious
<b>26</b>	Minerals Local Development Plan		Dubious of historic credibility
<b>27</b>	Introduction	1	Historic credibility?
<b>28</b>	Paragraph	1.2	Futile?
<b>29</b>	Paragraph	1.8	Futile

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30	Paragraph	1.1	Ah well
31	Paragraph	1.12	Dubious
32	Paragraph	1.13	Variety of conflicting viewpoints
33	Paragraph	1.15	Pointless
34	Paragraph	1.17	Inevitable?
35	Paragraph	1.19	Area just being decimated
36	Paragraph	1.21	Relentless anyway
37	Paragraph	1.23	Historic credibility?
38	Paragraph	1.25	Vandalism?
39	Principal mineral resources within geological areas in South Lanarkshire.	Table 1.1	King Coal?
40	Broken Cross Surface Coal Mine	Picture 1.1	King Coal
41	Paragraph	1.27	Disgusted
42	Paragraph	1.29	Never refused yet
43	Paragraph	2.2	Relentless
44	Paragraph	2.4	Dubious
45	Paragraph	2.5	Got to be a joke
46	Spatial Framework	Policy MIN 1	Really
47	Broken Cross Operations	Picture 2.1	What a mess, we are only stewards of the planet
48	Protecting the Environment	3	Joking again
49	Protecting the Environment	3	Never
50	Paragraph	3.1	What a joke
51	Paragraph	3.2	Really
52	Paragraph	3.3	Credibility
53	Paragraph	3.4	Futile
54	Paragraph	3.5	Note
55	Paragraph	3.6	Really
56	New Lanark World Heritage Site	Picture 3.1	But is there coal
57	Paragraph	3.7	note
58	Paragraph	3.8	Cash
59	Paragraph	3.9	Point?
60	Paragraph	3.1	Ah well
61	Prime quality agricultural land	Figure 3.2	note
62	Paragraph	3.12	note
63	Paragraph	3.13	Past?
64	Special Landscape Areas	Figure 3.3	King Coal
65	Paragraph	3.14	King Coal
66	Paragraph	3.15	Coal?

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67	Environmental Protection Hierarchy	Policy MIN 2	Joke
68	Hierarchy of Natural and Built Heritage Sites	Table 3.1	Historical evidence
69	Paragraph	3.16	Obvious in Douglas Valley etc
70		Policy MIN 3	Joke
71	Paragraph	3.17	When was anything fully restored
72	Paragraph	3.18	Really
73	Restoration	Policy MIN 4	How does that work
74	Flooding constraints	Figure 3.4	King Coal
75	Paragraph	3.2	Really, 3/- fine?
76	Paragraph	3.21	King Coal
77	Paragraph	3.22	nice one
78	Water Environment	Policy MIN 5	really
79	Community	4	good
80	Paragraph	4.1	when
81	Paragraph	4.2	Suffering
82	Paragraph	4.3	good
83	Paragraph	4.4	where is their any evidence
85	Controlling Impacts from Extraction Sites	Policy MIN 7	Dubious
86	Paragraph	4.5	more comedy
87	Paragraph	4.6	farce
88	Paragraph	4.7	Dear oh dear
89	Paragraph	4.8	my leg is not a lamppost
90	Community Benefit	Policy MIN 8	King coal
91	Resource Recovery	5	farce
92	Paragraph	5.1	Lots of scope here
93	Paragraph	6.1	interesting
94	Coal Excavation	Picture 6.1	Horrid
95	Supporting Information	Policy MIN 11	that would be good
96	Paragraph	6.2	joke
97	Paragraph	6.3	wow
98	Transport	Policy MIN 12	good
99	Paragraph	6.4	farce
100	Legal Agreements	Policy MIN 13	Ah but...
101	Paragraph	6.5	King Coal

102	Protection of Resources	Policy MIN 14	Really
103	Paragraph	6.7	My leg is being pulled
104	Site Monitoring and Enforcement	Policy MIN 15	Historical evidence fairly sparse
105	Monitoring	7	wow
106	Paragraph	7.2	King coal
107	Paragraph	8.2	convenient

#### Modifications sought by those submitting representations:

#### Summary of responses (including reasons) by planning authority:

The Council has not responded to all of the representations since there was no logical response to be made. However a couple of representations raised issues which the Council can address.

8 – All Council adopted local plans have been subject to examination and found to be consistent with national planning policy.

12 – The plan follows and conforms to government guidance on sustainability and seeks sustainable mineral development wherever possible.

18 – The South Lanarkshire Local Landscape Character Assessment (**CD 37**) subject to public consultation and was approved by Council at planning committee.

19 – The Validating Local Landscape Designations (**CD 38**) document explains the basis for special landscape areas

20 – SNH were consulted in relation to the Main Issues Report (MIR) (**CD 36**) at consultation stage. Their comments were taken into consideration and the Habitats Regulations Assessment (HRA) (**CD 36**) was updated to reflect this.

34 – HRA (**CD 36**) was included in the consultation process and the Council considered any meaningful comments made in relation to its findings

59 – Paragraph 3.9 provides an explanation as to why prime agricultural land is identified as a category 2 site.

69 – The aim of the policy is to ensure that cumulative impact is fully considered when determining planning applications.

71 – Many of the former mineral sites within South Lanarkshire have been successfully restored.

83 – All mineral sites in South Lanarkshire are monitored not only by the Council but by SEPA as appropriate.

<b>Reporter's conclusions:</b>
1. I have noted all of Mr Hamilton's comments and the council's responses thereto. I find that these do not give rise any unresolved issues that are not covered by my conclusions and recommendations relating to Issues 1 to 19. I also find that Mr Hamilton's comments do not specifically justify any finding that the plan is not sufficient with respect to any of the paragraphs, photographs, figures, tables or policies referred to.
<b>Reporter's recommendations:</b>
No change should be made to the proposed Minerals Local Development Plan.