

21/00181/APP
18th February 2021

**Section 42 Planning Application to Vary Condition 1 of
Planning Permission 15/01768/APP to extend duration of
working for a further 5 years Auchtertyre Quarry Elgin
Moray
for Tarmac Caledonian Ltd**

Comments:

- Application is a major development as defined under the Council's Scheme of Delegation and also under the Hierarchy Regulations 2009 as it relates to mineral development on a site that exceeds 2ha.
- The proposal has been advertised under Schedule 3 of the Development Management Regulations 2013 and for neighbour notification purposes.
- One representation received.

Procedure:

- None

Recommendation – **Grant planning permission subject to the following:**

Conditions/Reasons

1. The permission hereby granted shall be for a limited period only and shall cease on 28 February 2026 (the 'cessation date') by which time and prior to that cessation date, the application site shall be cleared of all development approved or involved in implementing the terms of the permission hereby granted (including all mobile plant and machinery, any ancillary works, infrastructure, fixtures and fittings, etc.), and the site shall be re-instated in accordance with a restoration and aftercare scheme which shall previously have been submitted to and approved in writing by the Council, as planning authority (see Condition 4 below).

Reason: To ensure an acceptable form of development enabling the development to progress in accordance with the applicant's submitted particulars to allow for full extraction of available resources and site restoration thereafter, to enable the Council, as planning authority to retain control over the use of the site and enable further consideration to be given to the operations, effects and impact of the use upon the amenity, character and appearance of the site and surrounding area together with securing removal of all site infrastructure used in the extraction process prior to embarking upon the restoration of the site.

- 2 As part of the development hereby approved:
- a) the permission hereby granted is for the extraction of sand and gravel only;
 - b) there shall be no extraction of sand and gravel below the level (46m AOD) shown on the approved drawings (A052/00027 and 00028) or within any groundwater encountered;
 - c) notwithstanding the provisions of Class 55, Part 16 of the Town & Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, no (fixed) buildings/structures, plant or machinery etc. shall be installed, erected or operated on the site without the prior written approval of the Council, as planning authority;
 - d) prior to expiry of the permission or upon completion of extraction, whichever is the sooner, all buildings/structures, plant and machinery including mobile plant and machinery, etc. shall be permanently removed from the site;
 - e) the extraction of sand and gravel shall proceed progressively in an easterly direction across the site (drawing A052/00024 refers);
 - f) sub-soil and top-soil shall be stripped and stored separately, in accordance with details which shall be submitted to and approved by the Council, as planning authority prior to the commencement of the development regarding the location and maximum height of all stockpiles of stored soil materials (and where the latter should not exceed 6m as measured from the base level of the excavated quarry area (46m AOD as shown, drawings A052/ 00027 and 00028 refer));
 - g) there shall be no washing or other processing of the extracted material on the site;
 - h) all vehicles entering/leaving the site shall use the existing site access (as identified on drawing A052/00023);
 - i) the annual rate of extraction shall not exceed 60,000 tonnes, and the operator shall maintain monthly records of output/production from the excavated area, to be made available to the Council, as planning authority at any time and on request;
 - j) there shall be no working at the quarry outwith the hours of 07:30 - 17:00, Monday to Friday, and 07:30 - 12:00 noon, Saturdays unless with the prior written approval of Council, as planning authority;
 - k) on expiry of the permission or completion of extraction, whichever is the sooner, the site shall be restored to agricultural grassland (see Condition 4).

Reason: To ensure the operation of the quarry continues to progress in an environmentally acceptable manner (and in accordance with the terms of previous permissions granted at the site) and in the interests of the amenities and appearance of the development and the surrounding area.

- 3 No development shall commence until a Site Specific Management Plan has been submitted to and approved in writing by the Council, as planning authority in consultation with SEPA. The plan shall cover all site specific environmental sensitivities, pollution prevention and mitigation measures identified to avoid or minimise environmental effects including (but not limited to) groundwater, surface water, waste management, noise and dust impacts associated with the development.

Thereafter, the development shall be implemented solely in accordance with the approved plan details.

Reason: In order to minimise the impacts of the mineral extraction works on the environment and ensure up-to-date operating and environmental standards on site.

- 4 Notwithstanding the indicative final site restoration details shown on A052/00025 (which are not approved), at least one (1) year prior to mineral workings ceasing on the site and prior to any phased restoration works, a Site Specific Restoration and Aftercare Plan shall be submitted to and approved in writing by the Council, as planning authority in consultation with SEPA. The plan shall include (but not be limited to) the following information:
- proposals for phased working and progressive restoration;
 - existing and proposed finished ground levels relative to a fixed datum;
 - surface water drainage arrangements;
 - details of any buffer strips between the works and any water features, wetlands or peatlands on site and other measures to minimise pollution;
 - demonstration that the restoration proposals will not have a detrimental impact on the water environment, including groundwater quality and quantity and an assessment of the effect that any backfilling below the water table will have on groundwater flow;
 - a programme for the completion of the restoration and subsequent maintenance arrangements.

Thereafter, all site restoration and aftercare works shall be implemented in accordance with the approved plan.

Reason: To retain control over this temporary form of development and ensure that the site is appropriately restored in the interests of the protection of the environment.

- 5 The site access onto the C3E Elgin - Pluscarden - Rafford Road shall be maintained at all times throughout the lifetime of the development (unless otherwise agreed in writing with the Council, as Planning Authority) in accordance with section 3.2 of the previously approved Junction Maintenance Scheme, namely:
- the junction will undergo weekly cleaning during operational periods at the quarry, and at the request of Moray Council;
 - grass and other vegetation within the verges will be cut to ensure it does not encroach into the visibility splay;
 - the ditch located within the southern verge will be cleared from time to time, and at the request of Moray Council, to ensure surface water is channelled from the access track into the ditch and away from the public road; and
 - the road surface will be kept under review and where potholes develop, they will be repaired.

Reason: To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous materials

and surface water in the vicinity of the access, an acceptable development in the interests of road safety and that use of the access does not create any hazard to other roads users.

Reason(s) for Decision

The Council's reason(s) for making this decision are:-

The proposed variation to Condition 1 to extend the extraction period of the quarry is considered suitable in terms of the provisions of the Moray Local Development Plan 2020 and there are no material considerations that indicate otherwise.

List of Informatives:

THE ENVIRONMENTAL HEALTH MANAGER, DEVELOPMENT SERVICES, has commented that:-

The development shall be suitably controlled to ensure noise and dust emissions do not give rise to a statutory nuisance in terms of the Environmental Protection Act 1990.

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY has commented that:-

See consultation response dated 19 October 2015 (as already provided to the applicant's agent (by SEPA)) regarding detailed advice in relation to pollution prevention and environmental management and restoration and aftercare schemes, including information about the expected content and preparation of the Plans required by Conditions 3 and 4, together with reference to detailed sources of SEPA information and advice, including additional regulatory requirements and advice for the applicant.

NATURESCOT (formerly SCOTTISH NATURAL HERITAGE) has commented that:-

Sand Martins are known to be present on site. It is an offence to disturb or destroy a Sand Martin's nest when in use. Sand Martins do not tend to use older burrows from previous years in case of disease and old burrows can be destroyed outwith the bird breeding season.

Sand Martins are attracted to freshly formed faces in which they burrow and nest during the breeding season. To avoid the birds nesting into faces that are to be worked on during the summer, a 'sacrificial face' could be excavated just prior to the birds arriving in the spring. This would be a sand face that could be sculpted to near vertical and allow birds to use that face during the summer without disturbance. All operatives at the quarry must be made aware this is a 'wildlife area' to ensure there is no accidental damage to the face. This may allow work to continue in other areas of the quarry. Sand Martins are fairly adaptable and would habituate to quarry operations quickly so even working in relative proximity to the 'sacrificial face' should be possible.

Faces that are to be excavated during the summer should either be worked continuously, which would prevent the birds from burrowing, or faces should be left with a sloping face that is less attractive to burrowing i.e. if the slope is formed such that a predator such as a fox or stoat could gain access up to the exposed sand then it is unlikely that birds would nest. Alternatively, sand heaps and faces could be covered with large tarpaulins/sheets to prevent birds gaining access to burrow.

If it is not possible to accommodate nesting Sand Martins in the summer, faces must be uncondusive to Sand Martin burrowing (as above) and/or covered when not being worked on.

Sand Martins will take advantage of any suitable surface they can which is why it can be easier to provide them with a 'safe space' each year and thus avoid the conflicts with quarry operations.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Planning consent does not carry with it the right to carry out works within the public road boundary.

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
	Location plan
	Site plan



PLANNING APPLICATION COMMITTEE SITE PLAN

Planning Application Ref Number:

21/00181/APP

Site Address:

Auchtertyre Quarry

Elgin

Applicant Name:

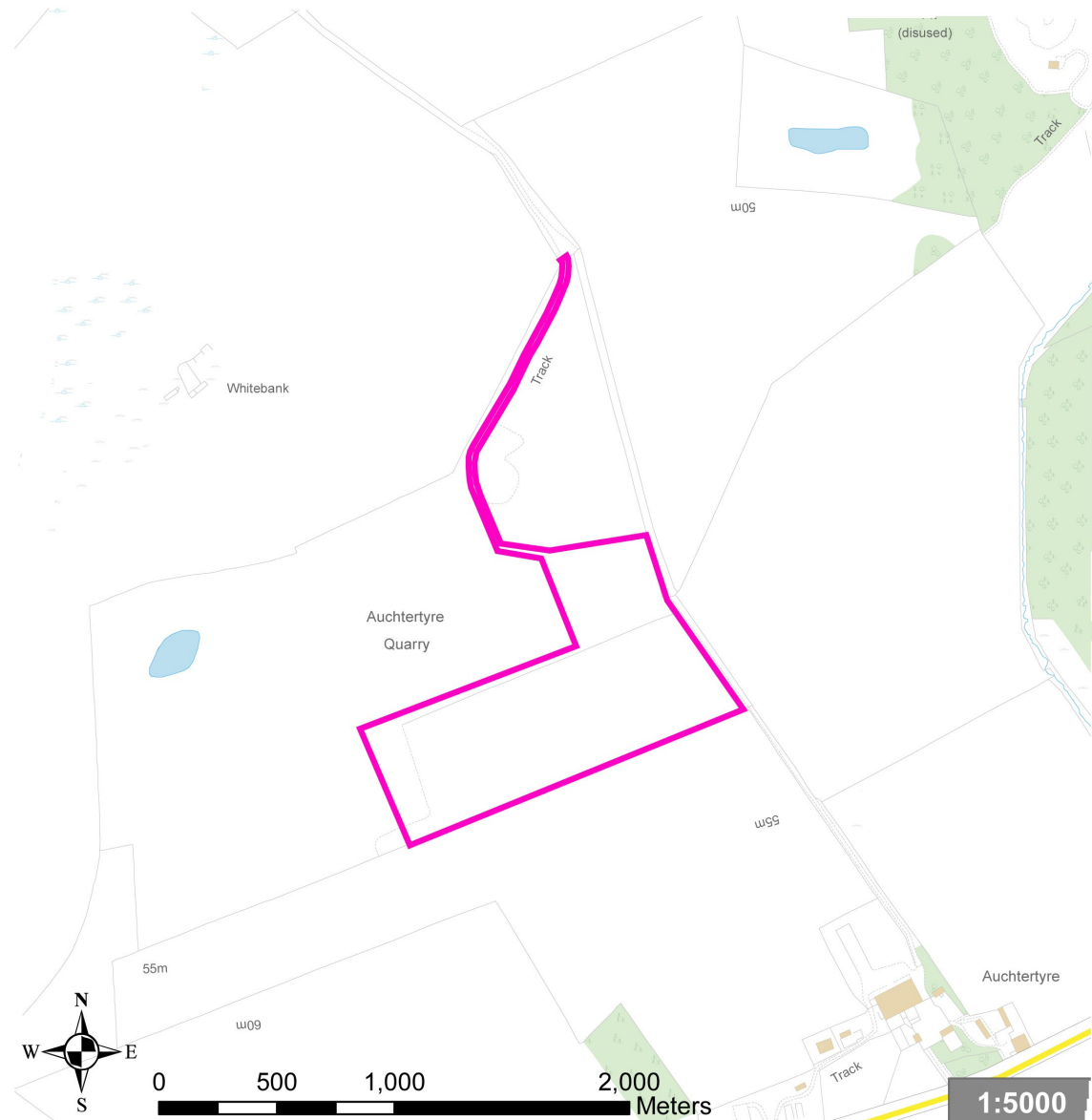
Tarmac Caledonian Ltd

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Location Plan



Site Location

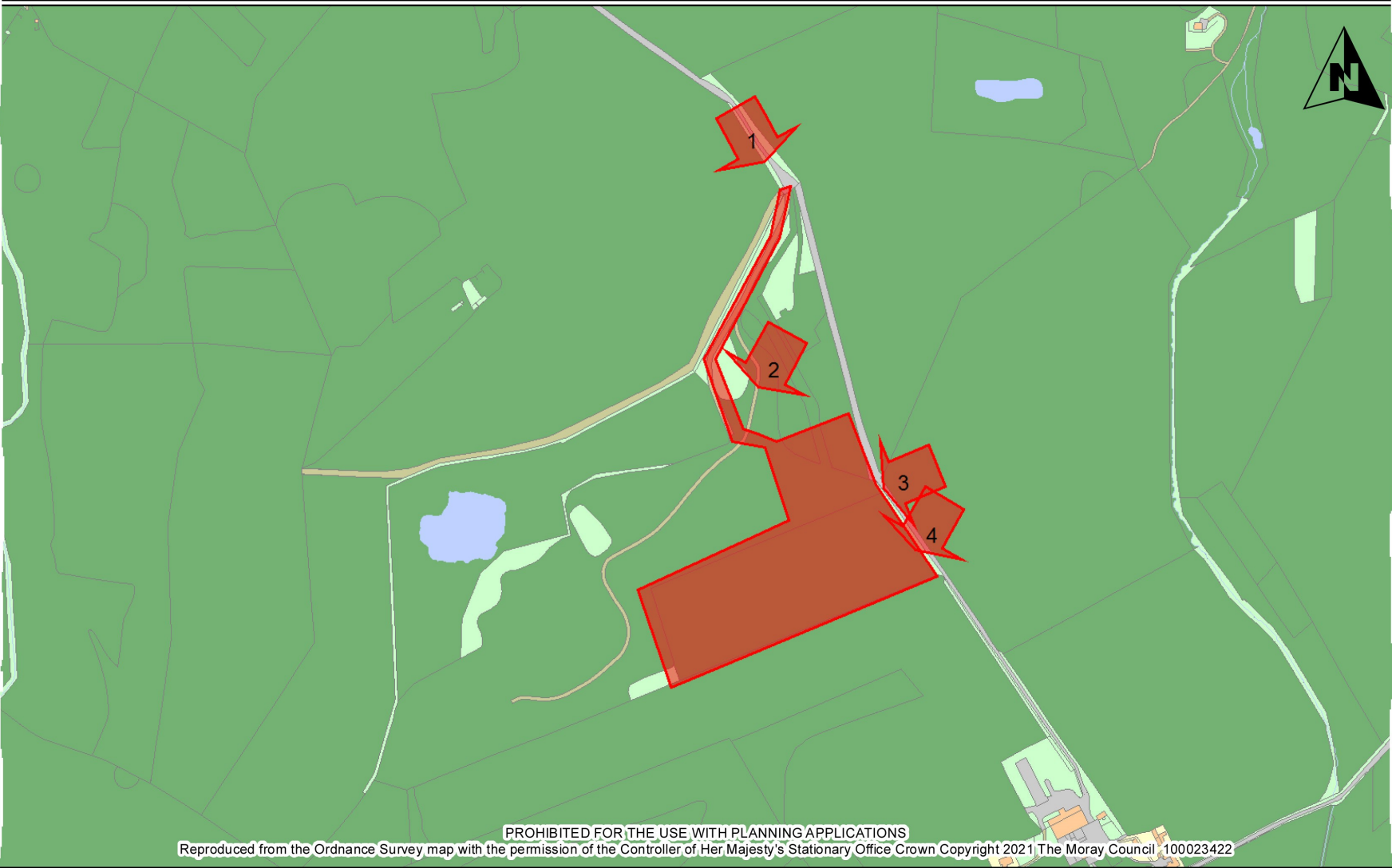


Site plan



Photo location plan

21/00181/APP - Photograph positions



Map Description: Arrows point in direction photograph was taken

Scale: 1:5,000 @ A4



Photo 1—access point to private track



Photo 2—Previously worked areas to be restored



Photo 3—Area to be extracted (1)



Photo 4 —Area to be extracted (2)



PLANNING APPLICATION: 21/00181/APP

In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications

THE PROPOSAL

- Application under section 42 of the 1997 Act to vary condition 1 of Planning Permission 15/01768/APP.
- Planning permission 15/01768/APP gave consent for the continued extraction of sand and gravel, along with reinstatement works at Auchtertyre Quarry near Mosstowie.
- Condition 1 limited permission for the continued operation of the quarry and reinstatement works for a period of 5 years that expired on 28 February 2021.
- The proposed variation seeks an additional period for operations and reinstated for 5 years, with the proposed wording suggested by the applicant varying the condition to expire on 28 February 2026.
- Application 15/01768/APP confirmed that no permanent buildings/structures are required on site.

THE SITE

- Approx. 3.8ha area located towards the south-eastern corner of the approx. 16.8ha Auchtertyre Quarry. The remaining (previously worked and part restored) quarry area is not part of the current application site as defined but is land in which the applicant/quarry operator has an interest).
- The proposed area for mineral extraction is currently overgrown and shows no signs of having been worked previously.
- Between the site and an existing restored area of agricultural grassland with water body (wetland), located towards the north-western corner of the existing quarry, is a previously worked area with sand and top-soil stockpiles (i.e. "area under restoration" as identified on drawing A052/00023 approved as part of set of plans accompanying 15/01768/APP).
- Access to the site is from the C3E road to the north using an approx. 1.1km long, private access track. The site entrance to the quarry is located in the north eastern corner of the quarry with an "existing agricultural laydown" area (to be retained) also located near the site entrance.
- The surrounding land is predominantly agricultural, with Auchtertyre farmhouse and associated farm buildings located approx. 350m to the south of the quarry. The residential property, Burnside is located adjacent to, and towards the northern end of, the access track
- The site is not located with any landscape, cultural or natural heritage designations at a national or local level (the latter identified in the MLDP 2020).

HISTORY

4 March 2021 - Screening Opinion adopted for this current application where, after taking account of the characteristics and location of the development and characteristics of the potential impact associated with varying the condition to enable mineral operations and site restoration to continue, the proposal is a Schedule 2 development but it would not be likely to result in significant environmental effects and therefore, it does not require to be subject to EIA procedures.

15/01768/APP – Planning permission for the continued operation of the quarry and restoration to agricultural land granted planning permission for a temporary period of 5 years by the Planning and Regulatory Services Committee on 25 February 2016 (per condition 1 of that consent, that condition subject to the requested variation under determination here).

15/00901/PAN - Proposal of Application Notice (PAN) to continue operations of sand and gravel quarry at Auchtertyre Quarry Elgin Moray - response (5 June 2015) identifies requirements for consultation with Heldon Community Council and holding of public consultation event at Cloddach Quarry site offices. Following consideration of this PAN, by the Council's Planning & Regulatory Services Committee on 11 August 2015, there were no provisional views/relevant issues which the Committee wished to raise about the development (paragraph 12 of Minute refers).

02/01957/FUL - Vary (not comply with) condition 2 of consent 94/00487/FUL to allow quarrying to continue until 01/01/2013 - granted 20 December 2002 with conditions of earlier permission re-applied and permission granted for a limited period expiring on 1 January 2013.

94/00487/FUL - Extension of previous approval to continue extraction of sand and gravel - granted 17 October 1997 (includes condition 2 which confirmed the permission for the extraction of sand and gravel would expire 5 years from the date of the permission).

MP/494/84 - Extend existing working to extract sand and gravel at Auchtertyre Quarry - approved 26 October 1984.

POLICY - SEE APPENDIX

ADVERTISEMENTS

- Advertised for neighbour notification purposes.
- Advertised as a development of a Class specified in Schedule 3 of the Development Management Regulations 2013.

CONSULTATIONS

Transportation Manager - No objection subject to previously approved Junction Maintenance Scheme (per condition 5 of previous consent) being complied with.

Environmental Protection/Moray Access Manager - No objection.

Environmental Health - No objection subject to informative requiring the development to be suitably controlled to ensure noise and dust emissions do not give rise to a statutory nuisance in terms of the Environmental Protection Act 1990.

Environmental Health, Contaminated Land - No objection.

NatureScot - No comments made; confirms advisory role on protected species is now fulfilled through provision of standing advice available on NatureScot website.

HSE - No response received, but noted that there was no objection to original application.

Heldon Community Council - No response at time of writing report.

SEPA – No objections subject to previous condition Site Specific Restoration Plan being re-applied. Condition requiring a Site Specific Management Plan is not required by SEPA as it is covered by SEPA's regulatory advice but support the Planning Authority re-applying this.

OBJECTIONS-REPRESENTATIONS

NOTE: Following the determination of this application, name and address details will be/have been removed (i.e. redacted) in accordance with the General Data Protection Regulations (paragraph 3 of Minute, Planning & Regulatory Services Committee 16 September 2014).

Issue: Impact of proposal on flora and fauna.

Comments (PO): Subject to previously agreed management plans secured under conditions applied to planning permission 15/01768/APP being re-applied, the proposal is not considered to result in a significant adverse impact on flora and fauna that would warrant refusal of this application to extend the operating life of the quarry. It is noted NatureScot raised no objections to the application.

OBSERVATIONS

Legislative Matters

Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended allows applicants to apply to develop land without compliance with conditions previous attached to a planning consent. In determining such an application, the Council, as Planning Authority can only consider the conditions subject to which planning permission should be granted and may:

- grant permission unconditionally (i.e. remove the conditions attached to the planning consent);
- grant permission conditionally with differing conditions; or
- refuse the application (i.e. keep the conditions attached to the planning consent).

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the Development Plan i.e. the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

The main planning issues are considered as follows:

Background

When application 15/01768/APP was applied for, Auchtertyre Quarry lay dormant i.e. was not operational and all previous planning permissions for sand and gravel extraction at this quarry site had expired. That consent sought to continue operations to complete the extraction of mineral reserves previously consented but not worked out within the previously approved quarry area, and to allow for site restoration of the site to agricultural grassland thereafter.

15/01768/APP permitted extraction for a further period of 5 years, expiring on 28 February 2021. The supporting statement provided with the application notes that extraction was not progressed under that consent due to the condition of a bridge on the private access road to the quarry. This bridge was replaced in winter 2020, and is now adequate to serve the quarry. A variation to condition 1 of 15/01768/APP is now sought, to permit further extraction for a period of 5 years.

Relationship to Minerals Policy (DP10)

Auchtertyre Quarry is identified as a safeguarded mineral reserve in terms of the Moray Local Development Plan 2020 for sand and gravel. This application will allow remaining reserves to be extracted and thereafter, facilitate restoration of the quarry. The proposal is considered to comply with policy DP10 given its support in principle to proposals to re-open a dormant quarry, which is the case here. As noted, this proposal seeks to continue to work within the realms of a previously approved quarry area, and to extract mineral reserves to previously agreed levels albeit within a different time period in light of delays to implementing the most recent consent. This proposal does not involve the physical expansion of the quarry area beyond that consented historically.

From policy DP10, all mineral developments are required to avoid or mitigate satisfactorily their impact upon a number of issues. Following consideration and ensuring all other conditions originally applied to application 15/01768/APP remain in force, consultees have not objected to the development as having unacceptable or significant adverse environmental effects including disturbance and disruption impacts arising from previous on-site extraction activities, or in relation to noise, pollution of land or water, transport and ecological interests, etc. As defined, this current site was included previously in earlier applications proposing extraction over a larger quarry area, to which there were no objections in terms of any identified adverse effects upon the natural and built environment including landscape and visual impacts, or upon the surrounding community, or in terms of cumulative effects. The arrangements for site restoration and extractive waste management are also considered acceptable (see below).

In light of the above considerations, where no unacceptable or significant adverse effects are identified, and subject to the development continuing to operate in a similar manner as before, this proposal to vary condition 1 to enable quarry operations at Auchtertyre to continue for a further 5 years is acceptable and would comply with policy DP10.

Visual Impact (DP10 and DP1)

As noted above, there were previously no concerns with the quarry in terms of its

landscape and visual impact. The quarry is not a readily noticeable feature in the surrounding area (in particular from public roads), whilst its excavation depth is small in comparison with other quarries. As extraction progresses the land, previously worked areas, as well as that proposed for further extraction will be reinstated to agricultural use, which would be in keeping with the prevailing land use in the wider area. Accordingly there is no conflict with policies DP1 and DP10 in respect of landscape and visual impacts.

Impact on the Environment (DP10 and DP1)

The site is not designated in terms of landscape, cultural or natural heritage value. The past operation of the quarry has not given rise to any specific environmental issues. Condition 3 of 15/01768/APP requires the submission of a Site Specific Management Plan, to identify and address all environmental sensitivities, pollution prevention and mitigation measures to avoid or minimise environmental impacts. This reflects the requirements of Scottish Planning Policy (SPP), ensuring that the development complies with current standards in terms of acceptable operating practices and environmental management. As condition 3 will remain in force, the proposal would comply with policies DP10 and DP1 with regards to environmental impact.

The Extractive Waste Management (Scotland) Regulations 2010

All extractive waste operations and operators are required to comply with the Extractive Waste Management (Scotland) Regulations 2010, which requires preparation of an Extractive Waste Management Plan but this can be waived if the planning authority are satisfied that the extractive waste associated with a minerals development can be managed without endangering human health and without using processes or methods which harm the environment. In January 2012 the Council granted Auchtertyre Quarry a waiver to the Regulations on the grounds that no material on site constituted extractive waste for the purposes of the Regulations.

As part of application 15/01768/APP, the applicant provided a review of operations to support the case that a waiver should again be granted for the proposed operations. That review confirmed that soils would be appropriately managed by existing arrangements, in particular the process of removing and storing/spreading soil on previously quarried land. Only worked sand and gravels would be dispatched from the site and with no material processed on the site there are no other (residue) materials present or produced that would constitute extractive waste. That application considered that the proposal would not impact on peat or polluted soils. On that basis a waiver was granted. Given there is no change to the approved development works (other than the time period for which they would be implemented) and there has been no change to the Regulations since the original/most recent planning consent (15/01768/APP), this waiver remains valid under the Regulations at this time.

Impact on Birds (EP1)

Application 15/01768/APP noted that Sand Martins are known to nest on the site during the bird breeding season. Sand Martins are protected under the Wildlife and Countryside Act and it is an offence to disturb or destroy their nests while birds are present. NatureScot (then known as SNH) previously advised that nests are rarely re-used and can be destroyed outwith the breeding season. Advice was also given by NatureScot on the use of sacrificial faces to be set aside for breeding birds, or covering and maintaining worked land to prevent birds from nesting. This advice was appended to the decision as an informative note and it is recommended it be reapplied. The site operator is already aware of the presence of the birds and will take steps to manage them on site (and from

the indicative restoration plans approved as part of 15/01768/APP, provision is made to retain a former working face as a habitat for Sand Martins in the south western corner of the already worked quarry area). In light of the above considerations, the proposal is considered to comply with policy EP1.

Restoration (DP10)

Policy DP10 requires restoration to be undertaken at the earliest stage and designed to a high standard, and if the operator cannot demonstrate that the programme for restoration is sufficient, a financial guarantee may be sought.

The existing restoration arrangements and conditions in respect of this will remain in force. This arrangement continues the restoration principles employed during earlier stages of working the quarry, and once fully excavated, restoration of the quarry will include re-profiling the ground and redistributing stockpiled (sub- and top- soil) materials over the worked site area as part of the arrangements to return the land to agricultural grassland. The water feature (wetland) in the north-west corner of the quarry area will be retained. In light of this, the proposal would comply with the requirements of policy DP10.

Policy DP10 in certain circumstances requires a financial guarantee/bond to ensure restoration can be undertaken should the operator fail to do so (for whatever reason). As part of the previous permissions, the requirements for site restoration after mineral extraction did not include nor require provision of a bond or similar financial arrangement to facilitate restoration of the site. The agent applicant/quarry operator is already signed up to an industry-based Minerals Products Association Guarantee Fund, the provisions of which are to be adopted for this site. Sand and gravel (and other mineral) workings are covered by the Fund which incorporates a commitment to restoration and gives a financial guarantee to planning authorities against a restoration default: a claim can be made where an operator is unable to meet restoration obligations arising from a planning condition as a result of financial failure and after every enforcement power available to the planning authority has been used. This arrangement would address the issue of financial guarantee as referred to in policy DP10.

Pollution (EP14)

The nature of the development is such that works on site will create noise and dust, although such effects may be limited in duration given that the quarry is likely to operate on an intermittent rather than full-time basis. The Environmental Health Manager has not objected to any potential noise, dust or other pollution effects arising from the development. The response notes there has been no complaints since the granting of 15/01768/APP, though it is noted that operations did not proceed. However, application 15/01768/APP did not raise any issues of concerns regarding these matters.

An informative applied to application 15/01768/APP is recommended to be applied to any new consent to 'remind' the developer that they must ensure that the development does not give rise to noise or dust pollution that would constitute a statutory nuisance (and in such circumstances, the Environmental Health Authority would deal with any breaches). The arrangements to manage and mitigate potential pollution effects arising from noise and dust can also be addressed within the required management plan under condition 3, as well as limitations on the consent under condition 2 (notably on operation hours). On this basis and in light of the previous permissions granted for the quarry as a whole, wherein there were no objections in terms of adverse pollution effects, the development of this remaining (smaller) area within the previously approved quarry area is also considered unlikely to create significant pollution in terms of noise and dust, etc. and the

proposal would therefore comply with policy EP14.

Amenity (DP1)

The quarry will likely continue to operate on an occasional rather than continuous basis. The quarry site itself is well separated from any existing housing. The house, Burnside is located immediately adjacent to the access track but it is approx. 790m from the entrance to the quarry itself, and from the previous applications, the effects of transporting up to 60,000 tonnes per annum along the existing access track past this property was not a source of objection. The buildings at Auchtertyre Farm are approx. 350m to the south of the quarry and the surrounding (intervening) land is worked as part of the agricultural holding.

The quarry has operated successfully alongside the established surrounding development and mindful of those earlier permissions, there are no objections to the working of the proposed remaining area. This current proposal is also considered unlikely to have any undue impact on the amenity of any neighbouring houses or to the surrounding area, and as such it would comply with policy DP1.

Access (PP3)

The site is accessed from the north via an existing private track with the entrance to the quarry located more than 1 km from the public road. The track also serves a private house and is used by the farm to the south albeit not as a principal access. The Transportation Manager has not objected to the proposed variation to continue extraction for a further 5 years but has requested that the previously agreed Junction Maintenance Scheme as part of condition 5 of 15/01768/APP remains in place. As this information has already been agreed, the wording of condition 5 will be updated to reflect this and ensure development progresses in accordance with this. On this basis, the proposed variation to continue operations for a further 5 years complies with policy PP3 with regards to access.

Conclusion and Recommendation

This application seeks to extend the consent period of extraction and restoration of this quarry that is a safeguarded mineral reserve in the MLDP 2020. The development will allow extraction of the remaining reserves and restoration of the site, the latter using soil materials extracted from the site. The principle of the development for sand and gravel extraction at this quarry has previously been considered to be acceptable. Subject to conditions 2 to 4 previously applied being reiterated (condition 5 varied per considerations under Access), this proposal to continue operations, to excavate the remaining available resource within the confines of the existing quarry to the previously agreed depth of extraction, is considered to accord with planning policy and can be achieved without undue environmental effects. The site will be returned to agricultural use thereafter. The proposal would also satisfy policy DP1 in terms of the development progressing yet safeguarding the built and natural environment.

In accordance with the applicant's agent's request to vary the condition, it is recommended that planning permission be granted for a period of five years as applied for, to enable existing reserves to be extracted and for site restoration thereafter as previously agreed.

REASON(S) FOR DECISION

The Council's reason(s) for making this decision are: -

The proposed variation to condition 1 to extend the extraction period of the quarry is considered suitable in terms of the provisions of the Moray Local Development Plan 2020 and there are no material considerations that indicate otherwise.

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**Beverly Smith
Development Management & Building Standards Manager**

APPENDIX

POLICY

Moray Local Development Plan 2020

PP3 INFRASTRUCTURE & SERVICES

Development must be planned and co-ordinated with infrastructure to ensure that places function properly and proposals are adequately served by infrastructure and services.

- a) In relation to infrastructure and services developments will be required to provide the following as may be considered appropriate by the planning authority, unless these requirements are considered not to be necessary:
 - i) Education, Health, Transport, Sports and Recreation and Access facilities in accord with Supplementary Guidance on Developer Obligations and Open Space.
 - ii) Green infrastructure and network requirements specified in policy EP5 Open Space, Town and Village Maps and, contained within Supplementary Guidance on the Open Space Strategy, Masterplans and Development Briefs.
 - iii) Mitigation/modification to the existing transport network (including road and rail) to address the impact of the proposed development in terms of safety and efficiency. This may include but not be limited to passing places, road widening, junction enhancement, bus stop infrastructure, and drainage infrastructure. A number of potential road and transport improvements are identified and shown on the Town and Village Maps as Transport Proposals (TSP's) including the interventions in the Elgin Transport Strategy. These requirements are not exhaustive and do not pre-empt any measures which may result from the Transport Assessment process.
 - iv) Electric car charging points must be provided at all commercial and community parking facilities. Access to charging points must also be provided for residential properties, where in-curtilage facilities cannot be provided to any individual residential property then access to communal charging facilities should be made available. Access to other nearby charging facilities will be taken into consideration when identifying the need for communal electric charging points.
 - v) Active Travel and Core Path requirements specified in the Council's Active Travel Strategy and Core Path Plan.
 - vi) Safe transport and access routes linking to existing networks and mitigating the impacts of development off-site.
 - vii) Information Communication Technology (ICT) and fibre optic broadband connections for all premises unless justification is provided to substantiate it is technically unfeasible.

- viii) Foul and surface water drainage, including Sustainable Urban Drainage Systems (SUDS), including construction phase SUDS.
- ix) Measures that implement the waste management hierarchy as defined in the Zero Waste Plan for Scotland including the provision of local waste storage and recycling facilities designed into the development in accord with policy PP1 Placemaking. For major applications a site waste management plan may be required to ensure that waste minimisation is achieved during the construction phase.
- x) Infrastructure required to improve or increase capacity at Water Treatment Works and Waste Water Treatment Works will be supported subject to compliance with policy DP1.
- xi) A utilities plan setting out how existing and new utility (including gas, water, electricity pipelines and pylons) provision has been incorporated into the layout and design of the proposal. This requirement may be exempted in relation to developments where the council considers it might not be appropriate, such as domestic or very small scale built developments and some changes of use.

b) Development proposals will not be supported where they:

- i) Create new accesses onto trunk roads and other main/key routes (A941 & A98) unless significant economic benefits are demonstrated or such access is required to facilitate development that supports the provisions of the development plan.
- ii) Adversely impact on active travel routes, core paths, rights of way, long distance and other access routes and cannot be adequately mitigated by an equivalent or better alternative provision in a location convenient for users.
- iii) Adversely impact on blue/green infrastructure, including green networks important for wildlife unless an equivalent or better alternative provision will be provided.
- iv) Are incompatible with key waste sites at Dallachy, Gollanfield, Moycroft and Waterford and would prejudice their operation.
- v) Adversely impact on community and recreational sites, buildings or infrastructure including CF designations and cannot be adequately mitigated.
- vi) Adversely impact on flood alleviation and mitigation infrastructure.
- vii) Compromise the economic viability of bus or rail facilities.

c) Harbours

Development within and diversification of harbours to support their sustainable operation will be supported subject to compliance with other policies and settlement statements.

d) Developer Obligations

Developer obligations will be sought to mitigate any measurable adverse impact of a development proposal on local infrastructure, including education, healthcare,

transport (including rail), sports and recreational facilities and access routes. Obligations will be sought to reduce, eliminate or compensate for this impact. Developer obligations may also be sought to mitigate any adverse impacts of a development, alone or cumulatively with other developments in the area, on the natural environment.

Where necessary obligations that can be secured satisfactorily by means of a planning condition attached to planning permission will be done this way. Where this cannot be achieved, the required obligation will be secured through a planning agreement in accordance with Circular 3/2012 on Planning Obligations.

Developer obligations will be sought in accordance with the Council's Supplementary Guidance on Developer Obligations. This sets out the anticipated infrastructure requirements, including methodology and rates.

Where a developer considers that the application of developer obligations renders a development commercially unviable a viability assessment and 'open-book accounting' must be provided by the developer which Moray Council, via the District Valuer, will verify, at the developer's expense. Should this be deemed accurate then the Council will enter into negotiation with the developer to determine a viable level of developer obligations.

The Council's Developer Obligations Supplementary Guidance provides further detail to support this policy.

DP1 DEVELOPMENT PRINCIPLES

This policy applies to all development, including extensions and conversions and will be applied reasonably taking into account the nature and scale of a proposal and individual circumstances.

The Council will require applicants to provide impact assessments in order to determine the impact of a proposal. Applicants may be asked to determine the impacts upon the environment, transport network, town centres, noise, air quality, landscape, trees, flood risk, protected habitats and species, contaminated land, built heritage and archaeology and provide mitigation to address these impacts.

Development proposals will be supported if they conform to the relevant Local Development Plan policies, proposals and additional guidance, meet the following criteria and address their individual and cumulative impacts:

(i) Design

- a) The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood.
- b) The development must be integrated into the surrounding landscape which will include safeguarding existing trees and undertaking replacement planting to include native trees for any existing trees that are felled, and safeguarding any notable topographical features (e.g. distinctive knolls), stone walls and existing water features by avoiding channel modifications and culverting. A tree survey and tree protection plan must be provided with planning applications for all

proposals where mature trees are present on site or that may impact on trees outwith the site. The strategy for new tree provision should follow the principles of the "Right Tree in the Right Place".

- c) Make provision for new open space and connect to existing open space under the requirements of Policy EP5 and provide details of the future maintenance of these spaces. A detailed landscape plan must be submitted with planning applications and include information about green/blue infrastructure, tree species, planting, ground/soil conditions, and natural and man-made features (e.g. grass areas, wildflower verges, fencing, walls, paths, etc.).
- d) Demonstrate how the development will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape.
- e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.
- f) Proposals do not result in backland development or plots that are subdivided by more than 50% of the original plot. Sub-divided plots must be a minimum of 400m², excluding access and the built-up area of the application site will not exceed one-third of the total area of the plot and the resultant plot density and layout reflects the character of the surrounding area.
- g) Pitched roofs will be preferred to flat roofs and box dormers are not acceptable.
- h) Existing stone walls on buildings and boundaries must be retained. Alterations and extensions must be compatible with the character of the existing building in terms of design, form, choice of materials and positioning and meet all other relevant criteria of this policy.
- i) Proposals must orientate and design buildings to maximise opportunities for solar gain.
- j) All developments must be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use (calculated on the basis of the approved design and plans for the specific development) through the installation and operation of low and zero-carbon generating technologies.

(ii) Transportation

- a) Proposals must provide safe entry and exit from the development, including the appropriate number and type of junctions, maximise connections and routes for pedestrians and cyclists, including links to active travel and core path routes, reduce travel demands and ensure appropriate visibility for all road users at junctions and bends. Road, cycling, footpath and public transport connections and infrastructure must be provided at a level appropriate to the development and connect people to education, employment, recreation, health, community and retail facilities.
- b) Car parking must not dominate the street scene and must be provided to the side or rear –and behind the building line. Maximum (50%) parking to the front

of buildings and on street may be permitted provided that the visual impact of the parked cars is mitigated by hedging or low stone boundary walls. Roadways with a single carriageway must provide sufficient off road parking to avoid access routes being blocked to larger service vehicles and prevent parking on pavements.

- c) Provide safe access to and from the road network, address any impacts on road safety and the local road, rail and public transport network. Any impacts identified through Transport Assessments/ Statements must be identified and mitigated. This may include but would not be limited to, passing places, road widening, junction improvements, bus stop infrastructure and drainage infrastructure. A number of potential mitigation measures have been identified in association with the development of sites and the most significant are shown on the Proposals Map as TSP's.
- d) Provide covered and secure facilities for cycle parking at all flats/apartments, retail, community, education, health and employment centres.
- e) Garages and parking provision must be designed to comply with Moray Council parking specifications see Appendix 2.
- f) The road layout must be designed to allow for the efficient mechanical sweeping of all roadways and channels, paviers, turning areas and junctions. The road layout must also be designed to enable safe working practices, minimising reversing of service vehicles, with hammerheads minimised in preference to turning areas such as road stubs or hatchets, and to provide adequate space for the collection of waste and movement of waste collection vehicles.
- g) The road and house layout in urban development should allow for communal refuse collection points where the design does not allow for individual storage within the curtilage and / or collections at kerbside. Communal collection points may either be for the temporary storage of containers taken by the individual householder or for the permanent storage of larger containers. The requirements for a communal storage area are stated within the Council's Kerbside Collection Policy, which will be a material consideration.
- h) Road signs should be minimised designed and placed at the back of footpaths to reduce street clutter, avoid obstructing pedestrian movements and safeguarding sightlines;
- i) Within communal parking areas there will be a requirement for electric car charging points. Parking spaces for car sharing must be provided where a need is identified by the Transportation Manager.

(iii) Water environment, pollution, contamination

- a) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water including temporary/ construction phase SUDS (see Policy EP12).
- b) New development should not be located in areas at flood risk or increase vulnerability to flooding (see Policy EP12). Exceptions to this would only be

considered in specific circumstances, e.g. extension to an existing building or change of use to an equal or less vulnerable use. Where this exception is applied the proposed development must include resilience measures such as raised floor levels and electrical sockets.

- c) Proposals must avoid major hazard sites and address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- d) Proposals must protect and wherever practicable enhance water features through for example naturalisation of watercourses by introducing a more natural planform and removing redundant or unnecessary structures.
- e) Proposals must address and sufficiently mitigate any contaminated land issues.
- f) Make acceptable arrangements for waste collection and management and encourage recycling.
- g) Avoid sterilising significant workable reserves of minerals, prime agricultural land or productive forestry.
- h) Proposals must avoid areas at risk of coastal erosion and coastal change.

DP10 MINERALS

a) Safeguarding Mineral Reserves

The Council will safeguard all existing workable mineral reserves/ operations from incompatible development which is likely to prejudice it unless;

- There are no alternative sites for development, and
- The extraction of mineral resources will be completed before development commences.

b) Mineral Operations

Proposals for mineral extraction will be acceptable in the following circumstances, subject to compliance with other relevant LDP policies;

- Extension to existing operation/sites.
- Re-opening of a dormant quarry.
- →A reserve underlying a proposed development where it would be beneficial to extract prior to development.

Proposals for new and extensions to existing mineral sites, which contribute to the maintenance of at least a 10 years supply of permitted reserves of construction aggregates in Moray will be supported, subject to meeting the terms of Policy DP1 and other relevant policies.

Proposals for borrow pits will be supported, subject to compliance with other relevant policies, to allow the extraction of minerals near to or on the site of associated development (e.g. wind farm and roads construction, forestry and agriculture) provided it can be demonstrated that the operational, community and environmental benefits of the proposal can be evidenced. These consents will be time limited, tied to the proposal and must be accompanied by full restoration proposals and aftercare.

All mineral development proposals must avoid or satisfactorily mitigate impacts. In determining proposals, the Council will give consideration to the requirements of Policy DP1. Additional mitigation may be required for renewables at existing quarries.

Proposals must be accompanied by an extractive Waste Management Plan.

c) Restoration and aftercare

Operators must provide details of their proposed programme of restoration (including the necessary financing, phasing and aftercare of the sites). In some circumstances, the Council may require a financial guarantee/ bond.

Restoration programmes must reinstate the site at the earliest opportunity when excavation has ceased. Restoration must be designed and implemented to the highest standard. After uses must result in environmental improvement and add to the cultural, recreational or environmental assets of the area.

EP1 NATURAL HERITAGE DESIGNATIONS

a) European Site designations

Development likely to have a significant effect on a European Site and which is not directly connected with or necessary to the conservation management of that site must be subject to an appropriate assessment of the implications for its conservation objectives. Proposals will only be approved where the appropriate assessment has ascertained that there will be no adverse effect on the integrity of the site.

In exceptional circumstances, proposals that could affect the integrity of a European Site may be approved where:

- i) There are no alternative solutions, and
- ii) There are imperative reasons of over-riding public interest including those of a social or economic nature, and
- iii) Compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.

For European Sites hosting a priority habitat or species (as defined in Article 1 of the The Conservation (Natural Habitat & c.) Regulations 1994), prior consultation with the European Commission via Scottish Ministers is required unless the imperative reasons of overriding public interest relate to human health, public safety or beneficial consequences of primary importance to the environment.

b) National designations

Development proposals which will affect a National Park, National Scenic Area (NSA), Site of Special Scientific Interest (SSSI) or National Nature Reserve will only be permitted where:

- i) The objectives of designation and the overall integrity of the area will not be compromised; or
- ii) Any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

c) Local Designations

Development proposals likely to have a significant adverse effect on Local Nature Reserves, wildlife sites or other valuable local habitats will be refused unless it can be demonstrated that;

- i) Public benefits clearly outweigh the nature conservation value of the site, and
- ii) There is a specific locational requirement for the development, and
- iii) Any potential impacts can be satisfactorily mitigated to conserve and enhance the site's residual conservation interest.

d) European Protected Species

European Protected Species are identified in the Habitats Regulations 1994 (as amended in Scotland). Where a European Protected Species may be present or affected by development or activity arising from development, a species survey and where necessary a Species Protection Plan should be prepared to accompany the planning application, to demonstrate how the Regulations will be complied with. The survey should be carried out by a suitably experienced and licensed ecological surveyor.

Proposals that would have an adverse effect on European Protected Species will not be approved unless;

- The need for development is one that is possible for SNH to grant a license for under the Regulations (e.g. to preserve public health or public safety).
- There is no satisfactory alternative to the development.
- The development will not be detrimental to the maintenance of the favourable conservation status of the species.

e) Other protected species

Wild birds and a variety of other animals are protected under domestic legislation, such as the Wildlife and Countryside Act 1981 (as amended in Scotland by the Nature Conservation (Scotland) Act 2004 and the Wildlife and Natural Environment (Scotland) Act 2011), Protection of Badgers Act 1992 and Marine (Scotland) Act 2010. Where a protected species may be present or affected by development or activity arising from development, a species survey and where necessary a Species Protection Plan should be prepared to accompany the planning application to demonstrate how legislation will be complied with. The survey should be carried out by a suitably experienced ecological surveyor, who may also need to be licensed depending on the species being surveyed for.

Proposals which would have an adverse effect on badgers or their setts must be accompanied by a Badger Protection Plan demonstrating how impacts will be avoided, mitigated, minimised or compensated for.

EP14 POLLUTION, CONTAMINATION & HAZARDS

a) Pollution

Development proposals which may cause significant air, water, soil, light or noise pollution or exacerbate existing issues must be accompanied by a detailed assessment report on the levels, character and transmission of the potential pollution with measures to mitigate impacts. Where significant or unacceptable impacts cannot be mitigated, proposals will be refused.

b) Contamination

Development proposals on potentially contaminated land will be approved where they comply with other relevant policies and;

- i) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment; and
- ii) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/ or treatment of any hazardous material.

c) Hazardous sites

Development proposals must avoid and not impact upon hazardous sites or result in public safety concerns due to proximity or use in the vicinity of hazardous sites.