

**18/01163/APP**

**11th September 2018**

**Vary condition 2 of planning consent 93/00558/FUL to allow extraction to take place for a further period of 25 years beyond the current permitted expiry date of 8th December 2018 Netherglen Quarry Longmorn Elgin Moray for Breedon Northern**

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**Comments:**

- A SITE VISIT has been carried out.
- Application is a "major" development as defined under the Hierarchy Regulations 2009 because the site area exceeds 2 ha.
- Advertised under Schedule 3 of the Development Management Regulations 2013.
- Advertised for neighbour notification purposes.
- One objection 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 to have effect on 29 January 2044 (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 3 below).

**Reason -** To ensure an acceptable form of development enabling it 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 the restoration of the site.

2. Within 3 months of the date of this permission (or other appropriate period agreed in writing by the Planning Authority), an up-to-date Site Specific Management Plan shall be submitted to and approved by the Planning Authority in consultation with SEPA. Thereafter all works shall be undertaken in accordance with the approved Plan. The Plan shall include the information (where applicable) outlined in paragraph 3.3 of the SEPA consultation response 9 October 2018 attached to this decision.

**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

3. At least one (1) year prior to mineral workings ceasing on the site and prior to any phased restoration works, a restoration and aftercare plan shall be submitted for the written approval of the planning authority, in consultation with SEPA, and all work carried out in accordance with the said scheme. The plan must include information on any proposals for phased working and progressive restoration, as well as the effect that any restoration will have on the water environment. The plan shall include (but not be limited to) the following information:
  - a) Proposals for phased working and progressive restoration.
  - b) Existing and proposed finished ground levels relative to a fixed datum.
  - c) Surface water drainage arrangements.
  - d) Details of any buffer strips between the works and any water features and other measures to minimise pollution.
  - e) Demonstration that the restoration proposals will not have a detrimental impact on the water environment, including groundwater quality and quantity.
  - f) Identify environmental enhancement opportunities that can be achieved through restoration. These could include habitat creation and management proposals.
  - g) A programme for the completion of the restoration and subsequent maintenance arrangements.

**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.

4. The further survey and mitigation measures detailed within the accompanying Preliminary Ecological Appraisal by ENVIRO CENTRE dated March 2018 submitted as part of this application shall be implemented by the Quarry Operator, unless otherwise agreed with the Council as Planning Authority.

**Reason -** To ensure the adequate protection and enhancement of ecological features and protected species.

5. All quarry operations shall be carried out and permitted between 0700 – 1900, Monday to Friday, and 0700 – 1300, Saturdays and at no other times without the

prior written consent of the Council, as Planning Authority in consultation with the Environmental Health Manager.

**Reason** - In the interests of amenity so as to ensure that the development does not cause a nuisance or disturbance to residents in the area.

6. During the normal daytime working hours defined in the above condition, noise emissions associated with the development shall not exceed the free-field Equivalent Continuous Noise Level (LAeq,1h) of 52dB(A), as determined at any existing noise sensitive property.

**Reason** - In the interests of amenity so as to ensure that the development does not cause a nuisance or disturbance to residents in the area.

7. At the reasonable request of the Planning Authority, following a complaint relating to noise from quarry operations at the development, the developer shall measure at its own expense noise emissions as they relate to the permitted consent limits having regard to measurement locations and methodologies as detailed in Planning Advice Note 'PAN50, Annex A: The Control of Noise at Surface Mineral Workings'. The results of such monitoring shall thereafter be forwarded to the Planning Authority. In the event that the results of the subsequent monitoring specified above records levels exceeding that in condition 6 above further timeous mitigation measures will be required to be identified in a scheme agreed in writing by the Planning Authority, in consultation with the Environmental Health Manager, and thereafter implemented.

**Reason** - In the interests of amenity so as to ensure that the development does not cause a nuisance or disturbance to residents in the area.

8. Prior to the commencement of any blasting operations a scheme for the monitoring of blasting including the location of monitoring points and equipment to be used shall be submitted to the planning authority for written approval. All blasting operations shall take place only in accordance with the scheme as approved or with such subsequent amendments as may receive the written approval of the Planning Authority.

**Reason** - In the interests of amenity so as to ensure that the development does not cause a nuisance or disturbance to residents in the area.

9. Ground vibration as a result of blasting operations at the development shall not exceed a peak particle velocity of 6 mms-1 in 95% of all blasts and no individual blast shall exceed a peak particle velocity of 10mms-1 as measured at vibration sensitive buildings. The measurement shall be the maximum of 3 mutually perpendicular directions taken at the ground surface at any vibration sensitive building.

**Reason** - In the interests of amenity so as to ensure that the development does not cause a nuisance or disturbance to residents in the area.

10. No blasting shall be carried out on the site except between the following times (1000 and 1200 hours) and (1400 and 1600 hours) Monday to Fridays and (1000 and 1200 hours) on Saturday. There shall be no blasting or drilling operations on Sundays, Bank or National Holidays. This condition shall not apply in cases of emergency when it is considered necessary to carry out blasting operations in the interests of safety the Planning Authority shall be notified in writing immediately of the nature and circumstances of any such event.

**Reason** - In the interests of amenity so as to ensure that the development does not cause a nuisance or disturbance to residents in the area.

11. Within 3 months of the date of this permission, details shall be submitted to and approved by the Planning Authority in consultation with the Council Roads Authority for edge strengthening works to the A941 and site access over a continuous 55 metre length comprising 40 metres of the A941 road from the start of the entrance to the site extending southwards on the west side and the first 15 metres of the edge of the access from the start of the entrance to the site on the A941. Thereafter the agreed road edge strengthening works shall be completed in accordance with the approved details within 6 months of the date of this permission.

**Reason** - To ensure acceptable infrastructure is provided on the route to/from the development in the interests of road safety.

12. Within 3 months of the date of this permission, written evidence shall be submitted the Council as Planning Authority that a S96 Wear and Tear Agreement between the Quarry Operator (or their appointed representative) and the Roads Authority (Roads Maintenance) has been completed. The Wear and Tear agreement shall include the full width of the A941 road over a 70 metre length centred at the access to the development onto the A941 and be provided for the lifetime of the development.

**Reason** - To ensure infrastructure is maintained at the access to the development in the interests of road safety.

13. Within 3 months of the date of this permission, details of evidence from the Quarry Operator shall be submitted to and approved by the Planning Authority in consultation with the Council Roads Authority, which confirms the provision of advanced warning signs (2 southbound and 1 northbound) on the A941 at locations to a specification previously agreed with the Council Roads Authority (Traffic Section).

**Reason** - To ensure acceptable infrastructure is provided at the access to the development in the interests of road safety.

14. No water or loose material shall drain or be carried onto the public carriageway for the life-time of the development.

**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 material

and surface water in the vicinity of the new access.

15. Notwithstanding the provisions of Classes 55 and 56 of the Town & Country Planning (General Permitted) (Development) (Scotland) order 1992 (as amended, revoked or re-enacted; with or without modification) no buildings, plant or machinery (other than the mobile plant/machinery for extraction works located within the areas of extraction operations; and plant/machinery/buildings for processing aggregate construction products within the areas of processing operations), shall be installed or operated within the site without the prior approval of the Council as Planning Authority.

**Reason** - In order to retain effective control over future development within the application site so that it is carefully managed and does not result in over-development or adversely impact on the amenity or character of the area.

16. No tree felling shall commence on site until a woodland planting scheme to compensate for the removal of 1.4 hectares of woodland from the site (the location and planting timescale(s) for which are shown on the Tree Compensation Plan drawing number N01/PA/010) has been submitted to and approved in writing by Moray Council in consultation with Forestry Commission Scotland. The replanting scheme must comply with the requirements set out in the UK Forestry Standard (Forestry Commissions, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers. The scheme submitted for approval must include:-
  - a. details of the location of the area to be planted (Tree Compensation Plan drawing number N01/PA/010 refers);
  - b. details of land owners and occupiers of the land to be planted;
  - c. the nature, design and specification of the proposed woodland to be planted;
  - d. details of all Necessary Consents for the Replanting Scheme and timescales within which each shall be obtained;
  - e. the phasing and associated timescales for implementing the Replanting Scheme (Tree Compensation Plan drawing number N01/PA/010 refers);
  - f. proposals for the maintenance and establishment of the Replanting Scheme, including; annual checks; replacement planting; fencing; ground preparation; and drainage.

The approved Replanting Scheme shall thereafter be implemented in full and in accordance with the phasing and timescales set out therein, unless otherwise agreed in writing by Moray Council in consultation with Forestry Commission Scotland.

**Reason** - In order to ensure compensatory woodland planting is provided to mitigate for that lost as a result of the development.

17. Once mineral extraction has been exhausted or the permission duration expires (whichever is the sooner) the final restoration phase of Netherglen Quarry shall be carried out in accordance with the approved restoration plan. The restoration works shall be carried out within 12 months of the quarry ceasing to operate or at the latest within the 25<sup>th</sup> year following the date of this consent.

**Reason** - In order to ensure, upon expiry of the mineral extraction, that the quarry is landscaped to minimise any long term visual impact and to encourage biodiversity back to the area.

18. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council as Planning Authority gives written consent to any variation of this planning condition. This includes those planted as part of the progressive restoration of the quarry in addition to the remaining planting required as part of the final phase of the approved Concept Restoration Plan.

**Reason** - In order to ensure that the approved landscaping works are properly maintained in a manner to ensure the appropriate landscaping and quarry restoration is achieved.

19. The proposed phasing, progressive and final restoration and landscaping details as shown on the approved Concept Restoration Plan drawing number N01/PA/007 and the associated restoration and aftercare plan submitted/approved under the terms of condition 3 must be adhered to, unless approved in writing by the Council as Planning Authority.

**Reason** - In order to ensure that the approved phasing of operations and proposed restoration and planting details are provided.

**Reason(s) for Decision**

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

The proposal accords with the relevant provisions of the development plan and there are no material considerations that indicate otherwise.

**List of Informatives:**

MANAGER (DEVELOPMENT MANAGEMENT) has commented that:-

The recommendations contained within the 'Assessment of Environmental Impact of Blasting, Future Working at Netherglen Quarry, Moray' dated the 18<sup>th</sup> May 2018 should be adhered too.

THE TRANSPORTATION MANAGER has commented that:-

Advanced warning signs to be provided on the A941 shall be to Traffic Signs Regulations and General Directions (TSRGD) diagram number 506.1 (and the relevant handed variant thereof), 900mm and in class ref 2 material.

Before commencing works, the applicant is obliged to apply for permission to modify the existing public road, in accordance with Section 56 of the Roads (Scotland) Act.

The applicant will be required to provide technical information, and a programme for the proposed works. Advice on the application process can be obtained by emailing [constructionconsent@moray.gov.uk](mailto:constructionconsent@moray.gov.uk)

Planning consent does not carry with it the right to carry out works within the public road boundary and the applicant is obliged to contact the Transportation Manager for road opening permit in accordance with the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into his property.

The applicant shall ensure that their operations do not adversely affect any Public Utilities, which should be contacted prior to commencement of operations.

The applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

The Transportation Manager must always be contacted before any works commence.

This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

THE SCOTTISH ENVIRONMENT PROTECTION AGENCY has commented that:-

See attached consultation responses dated 9<sup>th</sup> October and 4<sup>th</sup> December 2018.

SCOTTISH NATURAL HERITAGE has commented that:-

See attached consultation responses dated 25<sup>th</sup> September 2018.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT	
Reference No. Version No.	Title/Description
2	Current site levels
1	Water Management plan
N01-PA-008	Cross section Phase 1
N01-PA-009	Cross section Phase 2

N01/PA/007	Restoration plan
N01/WMP/201	Waste management plan
N01/PA/005	Phase 3 extraction
N01/PA/001	Location plan
N01/PA/002	Site plan
N01/PA/006	Cross section Phase 3
N01/PA/003	Phase 1 extraction
N01/PA/004	Phase 2 extraction
N01/PA/010	Tree Compensation Plan

Other supporting information to be stamped and issued with decision (and kept sensitive):

Preliminary Ecological Appraisal by ENVIRO CENTRE dated March 2018.

Assessment of Environmental Impact of Blasting, Future Working at Netherglen Quarry, Moray dated the 18th May 2018.





## PLANNING APPLICATION COMMITTEE SITE PLAN

**Planning Application Ref Number:**

**18/01163/APP**

**Site Address:**

Netherglen Quarry

Longmorn

**Applicant Name:**

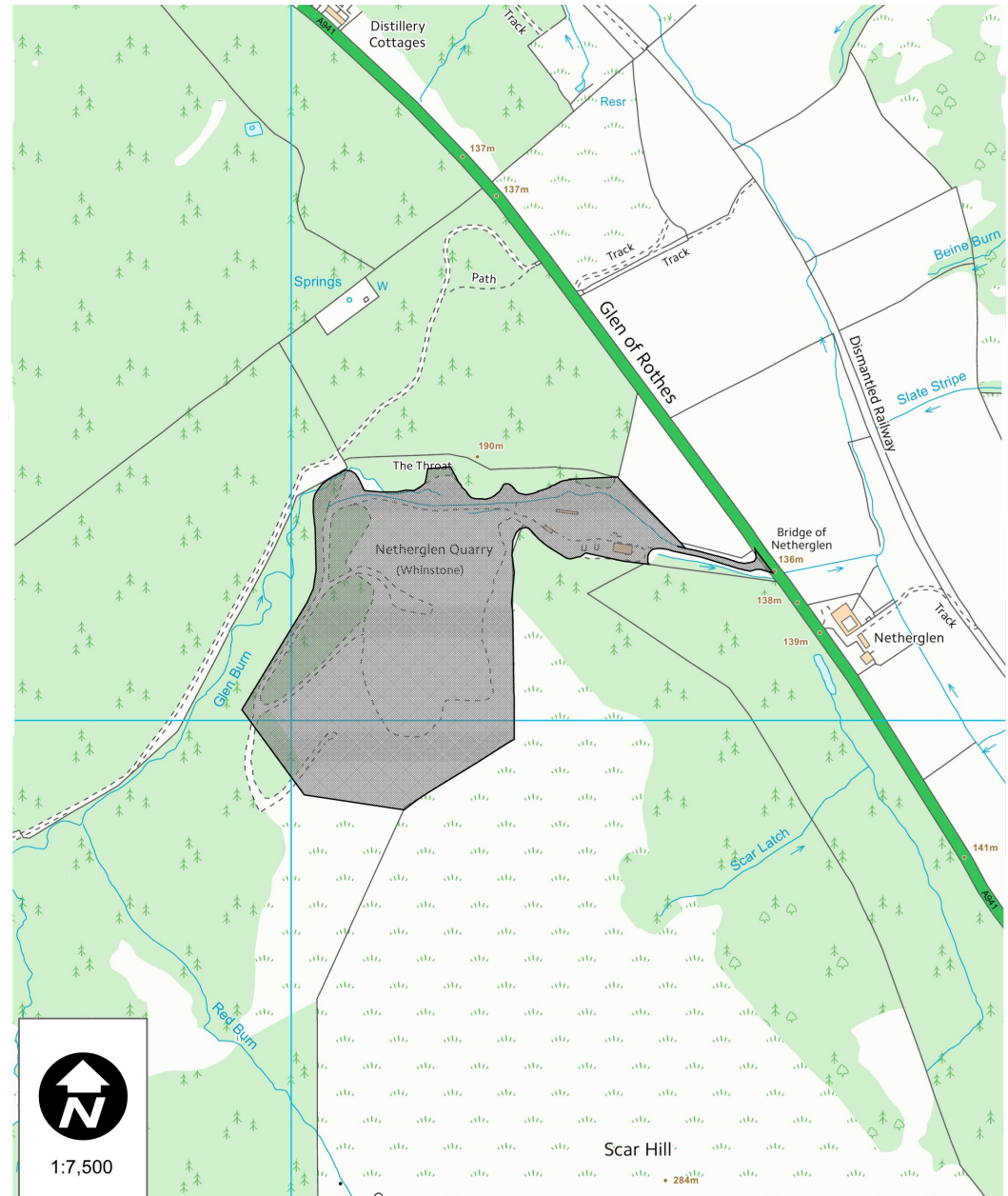
Breedon Northern

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## Location Plan







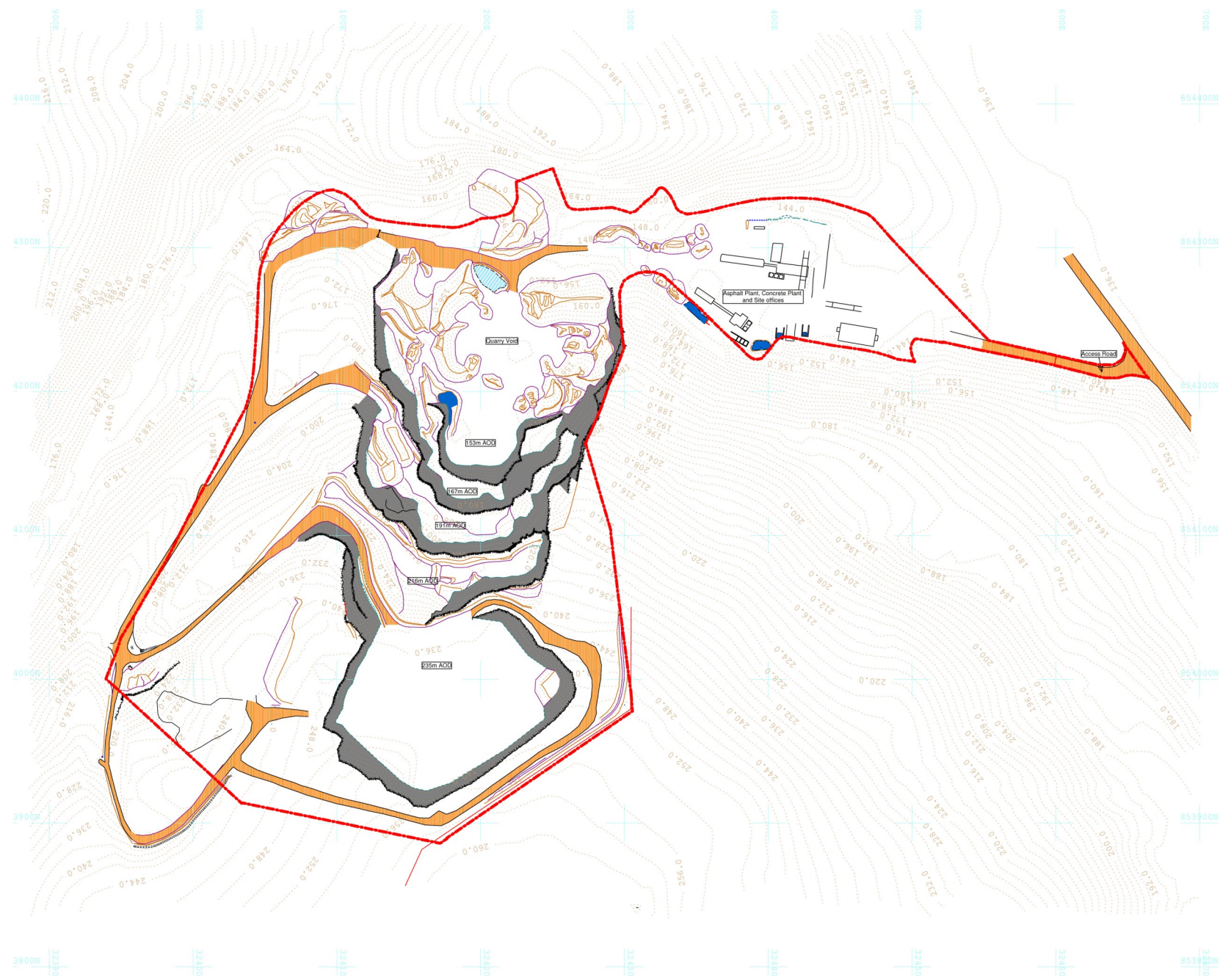
Site Location







Site plan





























## PLANNING APPLICATION: 18/01163/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*

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### **THE PROPOSAL**

- Application to vary condition 2 of planning consent 93/00558/FUL to allow extraction to take place for a further period of 25 years beyond the current permitted expiry date of 8th December 2018 at Netherglen Quarry, Longmorn. (The application has been submitted under the terms of Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act), which allows for the variation or removal of planning conditions placed on a previous planning consent).
- Mineral extraction would continue at an average annual output rate of up to 150,000 tonnes (similar to current levels), giving an overall estimated total yield of 3.6million tonnes. This also includes the continued processing of rock on site into aggregate construction products, of coated roadstone (asphalt) and ready-mix concrete.
- The development will be undertaken in 3 phases:
- Phase 1 will involve progressing the upper benches to their later extents at an elevation of 222m and 237m (Above Ordnance Datum) AOD and is anticipated to yield approx. 1.1 million tonnes of mineral. Prior to this an area of vegetation including 1.1ha of woodland will be removed, with overlying soils placed against finalised quarry faces for restoration.
- Phase 2 will involve working the existing bench at 191m AOD split with a further bench established at 207m AOD, taken to their later extents and yielding approx. 1.5 million tonnes of mineral.
- Phase 3 will involve extraction on three levels at benches of 166m, 177m and 153m AOD taken to their final positions and yielding approx. 1 million tonnes.
- Rock products will continue to be stockpiled in the existing quarry stocking area within the quarry void prior to collection for dispatch to market, or utilised for the manufacture of asphalt or ready-mix concrete. Loaded HGVs carry an average of 20 tonnes of rock/asphalt or 6 cubic metres of concrete, and exit the quarry via the existing site access onto the A941. For hours of operation, extraction and processing of rock will be undertaken between 0600hrs and 1900hrs Monday to Friday, and 0700hrs and 1300hrs on Saturdays.
- The proposal includes a Concept Restoration Plan which details a scheme of progressive restoration and restoration works for completion once extraction has ceased, and 1.4ha of compensatory tree planting along the southern edge of the site and upper bench of phase 1 (to be carried out in 2020 and following completion of phase 1).
- The application is supported by a Planning Supporting Statement, Noise and Vibration Assessments, Landscape and Visual Assessment, Flood Risk Assessment, Surface Water Waste Management Plan, Preliminary Ecological Appraisal and Extractive Waste Management Plan.

## **THE SITE AND SURROUNDINGS**

- An established hard rock quarry located approximately 9.3km south of Elgin and approximately 6km north of Rothes, with access taken directly from the A941.
- The application site, inclusive of the existing quarry operations extends to approximately 13.5ha, the actual permitted area of extraction being 7.5ha. The site comprises the following elements:
- The current quarry area (11.5 ha), which comprises the quarry void containing primary and secondary processing plant, stocking areas, haul roads, the concrete and asphalt plants located in the north-east area of the site together with associated workshops, offices and weigh-bridge. This also includes an area of retained woodland within the western part of the site which separates the haul road from the quarry.
- The remaining unworked portion of the site (2ha), which comprises dry heath/moorland and 1.1ha of native pine (naturally regenerated) woodland - mixed habitat. A further area of 0.2 ha of pine woodland within the eastern part of the site has been removed recently.
- The quarry is located on the northern slope of Scar Hill which rises to an elevation of 282m AOD to the south of the quarry. To the west, the land rises again with Hart Hill reaching an elevation of 267m AOD, and to the north and east the land gently falls before rising again to Brown Muir.
- Immediate surrounding land-use is comprised of mainly plantation woodland with the exception of an area of bare ground (heath and moorland) to the south and farmland to the east. The wider locality includes two further mineral extraction sites along the A941 corridor, namely the Gedloch Quarry approximately 1.3km to the north-west and Rothes Glen Quarry 1.4km to the south.
- The closest residential property to the quarry is Netherglen Farm which lies approximately 150m to the south of the site access. Further properties at Coleburn are located approximately 700m to the north.
- The site is not located within any designated environmentally sensitive areas.
- The SEPA indicative flood map shows that the northern part of the site is currently identified as being at 'medium risk' from river flooding. The SEPA flood map also indicates that the northern area and a small area of the quarry void to be at 'medium or high risk' from surface water flooding.
- The site is located within the catchment of the Red Burn which flows north and east of the site. Red Burn is a tributary of the Glen Burn approximately 200m to the east of the site. The Red Burn flows northwards past the western site boundary and then eastward adjacent to and through the northern part of the site (see Water Management Site Plan 1). The burn is culverted at 3 locations: beneath the haul road, beneath the concrete plant and site offices, and beneath the A941.
- There are no known sites of archaeological interest within the application site boundary.

## **HISTORY**

For the site:

**18/00371/SCN** - Screening Opinion adopted (11 April 2018) for the current application site area where, in taking account of the characteristics and location of the development and characteristics of the potential impact associated with the development proposed, no



significant environmental effects are considered likely to occur and the proposal does not require to be subject to EIA procedures.

**10/00304/APP** – Planning consent to erect new concrete batching plant – granted 2 June 2010. This lies within the north-eastern area of the site adjacent to the entrance and is operational.

**08/00512/APP** – Planning consent to erect new asphalt batching and production plant – granted 14 August 2008. This is also located within the north-eastern area of the site adjacent to the entrance and is operational.

**93/00559/FUL** - Planning consent for the resumption and extension of hard rock workings, installation of mobile plant, retention of buildings and associated work – granted 9 December 1993. This followed a 10 year period when the quarry was closed. The quarry continues to operate in accordance with this planning consent, which lapsed on 8 December 2018.

**MC/180/74** – Planning consent for access road and extension to quarry – granted 22 July 1974.

**MC/117/74** – Planning consent granted for weigh-bridge and weigh-bridge office at quarry.

**MC/19/65** – Planning consent granted to erect stone crushing, screening and coating plant, power house, switch gear house and garage, electricity sub-station and weigh bridge at Netherglen Quarry.

## **POLICY - SEE APPENDIX**

## **ADVERTISEMENTS**

- Advertised for neighbour notification purposes.
- Advertised under Schedule 3 of the Development Management Regulations 2013.

## **CONSULTATIONS**

**Development Plans** - As this is an application for an extension of time to an existing consent we have no comments to make.

**Transportation Manager** – No objections subject to conditions as recommended requiring provision of edge strengthening works to the A941 and site access over a 55 metre length (15m back from the edge of the carriageway (southern side only) and 40m south of the access along the A941), evidence of a 'Wear and Tear' agreement covering the A941 over a 70 length centred at the site access for the lifetime of the development, advanced warning signage at 3 locations (2 southbound and 1 northbound) on the A941 and measures to ensure that no water or loose material drains onto the public carriageway.

**Environmental Health** - No objections subject to conditions as recommended, regarding hours of quarry operations, noise, monitoring/mitigation measures in the event of noise

complaints being received, blasting (including scheme of monitoring) vibration and hours of blasting operations.

**Contaminated Land** – No objections.

**Private Water Supplies** – No objections.

**Moray Flood Risk Management** - No objections subject to a condition requiring submission/approval of a restoration and aftercare plan which is to include information on phased working and progressive restoration and any associated effects on the water environment.

**Developer Obligations** – No developer obligations sought.

**SEPA** - No objections subject to conditions as recommended requiring submission/approval of an up-to-date Site Specific Management Plan (to minimise impacts on the environment and ensure up-to-date operating and environmental standards), and a restoration and aftercare plan which is to include information on phased working and progressive restoration and what effects this will have on the water environment (to retain control of this temporary development and ensure that the site is appropriately restored to protect the environment). Informative notes on regulatory requirements are also recommended.

In terms of flood risk, SEPA notes that the application is only for the extension in the time operation of an existing quarry, there are no changes in the footprint of the operations and any existing flooding issues locally at the site will be mitigated. Highlights consultation responses to the previous applications for plant at the quarry when it raised no objection, based on flood risk studies at the time which demonstrated some risk of flooding in this part of the quarry, but an unlikely risk elsewhere, and also that the development was also viewed as an exception under Scottish Planning Policy (SPP) where the location of the proposal is essential for operational reasons.

**Scottish Natural Heritage** – No objections. SNH agrees with the conclusions of the accompanying ecological report and that if further survey and broad mitigation, as outlined in the report is implemented then the proposed future extraction works are not considered likely to cause significant effects on the ecology of the site. SNH advises that the recommendations in the report are implemented to minimise adverse impacts on wildlife and the ecology of the site.

**RSPB Scotland** – No response received at the time of writing this report.

**Health and Safety Executive (Quarries)** - No response received at the time of writing this report.

**Forestry Commission Scotland** – No objections. As this is an extant permission FCS would be satisfied if the proposed area of tree removal be reinstated as part of the restoration plan. The submitted compensatory tree planting plan is acceptable, recommends imposition of condition requiring submission/approval of further details and management/establishment plan.

**MOD Safeguarding** – No safeguarding objection.

**Aberdeenshire Archaeology Service** – No objection.

**Speyside Council** - No response received at the time of writing this report.

## **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).

One letter of representation was received from:-

[REDACTED].

The grounds of representation or objection are summarised below:-

**Issue:** Blasting at the site seems to be getting closer and more frequent, with pictures on walls having to be straightened after each blast, and concerned about potential damage to property from another 25 years of blasting.

**Comment (PO):** The applicants have submitted a specific assessment relating to blasting and vibration. This proposes using charges of a sufficient size so as not to cause damage to neighbouring properties and has assessed the blasting/vibration effects for surrounding properties (including the contributors') using existing readings and vibrations from monitoring a typical blast. In light of the concerns raised by the contributor the applicant has offered to set up measuring equipment at the affected property during the next blast to establish the level of impact and mitigation measures (if required).

The Environmental Health Manager has reviewed the assessment and has raised no objection subject to conditions regarding the monitoring, level of vibration limits and times for blasting operations to ensure that disruption and disturbance to neighbouring properties are minimised and can be controlled. The Environmental Health Manager has also reviewed the submitted objection, and notes that the predicted vibration levels from blasting would be considerably below prescribed vibration limits and that the recommended condition for a vibration monitoring scheme should address any concerns that arise, in addition to the need to meet prescribed vibration limits.

**Issue:** Noise is getting louder as it is getting closer and with woods being cut down opposite the houses, we are losing the buffer for the noise.

**Comment (PO):** The application is supported by a Noise Impact Assessment which contains detailed analysis of noise impacts from the proposal and has been reviewed by the Environmental Health Manager. This predicts no significant adverse effects and that noise received at the nearest residential properties (including the contributors') when operations are in progress will not exceed relevant PAN 50 noise criteria limits nor be higher than the measured ambient levels at the two receptor locations. Conditions are recommended in relation to noise in terms of noise levels and hours of operation. These afford the Council adequate control over the quarry extension should noise cause a nuisance.

**Issue:** Affecting natural environment and over development of site.

**Comment (PO):** The proposal represents an acceptable form of development for this location which together with appropriate mitigation/conditions would not result in significant adverse impacts on the environment.

## **OBSERVATIONS**

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 2015 (MLDP) unless material considerations indicate otherwise. The main issues are considered below.

Scottish Planning Policy 2014 (SPP) provides further direction of mineral extraction proposals and the need to secure appropriate provision of mineral resources, subject to appropriate site restoration.

Also relevant to the application being for mineral extraction development is advice contained within Planning Advice Notes 50 'Controlling the Environmental Effects of Surface Mineral Workings' and 64 'Reclamation of Surface Mineral Workings' and their associated Annexes. The development would also be subject to consideration under The Management of Extractive Waste (Scotland) Regulations 2010.

### **Background**

In terms of the Hierarchy for planning the application is a major development under the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 as it involves a proposed mineral extraction area which exceeds 2 hectares. As the application has been made under the terms of section 42 there is no requirement for pre-application consultation.

The proposal was the subject of a request for a formal EIA screening opinion in March 2018 under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. Following consideration of this request and accompanying information, the Council, as Planning Authority subsequently issued a screening opinion on 11 April 2018 which confirmed that the proposal was not EIA development and did not require formal EIA procedures.

Annex I of Circular 3/2013: Development Management Procedures details the procedure for considering section 42 applications. This states that when determining a Section 42 application, although authorities may only normally consider the issue of the conditions to be attached to any resulting permission, planning authorities can where appropriate widen the scope of the application to consider the overall effect of granting a new planning permission. With this in mind and given the length of time that has passed since the approval of the original application during which a number of development plans (and guidance) have been adopted, this represents a significant change in material circumstances and as such it is necessary to not only consider the proposed variation to the condition in question, but also to assess the application afresh to consider compliance with the adopted Moray Local Development Plan 2015.

### **Principle/Impact of Quarry Expansion (ER4, ED7, IMP1, PP1 and PP2)**

Policy ER4 Minerals is supportive of applications for mineral extraction involving extensions to existing quarrying operation/sites, where they avoid/satisfactorily mitigate impacts on the natural and built environment and amenity, and include sufficient information to enable assessment of the likely effects of the development together with proposals for appropriate control, mitigation and monitoring. In determining proposals, the policy highlights the following issues for consideration; impacts on natural heritage and historic environment including landscape and visual impact, disturbance and disruption

from noise, blasting vibration and potential pollution of land, air and water noise, effect on communities, cumulative impact, transport impacts, and restoration and aftercare. These issues are addressed below. The policy also requires proposals to be accompanied by an Extractive Waste Management Plan.

Policy ED7 Rural Business Proposals permits extensions to rural businesses provided they meet set criteria, i.e. have a locational justification, appropriate infrastructure exists in terms of access, the natural/built environment is safeguarded and careful control is exercised over siting, design, landscape and visual impact, and emissions.

Policy IMP1 Developer Requirements requires new development to be of a scale, density and character that reflects the surrounding area, and integrates with the surrounding landscape.

Primary Policies PP1: Sustainable Economic Growth and PP2: Climate Change support development proposals which deliver sustainable economic growth and contribute to reducing greenhouse gas emissions by making efficient use of land and infrastructure (subject to provisos).

Netherglen Quarry has been in operation at this location since the early twentieth century, with varying levels of extraction over the years. It has been a long standing feature in the landscape located within rolling landform and woodland on the A941 corridor between Fogwatt and Rothes. The quarry is therefore, without prejudice to the acceptability of its expansion and continuation an established feature within the landscape. The purpose of the application is to allow for the continued extraction of the remaining mineral at this active site, estimated to be approximately 3.6 million tonnes for a further 25 years. The quarry will effectively continue to operate as at present, and the applicant has stated their intent to continue to operate the quarry as per current practices.

With appropriate mitigation and updated conditions the proposal is considered acceptable under the terms of policy ER4 Minerals. The application is supported by sufficient information which includes various technical appraisals to inform assessment of the likely impacts, together with appropriate mitigation measures and restoration arrangements. Subject to conditions where recommended, the proposal accords with policies ER4, ED7 and IMP1.

In terms of the aims of Primary Policies 1 and 2, the proposal will assist with the availability of construction materials, provide jobs and support the local economy. It will help to ensure that Moray has an adequate long term resource of minerals locally for the construction industry, whilst also reducing unnecessary and unsustainable import of materials to the area from elsewhere. This is consistent with the aims of policy PP1 Sustainable Economic Growth and PP2 Climate Change where use of local resources and building materials are encouraged.

### **Impact on Natural Heritage and Historic Environment (ER4, E3, BE1, IMP1)**

The application is supported by several assessments to inform consideration of the impact of the proposal upon the natural and built environment. These include, in addition to the Planning Statement, a Preliminary Ecological Appraisal (PEA) which comprises habitat survey and investigations of the presence or otherwise of protected species.

The PEA identifies the primary habitat types present on site to be a mix of dry heath and native pine woodland, some of which will be lost as a result of the proposal and also

includes findings from field survey work in relation to species likely to be affected (bats, otter, squirrel, pine martin, badger and birds). From these findings and analysis, the PEA considers that the proposed continuation of extraction works and expansion into the adjacent heath and woodland are unlikely to cause unacceptable impacts on natural heritage interests (protected habitat or species), provided recommended broad mitigation measures and pre-felling checks as outlined within the report are adopted. The un-worked area within which the quarry operations will expand into is predominantly dry heath/moorland and native pine woodland. It has limited ecological value as its location adjacent to the working quarry, will have made these areas less attractive to some species susceptible to human disturbance and activity. Scottish Natural Heritage has assessed this information and agrees with the conclusions of the report, and provided further survey and mitigation as outlined within the appraisal report is implemented, considers that the proposal is unlikely to cause significant effects on wildlife or the ecology of the site. These recommendations shall form the basis of a planning condition.

The proposal site is not subject to any landscape or environmental designations although natural heritage interests are present within the wider area, in this case two SSSI's 1.3km to the north and 3.6km to the south. The proposal would have no adverse impacts on these designated areas given the separation distances involved.

There are also no known sites of archaeological interest within the application site boundary, although there are several in the wider area. Following consultation, the Aberdeenshire Archaeology Service has raised no objection to the granting of permission.

Although the proposal will result in the loss of an area of pine woodland, this is addressed by compensatory woodland planting on land immediately adjacent to the south of the site and re-planting within the quarry for landscaping purposes, and is discussed below.

Based on the above considerations and subject to conditions where recommended, the proposal is not considered to result in significant adverse effects on natural heritage or historic environment interests and therefore accords with policies ER4, E3, BE1 and IMP1.

### **Landscape and Visual Impacts (ER4 and IMP1)**

The application is supported by a Landscape and Visual Assessment (LVA). This assesses the potential effects of the proposed continuation of quarrying upon the landscape, amenity and visual receptors (including cumulative impacts). It includes maps of 'Zones of Theoretical Visibility' (ZTV maps and a Landscape Character Type (LCT) Map) in addition to photomontages of the quarry from five locations, one at the access to the east and the remaining four to the north where views are possible.

The ZTV maps show that the proposal will be largely screened by surrounding topography and woodland, when viewed from the south, west and east, with views of the development limited mainly to vantage points along the A941 corridor and surrounding countryside to the north and west. This is evident from the accompanying montages which show that the proposed workings and lower benches of the quarry will continue to be largely screened from view (by a combination of landform and woodland), the exception being the upper benches (phase 1) which will result in a slight elongation and encroachment into adjacent moorland and woodland within the unworked part of the site. However given that this loss is limited to a small area of moorland/woodland cover within the Upland and Moorland Landscape Character Type and fact that the quarry site is an established feature in its own right within the landscape, the LVA considers that the proposals are unlikely to be detrimental to the overall character and appearance of the landscape. In visual impacts

terms, the LVA concludes that the proposal will appear as a continuation of current extractive operations, and as views of the site are extremely limited from the surrounding area, this will result in a barely perceptible change to existing views, as illustrated in the accompanying photomontages.

Due to the proximity of the proposal with the nearby Gedloch Quarry 1.3km to the northwest and the way in which the two developments may be experienced the LVA also assesses cumulative impact. This concludes that whilst views of the proposal in combination with Gedloch are likely from viewpoints 2 and 5, the cumulative effects would not be significant due to the extent of mature woodland plantation encompassing both quarries, only the upper portions of extraction faces would be visible and the limited locations from which both developments can be viewed in combination.

A Concept Restoration Scheme (revised) is included within the Planning Statement, which sets out details of progressive and final restoration/aftercare proposals based on the phased approach to the quarry development. This would involve progressive restoration taking place, with each completed bench and quarry face being graded with overburden and soils to provide a rooting medium for vegetation and trees, which overtime will allow the visible quarry faces to blend with the surrounding landscape in terms of texture and colour. This will benefit the site visually and soften the appearance of the freshly exposed rock well in advance of the final restoration period. These arrangements shall be covered by condition.

From the above considerations, the continuation of extractive operations read in the context of this established quarry is acceptable. The expansion of operations into the adjacent heath/moorland can be readily absorbed by the wider landscape and will not be unduly obtrusive to any visual receptor. In terms of landscape and visual impact resulting from the development, the degree of change in the character (landscape and visual) and extent of the quarry will be contained within the surrounding undulating landform and woodland cover.

Subject to conditions where recommended and progressive and final and restoration planting being implemented, the proposal will therefore not result in significant adverse landscape or visual effects, and accords with the landscape character elements of ER4 and IMP1.

### **Impacts from Noise, Blasting Vibration, and Potential Pollution of Land, Air and Water (ER4, EP8, EP12, and IMP1)**

Policies EP8 Pollution and EP12 Air Quality require developments that may cause significant (noise or air) pollution to be supported by detailed assessment and to demonstrate that such pollution can be appropriately mitigated. The applicant has submitted Environmental Noise and Blasting Assessments based on relevant guidelines within Planning Advice Note (PAN) 50 'Controlling the Environmental Effects of Surface Mineral Workings'. These assessments have informed the consultation response from the Environmental Health Manager.

The Environmental Noise Assessment assesses the potential effects of the proposed quarry operations on the closest noise sensitive receptors, Netherglen Farm located 150m to the east and the hamlet of Coleburn 700m to the north. Identified operations include soil and overburden handling, production of asphalt and ready mix concrete, loading and dispatch of aggregates, drilling of blast shot holes etc. The assessment predicts no significant adverse effects, and that noise received at the closest residential

properties when operations are in progress will not exceed relevant PAN 50 noise criteria limits and be no higher than the measured ambient levels at the two receptor locations. It also confirms the applicant's intention to continue to operate the quarry within PAN 50 noise criteria.

The Environmental Blasting Assessment assesses the effects from explosive blasting and vibration generated at the site. Blasting already occurs at the quarry, so is not an uncommon event at this location. The submitted assessment provides a detailed analysis of the intended method of blasting using existing readings and vibrations from monitoring a typical blast, along with recommendations to minimise impacts on nearby receptors. This predicts no significant adverse effects on surrounding residential properties, vibration effects will fall within limits suggested in PAN 50, and provided the recommendations are followed quarry operations can continue without giving rise to nuisance complaints.

In terms of air quality, given the separation distance to neighbouring properties, the containment from the quarry sides, intervening woodland and the continued operation of standard dust mitigation measures, there is limited need to control dust beyond the quarry itself which is unlikely to give rise to significant adverse effects. Although the site access runs between 150 and 300m from Netherglen Farm, this part of the road is surfaced with bitmac which minimises the potential for dust generation.

The Environmental Health Manager has reviewed these assessments and has raised no objection subject to conditions to protect amenity, controlling hours of quarry operations, noise, monitoring/mitigation measures in the event of noise complaints being received, blasting (including scheme of monitoring) vibration and hours of blasting operations. These shall be attached to the decision notice as recommended.

In relation to pollution prevention the applicant has confirmed that the quarry currently employs measures to protect groundwaters with emergency spill kits available close to all plant and equipment with suitably trained staff to respond to any incidents, and these measures will continue to be employed for duration of the development. SEPA has been consulted in this regard and has raised no objection subject to a condition requiring submission/approval of an updated Site Specific Management Plan (in consultation with SEPA) within 3 months of the grant of consent (unless otherwise agreed), to minimise the impacts of the mineral extraction works on the environment and ensure up-to-date operating and environmental standards on site.

From the above considerations and subject to the recommended conditions regarding blasting, noise and provision of an updated Site Specific Management Plan the proposal complies with policy ER4 Minerals, EP8 Pollution and EP12 Air Quality.

### **Transport Impacts (ER4, T2 and IMP1)**

The proposal will continue to utilise the existing entrance and junction with the A941 which provide a suitable and direct means of access onto the primary road network with no change to current traffic movements (up to 60 movements per day). As the output from the quarry is projected to remain at up to 150, 000 tonnes per annum similar to current levels, the traffic generation associated with the development will not result in any additional significant impacts on the local road network, over and above those existing.

The Transportation Manager has raised no objection subject to conditions as recommended requiring provision of edge strengthening works to the A941 and site access over a 55 metre length (15m back from the edge of the carriageway (southern side



only) and 40m south of the access along the A941), evidence of a 'Wear and Tear' agreement covering the A941 over a 70 length centred at the site access for the lifetime of the development, advanced warning signage at 3 locations (2 southbound and 1 northbound) on the A941 and measures to ensure that no water or loose material drains onto the public carriageway.

On the basis of the conditions recommended, the road network is capable of accommodating the continuation of quarrying operations and complies with the requirements of policies ER4, T2 and IMP1.

### **Drainage and Flood Issues (EP5 & EP7)**

Based on the SEPA indicative flood maps, the northern part of the site, including the haul road and processing area to be at 'medium risk' from river flooding. It also shows the northern area and a small area of the quarry void to be at 'medium or high risk' from surface water flooding. As such the proposal requires assessment against policy EP7 Control of Development in Flood Risk Areas, and consultation with SEPA and the Flood Risk Management Section.

Both SEPA and the Flood Risk Management team have reviewed the submitted Flood Risk Assessment and Surface Water Management Plan for the proposed quarry continuation/expansion. This will involve surface water from the proposed extraction works being captured/controlled by the current surface water drainage regime at the site which comprises a series of lagoons, settlement sumps, tanks/soakaways and sizeable, to provide the necessary attenuation and treatment of run off prior to discharge. These arrangements also benefit from a SEPA Controlled Activities (CAR) discharge licence which stipulates controls on both the quality and volume of water discharged from site and is subject of routine audits by SEPA. Although the proposal will result in an increased footprint of the excavation and change to internal flow patterns as the quarry void progresses, the increase(s) in volume of groundwater/effluent requiring treatment are not anticipated to be significant and with ongoing regular monitoring of effectiveness will be adequately managed by existing drainage arrangements.

The Flood Risk Assessment further concludes that the proposal is not at significant risk from flooding nor is it likely to cause increased risk offsite due to a combination of factors, namely the surface water management measures employed are designed to attenuate storm flows and reduce of the magnitude of peak flows, site levels/buildings/access and stockpiles are located outwith the floodplain and attenuation effects from the nearby reservoir upstream in the headwaters of the Red Burn which will reduce flows from the burn.

Following consultation, SEPA has raised no objection on flood risk grounds since the application relates solely to the extension in the time operation of an existing quarry, there are no changes in the footprint of the operations and any existing flooding issues locally at the site will be mitigated. By way of background, SEPA has also highlighted its consultation responses to the previous applications for plant at the quarry when it raised no objection, based on flood risk studies at the time that demonstrated some risk of flooding in this part of the quarry, but an unlikely risk elsewhere, and also that the development was also viewed as an exception under SPP where the location of the proposal is essential for operational reasons.

The Flood Risk Management Section has similarly raised no objection on flood risk grounds, and has recommended a condition requiring submission/approval of a

restoration and aftercare plan to include information on phased working/progressive restoration and any associated effects on the water environment.

From the above, the proposed drainage arrangements comply with the requirements of policies EP5 Surface Water Drainage and EP7 relating to flood issues.

### **Restoration and Aftercare Proposals (ER4, EP8)**

As part of the Planning Statement and other submissions, the applicants have provided a Concept Restoration Scheme and Plan detailing how they intend to restore the site once the mineral extraction phases come to an end, along with aftercare proposals. This would involve progressive restoration taking place during the lifetime of development, with each completed bench and quarry face being graded with overburden and soils to encourage vegetation re-establishment to create habitat and enhance biodiversity. The final restoration and consolidation of landscaping and removal of buildings/plant once all extraction has ceased would see the final landscaping and restoration works be undertaken.

In order to ensure implementation of the above proposals, a condition requiring submission and approval of a final restoration and aftercare plan at least one year prior to mineral workings ceasing on the site and prior to phased restoration works shall be attached to the planning consent as recommended by SEPA. This is to include detailed information on phased working and progressive restoration as well as effects of restoration on the water environment to ensure the protection of the environment.

### **Development in Woodlands (ER2 and E4)**

Policy ER2 Woodlands (in line with the Scottish Government policy) permits removal of woodland where it can be demonstrated that its loss is clearly outweighed by social or economic benefits at national/regional/local level, and if compensatory planting has been agreed. Woodland removal within the terms of this policy is defined as the permanent removal of woodland for the purpose of conversion to an alternative land use, the aim of which is to avoid clear felling of woodlands for development, unless terms of the policy are met. Policy E4 Trees and Development protects trees/woodland and where this is removed in association with development, the provision of compensatory planting.

The proposed continuation of extractive operations at the quarry will result in removal of 1.4ha of woodland from the site. In terms of policy ER2, this loss whilst noted would be outweighed by the clear economic benefits from the proposal which would continue to provide locally sourced construction material and employment opportunities, and the policy support afforded to the proposal by the Primary Policies 1 and 2 given its contribution to economic growth and sustainable location.

The applicant has also submitted a compensatory tree planting plan which identifies replacement tree planting for an equivalent area along the southern outer edge of the site (land within the applicant's control) and upper bench of phase 1, to be carried out in 2020 and following completion of phase 1. A suspensive condition requiring submission/approval of a management/establishment plan covering implementation of these arrangements shall be attached to the decision as recommended by the Forestry Commission Scotland.

From the above and subject to the condition as recommended, the proposal is not considered to have unacceptable significant adverse effects on forestry and the proposal is considered to be compliant with policy ER2.

### **MOD Safeguarding Areas (EP13)**

The proposal falls within the safeguarding zone surrounding the MOD airfield at Lossiemouth, requiring consultation with the MOD Defence Infrastructure Organisation on minerals applications. The MOD has raised no safeguarding objection to the proposal.

### **Extractive Waste Management (ER4, EP8)**

An updated Extractive Waste Management Layout Plan and associated information which identifies an extractive waste area (for storing inert waste (overburden, crushed rock, gravel or fines.)) on the site has been submitted with the application as required under policy ER4 and the Extractive Waste Management (Scotland) Regulations 2010. This has been assessed in terms of pollution prevention and monitoring and is considered acceptable in terms of meeting the regulations. In terms of non-inert waste (unpolluted soils, peat, non-waste by product waste) a separate request for the regulations to be waived can be accepted, on the basis that this can be managed/stored on site without endangering human health or the environment.

### **Conclusion**

Subject to the conditions recommended, the proposed continuation of extraction operations and expansion for a 25 year period is acceptable and would not give rise to unacceptable or detrimental impacts and would accord with the requirements of the Moray Local Development Plan 2015.

### **REASON(S) FOR DECISION**

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

The proposal accords with the provisions of the Moray Local Development Plan and there are no material considerations that indicate otherwise.

**Author/Contact  
Officer:**

Richard Smith  
Senior Planning Officer

**Ext:** 01343 563256

**Beverly Smith  
Manager (Development Management)**



## **APPENDIX**

### **POLICY**

#### **Adopted Moray Local Development Plan 2015**

#### ***Moray Local Development Plan 2015 - Material Consideration***

#### **Primary Policy PP1: Sustainable Economic Growth**

The Local Development Plan identifies employment land designations to support requirements identified in the Moray Economic Strategy. Development proposals which support the Strategy and will contribute towards the delivery of sustainable economic growth and the transition of Moray towards a low carbon economy will be supported where the quality of the natural and built environment is safeguarded and the relevant policies and site requirements are met.

#### **Primary Policy PP2: Climate Change**

In order to contribute to reducing greenhouse gas emissions, developments of 10 or more houses and buildings in excess of 500 sq m should address the following:

- Be in sustainable locations that make efficient use of land and infrastructure
- Optimise accessibility to active travel options and public transport
- Create quality open spaces, landscaped areas and green wedges that are well connected
- Utilise sustainable construction techniques and materials and encourage energy efficiency through the orientation and design of buildings
- Where practical, install low and zero carbon generating technologies
- Prevent further development that would be at risk of flooding or coastal erosion
- Where practical, meet heat and energy requirements through decentralised and local renewable or low carbon sources of heat and power
- Minimise disturbance to carbon rich soils and, in cases where it is agreed that trees can be felled, to incorporate compensatory tree planting.

Proposals must be supported by a Sustainability Statement that sets out how the above objectives have been addressed within the development. This policy is supported by supplementary guidance on climate change.

#### **Policy ER4: Minerals**

The Council will support, in principle, mineral extraction in the following circumstances;

- Extension to existing operations/sites,



- Reopening of a dormant quarry,
- A reserve underlying a proposed development where it would be beneficial to extract prior to development.

New minerals sites will only be permitted where it has been demonstrated that existing reserves have been exhausted or are no longer viable and for construction aggregates it has been evidenced that there is less than the minimum 10 year supply available.

Borrow pits will be supported 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.

Taking into account PAN 50 Controlling the Environmental Effects of Surface Minerals Workings sufficient information should be provided to enable a full assessment of the likely effects of the mineral development together with proposals for appropriate control, mitigation and monitoring.

Minerals developments should avoid or satisfactorily mitigate impacts, in determining proposals the Council will give consideration to the following issues;

- Impact on natural heritage and historic environment including landscape and visual impact,
- Disturbance and disruption from noise, blasting vibration, and potential pollution of land, air and water,
- Effect on communities,
- Cumulative impact,
- Transport impacts,
- Restoration and aftercare proposals.

Once a mineral working has ceased the land should be reinstated at the earliest opportunity. Restoration should be designed and implemented to the highest standard and after uses should result in environmental improvement and add to the cultural, recreational or environmental assets of the area. If operators cannot demonstrate that their programme of restoration (including the necessary financing, phasing and aftercare of the sites) is sufficient a financial guarantee may be sought;

Proposals should be accompanied by an Extractive Waste Management plan.

### **Policy ED7: Rural Business Proposals**

New business developments, or extensions to existing industrial/economic activities in the countryside, will be permitted if they meet all of the following criteria:

- a) There is a locational justification for the site concerned, particularly if there is serviced industrial land available in a nearby settlement.
- b) There is capacity in the local infrastructure to accommodate the proposals, particularly road access, or that mitigation measures can be achieved.
- c) Account is taken of environmental considerations, including the impact on natural and built heritage designations, with appropriate protection for the natural environment; the use of enhanced opportunities for natural heritage integration into adjoining land.
- d) There is careful control over siting, design, landscape and visual impact, and emissions. In view of the rural location, standard industrial estate/urban designs may not be appropriate.

Proposals involving the rehabilitation of existing properties (e.g. farm steadings) to provide business premises will be encouraged, provided road access and parking arrangements are acceptable.

Where noise emissions or any other aspect is considered to be incompatible with surrounding uses, there will be a presumption to refuse.

Outright retail activities will be considered against retail policies, and impacts on established shopping areas, but ancillary retailing (eg farm shop) will generally be acceptable.

### **Policy E3: Protected Species**

Proposals which would have an adverse effect on a European protected species will not be approved unless;

- there is no satisfactory alternative; and
- the development is required to preserve public health or public safety, or for other reasons of overriding public interest, including those of a social or economic nature, and beneficial consequences of primary importance for the environment; and the development will not be detrimental to the maintenance of the population of species concerned at a favourable conservation status of the species concerned.

Proposals which would have an adverse effect on a nationally protected species of bird will not be approved unless;

- There is no other satisfactory solution
- The development is necessary to preserve public health or public safety
- The development will not be detrimental to the conservation status of the species concerned.

Proposals which would have an adverse effect on badgers or their setts must be accompanied by a Badger Protection Plan to avoid, minimise or compensate for impacts. A licence from Scottish Natural Heritage may be required as well as planning permission. Where a protected species may be affected a species survey should be prepared to

accompany the application to demonstrate how any offence under the relevant legislation will be avoided.

## **Policy BE1: Scheduled Monuments and National Designations**

### **National Designations**

Development Proposals will be refused where they will adversely affect Scheduled Monuments and nationally important archaeological sites or their settings unless the developer proves that any significant adverse effect on the qualities for which the site has been designated are clearly outweighed by social or economic benefits of national importance.

### **Local Designations**

Development proposals which will adversely affect sites of local archaeological importance or the integrity of their settings will be refused unless it can be demonstrated that;

- a) Local public benefits clearly outweigh the archaeological value of the site, and
- b) There is no suitable alternative site for the development, and
- c) Any adverse effects can be satisfactorily mitigated at the developers expense

Where in exceptional circumstances, the primary aim of preservation of archaeological features in situ does not prove feasible, the Council shall require the excavation and researching of a site at the developers expense.

The Council will consult Historic Scotland and the Regional Archaeologist on development proposals which may affect Scheduled Monuments and archaeological sites.

## **Policy EP8: Pollution**

Planning applications for developments that may cause significant pollution in terms of noise (including RAF aircraft noise), air, water and light emissions will only be approved where a detailed assessment report on the levels, character and transmission of the potential pollution is provided by the applicant. The assessment should also demonstrate how the pollution can be appropriately mitigated. Where the Council applies conditions to the consent to deal with pollution matters these may include subsequent independent monitoring of pollution levels.

## **Policy EP12: Air Quality**

Development proposals, which, individually or cumulatively, may adversely affect the air quality in an area to a level which could cause harm to human health and wellbeing or the natural environment must be accompanied by appropriate provisions (deemed satisfactory to the Council and Scottish Environment Protection Agency as appropriate) which demonstrate how such impacts will be mitigated.

Some existing land uses may have a localised detrimental effect on air quality, any proposals to locate development in the vicinity of uses and therefore introduce receptors

to these areas (e.g. housing adjacent to busy roads) must consider whether this would result in conflict with the existing land use. Proposals which would result in an unacceptable conflict with existing land use and air quality will not be approved.

### **Policy EP5: Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)**

Surface water from development should be dealt with in a sustainable manner that has a neutral effect on the risk of flooding or which reduces the risk of flooding. The method of dealing with surface water should also avoid pollution and promote habitat enhancement and amenity. All sites should be drained by a sustainable drainage system (SUDS). Drainage systems should contribute to enhancing existing "blue" and "green" networks while contributing to place-making, biodiversity, recreational, flood risk and climate change objectives.

Specific arrangements should be made to avoid the issue of permanent SUD features becoming silted-up with construction phase runoff. Care must be taken to avoid the introduction of invasive non-native species during the construction of all SUD features.

Applicants must agree provisions for long term maintenance of the SUDS scheme to the satisfaction of the Council in consultation with SEPA and Scottish Water as appropriate.

A Drainage Assessment (DA) will be required for developments of 10 houses or more, industrial uses, and non-residential proposals of 500 sq metres and above.

The Council's Flood Team will prepare Supplementary Guidance on surface water drainage and flooding.

### **Policy EP7: Control of Development in Flood Risk Areas**

New development should not take place if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. Proposals for development in areas considered to be at risk from flooding will only be permitted where a flood risk assessment to comply with the recommendations of National Guidance and to the satisfaction of both the Scottish Environment Protection Agency and the Council is provided by the applicant. This assessment must demonstrate that any risk from flooding can be satisfactorily mitigated without increasing flood risk elsewhere. Due to continuing changes in climatic patterns, the precautionary principle will apply when reviewing any application for an area at risk from inundation by floodwater.

The following limitations on development will also be applied to take account of the degree of flooding as defined in Scottish Planning Policy;

a) In areas of little to no risk (less than 0.1%) there will be no general constraint to development.

b) Areas of low to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for essential civil infrastructure and most vulnerable uses. Water resistant materials and construction may be required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during extreme flooding events.

c) Areas of medium to high risk (0.5% or above) may be suitable for:

- Residential, institutional, commercial and industrial development within built up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan;
- Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow;
- Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place and
- Job related accommodation e.g. for caretakers or operational staff.

Areas within these risk categories will generally not be suitable:

- Civil infrastructure and most vulnerable uses;
- Additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water based recreation, agriculture, transport or utilities infrastructure (which should be designed to be operational during floods and not impede water flow), and
- An alternative, lower risk location is not available and
- New caravan and camping sites.

Where development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

## **Policy ER2: Development in Woodlands**

### **All woodlands**

Development which involves the loss of woodlands will be refused where the development would result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the forest. Woodland removal will only be supported where it can be demonstrated that the impact on the woodland is clearly outweighed by social or economic benefits of national, regional and local importance, and if a programme of proportionate compensatory planting has been agreed with the Planning Authority.

### **Protected Woodlands**

Woodland removal within native woodlands, ancient semi natural and woodlands within sites protected under the terms of policies E1 and E2 will not be supported.

### **Tree surveys and new planting**



Development proposals must take account of the Council's Trees and Development supplementary guidance. The Council will require the provision of compensatory planting to mitigate the effects of woodland removal.

Where appropriate the Council will seek opportunities to create new woodland and plant native trees in new development proposals. If a development would result in the severing or impairment of connectivity between important woodland habitats, mitigation measures should be identified and implemented to support the wider green network.

#### **Policy E4: Trees and Development**

The Council will serve Tree Preservation Orders (TPO's) on potentially vulnerable trees which are of significant amenity value to the community as a whole, or trees of significant biodiversity value.

Within Conservation Areas the Council will only agree to the felling of dead, dying, or dangerous trees. Trees felled within Conservation Areas or subject to TPO protection should be replaced, unless otherwise agreed with the Council.

Woodland removal will only be permitted where it would achieve significant and clearly defined additional public benefits. Where woodland is removed in association with development, developers will generally be expected to provide compensatory planting. The Council may attach conditions on planning consents ensuring that existing trees and hedges are retained or replaced.

Development proposals will be required to meet the requirements set out in the Council's Trees and Development Supplementary Guidance. This includes carrying out a tree survey to identify trees on site and those to be protected. A safeguarding distance should be retained between mature trees and proposed developments.

When imposing planting or landscaping conditions, native species should be used and the Council will seek to promote green corridors.

Proposals affecting woodland will be considered against Policy ER2.

#### **Policy T2: Provision of Access**

The Council will require that new development proposals are designed to provide the highest level of access for end users including residents, visitors, and deliveries appropriate to the type of development and location. Development must meet the following criteria:

- Proposals must maximise connections and routes for pedestrian and cyclists, including links to active travel and core path routes, to reduce travel demands and provide a safe and realistic choice of access.
- Provide access to public transport services and bus stop infrastructure where appropriate.
- Provide appropriate vehicle connections to the development, including appropriate number and type of junctions.

- Provide safe entry and exit from the development for all road users including ensuring appropriate visibility for vehicles at junctions and bends.
- Provide appropriate mitigation/modification to existing transport networks where required to address the impacts of new development on the safety and efficiency of the transport network. This may include but would not be limited to, the following measures, passing places, road widening, junction enhancement, bus stop infrastructure and drainage infrastructure. A number of potential road improvements have been identified in association with the development of sites the most significant of these have been shown on the Settlement Map as TSPs.
- Proposals must avoid or mitigate against any unacceptable adverse landscape or environmental impacts.

Developers should give consideration to aspirational core paths (under Policy 2 of the Core Paths Plan) and active travel audits when preparing proposals.

New development proposals should enhance permeability and connectivity, and ensure that opportunities for sustainable and active travel are protected and improved.

The practicality of use of public transport in more remote rural areas will be taken into account however applicants should consider innovative solutions for access to public transport.

When considered appropriate by the planning authority developers will be asked to submit a Transport Assessment and Travel Plan.

Significant travel generating proposals will only be supported where:

- Direct links to walking and cycling networks are available;
- Access to public transport networks would involve walking no more than 400m;
- It would not have a detrimental effect on the capacity of the strategic road and/or rail network; and
- A Transport Assessment identifies satisfactory mechanisms for meeting sustainable transport requirements and no detrimental impact to the performance of the overall network.

Access proposals that have a significant adverse impact on the surrounding landscape and environment that cannot be mitigated will be refused.

### **Policy EP13: Ministry of Defence Safeguarding Areas**

Certain categories of development within particular distances from MoD airfields at Lossiemouth and Kinloss require to be subject of consultation with Defence Infrastructure Organisation. This applies to a wide range of development proposals which could have implications for the operation of the airfields and includes aspects such as height of buildings; use of reflective surfaces; refuse tips; nature reserves (and other proposals which might attract birds);

Full details of the consultation zones and development types are held by Moray Council. The outer boundaries of the zones are shown on the Proposals Map.

### **Policy IMP1: Developer Requirements**

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It should comply with the following criteria

- a) The scale, density and character must be appropriate to the surrounding area.
- b) The development must be integrated into the surrounding landscape
- c) Road, cycling, footpath and public transport must be provided at a level appropriate to the development. Core paths; long distance footpaths; national cycle routes must not be adversely affected.
- d) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water.
- e) Where of an appropriate scale, developments should demonstrate how they will incorporate renewable energy systems, and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria.
- f) Make provision for additional areas of open space within developments.
- g) Details of arrangements for the long term maintenance of landscape areas and amenity open spaces must be provided along with Planning applications.
- h) Conservation and where possible enhancement of natural and built environmental resources must be achieved, including details of any impacts arising from the disturbance of carbon rich soil.
- i) Avoid areas at risk of flooding, and where necessary carry out flood management measures.
- j) Address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- k) Address and sufficiently mitigate any contaminated land issues
- l) Does not sterilise significant workable reserves of minerals or prime quality agricultural land.
- m) Make acceptable arrangements for waste management.