

Issue 15b	Minerals and Other Extractive Activities	
Development plan reference:	ER4 - Minerals and Other Extractive Activities – Supply, page 48	Reporter: Douglas Hope
Body or person(s) submitting a representation raising the issue (including reference number):		
Lynne Palmer (00239) The Coal Authority (00286) Confederation of UK Coal Producers (00875) SportScotland (03185) Scottish Environment Protection Agency (03194) Forestry Commission Scotland (08988) Friends of the Ochils (10221) Scottish Natural Heritage (05211)		
Provision of the development plan to which the issue relates:	Sets out the approach for the consideration of minerals proposals in Perth and Kinross.	
Planning authority's summary of the representation(s):		
<p>The Coal Authority (00286/1/002): Objects to Policy ER4 because it seeks to impose unduly restrictive criteria in relation to determining whether or not proposals are acceptable. In particular criteria (a) which requires proposals to '<i>demonstrate that there are local, regional and/or national market requirements for the mineral that cannot be satisfied by greater efficiency at existing workings or other alternative sources</i>' is considered to be more onerous than Scottish Planning Policy.</p> <p>In relation to coal, SPP paragraph 239 (S4_Doc_115) makes it clear that the continuing supply of coal extraction is '<i>necessary and important in the national interest</i>', it goes on to make it clear that it is for planning authorities to only determine the acceptability of individual proposals. SPP paragraphs 225 – 247 (S4_Doc_116).</p> <p>Confederation of UK Coal Producers (00875/1/001): Minerals extraction operations have the potential to have relatively high impacts but these can generally be mitigated by appropriate measures. This is an important consideration, reference to which should be included in the Plan.</p> <p>Policy ER4A would benefit if, in qualification of the paragraph referring to the impact on local communities, the phrase '<i>taking into account appropriate mitigation measures</i>' were to be included.</p> <p>Forestry Commission Scotland (08988/1/006): In Policy ER4B (Restoration of Mineral Workings) reference should be made to positively and proactively consider alternative after uses which will deliver environmental improvements, rather than simply restoring the site to the previous use, when preparing restoration plans. This would be in line with paragraph 235 of the SPP (S4_Doc_117). There are strong links to be made here to the proposed policies NE2 (Forestry, Woodlands and Trees) (S4_Doc_500) and NE4 (Green Infrastructure) (S4_Doc_415).</p>		

SportScotland (03185/1/004): SPP paragraphs 235 (S4_Doc_117) and 247 (S4_Doc_118) state that mining operators are encouraged to consider after uses of extraction sites that result in environmental improvement rather than simply restoring land to its previous state. Sport and recreation can form a particularly suitable and positive after use for former mineral extraction and potentially surface coal mining sites. This could be an appropriate addition to Policy ER4B.

Friends of the Ochils (10221/1/004): Policy states '*Financial bonds for restoration will be required*'. Whilst agreeing with the need for this, the policy should be amended so as to state that '*Adequate financial bonds for restoration will be required*'. Unless adequate bonds are required and taken the Council has not addressed the risk of a company going into liquidation.

Scottish Environment Protection Agency (03194/15/001): ER4 Part A: To comply with the Management of Extractive Waste (Scotland) Regulations 2010 (Core_Doc_158), mineral planning applications must include a site Waste Management Plan exclusively for extractive waste. The planning authority must decide whether the requirements of the Regulations are met by the planning decision. This will ensure that potential adverse impacts on human health and the environment are limited.

In accordance with this guidance, it is recommended that the requirement for a site Waste Management Plan is included as part of this policy.

Scottish Natural Heritage (05211/25/007): Whilst it was not possible to identify specific Natura site(s) which may be impacted upon as a result of implementing Policy ER4A, the policy acknowledges the potential for significant environmental effects. As a consequence the HRA (S4_Doc_141) implications need to be considered and applicants need to be aware of that requirement.

Lynne Palmer (00239/10/004): Supports Policy ER4.

Scottish Environment Protection Agency (03194/15/002): Welcome the requirement under ER4C for extractive activities to minimise the production of waste, and the encouragement to use recycled aggregate/other materials where possible. This is a positive step in the delivery of the Zero Waste Plan aims and targets.

Modifications sought by those submitting representations:

The Coal Authority (00286/1/002): Policy ER4 should be amended by the deletion of criterion (a) because it seeks to impose a burden on energy mineral development proposals.

Confederation of UK Coal Producers (00875/1/001): Policy ER4A should be amended by adding '*taking into account appropriate mitigation measures*' immediately following '*And in all cases, their impact on communities and the environment...*'

Forestry Commission Scotland (08988/1/006): Considers that reference should be made to the need to positively and proactively consider alternative after uses which will deliver environmental improvements when preparing restoration plans.

SportScotland (03185/1/004): Considers that additional wording should be added to Policy ER4B to recognise that sport and recreation can provide a suitable and positive after use for former mineral extraction and surface coal mining sites.

Friends of the Ochils (10221/1/004): The policy should be amended by adding '*Adequate*' before '*financial bonds for restoration will be required...*' to ensure there are sufficient funds available over the lifetime of the workings to restore the site.

Scottish Environment Protection Agency (03194/15/001): Recommends that the requirement for a site Waste Management Plan is included as part of this policy.

Scottish Natural Heritage (05211/25/007): In line with the outcome of the HRA and Appropriate Assessment processes it is considered prudent that the following criteria should be added to the policy on page 48 to ensure that there are no significant impacts on the qualifying interests of European sites as a result of mineral workings:
'(vi) *ensuring there are no adverse effects on the integrity of a European designated site(s).*'

Summary of responses (including reasons) by planning authority:

The Coal Authority (00286/1/002): It is not accepted that criterion (a) imposes an '*unduly restrictive criteria*' and should be deleted. The criterion applies to all minerals and recognises that there can be reasons of national importance why a particular mineral (including coal) can be extracted at a particular location. However, SPP recognises that '*planning authorities are responsible for determining the acceptability of individual development proposals*'. SPP paragraph 239 (S4_Doc_115) The Council has not identified a broad area of search for coal as the area identified in the Coal Authority map Map of Local Government Authorities and Coalfields (S4_Doc_283) falls within the Loch Leven Catchment which is sensitive to development due to the proximity of the Loch Leven Special Protection Area, Ramsar site and National Nature Reserve. Consequently, any proposal would have to be carefully considered. As it has not been identified as an area of search the SPP states that '*There is a general presumption against extraction outwith areas of search identified in the development plan*'. SPP paragraph 240 (S4_Doc_119) The SPP also recognises that '*It is essential that areas of search provide realistic opportunities for surface coal extraction, providing communities with an appropriate level of certainty and the industry with reasonable access to available coal resources*' SPP paragraph 240 (S4_Doc_119).

No modification is proposed to the Plan.

Confederation of UK Coal Producers (00875/1/001): The matter raised is noted and accepted as it would be helpful to recognise that environmental effects can be mitigated when considering individual proposals. However, it is important that mitigation measures can be implemented and that any residual effects are acceptable.

Consequently, if the Reporter is so minded the text in bold could be added to Policy ER4A as suggested by the respondent '*... And in all cases, their impact on local communities and the environment has been assessed and does not have an adverse residual effect after appropriate mitigation having regard to...*'. This is supported by the approach to be adopted by planning authorities as outlined in SPP paragraphs 232, 233, 240, 242, and 245 (S4_Doc_116)

SportScotland (03185/1/004); Forestry Commission Scotland (08988/1/006): The issue raised is noted however the terms of the policy and others within the Plan give scope for the Planning Authority to seek to achieve the outcome sought by the respondents. It is accepted clarity would be added by including the type of after uses suggested in SPP paragraphs 235 (S4_Doc_117) and 247 (S4_Doc_118). If the Reporter is so minded the

following text '*Operators are encouraged to consider after uses that result in environmental improvement which should add to the cultural, recreational or environmental assets of the area detailed in the previous section.*' could be added to Policy ER4B as suggested by the respondents.

Friends of the Ochils (10221/1/004): The issue raised is noted. However, it is not considered that the suggested amendment clarifies matters. Any financial bond or other financial instrument will be based on the restoration scheme submitted as part of the planning application and will reflect the scale and type of mineral extraction proposed. SPP recognises that the financing could come from '*an established and properly funded industry guarantee scheme*' paragraphs 235 (S4_Doc_117) and 247 (S4_Doc_118).

No modification is proposed to the Plan.

Scottish Environment Protection Agency (03194/15/001): The requirement for future mineral planning applications to include a site Waste Management Plan (WMP) was introduced by the Management of Extractive Waste (Scotland) Regulations 2010 (Core_Doc_158). The associated Guidance explains the general need for future mineral planning applications/decisions to include a site WMP and the deadline of 1 May 2012 for operators of existing sites to have a WMP approved by the planning authority. Given there is a statutory requirement for applicants to prepare and submit a WMP it is not considered necessary to replicate this requirement in Policy in the interests of brevity and concision.

No modification is proposed to the Plan.

Scottish Natural Heritage (05211/25/007): It is considered that amending Policy ER4A to incorporate the mitigation measures as set out in the Habitats Regulations Appraisal (including Appropriate Assessment) of the Proposed Plan (S4_Doc_141), and detailed in the previous section will provide greater clarity and transparency for applicants as to what circumstances the provisions of the Plan's Policy NE1: International Nature Conservation Sites (S4_Doc_389) will apply and it also sets out what will be expected of them in making their planning application. Further Habitats Regulations Appraisal or Environmental Impact Assessment may be required at the planning application stage for any proposals.

If the Reporter is so minded the additional clause '*(vi) ensuring there are no adverse effects on the integrity of a European designated site(s)*' suggested by Scottish Natural Heritage should be added to Policy ER4A.

Reporter's conclusions:

Policy ER4A

1. Policy ER4 is an all-encompassing policy and relates to all mineral activities, including surface coal extraction. Scottish Government policy on mineral activity in SPP (paragraph 225) emphasises that an adequate and steady supply of minerals is essential to support sustainable economic growth and paragraph 239 of SPP indicates that coal extraction is necessary and important in the national interest.

2. In relation to the wording of criterion (a) of policy ER4A, it is Government policy that planning authorities should have regard to the availability, quality, accessibility and requirement for mineral resources in their area when preparing development plans (see

paragraph 226 of SPP). In relation to surface coal extraction, paragraph 242 of SPP states that development plans should aim to minimise significant negative impacts from surface coal extraction on the amenity of local communities, the natural heritage and historic environment. Similar considerations apply to minerals extraction (see paragraph 231 of SPP).

3. In the light of the above aims, it is considered that it is a legitimate requirement of the Proposed Plan that, when considering individual development proposals, including surface coal extraction, the planning authority must be satisfied that there is a justifiable need for the mineral that cannot be met from existing workings or from renewable, recycled or secondary sources. Accordingly, it is not agreed that criterion (a) of policy ER4 imposes an unnecessary burden on energy mineral development.

4. In relation to the reference in policy ER4A to the need to assess the impact on local communities and the environment, no mention is made of the part that mitigation measures can play in reducing adverse effects. The planning authority agrees that the relevant part of policy ER4A should be modified to take account of appropriate mitigation measures.

5. In relation to the lack of a reference in policy ER4A to the need for a Waste Management Plan, it is a requirement of the Management of Extractive Waste (Scotland) Regulations 2010 that mineral planning applications include a site Waste Management Plan exclusively for extractive waste. Whilst the planning authority considers that it is unnecessary to replicate this requirement in policy ER4A, it would be prudent to include an explanatory note at the end of the policy to remind operators of this requirement.

6. In relation to the possible effects of mineral working on Natura site(s), it is agreed that it would be prudent to amend policy ER4A to incorporate an additional criterion to ensure that there are no adverse effects on the integrity of a European designated site(s).

Policy ER4B

7. In relation to the restoration of mineral workings, paragraph 235 of SPP suggests that planning authorities should encourage after-uses which add to the cultural, recreational or environmental assets of an area. It is agreed that policy ER4B would benefit from a more positive and proactive approach to restoration and that the policy should provide encouragement to operators to consider after-uses that would bring environmental improvements rather than simply restoring the land to its previous state. In relation to the requirement for financial bonds, clearly any bond would require to be adequate and related to the particular circumstances of the proposal. Paragraph 235 of SPP suggests that planning authorities should ensure that consents are associated with an appropriate financial bond unless the operator can satisfactorily demonstrate that finance is available from other sources such as an established and properly funded industry guarantee scheme. It is considered that the final sentence of policy ER4B would benefit from additional wording to emphasise the need for appropriate funding.

Reporter's recommendations:

Policy ER4A

1. In the sentence beginning '*And in all cases, their impact on local communities....*' replace the words '*adverse effect having regard to all the following*' with the words '*adverse residual effect after appropriate mitigation having regard to*'.

2. Add additional criterion: *'(vi) ensuring there are no adverse effects on the integrity of a European designated site(s).'*
3. Add at end of policy ER4A the following words: *'Note: A Waste Management Plan must be submitted as part of any application for planning permission.'*

Policy ER4B

4. Insert between the first and second sentences, the following words: *'Operators are encouraged to consider after-uses that would add to the cultural, recreational and environmental assets of the area.'*
5. Insert the following word at the beginning of the third sentence: *'Appropriate'*.