



16 OPENCAST COAL





SCOTTISH EXECUTIVE
Development Department

Scottish Planning Policy

SPP 16

Opencast Coal



PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
- **Circulars**, which also provide statements of Scottish Executive policy, contain guidance on policy implementation through legislative or procedural change.
- **Planning Advice Notes (PANs)** provide advice on good practice and other relevant information.

Statements of Scottish Executive policy contained in SPPs and Circulars are material considerations to be taken into account in development plan preparation and development management.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location-specific planning policy, for example, the West Edinburgh Planning Framework, have the same status in decision-making as SPPs.

The National Planning Framework sets out the strategy for Scotland's long-term spatial development. It has the same status as SPPs and provides a national context for development plans and planning decisions and the ongoing programmes of the Scottish Executive, public agencies and local government.

Important Note: In the interests of brevity and conciseness, Scottish Planning Policies do NOT repeat policy across thematic boundaries. Each SPP takes as read the general policy in SPP1, and highlights the other SPPs where links to other related policy will be found. The whole series of SPPs should be taken as an integral policy suite and read together.

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SUMMARY

The UK Government has indicated that coal fired electricity generation continues to have an important part to play in widening the diversity of the energy mix if ways can be found materially to reduce carbon emissions. Where indigenous coal is available, and generators choose to use it, it should continue to contribute to the UK Government's objective of ensuring secure, diverse and sustainable supplies of energy at competitive prices. In Scotland, all coal produced is now extracted by opencast methods. It remains a matter for planning authorities to determine whether specific planning proposals are acceptable.

Planning policies must recognise that the scale of opencast coal extraction can differ significantly from many other types of mineral working in terms of its impact on local communities and the environment. This is primarily due to the amount of overburden to be removed and stored to allow access to the coal; the use of large engineering plant and machinery; and the relatively large volumes extracted, which may often have to be transported over significant distances.

In addition to contributing to energy supply, opencast coal extraction can be a relatively short-term land use when compared to other extractive industries. Most of the excavated material can also be returned to the ground and reclamation can bring about improvements to landscapes, particularly where development takes place on previously derelict or despoiled land. The industry also provides vital employment opportunities, particularly in rural areas.

Through its Environmental Justice agenda, the Executive is committed to improving the environment in which the people of Scotland live. This agenda must acknowledge that people may have to live close to developments that provide wider benefits to society as a whole. However, this should not mean that local communities are subjected to unacceptable or unnecessary impacts.

Planning authorities should use their development plans to identify areas where opencast coal extraction may be acceptable. There should be a presumption against development outwith these areas. Within identified areas, extraction should only take place if the impact on local communities and the environment is acceptable; or if the proposal provides local or community benefits that outweigh the impacts. If this cannot be done, the presumption against development remains.

The Executive expect planning authorities and operators to work closely with local communities at all stages of the planning process. Where planning permission is granted, arrangements should be put in place to ensure that sites are properly monitored and that legitimate community concerns can be addressed quickly.



INTRODUCTION

1. This Scottish Planning Policy (SPP) sets out the national planning policy framework for the working of opencast coal. The policies are equally applicable to those minerals, such as clays for brick making, where extraction occurs in association with coal removal. The SPP updates, revises and clarifies the contents of NPPG 16 (1999) to reflect developments in policy, legislation, etc and draws on practical experience of implementing earlier policies. In doing so, account is taken of research into the operation and effectiveness of NPPG 16. This endorsed the policy objectives of NPPG 16 and made recommendations that are intended to build on the strengths of previous guidance.

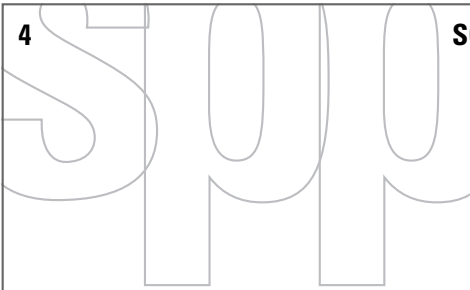
POLICY CONTEXT

SPP OBJECTIVES

2. *Scottish Planning Policy 1: The Planning System* was published in November 2002. It sets out the purpose of the planning system, and puts it in the context of the wider objectives of the Scottish Executive. The underlying principles of sustainable development, economic competitiveness, social justice, environmental quality and integrated transport underlie all SPPs, including this SPP, and are not repeated here.

ENERGY ISSUES

3. On 24 February 2003, the UK Government published its Energy White Paper "*Our Energy Future - Creating a Low Carbon Economy*". This acknowledges the need to reduce carbon dioxide emissions significantly and provides the long-term framework to provide security of supply, deliver environmental and social goals and to promote competitive energy markets. In reducing carbon dioxide emissions, the priority is to strengthen the contribution of energy efficiency and renewable energy sources. The White Paper acknowledges that in a low-carbon economy the future for coal must lie in cleaner technologies - which can increase the efficiency of coal-fired power stations and thereby reduce the amount of carbon they produce - or carbon capture and storage. It also recognises that if ways could be found cost-effectively to handle the carbon, keeping coal-fired generation in the fuel mix would offer significant energy security and diversity benefits.
4. With the closure of Longannet deep mine in 2002, all coal produced in Scotland now originates from opencast sites. Within Scotland, future demand for coal will be strongly influenced by the remaining life of the coal-fired power stations at Cockerzie and Longannet. However, the movement of coal outwith Scotland and the availability of coal from abroad means that the industry now operates in a highly open and competitive market. As a result, Scottish opencast production now plays a significant role in total UK supply. This is expected to continue.



5. It is not the UK Government's policy to set limits on or targets for the share of total energy or electricity supply to be met from different fuels. In the light of market conditions, it remains a matter for individual opencast operators to determine the level of output for which they wish to aim. However, it remains a matter for planning authorities to determine the acceptability of individual development proposals in accordance with the principles of the land use planning system having regard to the policies set out in development plans, this SPP and all other material considerations. A contract between an opencast operator and any of the electricity generators is not a material consideration in terms of planning legislation and policy. The quality of coal is also not a material planning consideration.

ENVIRONMENTAL JUSTICE

6. A speech by the First Minister in February 2002 provided a high-level political commitment to environmental justice in Scotland. This commitment was confirmed in the 2003 Partnership Agreement "A Partnership for a Better Scotland" which commits the Scottish Ministers to delivering sustainable development; putting environmental concerns at the heart of public policy; and securing environmental justice for all of Scotland's communities.
7. A key element of environmental justice is ensuring that local communities are provided with accessible information and opportunities to participate in decision making in order to enable them to have greater control over the environments in which they live. In the context of opencast working, policies must also recognise that coal is a finite resource that can only be worked where it is found. Additionally, the industry provides valuable employment in rural areas and can contribute to environmental improvements by clearing dereliction, etc. However, it is not always easy to find sites that can be worked in environmentally acceptable ways. This has resulted in a trend towards the concentration of opencast developments within certain geographical areas. The existence of coal in these areas should not mean that communities should be expected to endure unacceptable living conditions, particularly if there are other developments within close proximity that also have a significant impact upon the environment and the quality of life of local people. These issues are explored further in paragraphs 9 to 14.

PLANNING POLICY

THE GENERAL PRINCIPLE

8. In applying the principles of sustainable development and environmental justice to opencast coal extraction, there should normally be a presumption against development unless the proposal would meet one of the following tests:

Test 1

- Is the proposal environmentally acceptable, or can be made so by planning conditions and/or agreements?

Planning authorities should consider environmental acceptability in the context of the impact on both local communities and the environment. This will involve weighing up the various benefits and disbenefits, including those in paragraph 34 (but excluding those in paragraph 35), that are likely to arise if the development proceeds.

Test 2

- Does the proposal provide local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission?

“Local or community benefits” will only arise in the following circumstances:

- Where there is improvement of local amenity or future development opportunities arising from the clearance of a substantial area of derelict or despoiled land, the stabilisation of a previously undermined site, or other similar benefits. These will include the removal of mine gases and polluted mine drainage; or the removal of coal from a site prior to approved permanent development (see paragraph 20). It is for the planning authority to decide whether there are sufficient local or community benefits to allow consent to be granted. If approved, the period and phasing of such working should be tightly controlled through planning conditions and monitored by the planning authority to ensure minimum disruption to local communities and the environment; or
- Where extraction generates employment which is particularly beneficial in those areas where extraction takes place. Where such jobs are genuinely available to local communities, authorities may judge that there is a local benefit to be secured if the proposal satisfactorily safeguards the interests of impacted communities (as set out in paragraph 36).

WORKING WITH COMMUNITIES

9. Opencast coal extraction can be regarded as an unwelcome environmental intrusion and nuisance, particularly by those living closest to where extraction is to take place. It is therefore crucial that local communities have access to environmental information so that they are able to participate fully in decisions that will impact on their quality of life. This better ensures that attitudes are founded on the best possible information and anxieties are reduced by transparency and inclusivity. The Executive expect planning authorities to work closely with communities in coalfield areas when considering the contents of developments plans and, also, for operators to work closely with local communities at an early stage of specific proposals and to keep them involved



as they develop their proposals. Legitimate public concern or support will be one of a number of material considerations that should be taken into account when considering proposals.

10. If permission is granted, operators should continue to be good neighbours, aiming to distinguish themselves through genuine engagement with local communities. Formal liaison mechanisms, such as community liaison or advisory panels, should be established to ensure that community concerns are properly addressed and to promote better mutual understanding. This should help ensure that work proceeds smoothly and with minimum inconvenience to those most affected, and that legitimate local concerns about the operation of the site can be addressed quickly.

SEPARATION DISTANCES

11. In considering whether impacts on local communities are acceptable, particular attention needs to be given to separation distances between proposed sites and adjacent communities. As a general rule, site boundaries within 500 metres from the edge of a community are likely to be unacceptable although this should not prevent non-engineering works, such as the planting of trees, from taking place to reduce the visual impact of development on communities and the environment. Exceptionally, the topography, the nature of the landscape, the respective location of the site and the nearest community in relation to the prevailing wind direction and visibility may be such that they can justify the 500 metres distance being tailored to local circumstances and a greater or lesser distance may be applied.
12. The identification of towns and villages as communities is self-evident but “communities” can also consist of small clusters of houses. Planning authorities, when devising policies and considering planning applications, are best placed to decide what constitutes a “community” and to identify the impact of proposals on them and whether any local or community benefits are likely to arise for them to offset the impact of the development. However, the Executive also expect operators and planning authorities to ensure that there are no unacceptable impacts on individual dwellinghouses or sensitive establishments outwith defined communities; or that such impacts are acceptable to individual occupiers.

CUMULATIVE IMPACTS

13. In addition to complying with paragraph 8, planning authorities must also ensure that proposals will not subject any community to a disproportionate burden of negative environmental impacts or perpetuate unacceptable disturbance to a particular community. This will be particularly important if there are already two or more operational or consented sites that could raise similar impacts within 5 km of any nearby community. Such sites will include:
 - other opencast coal sites;
 - sites for the extraction of other minerals; and
 - landfill sites.

14. In such circumstances, an assessment of the likely cumulative impacts of additional workings, if approved, on all communities within a radius of 5 km of the proposed site boundary should be undertaken. This should include site design, likely further increases in road traffic, period of disturbance to communities and the period that the landscape is likely to be disturbed. The developer should demonstrate what measures will be taken to mitigate likely cumulative impacts. Planning permission should be refused if unacceptable impacts cannot be adequately mitigated. Future applications in the same area may be considered where some sites have ceased to operate and have been returned to a condition acceptable to the planning authority.

SAFEGUARDING ENVIRONMENTAL RESOURCES

Natural Heritage

15. Within the wider framework of sustainable development, the Executive is committed to safeguarding and, where possible, enhancing Scotland's natural heritage. This may impose constraints on development but, with careful planning, the potential for conflict can be reduced. *NPPG 14: Natural Heritage* (January 1999) sets out the policy on how to assess development proposals showing due concern for the natural heritage. Guidance is provided on the approach to be adopted in relation to protecting sites of international and national importance and the wider natural heritage. Further advice is given in *Planning Advice Note 60: Planning for Natural Heritage*. The Nature Conservation (Scotland) Act 2004 applies a general biodiversity duty to all Scottish public bodies which obliges them to "further the conservation of biodiversity" in the course of exercising their functions.

Conservation of the Built Heritage

16. The Executive is committed to the preservation of important features of the nation's built heritage. Regard must be had to the statutory obligations on developers undertaking works likely to affect scheduled monuments, listed buildings and/or conservation areas, historic gardens or designed landscapes and their settings. Mineral workings may pose a threat to structures and remains of archaeological interest, hitherto unrecorded or not afforded the protection of scheduled monuments under the Ancient Monuments and Archaeological Areas Act 1979. NPPG 5 and NPPG 18 provide detailed guidance on assessing the effects of proposals on archaeological sites, scheduled monuments and the historic environment. Related advice is given in PAN 42.

Green Belts

17. The purposes of green belts and the Executive's policy are set out in SDD Circular 24/1985. Opencast coal working is generally incompatible with green belt objectives and current or past workings should not be seen as a precedent for future working. However, working within the green belt may be acceptable in circumstances where it would result in the removal of dereliction, improve land stability, remove hazards or lead to drainage improvements and the land can be reclaimed to an appropriate green belt use and standard agreed by the planning authority. In this way, opencast coal working may lead to improvement in local amenity for the purposes of the tests set out in paragraph 8.



Agricultural Land

18. The Executive's policy on the protection of agricultural land, as set out in SDD Circular 18/87 (as amended by SOEnD Circular 25/1994), is that, when considering the allocation of land for development and in deciding applications for planning permission affecting agricultural land, the agricultural implications must be considered together with the environmental, cultural and socio-economic aspects. In particular, prime quality land should normally be protected against permanent development or irreversible damage.
19. Coal deposits may lie beneath both prime quality agricultural land and other categories. The feasibility of reclaiming land to a high standard, the demand for valuable resources, and the contribution which such a development might make to the rural economy, together with the current pressure to reduce agricultural output, may, in appropriate circumstances, offer an opportunity to remove coal and have the site reclaimed in anticipation of increased demand for agricultural production.

Sterilisation

20. Deposits of coal and related minerals capable of being extracted in accordance with this SPP should not be sterilised unnecessarily. If extraction is not possible because of other ongoing developments that raise similar issues in the area then planning authorities should take a long-term view on the potential for extraction and incorporate possible extraction timescales in their development plans. Where practicable, it is desirable to secure extraction prior to new permanent development above workable coal reserves. Policies and decisions should therefore take into account the benefit of the removal of coal by opencast mining, within a reasonable timescale and in an environmentally acceptable way, prior to permanent development.

OPERATIONAL CONSIDERATIONS

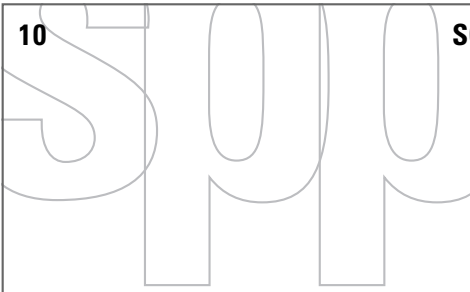
CHARACTERISTICS

21. The main factors to consider in relation to opencast coal extraction are visual intrusion, landscape impact, noise, blasting and vibration, dust, ecology, pollution and disruption of watercourses, the effects of groundwater and transport issues. There are a number of statutory environmental protection regimes that are separate but complementary to the town and country planning system. PAN 51: *Planning and Environmental Protection* gives advice on the relationship of the two systems. Planning authorities should not seek to control or over-ride, through planning measures, matters that are the proper concern of the relevant body, except where the planning interests can be clearly distinguished.

22. Advice on controlling the environmental effects of surface mineral workings is given in PAN 50 with Annex A on controlling *Noise*, Annex B on *Dust*, Annex C on *Traffic* and Annex D on *Blasting*.

AIR QUALITY

23. Likely exposure to dust arising from opencast coal extraction is a material planning consideration. Health concerns can also arise as a result of anxiety among residents close to a proposed site if they believe emissions to be damaging to health. This makes it all the more important for good communications to exist between operators and communities to help allay anxieties.
24. Concerns over the likely effects of dust emissions should be assessed against the existing body of scientific, medical and epidemiological evidence. These effects have been explored in detail by the Committee of Medical Effects on Air Pollutants (COMEAP), a panel of independent experts which advises UK health departments; the Expert Panel on Air Quality Standards; and in the University of Newcastle-upon-Tyne study *Do Particulates from Opencast Coal Mining Impair Children's Respiratory Health? (1999)*. COMEAP endorsed this study and concluded that it was most unlikely that opencast sites would have any long-term effects on the health of local communities.
25. The Newcastle study highlights the need to ensure proposals are assessed against the objectives in the Air Quality Strategy for England, Scotland, Wales and Northern Ireland. These objectives are set for pollutants of particular concern for human health, together with dates by which they should be achieved. The Newcastle Study also contains a framework to guide the assessment of the implications of proposals on the objective for PM10 particulates. This framework should be adopted when drawing up and considering proposals for new sites, or extensions or modifications to existing sites, if there is a residential property or other sensitive establishment within 1 km of any site activity with the potential to generate dust. In doing so, use should be made of the information collected by local authorities in undertaking their responsibilities for Local Air Quality Management.
26. Operators should provide sufficient information to enable a full assessment to be made of the likely effects of development, including likely on-site diesel consumption, together with proposals for appropriate control, mitigation and monitoring. When considering proposals, planning authorities should have regard to the environmental acceptability of likely dust emissions, including the cumulative impact at residential properties and on other sensitive uses. Where effects cannot be adequately controlled or mitigated, planning permission should be refused.



GROUNDWATER

27. The European Directive on Groundwater (80/68/EEC) was fully transposed into Scottish law by the introduction of the Groundwater Regulations 1998. These Regulations forbid the introduction of certain substances (denoted as “List I substances”) into groundwater, and also place limitations on the extent to which other substances (“List II substances”) may be permitted to enter groundwater. Scottish opencast mining, which constitutes an ‘activity’ under the Regulations, poses little risk of introducing List I substances into groundwater, but it has substantial potential to lead to the migration of several ‘List II’ substances. The Code of Practice for the Owners and Operators of Quarries and other Mineral Extraction Sites was published by the Scottish Executive in 2003 and provides advice on the control of pollution from non-mineral pollution sources during opencast mining. It also identifies the need for the assessment of the risk of release of List I and List II substances from storage of excavated materials in stockpiles or backfilling, prior to the activity being undertaken. The Scottish Environment Protection Agency has the lead role in the protection of groundwater and has published a Groundwater Protection Policy for Scotland. A research and development project has also been carried out for the Agency to assist it in developing guidance on how to evaluate the potential impact of opencast coal mining on water quality.

ENVIRONMENTAL DUTY

28. Section 53 of the Coal Industry Act 1994 imposes an environmental duty on the coal industry and planning authorities. In formulating coal mining proposals requiring planning permission, operators are required to have regard to the desirability of preservation of natural beauty, the conservation of flora and fauna and geological or physiographical features of special interest and the protection of sites, buildings, structures and objects of architectural, historic or archaeological interest; and must formulate proposals for the adoption of measures to mitigate any adverse effects of the development on such matters. In considering proposals, planning authorities are required to have regard to the extent to which the operator has complied with the duty although this does not override the need for proposals to comply with development plans and the policies in this SPP. Proposals not prepared in accordance with this duty are most unlikely to meet the requirements of this SPP. Apart from the careful selection of sites, operators can best discharge this duty by ensuring that all proposals meet one of the tests set out in paragraph 8; and by proposing to planning authorities appropriate conditions and high standards of restoration and aftercare.

SAFEGUARDING OF LOCAL COMMUNITIES AND THE ENVIRONMENT

ENVIRONMENTAL IMPACT ASSESSMENT

29. An Environmental Impact Assessment (EIA) requires the significant environmental impacts (both negative and positive) of major new developments to be identified with a view to preventing, reducing and offsetting any adverse effects. EIA is mandatory for proposed opencast mining where the surface area of the site exceeds 25 hectares. For sites less than 25 hectares, the need for EIA will arise only if the proposal is judged likely to have significant environmental effects. See the Environmental Impact Assessment (Scotland) Regulations 1999 which implement EC Council Directive 85/337/EEC, as amended by Council Directive 97/11/EC and more recently by Directive 2003/35/EC. Further advice is given in PAN 58: Environmental Impact Assessment.
30. In determining the need for EIA (either for new sites or for extensions to existing sites), diligent attention to the nature of the proposed development and the sensitivity of the location is paramount. If an EIA is required, operators and planning authorities should work closely to ensure that all the relevant environmental issues are carefully identified as soon as possible so that unnecessary delays are avoided following the submission of the planning application. Close public involvement at this stage is also recommended since affected communities will have local knowledge of the issues that may subsequently need to be addressed. This should also ensure a better public understanding of the likely environmental effects of the project and how these will be mitigated. Operators should allow sufficient time for the preparation and submission of an Environmental Statement (ES), particularly if more complex or seasonal issues are likely to be raised.

SUPPORTING INFORMATION

31. The Executive expects planning authorities to require operators, when submitting proposals, to indicate through supporting information their understanding of the location of coal reserves in surrounding land **and** their likely future plans relating to:
- any future extensions, both laterally and vertically, in relation to the current application; and
 - their interest in adjacent sites.
32. The information provided by the operator, which should be supported by information available from the Coal Authority (see Annex A), will enable the planning authority to better assess the period of disturbance to local communities at the outset and to take a long-term view on the possible wider implications for the area. If this information is not provided, or proves to be inaccurate then, unless there are clear changes in circumstances, there will be a presumption against both further extensions and the development of adjacent new sites by the applicant.

APPRAISAL OF PROPOSALS

33. The ES, together with other information, such as a Transport Assessment, submitted in support of an application, should assist the planning authority in reaching a view on both the disbenefits and benefits of a particular proposal leading in turn to an overview in principle either for or against the proposal. If authorities do not consider they have sufficient material to form a view they should exercise their power to require additional information from the applicant. However, the planning authority should, as far as possible, indicate to the applicant their full information requirements before the EIA is prepared.
34. While not meant to be exhaustive, some of the factors which planning authorities should bear in mind when assessing the disbenefits and benefits of a proposal are set out below:

Disbenefits

- Proximity to communities can have a detrimental effect not only on an area's amenity but also on the quality of life for local people.
- Uncertainty for local communities created by the possibility of site extensions and extended periods of working.
- Haulage traffic, which passes through communities on a regular and frequent basis, can have a significant impact on the amenity and fabric of communities as well as the quality of life for local people.
- There are other developments in close proximity that will subject a local community to a disproportionate or ongoing cumulative burden of negative environmental impacts.
- Disturbance and disruption from noise (including blasting); pollution of land, air and water (including airborne dust) which can be recurring problems.
- Radical change to the local landscape is an inevitable, if short term, consequence of opencast working. Even after restoration and aftercare, it can take many years for the landscape to regain maturity and the appearance of being undisturbed. Even then, habitats and species as well as earth science and archaeological features can be lost.
- The impact of extraction on efforts to attract and retain investment in an area.
- The loss of local opportunities for recreation and access to the countryside.

Benefits

- The removal of existing dereliction and land instability which can improve amenity and future development opportunities.
- The removal of all coal and related minerals in one operation which may eliminate uncertainty over future disturbance for local communities.

- The distance of the proposal in relation to local communities is unlikely to raise significant impacts.
- Sterilisation of workable coal resources is avoided.
- Traffic routing to avoid disturbance to local communities.
- Minewater remediation.
- Planned restoration and aftercare arrangements are clear and put in place an after use for the site that is generally acceptable to local communities.
- Extraction may reveal or enhance earth science conservation features.
- Restoration will provide new landscape benefits in keeping with the landscape character of the area or the creation of new habitats identified as Biodiversity Action Plan targets.

TRUST FUNDS, ETC

35. Benefits, for instance, in the form of new community facilities or community trust funds may be proposed by the developer or suggested by the planning authority. However, such benefits should not be treated as a material consideration unless they meet the tests set out in SODD Circular 12/1996 on planning agreements. Thus, attempts to offset harm to local communities through unreasonable provision not related directly to the proposed development, or securing general benefits for the wider community, should not form part of the assessment of disbenefits and benefits.

OVERALL ASSESSMENT OF DISBENEFITS AND BENEFITS

Safeguarding Communities

36. Having assembled and analysed the various disbenefits and benefits, it falls to the planning authority to reach a judgement on whether the proposal is environmentally acceptable and therefore meets the first test in paragraph 8. In doing so, particular weight should be attached to the impacts that arise in close proximity to the local communities most affected, as against those that may be of more general effect. Accordingly, the weight planning authorities attach to the different considerations in this assessment, including comments from statutory consultees and the public, is crucial. While there is considerable expertise both in mitigating the environmental impacts of working and reclaiming sites to a high standard, often resulting in environmental improvements, a judgement requires to be made as to whether these measures can adequately control the impact where proposed workings are in close proximity to communities. Each case must be judged on its merits and planning authorities should satisfy themselves that the proposals and appropriate planning conditions adequately address all the local environmental impacts including any adverse effects on local amenity and wildlife interest, air quality, noise and ground and surface water. However, proposals are likely to be unacceptable where they:



- are too close to communities (i.e. proposed site boundaries are within 500 metres from the edge of a community); or
 - would have unacceptable impacts on individual dwellinghouses or sensitive establishments outwith communities and such effects cannot be mitigated satisfactorily; or
 - relate to an extension where such an intention was known and not made explicit when the original application was approved; or
 - are likely to result in a period of disturbance to communities that, including extensions, involves extraction for a period of more than 10 years; or
 - are in an area already subject to other nearby developments that also have negative environmental impacts, e.g. other mineral extraction operations, landfill sites etc, and the simultaneous or sequential working will result in a cumulative and unacceptable impact on a local community; or
 - rely solely on road haulage which passes directly through communities, particularly if rail based transportation is a viable option; or
 - affect adversely any natural or built heritage designation or site.
37. It will be a matter for the planning authority's judgement as to whether or not the environmental disturbance to a locality is minimised best by a major, single-site operation which may last a number of years, therefore justifying the commensurate investment in mitigation measures such as rail transport and tree planting to provide mature screening, or by a succession of planned developments on smaller sites below 25ha in area which may, each in themselves, have a smaller impact but would not warrant equivalent mitigation measures and may potentially extend the duration of operations in the area.
38. Additionally, proposals more distant from communities may still result in disbenefits outweighing benefits where there are significant impacts on landscape character and nature conservation interests.
39. If consent is granted, all economic minerals should be removed at the same time, if possible, in order to minimise further disturbance and uncertainty for the local community. In such circumstances, working should be supported by planning conditions which give certainty to communities during the period of disturbance. Thereafter, there should normally be a presumption against further working of the site for any minerals.

Safeguarding of Existing Businesses and Opportunities for Future Investment

40. Where a local authority is actively promoting an area for tourism or seeking to attract new investment to the locality or safeguarding particular sites for such investment, opencast proposals could pose a threat to those prospects. Such considerations could equally apply to the retention and expansion of existing businesses, including those particularly sensitive to noise, dust or vibration and those related to tourism and recreation. These are not grounds for imposing a

prohibition on opencast coal proposals. However, it is entirely appropriate for an authority to adopt, as a material consideration, any objective evidence of the possible adverse consequences for attracting or retaining such developments in assessing the extent and degree of the disbenefit likely to be experienced by the local community. The Local Enterprise Company (LEC) and the local tourist board may be able to assist in providing such evidence. In reaching their view, planning authorities are expected to have regard to the development plan and all other material considerations.

Minimising Traffic Impacts

41. Planning authorities should encourage the movement of freight by rail or water if these modes of transport provide feasible options for all or part of the journey. Much coal is moved by rail for the greater part of the journey but in many cases road transport is necessary over shorter distances to rail trans-shipment facilities, or for the whole trip where rail is not available. Regular and frequent lorry movements can cause considerable damage and maintenance problems on local roads as well as disturbance and pollution problems for communities. The Executive wishes to seek a better balance between lorry and rail transport, with an increased tonnage of coal being moved by rail from as near as practicable to the extraction site.
42. Accordingly, as part of the overall assessment, proposals which provide for rail transport should be more favourably considered than those wholly dependent on road transport. Proposals, which do not envisage rail transport, should be accompanied by an explanation as to why it is not possible and the alternative arrangements proposed to minimise impact on local roads and communities.
43. Appropriate mitigation measures might include dedicated off-road haul routes provided by the mineral developer, which avoid communities and hence minimise disturbance. Further advice is given in PAN 50 Annex C.

REGULATING DEVELOPMENT

CONDITIONS AND RELATED MATTERS

44. Planning authorities have wide-ranging powers to attach conditions to planning consents. While operators have a legal obligation to comply with such conditions, it is also in their best interests to do so in order to demonstrate their commitment to conducting their operations in an environmentally acceptable manner as good neighbours. Local communities rightly expect that conditions will be observed by operators and monitored effectively by planning authorities and, where necessary, appropriate enforcement action taken.
45. Where the initial assessment points towards possible consent in principle, the planning authority will need to address the environmental standards they would expect to be met through the use of planning conditions. In appropriate

circumstances, planning agreements can also be used. In line with the Executive's general policy for the environment, planning authorities must ensure high environmental standards and management both during and after the extraction stages so that developers absorb the environmental costs associated with their developments.

46. Many planning authorities already have a number of standard conditions they would expect to apply. In general, planning conditions must be comprehensive and sufficiently robust to mitigate adequately the environmental consequences that are likely to arise both in the short and long term. An EIA should provide a useful guide on the extent and content of conditions that will be appropriate. If there is doubt about particular aspects, the planning authority should seek additional information from the applicant before applying conditions in the interests of environmental protection and the quality of life for the local community, always recognising the standard tests that apply in setting all planning conditions (SODD Circular 4/1998 refers).
47. Where the environmental impacts of coal extraction cannot be sufficiently mitigated or controlled by means of planning conditions alone, it may be appropriate for planning authorities to seek planning agreements. These can be used to regulate the development and to ensure external effects related to the development are provided for. SODD Circular 12/1996 provides guidance on the tests to be met through planning agreements.
48. In all cases, planning authorities should consider what conditions or planning agreements are required in relation to the timing, phasing and programme of working the site and in relation to its restoration and aftercare. Particular care should be taken in relation to all workings close to communities and/or in areas important for their natural or built heritage, landscape or informal recreational value.

MONITORING COMPLIANCE WITH CONDITIONS

49. The corollary of setting conditions is the need for operators and planning authorities to ensure proper arrangements are in place for monitoring, including site inspections, to ensure compliance and for corrective action to be taken by the developer where necessary. For major sites, an environmental baseline survey may be needed to provide a benchmark for monitoring and managing change within acceptable parameters. Failure of operators to take action should lead to enforcement measures by the planning authority at an early date. Local communities will expect no less and indeed are entitled to robust action by the planning authority against those who fail to observe their obligations under the terms of the planning consent, see SODD Circular 4/1999 and PAN 54 *Planning Enforcement*.
50. It is a well-established practice within the planning system to monitor the impacts of development on the environment, particularly where the latter is sensitive to change. Environmental management is also an integral part of environmental codes being adopted by many sectors of industry in recognition

of the public concern for better safeguards for the environment as a whole. When granting or renewing planning permissions, planning authorities should provide for regular monitoring and the preparation and reporting of environmental audits by the operator, the content and frequency of which should be specified by the planning authority. The audit results should be discussed with the planning authority and, where appropriate, agreement reached on any remedial measures required to be taken by the operator to safeguard the environment of the site and the surrounding area as well as the amenity of any affected communities.

51. The Executive is currently considering the need for a statutory fees regime to recover the costs of monitoring and enforcing mineral permissions from operators. In the meantime, planning authorities should ensure stringent arrangements are in place to monitor properly the conditions attached to planning permissions. Such arrangements should take account of the circumstances of specific proposals. The arrangements needed should be agreed between planning authorities and operators, in conjunction with local communities, before planning permission is granted. In order to achieve the expected high standards of operation, planning authorities should treat any offer by the applicant to enter into a comprehensive monitoring and compliance scheme as a material consideration in determining opencast applications. Such schemes could provide for liaison committees, restoration bonds, independent compliance assessors, technical review panels, and arrangements for monitoring compliance with conditions. This principle should be applied when considering extensions to existing sites.

RESTORATION, AFTERCARE AND AFTER USE

52. Proposals for the restoration and aftercare of a site should form an important part of the information submitted with the planning application. The information provided should be sufficiently detailed for a realistic view to be taken of the after-use intended, including phasing of progressive restoration and the final landform and landscape, and monitoring procedures for supervising the proper completion of the restoration and afteruse procedures. The Executive's policy is to encourage afteruses that bring about environmental or community benefits and for areas to be restored to the required standard and returned to a beneficial afteruse as quickly as possible. For larger sites, this can be best achieved by progressive restoration. Further advice is given in *PAN 64: Reclamation of Surface Mineral Workings*.
53. Planning authorities already have wide powers to impose and enforce restoration and aftercare of sites through conditions. In addition, it has become common practice in Scotland for planning authorities to require, by means of a planning agreement, a financial guarantee to ensure against default on adequate restoration and aftercare. Such guarantees should be required unless the operator can demonstrate to the planning authority's satisfaction that their programme of restoration, including the arrangements for financing, phasing and

aftercare of sites is sufficient. This could include reliance on an established and properly funded industry guarantee scheme.

54. Finance to meet fully restoration, aftercare and after use conditions should build up commensurate with the pattern of activity/extraction, recognising that for larger sites there will be a requirement for progressive restoration requiring a stream of funding to be available at various stages. It is recognised that financial guarantees may pose an additional burden on operators but they represent a more formal recognition of operators' responsibility for which they ought to provide and should reduce the uncertainty that exists for communities about the longer term prospects for the amenity of their area.

TIME LIMITS ON OPERATIONS

55. Opencast mining is essentially a temporary use of land which, including extensions, should not result in a period of disturbance to local communities of more than 10 years. Planning authorities already have powers to attach conditions to planning permissions specifying the date by which development must begin (or the planning permission will lapse) and specifying dates for the completion of coal extraction, restoration and aftercare, applying such conditions to particular phases of operation. It should be noted that the definition of the 'commencement of minerals development' specifically excludes 'preparatory works' in order to preclude fairly minor works being undertaken as a means to keeping a permission alive, see SODD Circular 2/1999. Planning authorities should make explicit what works are to be treated as preparatory.
56. Thereafter, commencement of preparatory work and the winning and working of coal should be notified to the planning authority and made public through the liaison committee/community council so that it is known precisely when a start to operations begins and in turn what the completion date for extraction and restoration is. The duration of coaling operations and restoration works, including where possible progressive restoration, should be tight but realistic, commensurate with operational requirements and good operational practices. Once set, time limits should be altered only in exceptional circumstances.

FURTHER APPLICATIONS

EXTENSIONS TO EXISTING SITES

57. Approval of applications by planning authorities, with prior knowledge of future intentions, does not carry any presumption in favour of such future intentions. Any future application will require to be determined on its merits and in relation to current national planning policy, the development plan and any other material consideration, including prevailing conditions and current best practice and technology. While there may be benefits associated with extensions to existing well-run sites, it would be open to a planning authority to consider whether the environmental and amenity consequences of possible extension at some future

date warranted action to restrict the scope for an extension of a consented site. If such a course of action is decided upon, it should be incorporated as a policy in the development plan with reasoned justification.

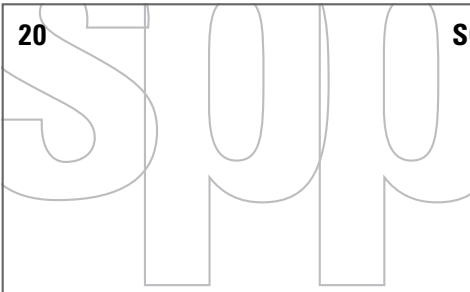
58. It is a matter of fact and degree as to whether changes proposed to extend or modify an existing consent require a new application to be submitted. Normally, planning authorities have no difficulty in determining what is appropriate in respect of lateral extensions. The position is less clear in terms of proposals to deepen an existing consented working. However, the same principles apply. The onus is on the developer and the planning authority to identify all the relevant consequences for the area of the deepened working in consultation with local communities and statutory bodies. Where these are likely to have additional identifiable effects on the environment and amenity of the area, having regard to the provisions of the development plan and all other material considerations, then an application supported by an EIA may be appropriate. In other circumstances, an application for a variation of conditions may be sufficient.

REPEAT APPLICATIONS

59. The basis of concern here is the desire to remove or minimise the uncertainty that arises from repeat applications. Section 39 of the 1997 Act provides that a planning authority may decline to determine a planning application made within two years of the Scottish Ministers refusing a similar application, either on call-in or appeal, and there has been no material change in circumstances since that decision. In addition, there should now be, as a matter of policy, a presumption against approving applications for the development of a site, or extension to an existing site, where a similar application was refused within two years unless there has been a significant change in the development plan or other material considerations. If the application or appeal processes raise issues that show the site is not suitable for development, the planning authority should consider modifying or deleting it from the development plan when next reviewing the plan.

DEVELOPMENT PLANNING

60. Section 25 of the Town and Country Planning (Scotland) Act 1997 Act makes clear that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Proposals for opencast coal extraction should be decided within a framework provided by the development plan, this SPP and any other material considerations.
61. An essential aspect of forward planning for coal extraction is an understanding of the resource that might be exploited. The Coal Authority has an important role to play in making available to planning authorities information in its possession on the location and extent of coal deposits and the areas subject to operating and exploration licences. The Coal Authority and planning authorities should



liaise closely at an early stage of the development planning process. The Coal Authority should also be approached by planning authorities in the consideration of individual planning applications. The role of the Coal Authority and the assistance it can offer to planning authorities is detailed in Annex A.

62. Coal operators should engage in full and open dialogue with planning authorities and provide them with information on the extent of known reserves and their forward plans. Planning authorities should provide operators with information on the planning and environmental constraints within the plan area. In this way, operators and planning authorities can discuss and co-operate in the production of forward programmes of potential sites which takes full account of planning and environmental restrictions and environmental justice, subject always to planning permission being obtained for individual proposals in accordance with the general policy principle set out in paragraph 8. Such programmes can also provide continuity for the industry, certainty for local communities, and help avoid problems of piecemeal applications and cumulative impact.
63. In 2002, the Executive announced that the requirements for all-Scotland coverage of structure plans should end. In future, it is envisaged that strategic development plans should only be prepared for the 4 largest city regions, concentrating on a broader overview of genuinely strategic issues which cross council boundaries such as transport, employment and the environment. Such policies need to take account of any opencast mining in the area and address the strategic issues raised in this SPP i.e. the emphasis on moving coal by rail wherever feasible.
64. The framework for controlling opencast coal extraction should be set out either in local plans and, in due course, local development plans or in subject plans. Policies, which should be drawn up by planning authorities, following consultation with the Coal Authority, local communities, environmental interests and coal operators, should:
 - set the overall longer-term framework for opencast working, including the criteria to be addressed when assessing individual proposals, including how cumulative impacts will be mitigated.
 - identify broad areas where the extraction of coal by opencast methods may be acceptable, taking account of all the factors covered in this SPP.
 - confirm that within areas identified in plans for possible future working, individual proposals will still require to be judged on their merits having regard to the policy contained in this SPP and all other material considerations. In situations where the environmental issues have already been addressed through the identification of areas with possible scope for opencast mining, this does not remove the requirement for the preparation of an environmental statement in association with specific proposals which are likely to have significant environmental effects.

- confirm that there will be a general presumption against extraction outwith those areas identified in plans as areas that may be acceptable for possible future working.
65. When formally reviewing plans, planning authorities, in consultation with operators and the Coal Authority, should consider previously identified search areas and any new information that has arisen in relation to coal reserves since plan preparation. If it is clear that no future applications are likely to be made, or that experience shows that consent is unlikely to be forthcoming, planning authorities should consider modifying or deleting the search area from the plan. New search areas should be identified where extraction of coal may be acceptable, taking account of all the factors covered in this SPP.
66. When preparing development plans, authorities will need to comply with the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004. At the time of writing these are due to be revoked and replaced by the Environmental Assessment (Scotland) Bill currently before parliament. The Regulations require an assessment of the effects of certain plans and programmes on the environment. Further guidance is given in SEDD Circular 2/2004 and in the *“Environmental Assessment of Development Plans; Interim Planning Advice”*. The process of systematically identifying and assessing the environmental effects of a development plan provides an important opportunity to determine the potential cumulative environmental impacts of present and anticipated future activities in the area and should better enable authorities to take a strategic view of the likely impact of additional opencast working on local communities.

NOTIFICATION OF APPLICATIONS

67. The notification direction issued on 22nd October 1998 (SODD Circular 20/1998) will be replaced to take account of the revised policies in this SPP. In addition, other notification requirements will continue to apply; for example, where there is a sustained objection from Scottish Natural Heritage on a proposal affecting an SSSI, SPA or SAC, or if a development is considered by the planning authority to be a significant departure to the structure plan (see SODD Circular 4/1997). The Scottish Executive will make every effort to respond to notifications within the statutory period of 28 days.



CONCLUSION

68. The purpose of this SPP is to establish a robust policy framework for the control of opencast coal developments. The Executive looks to planning authorities to steer proposals to environmentally acceptable sites and, where necessary, to refuse consent if they judge that development would be contrary to the guidance set out in this SPP.

NOTES

69. This SPP sets out the factors which the Scottish Ministers will have regard to when considering development plans, appeals or planning applications coming before them. Planning authorities should take its contents into account when preparing development plans and carrying out their development control responsibilities.
70. Enquiries about this SPP should be addressed to Ian Mitchell (0131 244 7062), Scottish Executive Planning Division, 2-H, Victoria Quay, Edinburgh, EH6 6QQ (e-mail: ian.d.mitchell@scotland.gov.uk). Further copies can be obtained by telephoning 0131 244 7543. This SPP and other SPPs, PANs and a list of circulars can be viewed on the Scottish Executive website: www.scotland.gov.uk/planning.

ANNEX A: THE COAL AUTHORITY

1. The Coal Authority is a Non-Departmental Public Body established under the Coal Industry Act 1994 and sponsored by the Department of Trade and Industry. It undertakes a range of activities formerly carried out by the British Coal Corporation. In particular, as the owner of practically all of the unworked coal in Great Britain, the Authority manages the unworked coal reserves on behalf of the nation and encourages economically viable operations to exploit these reserves. Within its sphere of responsibility, it protects the interests of those affected by past and future coal-mining activity.
2. The Authority manages the nation's coal reserves through licensing coal-mining operations and leasing the rights to extract coal. Whilst decisions on exploration for, and extraction of, coal reserves and the market for those reserves are for the coal operators to take, the Authority has a substantial interest in promoting the sustainable management and exploitation of those reserves. It may also have a view on the extent and quality of coal reserves within particular mining prospects. Accordingly, the Authority wishes actively to work with local authorities and coal operators to ensure that the coal resource is worked, and built development carried out, in such a way as to promote sustainability and environmental protection. This will entail close liaison during the production of development plans and during consideration of individual planning applications.
3. Outside of these consultations, the Authority will supply details of areas under licence, under application for licence or under exploration licence to planning authorities through its regular newsletter, and will respond directly to any queries about licences or the licensing process.
4. In March 1999, following a commission from the Coal Authority, the British Geological Survey published a map of the coal resource of the UK, showing coal-bearing strata and identifying coal resources at depths of less than 200 metres (which might be suitable for opencast mining) and less than 1200 metres (which might be suitable for deep-mining, coal-bed/coal-mine methane extraction or in-seam coal gasification). The map is designed to assist planning authorities, prospective coal and petroleum licensees and other interested parties.
5. The Coal Authority's duties and powers are set out in the Coal Industry Act 1994 (available from The Stationery Office, ISBN 0 10 542194 4). The Authority's *"Guidance Notes for Applicants for Licences or Rights in relation to Coal or Land Owned by the Authority"* and its Licensing Newsletter are available from either the Authority's website at www.coal.gov.uk or from the Licensing Department, The Coal Authority, 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire, NG18 4RG (Telephone 01623 638309; Facsimile : 01623 620363).



6. The Coal Authority also makes available the following material for interested parties to consult at its Mining Heritage Centre in Mansfield:

- mine plans for all abandoned coal mines
- the Statutory Register of Coal Mining Licences
- Coal Holdings Register (mineral ownership)
- National Photographic Library for Coal
- Electronic borehole records from British Coal Opencast's geological database.

Contact: Mr D Clarke, Mining Information Manager
Telephone 01623 638233
Fax 01623 629100
Email: davidclarke@coal.gov.uk
Website www.coal.gov.uk

7. Geological information from British Coal (opencast and deep mine) including prospecting site boundaries and primary borehole logs can be inspected at:

British Geological Survey,
Kingsley Dunham Centre,
Keyworth,
Nottingham NG12 5GG.

Contact: Mr R Bowie,
Telephone 0115 936 3100
Fax 0115 936 3200
Website www.bgs.ac.uk

8. Geological information is also maintained in the BGS Scottish Office at:

British Geological Survey,
Murchison House,
West Mains Road,
Edinburgh EH9 3LA.

Contact: Mr R Gillanders 0131 667 1000
Fax 0131 668 2683

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