

EAST AYRSHIRE OPENCAST COAL SUBJECT PLAN

**SCHEDULE OF RECOMMENDATIONS
MADE BY THE REPORTER
FOLLOWING THE PUBLIC LOCAL INQUIRY INTO
THE EAST AYRSHIRE OPENCAST COAL SUBJECT
PLAN**

**REPORT TO DEVELOPMENT SERVICES COMMITTEE
27 AUGUST 2002**

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RECOMMENDATIONS MADE BY THE REPORTER FOLLOWING THE PUBLIC LOCAL INQUIRY INTO THE SUBJECT PLAN

Reporter Ref.	Subject Plan Ref.	Recommended Changes	Council Comments
2.21(i)	Paragraph 4.3 MOD 24	Paragraph 4.3 to be amended as proposed in MOD 24	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard.
2.21(ii)	Potential Coal Extraction Areas	No change to be made to the methodology and information base used in the definition of Potential Coal Extraction Areas.	The Reporter's support for the approach taken in the preparation of the plan is appreciated. No further action is required in this regard.
2.21(iii)	Paragraph 1.1	No phasing to be introduced in the subject plan; but clarification of the timescale of the subject plan needs to be provided, possibly by the addition of a sentence in one of the introductory paragraphs, to the general effect that while the timescale of the plan is indefinite, it is the Council's intention to review it within 5 years of its adoption.	<p>The Council has already modified Paragraph 1.1 of the plan (See modification 1 of the Schedule of modifications) to refer to the timescale of the Subject Plan, the modification reading:-</p> <p>'The plan provides the policy framework for opencast developments for a period of at least 5 years.'</p> <p>In addition, Paragraph 10.2 of the plan also makes specific reference to the timescale of the Subject plan and also states that 'the plan will require to be monitored on a regular basis and reviewed as and when considered necessary in order to ensure continued relevancy.'</p> <p>The Council is of the opinion that it is not necessary to stipulate a fixed period within which the plan will be reviewed. In light of the above, the Council is therefore of the opinion that, strictly speaking, no further change to the Subject plan is required in this regard. However, in order to provide an early clarification of the Council's intention to</p>

			<p>review the Subject Plan, it is agreed that the last sentence of paragraph 1,1 of the plan will be expanded to read:-</p> <p>‘...and it is the Council’s intention to review the plan within 5 years of its adoption’.</p> <p>The recommendation of the Reporter that no phasing needs to be introduced into the Subject Plan is welcomed by the Council</p>
2.21 (Note)	General Recommendation	Where any recommendation involving a change to the text of the plan is accepted by the Council, I assume that any consequential amendments will be made without a specific recommendation.	The Council will make all necessary changes to the text which may be required as a result of a recommendation made by the Reporter, as considered necessary and appropriate.
3.9	Policy MIN4 MOD 95 (New Policy MIN 8)	I recommend that Policy MIN 4 be modified as proposed in MOD 95 subject to the omission of the penultimate sentence referring to independent appraisal of Environmental Statements.	<p>The recommendation of the reporter would necessitate the removal of the following sentence from the policy:-</p> <p>‘These statements will, at the discretion of the Council, be forwarded to a qualified assessor for independent appraisal and audit where considered necessary or appropriate.’</p> <p>The Council has no objection to the proposed amendment to the policy recommended by the Reporter.</p>
4.24	Paragraph 8.5	<p>Paragraph 8.5 of the Subject Plan, which deals with the issue of dust, to be amended as proposed by the Council to reflect the content of revised paragraph 31 of NPPG16 and to state as follows:-</p> <p>‘Government sponsored research, ‘Do Particulates from Opencast Mining Impair Children’s Respiratory Health?’ has been concluded and the results of this research are now incorporated into formal NPPG</p>	<p>The Council had previously agreed that Paragraph 8.5 should be amended to reflect the recent Government research that had been carried out and suggested in modification MOD68 the addition of a new sentence to the paragraph to read:-</p> <p>‘ Government research into the effects of opencast coal mining on health has recently been carried out and pending the results of this research, both the industry and planning</p>

		<p>guidance through an amendment to NPPG16: Opencast Coal and Related Minerals. (The research findings have been endorsed by the Committee on the Medical Effects of Air Pollutants, the panel of independent experts which advises the United Kingdom Health Department on these matters.). In particular, both planning Authorities and the industry should, as a minimum, adopt the assessment framework recommended in the research in drawing up and considering proposals for new sites, or extensions or modifications to existing sites and make use of information collected by local authorities in undertaking their responsibilities for Local Air Quality Management. This assessment framework will be given full consideration by the Council in its determination of planning applications and in the scoping exercises carried out with regard to Environmental Impact Assessments, in order to ensure that opencast developments do not result in unacceptable levels of dust.'</p>	<p>authorities have been advised to adopt a cautious approach and ensure that opencast developments do not result in unacceptable levels of airborne dust.'</p> <p>The Council gave evidence at the inquiry that it would be prepared to consider further amending the addition to paragraph 8.5 quoted along the lines recommended by the Reporter. While the wording of the addition as suggested by the Reporter differs slightly from the wording as suggested by the Council, the underlying content of the revision remains essentially the same. There is, consequently no objection to the deletion of the previously agreed modification quoted above and its replacement with the revised wording as recommended by the Reporter.</p>
4.25	<p>Paragraph 7.10 MIN34 (New paragraph 7.11 and New Policy MIN39)</p>	<p>Paragraph 7.10 and MIN34 which deal with the monitoring of opencast sites to be amended to show that the Council takes responsibility for the monitoring of dust levels and the maintenance of secure monitoring stations at sensitive locations outwith the site; and that the results will be available in the public domain.</p>	<p>The Council would accept that it has a responsibility to ensure that operators put appropriate dust monitoring procedures into place and that operators submit the results of such monitoring to the Planning Authority for consideration. The Council is not, however, itself responsible for the collection of the information which it assesses on a monthly basis through the monitoring process. This remains, in the opinion of the Council, the responsibility of individual site operators. However, once information is received by the Council, the Council would accept that it is responsible for assessing the information against the terms of the existing planning consent and any Section 75 Agreement that may be in place. If the</p>

			<p>monitoring process indicates that action requires to be taken by the operator to address any dust problems that may be occurring, the Council will ensure that adequate mitigation measures are put into place by the developer to rectify the situation. It should also be noted that certain site operations which have dust implications fall within the remit of the Scottish Environment Protection Agency under the provisions of the Environmental Protection Act and that SEPA has certain responsibilities in the monitoring of these operations. The Council is not the appropriate enforcement authority in respect of monitoring enforcement in terms of this legislation. The Council does not therefore agree with the recommendations of the Reporter and does not consider it necessary to amend the Subject Plan along the lines suggested.</p> <p>Dust monitoring information is currently in the public domain and is available from the Council on request.</p>
4.26	MIN3 MOD93 (New Policy MIN7)	<p>Modification 93 which deals with the assessment criteria for opencast coal development proposals, to be deleted ; and MIN3 to be amended to read as follows;-</p> <p>'Within Potential Coal Extraction Areas, all applicants for opencast coal development will be required to demonstrate to the Council that their proposals will not have any significant adverse effect on the community or create any permanent adverse effect on the environment. Proposals which are likely to have such effect are unlikely to be accepted unless there are counter balancing benefits. In assessing opencast coal proposals the Council will apply the following criteria;-</p>	<p>The change proposed by the Reporter restricts application of the policy solely to opencast developments within Potential Coal Extraction Areas. As developments outwith Potential Coal Extraction Areas are already dealt with in Policy MIN6 of the Subject Plan, as amended by modification MOD99, there are no objections to the rewording of the policy as recommended by the Reporter.</p>

		<p>(i) whether the proposal is acceptable in planning terms with the use of appropriate planning conditions or legal agreements; or</p> <p>(ii) whether the proposal carries benefit to the affected community or the environment which sufficiently outweighs any adverse effects; or</p> <p>(iii) exceptionally, whether the proposal is of such importance that it should be granted planning permission even though it fails to meet either of the above criteria. Such a proposal might for example propose the rehabilitation of substantial areas of dereliction, or the remediation of major problems left over from former mining operations.</p> <p>Applications which do not meet any of these criteria will not be acceptable to the Council and are unlikely to obtain planning permission.'</p>	
4.27	Policy MIN6 MOD99 (New Policies MIN1 and MIN2)	As a consequential amendment I recommend that MIN6 as proposed to be restated (MOD99) should include a sentence to state that there will be a presumption of refusal of applications for opencast coal development beyond the Potential Coal Extraction Areas, except as provided for in the next following policy unless there are positive reasons of sufficient weight to overcome the presumption of refusal and justify the grant of planning permission.	In the change to the policy as recommended by the Reporter, an addition is to be made to the new policy MIN 1 of the Subject Plan. This addition states that there will be a presumption of refusal of applications outwith Potential Coal Extraction Areas, except for acceptable small scale, short term proposals as provided for in new policy MIN2. This provision is acceptable to the Council. However, the recommended change also qualifies this statement with the addition of the provision that refusal should be presumed 'unless there are positive reasons of sufficient weight to overcome the presumption of refusal and justify the grant of planning permission.' New policy MIN2 of the plan already

			<p>states that the Council will not generally be supportive of any new opencast coal developments outwith the Potential Coal Extraction Areas except for small scale, short term extraction proposals which meet certain stated criteria. By implication, larger scale proposals may be supported in certain circumstances. The addition of the provision as suggested by the Reporter supports and clarifies the views of the Council that opencast developments, other than small scale, short term proposals, outwith the Potential Coal Extraction Areas could be considered acceptable if sufficient justification can be provided the applicant.</p> <p>The Council would be prepared to accept the Reporter's recommendation but would intend to make the necessary changes to the plan through an amendment to new policy MIN2 rather than by adding a new sentence to new policy MIN1 as suggested by the Reporter. A change to Policy MIN2 is considered more appropriate as this policy addresses in general terms, applications outwith Potential Coal Extraction Areas, to which the Reporter's recommendation relates. It is therefore agreed that an amendment should be made to the first sentence of new policy MIN2, to reflect that there will be a presumption of refusal of applications for opencast developments beyond the Potential Coal Extraction Areas. Consequently the words 'The Council will not generally be supportive of any' will be removed from the policy and replaced with the words 'There will be a presumption of refusal of applications for'. It is also agreed that a new sentence should be added after criterion (iii) of the policy to read:-</p> <p>'There will be a presumption of refusal of other opencast coal developments outwith Potential Coal Extraction Areas unless there are positive reasons of sufficient weight to overcome the presumption of refusal and justify the grant of</p>
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			<p>planning permission’.</p> <p>It is considered that the above suggested amendments meet all of the Reporter’s recommendations.</p>
5.14	MIN5 (New policy MIN9)	<p>In the interests of clarity, and in order to represent the contents of paragraph 11 of NPPG 16 more faithfully, I recommend that MIN 5 should be reworded along the following lines:-</p> <p>‘When approving major development proposals or development policies, the Council will consider whether it would be of benefit and desirable to plan for the removal of any underlying coal and related minerals in advance of, or in tandem with, the development proceeding. Any such mineral extraction operation would need to be acceptable in planning terms, with particular regard to the interests of the local community.’</p>	<p>The Council has no objection to the deletion of the policy and its replacement with a new policy along the lines as recommended by the Reporter.</p>
6.13	MIN6 (New Policies MIN1 and MIN2)	<p>I restate the recommendation contained in paragraph 4.27 that MIN6 as modified should clearly state that there is a presumption of refusal of applications beyond PCEA’s except as provided for in policy MINX.</p>	<p>See response to Reporter’s recommendation No. 4.27 detailed above.</p>
6.14	General Recommendation	<p>The Council should consider the benefits of having a survey of derelict land undertaken, as a means of focusing and prioritising land rehabilitation operations.</p>	<p>It is pointed out that the Council already carries out a survey of derelict and vacant land as part of the Scottish Vacant and Derelict Land Survey, the extent of the survey being commensurate with the levels of finance and manpower available to the Council to carry out the work. While being generally supportive of the Scottish Vacant Land Survey being expanded, it is considered that any identification of areas of dereliction by the Council for Subject Plan purposes could possibly be interpreted as an</p>

			<p>indication that opencasting within these areas would be considered acceptable by the Council. This would not be the Council's intention.</p> <p>It is not completely understood what the Reporter means by the phrase 'as a means of focussing and prioritising land rehabilitation operations' as the Council does not view opencast operations as a principal means of rehabilitating derelict land. It consequently does not consider that any derelict land improvement achieved by opencasting should be prioritised as part of any environmental improvement programme. However, the Council agrees that a derelict land survey could be of potential benefit in regard to any future review of the Subject Plan and will give further consideration to the implementation of such a survey, subject to the necessary finance and manpower being made available for such a project.</p>
6.15	MIN6 (New Policies MIN1 and MIN2)	MIN6 to be modified otherwise as proposed in MOD99.	See response to Reporter's recommendation No. 4.27 detailed above.
7.25	MIN30 MOD120 (New policies MIN34 and MIN35)	The wording of MIN30 to be amended so as to remove any connotation of compulsion by the omission of the word 'expect'; and by the insertion of the word 'suggested' before 'minimum rate' in the first sentence. The word 'expect', where it occurs elsewhere, to be substituted by the word 'encourage'.	The Council has no objection to the deletion of the original policy MIN30 and its replacement with the two new policies MIN34 and MIN35 as detailed in MOD120. The substitution has already been incorporated into the plan and no further action is required in this regard. The Council has no objection to the new policies MIN34 and MIN35 being amended as recommended by the Reporter.
7.26	Paragraph 7.7 (New para 7.8)	Add a sentence to the end of paragraph 7.7 of the local plan along the following lines: In negotiating the level of contribution to the Trust Fund, the Council will take account of any other community benefits being provided by the operator.'	The community benefits detailed by the objector relate specifically to reclamation of dereliction as part of an approved opencast operation. The Council is of the opinion that the costs involved in actual restoration of a site and the removal of any associated dereliction within it should be

			<p>met fully by the operator as part of the development proposals. They should not be set against the Minerals Trust as a separate community benefit. The Council would, however, be prepared to take into consideration, when negotiating levels of contribution to the Minerals Trust, the value of any particular benefits suggested as being appropriate by an operator for the particular community affected, provided that the suggested benefits have the demonstrated support of the community concerned. As a result, the Council would be prepared to add a sentence to the end of paragraph 7.7 along the lines recommended by the Reporter, to read:-</p> <p>'In negotiating the level of contribution to the Trust Fund, the Council will take account of any particular community benefits being suggested by the operator for the particular community affected.'</p>
7.27	General Recommendation	The Council to consider the need to prepare a constitution and rules for the management and administration of the Minerals Trust Fund.	A constitution and rules for the management of the Minerals Trust Fund is already in place and operative.
9.5	Policy MIN20 MOD109 (New Policy MIN23)	Policy MIN20 and MOD109 to be omitted and the gist of the content to be included as advice to the industry in the Recommendation Section at page 70 of the plan.	<p>The Council has no objection to the recommendation of the Reporter. The policy will be replaced in the Recommendations Section of the plan as a new Recommendation REC7, to read:-</p> <p>'Where considered expedient, and subject to the appropriate consent of the owner/occupier concerned being obtained, developers are recommended to carry out a structural survey of properties in close proximity to a proposed opencast site prior to the commencement of works in order that the degree and extent of any damage attributable to mining activities can be assessed. All such</p>

			surveys should be carried out by a competent, professional body, agreed between the operator and the individual owners/occupiers of the properties concerned.'
10.27(i)		MIN21 to be deleted as proposed by the Council in MOD110	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard.
10.27(ii)	Policy MIN21 MOD110 (New Policies MIN24 and MIN25)	The words 'may' in line 4 of the first substitute policy to be replaced by the words 'is likely to'.	The Council has no objection to the change recommended by the Reporter.
10.27(iii)	Policy MIN21 MOD110 (New Policies MIN24 and MIN25)	Part (I) of the first substitute policy to be altered to omit the words from 'working' to 'encroach' inclusive to be replaced by the words 'boundary which encroaches'.	This recommendation introduces a material change in the direction of the Subject Plan, introducing a buffer zone around communities from the boundaries of an opencast site rather than from the working face of the development. This represents a change to policy MIN 21 as modified by MOD 110 back to the policy stance taken by the Council in the original finalised version of the plan. While this recommendation represents a variance from the Council's interpretation of NPPG16, the Reporter has considered such a variance from the NPPG to be fully justified, having taken into account all pertinent representations made at the inquiry, including consideration of local circumstances. The Council therefore has no objection to the modification to the policy as recommended by the Reporter and agrees to make the necessary changes to the plan as suggested.
10.27(iv)	Policy MIN21 MOD110 (New Policies MIN24 and MIN25)	Part (ii) of the first substitute policy to be omitted.	It is agreed that, with the recommended changes to Policy MIN21 detailed in the preceding point, and with the Council's agreement to further modify the policy as described, the second part of the substitute policy has become redundant. The Council therefore has no objection

			to the change as recommended by the Reporter.
10.27(v)	Policy MIN21 MOD110 (New Policies MIN24 and MIN25)	The word 'extended' to be omitted in part (iii) of the first substitute policy in the interests of clarity.	The Council has no objection to the change recommended by the Reporter.
10.27(vi)	Policy MIN21 MOD110 (New Policies MIN24 and MIN25)	The Council to consider whether part (iv) of the first substitute policy is capable of being implemented.	The Council remains of the opinion that part (iv) of the policy is capable of being implemented. It is not considered that any further modification to the policy is required.
10.27(vii)	Policy MIN21 MOD110 (New Policies MIN24 and MIN25)	In the second substitute policy insert the words 'or under the control of ' after the word 'ownership' in line 6.	The Council gave evidence to the inquiry that it would be prepared to make the suggested change to the policy and consequently has no objection to the change recommended by the Reporter.
10.27(viii)	Policy MIN21 MOD110 (New Policies MIN24 and MIN25)	The Council to consider imposing a planning condition to require siren warnings of blastings and the use of blast nets, in future planning permissions in relevant cases.	Blasting operations within opencast sites are subject to separate legislation governed and enforced by the Health and Safety Executive. The imposition of such conditions as suggested by the Reporter could run contrary to Health and Safety legislation in certain circumstances and advice in this regard will continue to be sought, in respect of all opencast operations, from the Health and Safety Executive. Where such warnings of blasting and the use of blast nets are specifically requested by the Health and Safety Executive, the Council would be fully supportive of making these issues the subject of specific planning conditions attached to any consent that may be granted for a development.
10.27(ix)	Policy MIN21	A footnote to be added to the first substitute policy	The Council has agreed in response to a separate

	MOD110 (New Policies MIN24 and MIN25)	to indicate what the Council means by the word 'community'.	recommendation by the Reporter (see response to recommendation 1.10 below) for a definition of the term 'community' to be incorporated in a new glossary to be added to the Subject plan. It is not therefore considered necessary to repeat the definition as a footnote to this particular policy as recommended by the Reporter.
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11.27(i)	Policy MIN22 MOD111 (New Policy MIN26)	MIN22 to be omitted and replaced by a new policy as proposed by the Council (MOD111)	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard.
11.27(ii)	Policy MIN22 MOD111 (New Policy MIN26)	The words 'local community' in the first sentences of the new policy to be omitted.	The Council has no objection to the change recommended by the Reporter.
11.27(iii)	Policy MIN22 MOD111 (New Policy MIN26)	After the word 'ownership' in line 6 insert the words 'or under the control of'.	The Council gave evidence to the inquiry that it would be prepared to consider making the suggested change to the policy and consequently has no objection to the change recommended by the Reporter.
11.27(iv)	Policy MIN22 MOD111 (New Policy MIN26)	The words 'the 500m buffer zone to be omitted in new policy MIN26(iii) and (iv) and replaced by the words " distance of 500m from any sensitive establishment or dwelling"	The Council has no objection to the change recommended by the Reporter.
11.27(v)	Policy MIN22 MOD111 (New Policy MIN26)	The words 'the community' to be omitted in new policy MIN26(v) and replaced with 'any'.	The Council has no objection to the change recommended by the Reporter.
11.27(vi)	Policy MIN22 MOD111	Criterion (i) to be omitted.	The recommendation represents a relaxation in the criteria to be met for carrying out opencast operations within

	(New Policy MIN26)		500metres of sensitive establishments and individual or small groups of dwelling houses located outwith communities. This removes the necessity for a development within the 500metre separation distance to be justified in terms of removing areas of dereliction and places the emphasis for such developments being justified in terms of operational requirements and impact on the properties concerned. The Council has no objection to the change recommended by the Reporter.
12.13	Policy MIN15 MOD105 (New policy MIN18)	MIN15 to be modified as proposed by the Council.	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard.
13.27(i)	PolicyMIN7 MOD100 (New Policy MIN12)	Policy MIN7 to be modified as proposed by the Council in MOD100 and as indicated above by the Council witness at paragraphs 13.18 and 13.19.	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard.
13.27(ii)	PolicyMIN7 MOD100 (New Policy MIN12)	In criterion (ii) of MIN7 insert the words 'from an existing operative site or' after 'dwellings' in line 3.	The Council has no objection to the change recommended by the Reporter.
13.27(iii)	PolicyMIN7 MOD100 (New Policy MIN12)	Omit words 'an extended' in modified criterion (ii) and insert the words 'a total' in the interests of clarity.	The Council has no objection to the change recommended by the Reporter.
13.27(iv)	PolicyMIN7 MOD100 (New Policy MIN12)	Insert 'or' between each of the 4 criteria, in the interests of clarity.	The Council has no objection to the change recommended by the Reporter.
13.27(v)	PolicyMIN7 MOD100 (New Policy MIN12)	In criterion (iv) insert the words 'the integrity of' after the word 'on' in the final line.	The Council has no objection to the change recommended by the Reporter.

13.28	General Recommendation	I refer to my recommendation at paragraph 4.25 and recommend in addition that the Council should explore the possibility of combining dust monitoring with a programme of basic research by a university to establish any relationships between the presence of respirable dust, distance from sites, extraction rates, weather conditions and any other relevant variables.	While noting the recommendation of the Reporter it is noted that no recommendation to amend the Subject Plan as it pertains to the subject of research, has been made. The Council would support, in principle, the establishment of such an initiative. However, it is considered that the concept should be explored, in the first instance at a National level, possibly by the Scottish Executive, and with the full involvement and backing of the industry, SEPA and all relevant Mineral Planning Authorities. The Council's views on the Reporter's recommendation at paragraph 4.25 are detailed in point 4.25 above.
14.16(i)	Policy MIN9 MOD102 (New Policy MIN3)	MIN9 to be modified as proposed by the Council in MOD 102 including an alteration to the final paragraph of MOD 102 to substitute a period of 10 years for 5 years.	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard. The Council gave evidence at the inquiry that it would be prepared to consider altering the last sentence of the modified policy to read:- ' Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for an extended period in excess of ten years will not generally be considered acceptable, unless it can be clearly demonstrated that there are significant local community and environmental benefits to be secured by the development'. The Reporter's recommendation supports the Council's suggested approach.
14.16(ii)	Policy MIN9 MOD102 (New Policy MIN3)	Insert the words 'subject to detailed consideration' at the beginning of the policy.	The Council has no objection to the change recommended by the Reporter.

14.16(iii)	Policy MIN9 MOD102 (New Policy MIN3)	Insert an additional criterion to the first part of the policy along the following lines: that the proposed extension does not significantly prejudice plans for the restoration of the existing site.	The Council has no objection to the change recommended by the Reporter.
14.16(iv)	Policy MIN9 MOD102 (New Policy MIN3)	Omit the words 'an extended' in the final paragraph as proposed to be altered and substitute the words 'a total', in the interests of clarity.	The Council has no objection to the change recommended by the Reporter. (See point 14.16(i) above for the wording of the sentence which the Reporter recommends be amended).
15.7	Policy MIN35 (New policy MIN40)	Policy MIN35 to be retained.	The support of the Reporter for the policy is welcomed.
16.12(i)	Policy MIN27 MOD116 (New Policy MIN30)	Policy MIN27 to be omitted and replaced with new wording, as proposed by the Council in MOD 116.	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard.
16.12(ii)	Policy MIN27 MOD116 (New Policy MIN30)	Insert the words 'and related development' after the word 'proposals' in line 1.	The Council has no objection to the change recommended by the Reporter.
16.12(iii)	Policy MIN27 MOD116 (New Policy MIN30)	Insert words 'seek to' after the word 'will' in line 1.	The Council has no objection to the change recommended by the Reporter.
16.12(iv)	Policy MIN27 MOD116 (New Policy MIN30)	Include all High Visual Amenity Areas from Figure 9 in the list of areas deserving especial consideration.	Policy MIN27, as amended by MOD116, deals specifically with the impact of opencast operations on existing tourism, leisure and recreation resources and facilities or on areas with substantial tourism or recreation development potential, especially within the areas specifically identified. It is considered that not all of the High Visual Amenity Areas contain such resources or have tourism or recreational potential of a substantial nature. It is further considered that the impact of opencast operations on the High Visual

			Amenity Areas is already adequately addressed in policy MIN28, as amended by modification MOD117 (New policy MIN31) which lists all of the High Visual Amenity Areas identified in Figure9. For these reasons the Council would not be prepared to amend the plan as suggested by the Reporter. The recommendation does not, in any way, affect or change the content of the plan.
17.12	Policy MIN2 MOD92 (new Policy MIN6)	Policy MIN2 to be modified as proposed by the Council (MOD92).	The Reporter's support for the modification is welcomed. The change has already been incorporated into the plan and no further action is required in this regard.

18.11	MOD94 (New policy MIN4)	At the end of criterion (vi) after the word 'area' add the words 'including any significant prejudice to restoration plans for any existing site'.	The Council has no objection to the change recommended by the Reporter.
19.32	Paragraph 8.17	I consider that paragraph 8.17 of the plan may be improved by including the words 'and other HGV traffic' after the word 'vehicles', and I recommend accordingly.	The Council has no objection to the change recommended by the Reporter.
19.36	General Recommendation	I find myself in favour of the suggestion that non-technical summaries of EIA's should be available and I commend this to the Council.	Copies of all EIA's submitted to the Council for consideration require to include a non-technical summary. EIA's and their non-technical summaries are required to be made available for public inspection in terms of the Environmental Impact Assessment (Scotland) Regulations. Copies of these documents are required to be made available by the applicant and the applicant is entitled, in terms of the Regulations, to make a reasonable charge for them. It is the experience of the Council that copies of non-technical summaries are provided free of charge by applicants to those persons or organisations which wish to

			obtain them.
19.37	General Recommendation	I recommend that the Council should also, in appropriate cases, consider imposing a condition to control operating hours.	This is already standard practice within the Planning and Building Control Division when dealing with opencast coal applications. 'Hours of working' is already identified in policy MIN8 (new policy MIN13) as an issue which will be covered by appropriate conditions in any consents to be granted.
19.40	Policy MIN18 MOD107 (new Policy MIN21)	I find myself fully in sympathy with the point made which is the practical point that subcontractors are not appointed until the final planning stages of the operation. The Council has indicated its intention to further modify the policy to take account of this and I recommend accordingly, but there is no reason why approved subcontractors should not be invited to sign up to the protocol and I recommend an alteration to the policy accordingly.	The Council has no objection to the changes recommended by the Reporter.
19.44	Policy MIN29 MOD119 (New Policy MIN33)	I recommend that MOD 119 be modified to delete section (xvi)	On the basis that the list of subjects considered appropriate for inclusion in a Section 75 Agreement, as detailed in the policy, is not considered exclusive, the Council has no objection to the changes recommended by the Reporter.
19.45	Policy MIN 31 MOD121 (New Policy MIN36)	I recommend that the final sentence be amended to omit the words 'the landowner absolves' and to insert the words 'is absolved' after the word 'Council'. I also recommend that the Council considers the implications of the legal point raised by Law Mining Ltd relating to the contract with the assessor, and to omit the words 'normally contracted to the Council but' if this is necessary for legal reasons.	The Council has no objection to the changes recommended by the Reporter.
19.46	Policy MIN33	I recommend that the Council prepares a	The responsibility for the formation of liaison committees

	<p>MOD123 (New policy MIN38)</p>	<p>constitution and a set of rules for liaison committees, and consider authorising an official to be in attendance.</p> <p>I also recommend that the word 'will' is retained in the first sentence of the policy and not be replaced by 'may' (MOD123).</p>	<p>rests with the operator and not with the Council. It is considered that the constitution and rules of individual committees should be the responsibility of the committees themselves and not the Council which is only a constituent member of such committees. Advice and guidance on the establishment of liaison committees is generally annexed to Section 75 Agreements attached to issued planning consents and this is considered the appropriate approach to be taken in respect of the Subject Plan. This annex describes the general format of liaison committees and gives advice on their function. The Council would contend that the detailed constitution and rules of liaison committees is not an appropriate matter for consideration in the context of the Subject Plan. However, the Council is agreeable to providing advice to enable suitable constitutional and procedural arrangements to be put into place. Officials are already authorised to attend Committee meetings as considered necessary or appropriate. It is not proposed that any further change to the Subject Plan be made in this regard.</p> <p>The Council is of the opinion that liaison committees need not be established in all cases, especially when the sites concerned are remote from or have minimal impact on communities. Consequently the Council would not wish to compel all operators to form such Committees, as would be implied through the use of the word 'will' as recommended by the reporter. The Council would wish to be more flexible in its approach and would therefore intend to retain the word 'may' in the policy, as amended by MOD 123.</p>
<p>19.47</p>	<p>Policy MIN34 MOD124 (New Policy MIN 39)</p>	<p>I agree that this (monitoring) information should be in the public domain. This may be achieved by reports to the Council's committees and by making it available to Liaison Committees and I recommend</p>	<p>All monitoring information is already in the public domain as an integral part of the relevant planning application and is available for inspection on request. It is not considered necessary or appropriate to present monitoring reports on</p>

		accordingly.	individual sites to Committee as this would not be considered cost effective or justified in terms of Council resources and officer time. The Council would offer no objection to monitoring information being made available for discussion by individual Liaison Committees. It is the opinion of the Council, however, that each individual Committee should be allowed to decide exactly what information is placed before it for consideration. The Council would be happy to make such monitoring information available to Liaison Committees for consideration should this be requested by the Committee concerned.
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19.54	Table 5 MOD 80 (New Table 3)	The figures are 3 to 4 years old. Since this is a matter of critical importance to communities. I recommend that the Council should consider updating this information for the final version of the plan.	It is clearly stated in modification MOD 80 that the table concerned will be updated to reflect vehicle movements as of March 2000. It is not considered that any further updating of the Table is required. It is however accepted that the number of opencast coal related vehicle movements on the area's road network changes as existing opencast sites become completed and restored or as new opencast sites come on stream. Vehicle movements also vary within any one particular site over time, depending on local marketing and operational factors. This particular aspect of opencast operations will, however, be closely monitored under the annual monitoring and auditing procedures advocated elsewhere in the Subject Plan.
19.55	Policy MIN1 MOD 91 (New policy MIN5)	I recommend that the first part of the policy (relating to outline applications) be omitted and the second part be retained subject to the omission of the words 'will' to 'applications' and the substitution	The Council would agree that the first part of the policy may not, strictly speaking, be required in light of the requirements of policy MIN8 (new policy MIN13). Similarly, the Council would also agree with the doubt expressed that

		therefor of the words 'may decline to determine an application', so as to make it legally correct.	an outline planning permission would be legally valid. Consequently, it is agreed that the first sentence of the Policy should be deleted as per the Reporter's recommendation, especially in light of the fact that paragraph 7.1 of the Subject Plan clearly states that applicants should submit all known details relating to their proposals when submitting their applications. The title of the Policy will also be amended accordingly to refer to 'REPEAT APPLICATIONS' rather than 'OUTLINE AND REPEAT APPLICATIONS', although this has not been specifically recommended by the Reporter. The Council has no objection to the other alterations that the Reporter recommends should be made to the policy.
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19.56	Appendix 1 (Now Deleted)	The appendix (a policy and recommendations abstract) is a little 'lost' where it appears, but I consider that it provides a very useful summary of policies which is not available anywhere else in the plan. I recommend that the list be brought to the contents section of the plan and included in section 3.	The Council maintains its view that the appendix is not an essential or necessary part of the Subject Plan. However, the Council would be prepared to reinstate the policy and recommendation abstract back into the plan in order to accommodate the Reporter's views. It is not, however, considered appropriate to introduce the abstract into the Strategic Approach section of the Subject Plan as it does not relate to any strategic matters. Neither is it considered appropriate to include a synopsis of the policies contained in the plan in an introductory section of the plan. The Council remains of the opinion that, should such an abstract be required, it should be placed in the plan in a position at the end of the document, following detailed consideration of the policies it summarises, rather than before. It is therefore agreed that an updated appendix, reflecting the revised policies and recommendations as modified, be reintroduced
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			into the plan, but as an appendix to the document rather than as a part of the main text. Paragraph 1.6 of the plan already makes reference to a synopsis of the policies being attached to the rear of the plan.
19.59	MOD 97 (New Policy MIN10)	MEGA considers the word 'unduly' should be removed from the policy....The Council is prepared to use the expression 'does not have any unacceptable adverse impact on' and I recommend accordingly.	The Council has no objection to the change recommended by the Reporter.
19.60	MOD98 (New policy MIN11)	I recommend that expert advice be sought relating to the intent and terms of this policy.	It is not considered that the recommendation of the Reporter necessitates any amendment or alteration to the policy. It is considered that the intent of the policy is already clearly stated both in the policy itself and in paragraph 6.16, as modified by modification MOD43. Scottish Natural Heritage has commented fully on the contents of the plan and has not objected or raised any point of contention regarding the intent or terms of the policy.
19.61	MOD 110 (New Policy MIN25)	I recommend (i) that the words 'and on' in line 4 be omitted and the word 'including' be substituted; (ii) the word 'affected' be inserted before 'properties' three lines before the end, in substitution for the word 'the' ; and the word 'concerned' be omitted two lines from the end.	The Council has no objection to the changes recommended by the Reporter.
20.9	Maps and Figures	I recommend that the presentation of the proposals map and figures be improved so as to make them more helpful and informative for members of the public and for the industry; and the further late queries raised by MEGA be considered, and the figures amended as necessary.	The Council has no objection to the changes recommended by the Reporter and will ensure that the quality of the maps and figures will be improved to show additional geographic information as clearly and unambiguously as possible.

<p>Appendix 1 1.10</p>	<p>Glossary</p>	<p>I recommend the use of the following definitions.</p> <p>Settlement; A town, village or hamlet. (in the related figure 10 a note needs to be added to the effect that the diagram does not purport to show all communities which may potentially be affected by opencast coal mining).</p> <p>Community; A town, village or hamlet and including any cluster or group of about 10 houses in the countryside.</p> <p>Potential Coal Extraction Areas; Areas designated on the proposals map and illustrated on Figure 3 as areas within which opencast coal mining is acceptable in principal. (Please note differing title in the Proposals Map).</p> <p>Protocol; The Transportation of Coal by Road Protocol is an official code of practice prepared by the Council with the co-operation of the opencast operators which is designed to ensure best practice by the industry in the transportation of coal by road. This definition should also appear under Transportation by Road Protocol.</p> <p>Ecological Management Plan; A plan for site restoration and aftercare which is designed to create or enhance a range of habitat types, such as</p>	<p>The Council has no objection to a glossary being incorporated into the Subject Plan as agreed at the Public Local Inquiry. A minor amendment to the text of paragraph 1.6 of the Subject Plan, although not specifically recommended by the Reporter, will be made to reflect the fact that a glossary is attached to the rear of the Plan.</p> <p>The Council has no objection to the changes to the definition as recommended by the Reporter.</p> <p>The Council has no objection to the changes to the definition as recommended by the Reporter.</p> <p>The Council has no objection to the changes to the definition as recommended by the Reporter.</p> <p>The Council does not agree that a definition of the Transportation of Coal by Road Protocol is required under the heading 'Protocol'. There is no objection, however, to the definition as recommended by the Reporter being included in the Glossary under the heading 'Transportation of Coal by Road Protocol'.</p> <p>The Council has no objection to the introduction of the new definition as recommended by the Reporter.</p>
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		woodland, wet grassland, reed beds, open water and watercourses.	
Appendix 1 1.11	Glossary	<p>I also recommend the following changes to other definitions in the glossary:-</p> <p>Conservation Areas: include the words 'preserve or' before the word 'enhance'.</p> <p>Derelict Land; omit words 'developments for' and insert the words 'or development' after 'use'.</p> <p>Environmental Audit; substitute 'permission' for 'consent'.</p> <p>SAC's and SPA's; omit references to the First Minister and SNH.</p> <p>Sustainable Development; The Bruntland Commission 1997 defined sustainable development as economic and social development that meets the needs of the current generation without undermining the ability of future generations to meet their own needs.</p> <p>Historic Gardens; add to the end of the definition , in brackets; '(HS and CCS1983)'.</p>	The Council has no objection to the changes to the definitions as recommended by the Reporter.

AGENDA