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REVIEW OF OLD MINERAL PERMISSIONS

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EXECUTIVE SUMMARY

This report presents the findings of a research study into the review of old mineral permissions in Scotland. The aim of the study was to assess the progress that has been made in the review of old mineral permissions as required under section 74 and schedules 9 & 10 of the Town and Country Planning (Scotland) Act 1997 and to ascertain how effective the review procedures have been in practice.

Context

The problems associated with old mineral permissions, first identified in the Stevens Report (1976), centred on the fact that conditions imposed on planning permissions granted in the past typically failed to meet current standards for environmental protection.

The issue was first addressed through the Town and Country Planning (Minerals) Act 1981. This placed a duty on planning authorities to periodically review mineral sites in their area, and make use of modification and other orders available to them as deemed necessary for the updating of the relevant consent. It was generally accepted that this first attempt to review old mineral permissions failed to achieve its intended purpose.

The Planning and Compensation Act 1991 introduced requirements for the upgrading of mineral permissions granted under Interim Development Order provisions between 1943 to 1948. The approach adopted fundamentally differed from that of the 1981 Act, insofar as it placed the obligation to instigate action on the mineral operator/owner. Failure to register an IDO permission within a specified period of time resulted in the loss of the consent.

A similar approach was adopted in the Environment Act 1995, which introduced a requirement for the review of old mineral permissions granted in the period 1948 to 1982. These provisions were subsequently consolidated in section 74 and Schedules 9 & 10 of the Town and Country Planning (Scotland) Act 1997.

The current review process is based on a distinction drawn between active and dormant mineral workings. For dormant sites, no minerals development may be lawfully carried out until such time as a new scheme of conditions has been submitted to, and approved by the planning authority. For active sites the review was progressed in 2 successive three-year phases.

- Phase 1 sites are those where the predominant permission was granted between 1948 and 1969, but also includes sites within various designated areas of scenic or nature conservation interest
- Phase 2 sites are those where the predominant permission was granted between 1969 and 1982

By April 1997, planning authorities were required to publish a list of all 3 categories of sites, with dates established for the Phase 1 site submissions of new schemes of

conditions. By January 2000, Phase 2 site submission arrangements were established in a second published list. In addition, provisions are established for the periodic review of all minerals permissions every 15 years.

Failure to submit an application for the approval of new conditions by the specified date results in the relevant planning permission ceasing to have effect, placing a strong incentive on mineral operators/owners to instigate the review process. Failure on the part of a planning authority to issue a decision within 3 months (which may be extended by agreement) results in the deemed **approval** of the conditions as submitted. Any new condition that places restrictions on the working rights of a site creates a compensation liability on the planning authority.

Generally, the principal areas for which new conditions will typically be required are:

- Access, traffic and protection of public roads
- Site working programme and arrangements
- Noise
- Hours of working
- Site restoration, aftercare and afteruse

Research Methodology

The study involved the collection and analysis of both quantitative and qualitative data derived from:

- A questionnaire survey of all planning authorities
- Case studies of both individual site review cases and approaches to the review adopted by planning authorities
- Structured interviews with selected planning authorities and representatives of the minerals industry
- Selective review of planning registers

Main Findings

- The statutory requirements for the review of old mineral permissions have resulted in significant progress towards ensuring that such permissions have been updated to reflect current expectations for protection of the environment consistent with best working practices
- The current statutory provisions have been effective in addressing problems inherent in the initial arrangements for review established in the Town and Country Planning (Minerals) Act 1981

- The review process has been the subject of considerable delay, which varies significantly between different planning authorities across Scotland. Although the scale of the review task varies significantly between planning authorities, there is no relationship between progress in completion of the review and the workload requirement. The principal factors influencing progress are the complexity of individual cases, staff resources and relative priorities within planning authorities.
- The effectiveness of the review procedures appear to centre on the opportunity provided for dialogue and reappraisal of the working arrangements and planning circumstances relevant to each site

Recommendations

Legislative change for consideration by the Scottish Executive

- (a) It is recommended that the provisions of Schedules 9 and 10 of the Town and Country Planning (Scotland) Act 1997 be reviewed, specifically to address the following aspects:
 - To establish deadlines for the completion of Phase 1 and 2 site reviews
 - To clarify the status of review submissions as planning applications
 - To amend the requirements for consultation by establishment of relevant statutory consultees for review applications
 - To introduce requirements for notification of all review applications to the Scottish Executive, and an associated provision for referral
 - To introduce requirements for publication of a new third list covering all periodic review sites (including potential review cases)
 - To extend the statutory period for determination of all review applications to 4 months to provide consistency with EIA requirements, regardless of whether or not EIA is adopted in individual cases
- (b) The study supports current proposals for the amendment of the Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 1999 to specifically require the screening of all review cases. The associated advice should clearly indicate that all review cases will normally be subject to EIA, unless there are particular circumstances which would justify otherwise. Such amendment should establish a commencement date, at which time all review cases will become subject to this provision.

Revised guidance for consideration by the Scottish Executive

- It is recommended that Circular 34/ 1996 be reviewed as a matter of some urgency. Such review should seek to update the form and nature of guidance offered, and be rolled forward to remove those elements which are simply of historic interest (for example, reference and advice on the First list). It needs to reflect the changing nature of the review task with emphasis placed on periodic review requirements. The Annexes published

as a separate volume to the Circular should be updated to incorporate the correct, current statutory references.

- It is recommended that guidance on the use of EIA be reflected in the new Circular, as indicated above.

Action for consideration by planning authorities

- It is recommended that planning authorities establish a coherent strategy for management for the review process in its entirety.
- It is recommended that every planning authority establish a separate minerals register, in addition to the existing public statutory register of all planning application required under section 36 of the Town and Country Planning(Scotland) Act 1997, and Article 10 and Schedule 5 of the Town and Country Planning (General Development Procedure)(Scotland) Order 1992 as amended.
- It is recommended that all review matters, including the processing of review submissions should be handled by a single or restricted number of appropriate staff in order to develop or reinforce specialist minerals planning knowledge and skills.
- Where planning authorities do not employ staff with appropriate specialist skills in dealing with review matters, outsourcing of such work should be considered.
- Action should be instigated as a matter of priority to regularise any active working continuing to operate without the benefit of a valid planning consent.
- It is recommended that planning authorities should establish formalised procedures for the screening and scoping of all review cases for the purposes of EIA

Action for consideration by mineral operators

- It is recommended that a programme and strategy for the review of the planning circumstances of all sites in a company's ownership is established.
- It is recommended that the planning authority should be kept informed of any changes affecting a working site which might require further planning decision or become the subject of attention in any future review
- It is recommended that any information requested during the review process be provided timeously, recognising that mineral operators have a role in seeking to reduce delay within the planning decision-making process.

Informal action for consideration by all involved in the review process.

- It is recommended that planning authorities and mineral operators establish informal dialogue processes involving, as a minimum, periodic meetings to discuss and review progress in the development of sites. Any statutory requirements for the review of the relevant planning permission(s) can be considered as one output of these arrangements.

- It is recommended that consideration be given to the greater use of planning and other forms of agreements as a means of resolving situations which could otherwise deadlock progress towards mutually acceptable outcomes in review cases.

CHAPTER ONE INTRODUCTION AND CONTEXT

1.1 The general aim of this study was to assess the progress that has been made by planning authorities and mineral operators throughout Scotland in the review of old mineral permissions as required under section 74 and schedules 9 & 10 of the Town and Country Planning (Scotland) Act 1997 and to ascertain how effective the review procedures have been in practice. This chapter examines the legislative and planning context within which the review of old mineral permissions has been undertaken in Scotland and outlines the aims and objectives of the study.

CONTEXT

1.2 The problems associated with old planning permissions for mineral working were initially identified in the Stevens Report of 1976¹.

1.3 The key problem highlighted by this report, centred on the fact that conditions imposed on planning permissions granted in the past typically did not make adequate provision to meet current environmental protection standards and associated working practices during working of the site. Nor did they provide for the satisfactory restoration of land following the cessation of extraction. In contrast to the current situation in which the planning consent which will normally be subject to a range of conditions intended to regulate and control many aspects of the development, permissions in the past were often virtually unconditional. Typically they defined the site boundary with little or no restriction on how extraction should be undertaken within this defined area. In many cases, particularly for consents granted in the 1950's and 1960's, the only condition imposed was a requirement to remove of all plant, machinery and buildings when working ceased. Although some restriction could be imposed by virtue of any details of the proposed development shown on the approved plans, in most cases, the only effective constraints to site working were largely self-imposed by the mineral operator or by the terms of any lease for the land or mineral rights. As such, the planning permission did not provide any basis through which effective control could be exercised over those aspects of the development with the potential to adversely affect the environment, local amenity or create nuisance for local residents.

1.4 The issue was first addressed through the Town and Country Planning (Minerals) Act 1981, which placed a duty on planning authorities to periodically review mineral sites in their area, and to make use of modification and other orders made available to them as deemed necessary for the upgrading of the relevant planning consent. A key (and at that time controversial) feature of this requirement was that the costs of implementing works arising from upgrading these old planning consents should not be met from the public purse. Separate legislative change was therefore required to facilitate reduction of the compensation levels which otherwise would have been payable as a consequence of planning authorities using these powers to alter the terms of an existing planning permission. It was generally

¹ Department of the Environment/Scottish Development (1976) "Planning Control Over Mineral Working" Report of the Stevens Committee HMSO.

accepted that this first attempt to undertake the review of old mineral permissions failed to achieve its intended purpose. This was confirmed in a research study undertaken in 1990².

1.5 While this earlier study was primarily concerned to establish the extent to which training needs existed within the staff undertaking the review of mineral sites, it also gathered information on the progress of the review process and the perception of planning authorities on the difficulties they encountered. The study found that the principal reasons why most planning authorities had difficulty in meeting their statutory obligations at that time related to lack of staff resources, more urgent planning priorities, potential compensation liability/financial constraints, lack of staff expertise, and the poor quality of available records. Perhaps the most significant deficiency in the arrangements for this first review was that no timetable for commencement or completion was established within the legislation. In addition, the onus for instigation of the review process lay with the planning authorities, but initially there were significant delays by government in introducing reduced compensation liability arrangements. The delay was of particular significance with the complexity on which compensation could become payable making it virtually impossible to calculate in advance of instigating formal action. The overall effect of both delay and uncertainty in the financial implications of instigating action proved to be a major disincentive to planning authorities positively pursuing their duties with any degree of enthusiasm. As a consequence, only two planning authorities in Scotland completed the review process at that time.(i.e. late 1980's)

1.6 A decade later, the Planning & Compensation Act 1991 introduced requirements for the registration and upgrading of permissions granted under Interim Development Order (IDO) provisions between 1943 to 1948. These provisions had been introduced as an interim measure to authorise minerals development prior to the introduction of the comprehensive statutory planning controls of the Town and Country Planning (Scotland) Act 1947. These permissions were regarded as even more problematic than those granted in the post-1948 era. In many cases, there was little or no record of their existence where they had not been implemented, yet they continued to provide a basis on which minerals extraction could be commenced without any recourse to the planning authority. Although specific provision was made in the Town and Country Planning (Scotland) Act 1969 to restrict the life span of any extant, but unimplemented, consents granted under the 1947 Planning Act, these provisions did not extend to the earlier IDO consents.

1.7 The approach adopted in the review of the IDO permissions was fundamentally different from the previous review provisions of the 1981 Minerals Act, in so far as it placed the obligation to instigate action on the developer/mineral operator, not the planning authority. Failure to register an IDO permission within a specified period of time resulted in the loss of the consent, thus providing a strong incentive for action.

1.8 Subsequent to registration, the holders of an IDO permission were required to submit a scheme of operating and restoration conditions (consistent with modern standards of environmental protection) for the approval of the planning authority. In common with the provisions of the 1981 Minerals Act, there was no entitlement to compensation for the cost of complying with the new conditions unless such conditions restricted working rights on the site or otherwise affected its asset value. Further details of these arrangements and advice was given in Scottish Office Environment Department Circulars 2/1992 and 26/1992.

² Pollock S H A (1990) "Implementation of the Town & Country Planning (Minerals) Act 1981 in Scotland", Minerals Pickup project report, University of Dundee.

CURRENT STATUTORY PROVISIONS

1.9 Similar aspects of this approach were adopted in the Environment Act 1995, which introduced a new requirement under Section 96 for the review of old planning permissions for minerals development granted in the period 1948 to 1982. These provisions were subsequently consolidated in Section 74 and Schedules 9 & 10 of the Town & Country Planning (Scotland) Act 1997. The provisions relating to IDO permissions were incorporated in Schedule 8 of the same Act.

1.10 Schedule 9 provides for the initial review of sites in two phases where the predominant minerals permission was granted before 22 February 1982, but excluding the IDO permissions (para.1.6 to 1.8 above). Schedule 10 provides for the periodic review in the longer term of all mineral workings and their associated planning permissions. Advice on the statutory provisions and procedural matters was given in Scottish Office, Development Department Circular 34/1996, with supplementary advice offered in Circular 25/1998.

1.11 The approach adopted for the purposes of Schedule 9 is based in the first instance on a distinction drawn between active and dormant sites.

1.12 **Dormant** sites are those where the relevant planning permission was granted after 30 June 1948 and implemented, but no minerals development has been carried out to any substantial extent at any time in the period from 22 February 1982 to 6 June 1995. Although there is no statutory definition of what constitutes “substantial”, Circular 34/1996 offers advice on the subject, and reminds planning authorities of their duty to act reasonably on the basis of factual evidence in reaching their decision in each case. This is of particular importance given that there is no general right of appeal against the authority’s classification and the significance of the decision. From 1 January 1997 it is not lawful to recommence working of a site being classified dormant until the planning authority has approved a new scheme of conditions.

1.13 Active sites are the subject of review in 2 successive phases, each of 3 years.

- **Phase 1** sites are those where the predominant permission(s) was granted after 30 June 1948 and before 8 December 1969. In addition, all initial review sites which are wholly, or partly, located within National Scenic Areas, Sites of Special Scientific Interest or Natural Heritage Areas are treated as Phase 1 sites.
- **Phase 2** sites are those where the predominant permission(s) was granted after 7 December 1969 and before 22 February 1982.

1.14 A Phase 2 site may be reclassified during the initial review process as a Phase 1 site to reflect more urgent environmental priorities. This arises as a consequence of the provisions relating to sites potentially affecting areas designated by virtue of their scenic or nature conservation interest. It may also arise from implementation of the EU Directive 92/ 43 on the conservation of natural habitats and wild flora and fauna (generally known as the “Habitats Directive”).

1.15 Under the Environment Act 1995, and subsequently the Town and Country Planning (Scotland) Act 1997, planning authorities were required, before 1 April 1997, to prepare and publish a list of all dormant, Phase 1 & 2 active sites in their areas and serve relevant notices on individual land and mineral owners. The suggested forms of notice are given in Annexes

A and D to SODD Circular 34/ 1996. For Phase 1 sites the list was required to specify the date by which an application for approval of a new scheme of conditions should be submitted to the planning authority. Failure to submit by the specific date would result in the relevant planning permission(s) ceasing to have effect. This initial list assumed particular importance since in the event of a site being omitted, the relevant planning permission(s) would also cease to have effect. For this reason, land and mineral owners were given a 3 month period from the first publication date to apply to the planning authority for inclusion of any site initially omitted from the first list.

1.16 By 1 January 2000, planning authorities were required to prepare a list of active Phase 2 sites, with specific dates for submission of new conditions and following the same arrangements as those associated with the initial list.

1.17 Applications for the approval of new conditions do not require any fee, but otherwise the requirements and rights of appeal are similar to conventional planning applications. However, the planning authority has a 3 month period to make a decision on the application commencing from the receipt of all information, including additional information requested by the planning authority. In the event of the planning authority failing to determine the application within 3 months, or as may be extended by agreement, the conditions, as submitted, are deemed to be approved. These latter provisions are unique to applications for the approval of new schemes of conditions. They contrast with the equivalent provisions for conventional planning applications, where:

- the period for determination is normally 2 months commencing on the date of registration of the application;
- failure to determine the application within the statutory 2 month period results in a deemed refusal (unless agreement to an extension of time has been made).

The review case provisions have the effect of, firstly, encouraging applicants to expeditiously submit all information required by the planning authority for the purposes of decision-making. Secondly, they are intended to encourage planning authorities to take decisions expeditiously. In contrast to conventional applications where it is often in the applicants interest to agree to any extension of the statutory period, for review cases, it may be in the best interests of the applicant to refuse to agree to any such extension.

1.18 Although the nature of new conditions will vary according to the particular circumstances of individual sites, guidance and advice is given in SODD Circular 34/1996 at Annex L.

In general terms, the principal areas for which new conditions will typically be required are:

- Access, traffic and protection of the public road
- Working programme
- Hours of working
- Noise
- Site restoration, aftercare & after-use

1.19 In common with conventional planning applications, the planning authority may, at any time prior to determination, require the submission of additional information. However, as a result of an IDO case, which was the subject of challenge through the English Courts

(Wensley Quarries)³ it was established that review cases constitute a “development consent” for the purposes of the EEC Directive on Environmental Impact Assessment (EIA) (EEC 85/337) as amended by Directive 97/11/EC. A subsequent English High Court ruling⁴ confirmed that the Directive is also likely to apply to all review cases. As a consequence, it was considered prudent that in Scotland any application for approval of new conditions should be subject to the principles of the Town & Country Planning (Environmental Impact Assessment)(Scotland) Regulations 1999 (formerly the Environmental Assessment (Scotland) Regulations 1988). As the 1997 Act does not contain any explicit power for a planning authority to require an EIA prior to determination of a review case, SODD Circular 25/1998 advocated the use of EIA on a voluntary basis, pending legislative change.

1.20 Where a planning authority determine conditions different from those proposed by the applicant, other than provisions for site restoration and aftercare, and those conditions restrict the working rights, a separate notice must accompany the decision notice. This notice must indicate, inter alia, whether or not in the planning authority’s opinion the restriction would adversely prejudice to an unreasonable degree either the economic viability of operating the site or the asset value. SODD Circular 34/1996 suggests that in such circumstances, it would be appropriate to moderate the proposed restrictions in order that questions of “unreasonable prejudice” do not arise. The significance of this advice centres on the fact that the planning authority will create a compensation liability should it impose conditions which restrict the working rights of the site.

1.21 The working rights will be restricted or reduced where any of the following aspects of the development are affected:

- The size or depth of the extraction area are reduced
- The rate of extraction or deposition is curtailed
- There is a reduction in time before expiry of the permission
- There is a reduction in the total quantity of minerals permitted to be extraction or mineral waste to be deposited.

In effect, these aspects significantly restrict the range of options available to planning authorities in reviewing individual sites and provide an important safeguard for mineral operators.

1.22 In the longer term, all mineral extraction consents (including IDO permissions) will be subject to periodic reviews every 15 years from the date of the most recent consent or the last review. It is anticipated that for most planning authorities these periodic review requirements will create an on-going rolling programme of review cases. In common with the initial review, planning authorities must give land and mineral owners at least 12 months notice of the date for submission of an application for approval of new conditions. The failure to make such a submission will result in the planning permission ceasing to have effect.

1.23 SODD Circular 34/1996 clearly indicates that in progressing the review of old mineral permissions, government expects mineral companies to demonstrate a commitment to raising environmental standards and protection. Equally, it anticipates that planning authorities

³ R v North Yorkshire County Council ex parte Brown & Cartwright, JPL 116 (1999), JPL 616 (1999)

⁴ R v Peak District National Park ex parte Bleaklow Industries Ltd., JPL 290 (1999)

should not impose onerous new conditions with the potential to adversely affect the economic viability of the mineral workings.

ENVIRONMENT AND THE MINERALS INDUSTRY

1.24 Although the current statutory provisions relating to the problems associated with old mineral permissions can be traced to origins in the 1970s, it is important to recognise that very considerable change has occurred within the minerals industry since that time. In the 1970s, the minerals industry was typified by a still relatively large nationalised coal sector, and an aggregates sector comprised of a very large number of small local companies. It had a poor public image, often based on the activities of the coal industry which had created very significant areas of derelict and despoiled land. Restoration of former quarries was the exception rather than the norm, and the quality of restoration of former sand and gravel workings was generally poor. It was against this background and increasing public awareness and concern for environmental issues that the Stevens Committee identified the weaknesses in the planning controls over such development.

1.25 Since that time the structure and nature of the minerals industry has changed significantly. In particular, economies of scale within the industry have resulted in fewer but larger production units, with an aggregates sector increasingly dominated by a very limited number of major companies. The coal industry has been privatised, rationalised and contracted very significantly in terms of production. Large amounts of public expenditure have ensured the removal of most of the former dereliction associated with the coal industry. The aggregates sector has increasingly sought to improve standards of environmental protection during working and subsequent enhancement through restoration and aftercare of sites. This has often been achieved on a voluntary basis, but has been promoted through the adoption of codes of practice. While public perception of the minerals industry remains relatively poor, in reality the industry has significantly changed based on increasing acceptance of its environmental responsibilities. As such, the review of old mineral permissions to reflect modern standards of environmental protection is not generally seen as a major issue within the industry.

AIMS AND OBJECTIVES

1.26 As indicated at 1.1 above, the general aim of this study was to confirm the progress that has been made by planning authorities and mineral operators throughout Scotland in the review of old mineral permissions as required under section 74 and schedules 9 & 10 of the Town and Country Planning (Scotland) Act 1997 and to ascertain how effective the review procedures have been in practice.

1.27 The specific objectives defined by the Scottish Executive for the research study were to establish:

- The number of dormant and “lapsed” phase 1 and 2 sites by local authority area;
- The number of completed phase 1 cases and the number still outstanding;
- The number of phase 1 cases deemed to have been approved;
- The number and current time-scale for the completion of phase 2 reviews;

- The number of cases where planning or other regulatory agreements have been used;
- The quality of conditions submitted by applicants;
- The extent to which the need for environmental information has been considered in the completed reviews, including those relating to IDOs;
- The extent of further information required from operators and details of applications determined in the absence of such information;
- The reasons why reviews have not been completed;
- The impact and potential impact upon areas designated as SACs or SPAs;
- The impact and potential impact upon SSSIs;
- The effectiveness of the review procedures;
- Resource implications of the reviews;
- Reactions and expectations of the public generated by the review process.

1.28 The study was to consider the effectiveness of the review process by reference to case studies. This was to consider the nature of the revised permissions, the extent to which authorities have achieved improved restoration and operating conditions, the nature of agreements used, the extent to which revisions have impacted on working rights, and whether compensation has been paid in such cases.

1.29 The study was additionally tasked with identifying best practice and areas where additional guidance or legislative change is required.

CHAPTER TWO RESEARCH METHODOLOGY

2.1 This chapter examines the methodologies employed in undertaking the research study, and presents general comments on the response rates and sample size.

RESEARCH CONTEXT

2.2 Since local government reorganisation in 1996, all 32 local authorities in Scotland are planning authorities, and as such, all have statutory duties and responsibilities for the review of old mineral planning permissions. However, it is evident that there are significant variations between authorities in terms of the extent of active and former mineral workings within their respective administrative areas, and hence in the potential number of review cases. This position is further complicated by virtue of differences in the timescales typically associated with extraction of different mineral types which is reflected in the terms of their associated planning permissions. This is best illustrated by reference, for example, to open-cast coal working which is heavily concentrated within a limited number of areas of the Central Belt. However, since this form of extraction is typically undertaken on the basis of short term permissions, relatively few Phase 1 or 2 sites requiring initial review are likely to be found in these areas. The converse position exists where hard rock quarrying is the principal form of extraction, typically operating over a lengthy time span, often extending to 60 years.

2.3 This position was confirmed by a survey undertaken by the Scottish Office Development Department in 1998, which revealed considerable variations between planning authorities in the numbers of Phase 1 and 2 active sites, and dormant sites. This variation was taken into account in the research design.

2.4 In addition to variations in the potential review workload, considerable differences now exist within the organisational structures of the planning authorities which has implications for the research methodology. Since local government reorganisation in 1996, how local authorities choose to discharge their statutory responsibilities for the planning system varies widely. Many authorities no longer have a single planning department responsible for both development plans/policy matters and development control. The planning function is now often administered through larger multi-functional units, with (in some authorities) the traditional policy and regulatory roles delivered through separate departments/directorates. Further complexity is added where the local authority operates through a decentralised (area office based) service delivery and decision making structure. As such, it was recognised that in obtaining information for the purposes of this study, for some planning authorities more than one source or point of contact would be required. Accordingly, the methodology selected had to be sufficiently flexible to accommodate a variety of organisational arrangements.

2.5 This variation between planning authorities generated subsidiary research questions for the study, namely –

- Does any relationship exist between different forms of organisational/administrative arrangements and the effective and efficient discharge of the authorities' statutory responsibilities within the review process?

- Within the context of best practice, does any particular set of arrangements offer benefits to planning authorities in undertaking the review process?

RESEARCH METHODOLOGY

2.6 The study required the collection and analysis of both quantitative and qualitative data from all planning authorities. This was achieved utilising a combination of:

- Review of planning registers
- Use of a questionnaire
- Structured interviews with individual officials in selected authorities
- Selected case studies

For each planning authority, information was gathered both on the review process generally, and in relation to each review case. Information on individual cases was recorded in a database established for the purpose of this study.

2.7 In order to provide a general perspective on the review process from the minerals operators, the 3 principal industry representative bodies - Quarry Products Association, British Aggregates Association and the Confederation of UK Coal Producers (Coalpro) - were consulted, with meetings held with representatives of the former 2 organisations.

2.8 For the purposes of progressing the initial collection of data from the planning authorities, a nominated contact official was established. For most authorities, this initial contact was also used to confirm the organisational and administrative arrangements of the authority in relation to the review process.

Planning registers

2.9 There is a statutory requirement on all planning authorities to maintain a public register containing basic details of every planning application received and the decision. This provides a potentially invaluable source of information relevant to the research study, insofar as it contains details of each application for the approval of a new scheme of conditions and a record of the eventual decision. However given that for most authorities the resources required to identify an individual review case contained within a register of hundreds, and in many cases, several thousand entries, it reality the use of the general registers was not a feasible proposition. For this reason the use of the planning registers was restricted to situations where the planning authority could initially identify the relevant planning application reference number(s).

2.10 However, for the purpose of monitoring of progress on the review, or for minerals development monitoring or enforcement, some authorities have established separate registers in addition to the general register required by statute. Where these were available, they were used in gathering basic information on individual review cases.

2.11 In addition to the registers held by the planning authority, the contractor holds and maintains databases of all planning applications and decisions for the past 5 years for 11 planning authorities. This unique resource is used in connection with property searches, but was used in the study to initially identify review cases within these local authority areas.

This facility was also used in the study as an independent means of verifying information supplied by these planning authorities.

Questionnaires

2.12 A questionnaire was used as the primary means of collecting information from the planning authorities. The questionnaire was in 2 parts – the first covering overall and general aspects of the review; the second covering details of each review case/ site. A copy of the questionnaire is attached to this report as Appendix 1.

2.13 Recognising the common difficulties associated with postal questionnaires in general, and major variations in the number of cases between different planning authorities, a number of methods were used to enhance the likelihood of completion. These included:

- Completion of the questionnaire by telephone (with prior arrangement) for those authorities with few review cases, ie 2 or less active sites subject to review
- Completion of the questionnaire as part of a meeting with the relevant planning officials – for those authorities with relatively large numbers of review cases, and/ or the subject of a case study
- By post with prior arrangement

2.14 On completion of the Part 2 questionnaire returns, information gathered on each review site was entered into the cases database.

Case studies

2.15 In order to provide deeper insights on specific issues and aspects of the review process a series of case studies were undertaken. The case studies were of 2 types, namely:

- Detailed examination of the approach adopted by the local authority, notably in terms of how the review process was administered and managed. These studies were based on a combination of review of relevant documentation, for example, initial and progress reports by planning officials to committee, and structured interviews (see 2.17 below)
- Detailed examination of individual review cases to provide a better understanding of common issues and/ or specific aspects of the review process. The study of individual cases was primarily undertaken through review of committee reports, supplemented by interviews

2.16 For reasons of confidentiality, the case studies are not specifically identified or described within this report, but in most cases, they provide the basis on which the “best practice” recommendations are made.

Structured interviews and meetings

2.17 For those planning authorities with a larger review workload, and/ or selected for the purposes of case study, meetings were held with the relevant planning officials of the following authorities:

- Aberdeenshire Council
- Angus Council
- Argyll & Bute Council
- Falkirk Council
- Fife Council
- Highland Council
- West Lothian Council

In each case, the meeting was initially structured around the format of the questionnaire, prior to examination and discussion of those aspects or cases of particular interest.

RESPONSE RATES

2.18 Although considerable effort was made to achieve a response rate of 100% it was generally accepted by the Steering Group that this was unlikely. Indeed a feature of the study was the general delay in obtaining initial responses of any kind from a significant number of planning authorities.

2.19 Ultimately responses were received from 25 of the 32 planning authorities, representing a response rate **by authority** of **78%**. It should be noted however that only partial returns were made by 5 of these authorities. The returns for these authorities were generally confined to completion of Part A of the questionnaire only, or summaries of case monitoring/ progress report sheets.

2.20 However, the returns incorporated 145 of the total number of 167 Phase 1 and 2 review cases, representing a response rate **by cases** of **87%**. This was a reflection of the methodology adopted in the study, in which those authorities with the highest numbers of review cases were specifically targeted in the initial stages. It should be noted that 5 of the 7 non-responding authorities had 4 or less cases subject to review. For the 145 cases accounted for within the study, detailed information was obtained for 95 of these cases, together with a further 7 IDO cases.

2.21 Thus while failing to achieve complete coverage, the response rate achieved was sufficiently high to facilitate robust and reliable analysis. The sample incorporates a sound cross-section of the Scottish planning authorities in terms of geographical distribution, size, and internal working arrangements. It also incorporates the full range of forms of extraction and mineral types found within Scotland.

CHAPTER THREE REVIEW: PROGRESS, TRENDS & FEATURES

3.1 This Chapter presents the principal findings of the study. In particular, it establishes the progress made by planning authorities in the review of old mineral planning permissions, identifying general patterns and trends and highlights recurring features in undertaking the review process in practice. All figures quoted in this Chapter reflect the position as of July 2001.

REVIEW CASES – OVERVIEW

3.2 The numbers of dormant, Phase 1 and 2 sites and IDO cases throughout Scotland are presented in Table 1 below. The figures in brackets are derived from the 1998 survey undertaken by the (then) Scottish Office Development Department.

Table 1 – Review Cases Summary

Planning Authority	Phase 1 cases	Phase 2 cases	Dormant sites	IDO cases
Aberdeen City	2	0	7	
Aberdeenshire	7	2	111	
Angus	1	4	0	
Argyll & Bute	5	8	5	
City of Glasgow	(1)	(0)	(0)	
Clackmannanshire	1	1	1	
Com. Nan Eilean Siar	2	0	1	
Dumfries & Galloway	9	3	1	
Dundee City	0	0	0	
East Ayrshire	0	2	15	
East Dunbartonshire	2	1	2	
East Lothian	0	2	1	
East Renfrewshire	(0)	(1)	(0)	
Edinburgh City	2	0	1	
Falkirk	6	0	4	1
Fife	8	4	3	4
Highland	7	8	6	1
Inverclyde	0	1	0	
Midlothian	1	2	1	
Moray	(3)	(1)	(6)	
North Ayrshire	(6)	(1)	(16)	
North Lanarkshire	9	1	14	
Orkney	0	1	0	
Perth & Kinross	(5)	(1)	(1)	
Renfrewshire	2	1	1	1
Scottish Borders	(5)	(3)	(11)	
Shetland Islands	0	0	0	
South Ayrshire	2	0	7	
South Lanarkshire	(2)	(1)	(12)	
Stirling	13	13	0	
West Dunbartonshire	(1)	(1)	(0)	
West Lothian	2	0	7	
TOTALS	104	63	234	7

3.3 The study established that there has been some marginal change in the number of cases as the review process has been progressed. This was to be anticipated, insofar as there is specific statutory provision for the reclassification of sites, for example in the event of a new designated nature conservation site being affected by a working. In addition, it is inevitable that the working circumstances of some sites will alter over time. The study also established that some planning authorities experienced difficulties in classifying some individual sites in preparing their initial list. In such cases, there was a tendency to adopt a cautious (and prudent) approach by including marginal sites, bearing in mind the statutory implications of sites being excluded from the initial list.

3.4 The study found considerable variation between planning authorities in terms of the methods employed in compiling the initial list. The availability of existing records and the organisational structure of the authority primarily influenced the methods chosen. Organisational structure was of particular importance to those authorities with decentralised area office based administrative structures. It is evident that for many such authorities the initial decisions on division of responsibilities for the review process between centrally based staff and those of the area offices have persisted to the present time. For some authorities, further divisions of responsibility were created with policy staff (generally those responsible for minerals policy in development plans) responsible for the preparation of initial lists and development control staff responsible for the processing of subsequent applications. It is important to also recognise that work on the review commenced relatively soon after local government reorganisation and before some authorities had reconciled the record systems of the former councils.

3.5 The study revealed that relatively few planning authorities sought to establish any meaningful dialogue arrangements with local mineral operators in progressing the review. This was particularly the case at initial stages, where in many cases the sole contact was through the service of the requisite statutory notices. This finding appears somewhat inconsistent with the expectations of government, as indicated in Circular 34/1996, in seeking a “constructive approach” on all sides to the review process.

3.6 In spite of the initial difficulties, all planning authorities published the first list before or around the required date of 1 April 1997. It would however appear that 3 authorities have failed to publish a second list (required by 1 January 2000) although in each case there would appear to be active Phase 2 workings within their respective areas. It must be acknowledged that for 2 of these authorities there is some doubt over the relevant site(s) status. In contrast to the first list requirement, publication of the second list was unnecessary for those authorities with no active Phase 2 workings within their administrative area.

3.7 Table 2 provides, in summary form, the current position in progressing the review throughout Scotland. In addition, it should be noted that all 7 IDO cases are determined.

Table 2 – Review Decisions And Case Outcomes

Planning Authority	Cases resolved by issue of a decision	Review subsumed by new planning consent/appl.	Lapsed planning consent	Cases unresolved	
				Ph1	Ph2
Aberdeen City	0	1	2	1	0
Aberdeenshire	4	0	6	0	2
Angus	0	2	2	1	4
Argyll & Bute	5	2	0	0	8
City of Glasgow	(0)	(0)	(0)	(1)	(0)
Clackmannanshire	0	0	0	0	1
Com. Nan Eilean Siar	1	0	1	1	0
Dumfries & Galloway	8	*	*	1	3
Dundee City	0	0	0	0	0
East Ayrshire	0	0	0	0	1
East Dunbartonshire	0	2	1	0	0
East Lothian	0	0	0	0	2
East Renfrewshire	(0)	(0)	(0)	(0)	(1)
Edinburgh City	0	0	2	0	0
Falkirk	6	1	0	0	0
Fife	4	4	2	2	2
Highland	3	0	0	4	8
Inverclyde	0	1	0	0	0
Midlothian	1	0	0	0	2
Moray	(0)	(0)	(0)	(3)	(1)
North Ayrshire	(0)	(0)	(0)	(6)	(1)
North Lanarkshire	0	1	0	9	1
Orkney	0	0	1	0	1
Perth & Kinross	1	*	*	(4)	(1)
Renfrewshire	0	3	0	0	0
Scottish Borders	(0)	(0)	(0)	(5)	(3)
Shetland Islands	0	0	0	0	0
South Ayrshire	0	0	1	2	0
South Lanarkshire	(0)	(0)	(0)	(2)	(1)
Stirling	0	3	18	3	5
West Dunbartonshire	(0)	(0)	(0)	(1)	(1)
West Lothian	0	0	1	1	0
TOTAL	33	18	36	47	49

*Note 1 * Information not available*

Note 2 Figures may not correspond with case numbers quoted in Table 1, as a single case may be recorded in more than one category in Table 2. For example, for a site the original consent may have lapsed, but is now the subject of a new planning application which remains undetermined.

Note 3 Figures shown in brackets are derived from the earlier unpublished survey by the Scottish Office in 1998. In the absence of information to the contrary it is assumed that all cases in these authorities remain unresolved

3.8 The figures clearly indicate that, contrary to expectations, the review process in relation to Phase 1 and 2 sites is far from complete. Superficially, it could be concluded that with only 33 (20%) of the 167 review cases determined through the issue of a decision on a new scheme of conditions, and with such decisions confined to 9 of the 32 planning authorities, the statutory requirements have failed to achieve the intended outcome. Furthermore, it would appear that considerable variations exist between planning authorities in progressing the review process. However, other aspects of the study suggest a more complex pattern of approach to the review and issues associated with old planning permissions than that superficially presented by these statistics.

3.9 Firstly, it is important to recognise that there is an inherent assumption within the statutory time scale for determination of new schemes of conditions (3 months) that such applications are relatively straight forward and hence can be processed through the planning system expeditiously. The reality of most applications, in common with most minerals developments, is that they are inherently complex, often requiring considerable consultation with other statutory bodies and involving extensive negotiation to produce a mutually acceptable outcome. The use of EIA in association with such applications is both indicative of the complexity of the nature of this form of development, and can add to the complications within the decision-making process. Thus, far from a simple exchange between the mineral operator and planning authority of a list of “standard” conditions to be added to the original consent, decision-making processes associated with review cases are often as complex as those typically found for any new proposal for minerals extraction. This is reinforced by the significant numbers of public objections typically received by the planning authority in dealing with most applications for the approval of new schemes of conditions. Some indication of the relative complexity of the issues considered in a typical review case is evident from the examples of actual approved schemes of conditions found at Annex 2 and 3 of this report.

3.10 For these reasons, the study found 18 cases where, by mutual agreement, the review requirement was met as part of a new planning application for the site. This was more frequently used where the remaining life of the working was relatively limited, but there was a prospect for extension of the site. There is considerable evidence to suggest that faced with the prospect of a major submission involving the use of EIA simply to agree new conditions, a considerable number of operators were of the view that a new application to also extend the life of the site was preferable. However, in seeking to discharge the review requirement in this fashion, there was considerable variation adopted in the approach of the planning authorities. In particular, it is evident that a number of authorities generally refused to accept this approach, unless the boundaries of the proposed working site coincided exactly with those of the original consented area. It was found that in at least 3 cases, the review applications for Phase 1 sites remain deferred until such time as separate applications for extension of the workings are determined, thereafter the new scheme of conditions will be agreed in line with those for the extension. Thus, there is evidence to suggest that the 18 examples found in the study potentially mask a greater number of cases being dealt with in this fashion.

3.11 The study finding that to date some 38 of the 167 consents subject to review in Phase 1 and 2 have lapsed due to the non-submission of a new scheme of conditions by the specified date is surprisingly high. It was to be anticipated that there would be no remaining interest in some sites due to the mineral becoming exhausted or uneconomic to continue working due to changing market or ground conditions. However, given the general difficulties in obtaining

planning permission for mineral working in recent years, it is surprising to find that some older consents have simply been lost by default. The study established cases in 3 different local authority areas where the effect of the statutory review requirement has been that long established quarries continued to work without the benefit of a valid planning permission. Further investigation revealed that the respective planning authorities were addressing these cases, but this aspect is further examined in Chapter 4.

3.12 Finally in relation to Table 2, it is important to recognise that the high number of unresolved Phase 2 cases is primarily a reflection of the timing of this study relative to the required application submission dates. In contrast to Phase 1, where the submission dates were largely set for one year following publication of the first list (i.e. April 1998) and where there were relatively few requests for postponement extending this time scale, a high proportion of Phase 2 cases have agreed submission dates during 2001 and 2002. This trend in relation to Phase 2 submissions appears to be a reflection of seeking to facilitate use of EIA within the process, which was not an issue at the time of the first list, and increased recognition of the need to establish realistic and mutually convenient timescales. Although the earliest any Phase 2 cases could reasonably be anticipated was mid-2000 and for most authorities January 2001, it is evident that few such cases have been determined to date. The key point to note is that the 50 unresolved Phase 2 cases referred to above do not represent any particular cause for concern at this stage. However, when considered alongside the number of outstanding Phase 1 cases, it is clear that there remains a significant workload to complete this 'first round' of the review process.

3.13 It is however evident that a significant proportion of the Phase 1 cases remain unresolved and, with at least 25 outstanding cases identified in the study, is potentially indicative of a considerable problem of delay within the decision-making process.

3.14 However, while the exact magnitude of this outstanding workload may be questioned it is evident from the study that many planning authorities experienced a range of difficulties in processing the Phase 1 applications. The study revealed that in most cases, difficulties were not arising from a single common source (see 3.15 below). However, the effect was that the time taken in the determination of the initial submissions far exceeded the 3 month statutory period in most cases. Best estimates in this regard would suggest an average decision-making process in many cases in the order of 12-18 months. This estimate does not include the time period devoted to any pre-application discussions. While it must be acknowledged that some exceptionally complex and difficult cases will arise, often requiring considerable time and effort to resolve, it is evident that the general pattern of excessive delay is relatively common and widespread.

3.15 The most common difficulties reported by the planning authorities and contributing to delays within the decision-making process were:

- Complexity of individual cases
- Availability of staff resources – workload and expertise issues
- Quality of submissions and information from mineral operators
- Availability and quality of past planning records
- Quality of guidance
- Potential compensation liability issues
- Public perception of applications for approval of new schemes of conditions
- Relative planning priorities within authorities

These matters are examined in detail in Chapter 4 below.

3.16 These difficulties must be seen in an appropriate context, recognising that approximately 30% of planning authorities appear to have experienced few problems in meeting their statutory responsibilities for the review. The study established that in terms of resource commitment 15% of authorities considered it was less than anticipated, 50% reported it was as anticipated with 35% suggesting the review required a commitment greater than anticipated.

SPECIFIC FEATURES OF REVIEW CASES

3.17 Of the total actual and potential 167 Phase 1 & 2 cases and 7 IDO cases within Scotland, detailed information was obtained for 102, representing a sample of 59%. This sample comprised 58 Phase 1 cases, 37 Phase 2 and 7 IDO cases. In addition, details of 2 periodic review cases were obtained.

By mineral type, the sample incorporated:

3.18 This information was generally obtained from Part B of the questionnaire. However, variation in the level of detail supplied by different planning authorities meant that in some instances the questionnaire has been supplemented by information gained from case-studies and other sources. The questionnaire was used as the initial basis for identifying specific aspects of the review process presented below.

APPEALS

3.19 Rights of appeal in review cases are established in Schedule 9, paragraph 11 of the 1997 Planning Act in circumstances where:

- (a) The approved conditions differ from those submitted by the applicant, or
- (b) The planning authority has indicated that a restriction of working rights would not be such as to prejudice adversely to an unreasonable degree either the economic viability of the working or its asset value.

The study established that to date there has only been one appeal lodged against a planning authority decision, but the appeal remains to be determined. Given the manner in which most planning authorities have chosen to progress review cases, based on negotiation with applicants, it could be reasonably assumed that the number of appeals is likely to remain low.

3.20 In addition, there is an outstanding appeal against the non-inclusion of a 1960's consent on the initial list of sites. This case is somewhat exceptional in terms of its particular circumstances, and as such, is unlikely to give rise to further similar cases in the future. However, the case is of particular interest to the review process in general, insofar as it may help clarify the meaning of the phrase "no minerals development has been carried out to any **substantial extent**" in relation to dormant sites.

USE OF PLANNING OR OTHER REGULATORY AGREEMENTS

3.21 Agreements are generally used in conjunction with planning conditions to extend the form of control or regulation of the development in circumstances where the use of conditions might not be legally competent or otherwise inappropriate. Although they have the effect of extending the scope of planning control, their potential value lies rather more as a means of formalising agreements made through negotiation between the various parties in the planning process.

3.22 Arguably, one of the more surprising findings has been the remarkably little use made of section 75 or any other form of regulatory agreements (for example, under section 48 of the Roads (Scotland) Act 1984) by planning authorities in progressing review cases. It is surprising insofar as such agreements are relatively common in the regulation of minerals developments generally, and in particular, in relation to arrangements for site restoration and aftercare. The study found only one resolved case where a section 75 agreement had been used. It was however noted that a further four undetermined cases have been delayed while section 75 agreements are negotiated. While it might be suggested that planning authorities could be reluctant to use agreements in order to avoid the inevitable delays in decision-making as they are drafted and concluded, the study found no evidence to support this view. Indeed the study revealed two cases where the applicants had suggested the use of section 75 agreements, but in both cases, the planning authorities rejected this means of resolving deadlocked negotiations. The study was unable to identify any common reason to explain why the planning authorities appear reluctant to use agreements in review cases.

3.23 It may be that as an outcome of a bargaining process, agreements are unfortunately associated with planning gain situations, which in recent years has tended to eclipse their usefulness as a highly flexible mechanism available to assist in the resolution of disputes between parties. However, although acknowledging that agreements have "a limited but useful role" their use has never been particularly encouraged by government, as reflected in SODD Circular 12/ 1996 which states that "they should only be sought where they are required to make a proposal acceptable in land use terms."(paragraph 4). As the refusal of planning permission is not an option in review cases, questions of acceptability in land use terms do not arise. It is notable that at no point in SODD Circular 34/ 1996 is the potential use of agreements even mentioned.

3.24 It is however evident that agreements can be used to overcome some of the obstacles which can arise in review cases such as disputes over the exact boundaries of the original consented site – a problem reported by a number of authorities. Where such differences occur there has been a trend towards seeking a new planning application (and hence generating fee income) rather than simply agreeing boundaries for the purposes of review initially through a section 75 agreement, thereafter allowing for the submission of a new set of conditions only.

DESIGNATED SITES

3.25 Sites which are wholly, or partly, located within a Site of Special Scientific Interest (SSSI) or a National Scenic Area (NSA) are treated as Phase 1 sites for review purposes. In addition, as and when Special Protection Areas (SPAs) or Special Areas of Conservation (SACs) are designated the planning authority has a duty to review any extant permissions for development of any type which are unimplemented, or partly implemented. This will of course include any permissions for minerals development. Such reviews are undertaken under the terms of the Conservation (Natural Habitats Etc.) Regulations 1994 and are separate, and procedurally different, from old mineral permission reviews. However, there is scope for interaction between the two review processes primarily dependant on the relative timing of the designation of the area and the review of the old minerals permission(s).

3.26 The study established 9 cases (from a total of 174) where the mineral working was located within or affected a designated area as indicated in Table 3 below.

Table 3 – Review Cases Within Designated Areas

Designation	Number of Review Sites
Site of Special Scientific Interest (SSSI)	7
National Scenic Area (NSA)	1
Special Area of Conservation (SAC)	2
Special Protection Area (SPA)	1
TOTAL	11*

* Note: Two sites were affected by more than one designation

3.26 It must however be acknowledged that this figure may be an understatement of the position throughout Scotland as a result of the manner in which a number of planning authorities provided detailed case information. Detailed information was only available for one example where a review site was located within a SPA. Unfortunately this case, the Longannet Deep Mine (underground coal mining), was not particularly illuminating on the potential interaction between the old permissions review process and that of the Habitats Regulations, by virtue of a new application having been submitted for significant extension of the mine.

3.27 There is some evidence to suggest that review cases for sites located within designated areas, particularly those affecting SSSIs can be unusually problematic. Difficulties appear to centre on the perception of the review process by those primarily concerned with nature conservation and protection interests. It is clear that in some such cases subtle distinctions between an application for the approval of a new scheme of conditions, and a normal planning application for permission for minerals extraction tend to be lost or misunderstood by objectors. Such objectors often see the review as an opportunity to seek the closure of an existing mineral working. It is quite evident that planning authorities have firmly resisted any potential pressure in this regard, but there is no doubt that this form of representation has added to the difficulties in dealing with some cases.

PERIODIC REVIEWS

3.28 Periodic reviews will be undertaken every 15 years from the date of the most recent consent or the last review. As such, the requirement for periodic review for sites where the permission was granted after 22 February 1982 might have been as early as 1997. It is perhaps noteworthy that a somewhat odd situation was created in which a planning permission granted in the early 1980s could be the subject of review prior to one granted in 1969 or early 1970s and thus classified as a Phase 2 active site. This situation has arisen for at least 2 planning authorities.

3.29 The study found that few authorities have comprehensively or systematically assessed the requirements for periodic reviews. It was however established that approximately 25% of authorities had at least run checks on all current active workings (other than Phase 1 or 2 sites) to determine when the first periodic review of the relevant consent would be required. This finding is of particular significance as it confirms that for most authorities little or no work has been undertaken on periodic reviews. The study would suggest that for approximately 75% of authorities no assessment has been made of the extent of the future periodic review workload nor when such reviews should commence. This represents a matter of some concern, particularly as the periodic review requirements are likely to generate a workload pattern for a number of authorities significantly different to that experienced to date. In particular, it is evident that for those authorities where hard rock quarrying is the predominant form of minerals extraction, most (if not all) sites will have been the subject of Phase 1 or 2 reviews and thus there will be little further periodic review work required in the next 15 years. However, it is evident that for some authorities, notably within the Central Belt, which had relatively few initial review cases to resolve, there could be a disproportionately high number of periodic review cases potentially arising in the near future.

3.30 It is suggested that due to the on-going nature of the process and the considerable level of outstanding work to complete the first “round” reviews, any revision of current guidance deemed appropriate to reflect the changing nature of the task would be worthwhile and appropriate.

ADMINISTRATIVE/ ORGANISATIONAL ARRANGEMENTS FOR REVIEW

3.31 As anticipated in the research design, there are significant differences between planning authorities in the arrangements adopted for undertaking the review process. This is primarily, but not exclusively, a reflection of the organisational structure of the local authority, and how statutory responsibilities for the discharge of the planning function are organised within that structure. Arguably, the most significant aspect of such arrangements for the review process centres on whether the local authority operates on the basis of a decentralised administrative and decision-making structure. For such authorities, major variations exist in arrangements for delivery of the planning service. These range from authorities in which area offices are virtually autonomous in every respect, to those authorities, where major powers and decision-making responsibilities are retained at the centre of the organisation. These features have important implications for progressing the review process.

3.32 In addition, a distinctive feature of Scottish local government since 1996 has been the removal of many of the traditional departmental structures for service delivery. Thus, the

planning function is now typically part of a larger organisational grouping, with responsibilities for several local government services. In a number of authorities, responsibilities for statutory planning matters have been further divided between different units dealing with policy (development plans) and regulatory functions (development control). The effect of such arrangements is quite simply that planning in general can now represent a relatively minor function relative to other areas of responsibility within the organisational grouping. Within such an arrangement, little priority or significance is likely to be attached to the review task.

3.33 The study found that this was indeed the case for a number of authorities; best reflected in the fact that for some, establishing which officials were responsible for the review was in itself a significant task! The principal organisational arrangements for the review established in the study were:

- (1) All review work undertaken by development control staff at a single location
- (2) Initial preparation of lists by minerals specialist within a policy/ development plans unit, with subsequent applications dealt with by development control staff at a single location or located in area offices
- (3) All review work split between area offices depending on the location of the site and handled by development control staff
- (4) Initial preparation of lists by minerals specialist within central (headquarters) office, applications submitted to area offices but referred to central office for determination.

3.34 The study found that there is no one single arrangement that appeared to be universally successful in progressing the review process. There was however some evidence to suggest that the arrangements identified at (2) and (3) above could prove potentially problematic notably in terms of achieving consistency of approach between area offices. It must be acknowledged that this problem is not simply confined to review cases.

3.35 It was evident however that while the organisational arrangements for the review must be tailored to the particular structure of the authority, some authorities had achieved considerably better progress than others in completing the review task. It was found that these authorities had common characteristics primarily based on:

- Adoption of an explicit strategy for undertaking the review work
- Engaging in positive pre-submission dialogue with mineral operators/ applicants, typically involving other relevant statutory bodies such as SEPA and SNH in these discussions
- Development of good internal documentation within the authority to monitor progress
- Allocation of review cases to a single or very limited number of planning officials
- Distinction of review cases from other applications being handled within the development control process.

In summary, review cases require positive management within the authority as opposed to simply being treated as “another planning application” for determination.

CHAPTER FOUR ISSUES AND BEST PRACTICE

4.1 This Chapter identifies and discusses key issues and problem areas found to exist within the review process. It also identifies examples of how particular authorities have sought to resolve such issues or potential problems in such a fashion that represents best practice.

4.2 The key issues arising from experience of the review process in practice fall within 2 broad areas, namely:

- Issues associated with the contextual framework – statutory or otherwise – established for the review process
- Issues arising from how planning authorities have conducted the review process

In reality, many issues relate to working practices that involve elements of both statutory provisions, and procedures or approaches adopted by individual planning authorities.

STATUTORY FRAMEWORK

4.3 The basic statutory provisions for the review are now based on section 74 and Schedules 8, 9 and 10 of the Town and Country Planning (Scotland) Act 1997. The schedules cover IDO consents (Schedule 8), initial reviews (Schedule 9) and periodic reviews (Schedule 10) respectively, and establish the detailed requirements, responsibilities and procedural arrangements. While this framework appears comprehensive and inevitably relatively complex, it should not present any more difficulties in interpretation and use than many other parts of the same Act. It must however be recognised that for at least a few authorities this has not been the case. In addition, it must be acknowledged that, unlike many other parts of the Act, the review provisions remain “untested” in the Scottish courts.

4.4 The fact that to date no legal challenge to any of the review requirements, or to any particular case, has been made through the courts is quite surprising given an increasing tendency to challenge to planning decisions generally, and the somewhat draconian nature of some of the review provisions. For example, it has been suggested that the loss of a valid planning permission as a consequence of a planning authority's error or other failure to include a site on the first list appears contrary to the fundamental legal principle of natural justice.

4.5 Although relatively few criticisms of the legislative framework were raised in the course of the study by either planning authorities or the minerals industry, it is apparent that the statutory provisions underpin a number of the issues examined below. A common source of a number of problems appears to be some confusion on the status of an application for the approval of a new scheme of conditions. Some doubts focus on whether such a submission constitutes a “planning application”. It is evident from Circular 34/ 1996 that applications for the determination of new conditions require to be treated as if they were an application for planning permission for the winning and working of minerals, but this intention does not appear to be fully reflected within the legislation. The treatment of a submission as a planning application appears to be reinforced by the court ruling referred to at paragraph 1.19 above, which clearly establishes that it represents a “development consent”. It is also clear

that most planning authorities deal with review submissions administratively and procedurally in exactly the same (or a very similar) manner as any other planning application.

4.6 However, in such circumstances the provisions of the Town and Country Planning (General Development Procedure)(Scotland) Order 1992 appear to be applicable, except for those matters for which explicit alternative arrangements are made in the principal Act, i.e. the 1997 Planning Act. Thus, for example, the variation in the time period for determination (from the usual 2 months to 3 months for review cases) and deemed approvals (as opposed to the usual deemed refusals) fall into this category of provision. However there appears to be some conflict within the legislative provisions in relation to registration of the application/ submission, and in cases where EIA is required. In addition, there appear to be situations arising in practice which have not been anticipated within the legislation. These aspects are further examined below.

4.7 It does not fall within the terms of this study to seek to resolve these matters, but rather they are highlighted and reflected in the recommendations to the Scottish Executive, as aspects requiring attention based on legal opinion.

GUIDANCE AND ADVICE

4.8 Guidance on the statutory provisions and procedures for the review is given in Scottish Office Development Department Circulars 34/ 1996 and 25/ 1998. In addition to this specific advice, there are several other sources of guidance relevant to the review process and associated subject matters. These include Circular 4/ 1998 (use of conditions), Circular 26/ 1992 (operating, restoration and aftercare conditions for IDO permissions), National Planning Policy Guideline (NPPG) 4 (land for mineral working), NPPG 16 (opencast coal and related minerals) and Planning Advice Note (PAN) 50 and associated Annexes (controlling the environmental effects of mineral working).

4.9 The study established that the principal Circulars (i.e. 34/1996 and 25/ 1998) have not been well received by any of the parties within the review process. The guidance offered has been widely criticised and was frequently regarded as “unhelpful”. More specific comments suggested that many parts of the guidance appeared “vague and contradictory”.

4.10 Review of these Circulars would suggest that the criticisms are not without foundation. Circular 34/ 1996 is unusually lengthy in outlining the statutory requirements for the review in very considerable detail. In doing so, there is a considerable element of repetition within the document, for example, in setting out requirements for Phase 1, Phase 2 and periodic reviews. As such, the document is likely to be used for reference purposes only to check specific points, rather than the form of publication likely to be read in its entirety. This view on the general form of the guidance was reinforced during the study where on a number of occasions it was evident that some planning officials were unaware of particular pieces of advice contained within the Circular. While it would superficially appear that the guidance given is highly comprehensive, in reality it is primarily a description of the legislative provisions with, in many parts, little added in terms of understanding or meaningful advice. This reinforces a view expressed during the study that the guidance carefully avoids those aspects where advice is actually needed.

4.11 Perhaps the most obvious deficiency in the advice is simply that all statutory references are incorrect insofar as they relate to the Environment Act 1995 which has been superseded by the provisions of the Town and Country Planning (Scotland) Act 1997. This is particularly unfortunate as Circular 34/ 1996 has a separately bound volume of Annexes, which sets out suggested forms of most statutory notices and certificates for use in the review process. By their inherent nature such notices contain extensive references to the statute. Recognising that many planning authorities indicated a lack of appropriate expertise as a problem in undertaking review work, it appears very likely that greater reliance will have been placed on the guidance than might otherwise be expected. The potential problem of outdated guidance in this regard is self-evident, and requires action as a matter of some urgency.

4.12 Accusations that the guidance is unhelpful, or at least less positive than it might be in terms of the advice offered, would appear to be well-founded. This is perhaps best illustrated by reference to an example – advice on consultations. The advice offered in Circular 34/ 1996, paragraph 88 is as follows:

“Similarly, whilst the provisions of the Town and Country Planning (General Development Procedure)(Scotland) Order 1992 as amended.....relating to consultations before the grant of planning permission do not statutorily apply to these new procedures, planning authorities should have regard to these general requirements and carry out such consultations as they see fit before determining the application. In considering the need for consultations planning authorities should have regard to any consultations carried out by the applicant prior to submission of the application and the extent to which the submitted proposals reflect the views of the consultees. Unnecessary duplication of consultation should be avoided”

4.13 While it may be argued that this advice provides a helpful discretion to planning authorities, in reality it simply creates uncertainty within the decision-making process. It provides a potential opportunity for any planning authority to exclude any body whose views may differ from their own. This is highly relevant to review cases where for example Scottish Natural Heritage (SNH) may have a potential interest, which in many cases is less accommodating to the continued working of sites. To simply ignore such views would be totally unacceptable in the open, publicly accountable political arena within which the planning system operates. Such situations have not occurred, as planning authorities have exercised their discretion in favour of undertaking consultations on a similar basis to that required in relation to conventional planning applications.

4.14 However, in all cases it must be recognised that even where pre-application consultations between the applicant and another agency have occurred, it would be regarded as good practice for the planning authority to subsequently confirm that what has been submitted accurately reflects what was previously agreed. As such, it is evident that while the advice on this aspect was given in the interests of improving efficiency within the decision-making process, in reality it is contrary to what is normally required for technical reasons and sound administrative practice. This example is not an isolated case within the Circular, but illustrates why the Circular is regarded as unhelpful.

4.15 It is suggested that there is a strong case for the preparation of a replacement Circular as a matter of some priority. This is primarily justified in terms of the changing nature of the review task over time with an increasing emphasis on periodic review. However, clearly it

also provides an opportunity to revisit the existing guidance recognising the significant number of Phase 1 and 2 cases still outstanding.

SCHEMES OF CONDITIONS

4.16 The statutory arrangements for the review of individual sites place an onus on the mineral operators to instigate action through the submission of a new scheme of conditions for the approval of the planning authority. This arrangement is based on an inherent assumption that all mineral operators have the professional skills and ability to draft a set of planning conditions, which, inter alia, meet the 6 well-established criteria for the use of such conditions (SODD Circular 4/1998, paragraph 2 refers). The study has revealed that this assumption is fundamentally flawed, with few cases found where the operators proposed conditions were approved without amendment by the planning authority. There is ample evidence that the need for planning authorities to often redraft and/ or renegotiate conditions with applicants represents a significant and common source of delay. As a consequence of the potential compensation liability in circumstances where new or extended conditions could affect working rights, planning authorities have tended to adopt a relatively cautious approach in making changes to the submitted scheme. Inevitably this has required working closely with the applicant in order to fully evaluate and secure agreement to any such changes.

4.17 In identifying this issue, a number of planning authorities drew a distinction between smaller local operators with minimal knowledge or experience of the planning system and regional or national companies typically employing consultants or with in-house specialist staff. Lack of planning expertise is a particular problem for many local companies. This is perhaps best illustrated by reference to an actual (if extreme) example. In relation to a beach sand working, the proposed “scheme” of modern conditions was confined to a single condition, referring to the depth of extraction, and reading:

“Down to 50 m below sea level as required”

The applicant was apparently surprised that this proved unacceptable to the planning authority!

4.18 Although advice to applicants in preparing submissions was given in Annex L to SODD Circular 34/1996, there is little evidence to suggest widespread familiarity with the content of this document. It must be recognised that schemes of conditions must be tailored to the circumstances of individual sites, and hence the adoption of standard “model” conditions is inappropriate. However, there appears to be a need to revisit the form of advice given. In doing so, particular emphasis should be given to how it can be more effectively communicated to applicants.

4.19 It may be prudent to further clarify minimum requirements for the submission of schemes of conditions. The study found that there were wide variations in the form of application submissions, which would appear to have contributed to delay through the need to obtain further information from applicants. What constitutes an application is defined in Schedule 9, paragraph 9(2) of the 1997 Planning Act as to be in writing, and shall:

- (a) identify the site,
- (b) specify the land or minerals of which the applicant is the owner or has an interest,
- (c) identify any relevant planning permissions relating to the site,
- (d) identify and give an address for any person known or believed to be an owner of land or with an interest in the relevant minerals in the site,
- (e) set out the applicant's proposed conditions
- (f) be accompanied by an appropriate certificate (i.e. the usual certificates required for a minerals planning application, including neighbour notification)

4.20 While any such application may be legally correct it is evident that, if confined to the matters above, it will be far from complete from the viewpoint of the typical information required for determination. This is recognised in the statutory provisions, which under paragraph 9(9) allows the planning authority to specify further details required for the purposes of determination. While pre-application discussions should identify most information requirements, in practice, further details are often needed. As noted above, this inevitably contributes to delay within the decision-making process.

4.21 To assist in the application process, at least one planning authority has produced a set of application forms specifically for use in the submission of new schemes of conditions. This was suggested in the guidance issued to planning authorities in Circular 34/1996. It must however be acknowledged that the resources required to produce such forms would generally not be justified given the relatively small number of review cases for a significant number of planning authorities.

USE OF ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

4.22 Although advice was issued in November 1998 commending the use of EIA in all cases on a voluntary basis, it was not until November 2001 before further action was taken to promote legislative change requiring EIA screening in all review cases. Although the impetus for change is found in English court rulings, the case for change was strengthened in 1999, when new amendment Regulations were introduced in response to EU Directive 97/11/EC. These new Regulations introduced significant changes in relation to minerals development, having the effect of requiring the mandatory use of EIA for all but the most minor forms of such development.

4.23 This study has established that major variations exist between planning authorities in their use of EIA in review cases. Such variations in practice span the full spectrum of options ranging from use of EIA in every case to no use whatsoever, while some authorities adopt the use of EIA on a selective basis depending on the particular case circumstances. It is suggested that this variation in the use of EIAs is undesirable as it creates considerable uncertainty for mineral operators, and gives rise to circumstances in which the prospect for legal challenge through the courts is significantly increased.

4.24 It is important to recognise that in those cases where the use of EIA has not been adopted this does not necessarily result in poorly informed decisions. Some authorities would suggest that the supporting information accompanying the submission is often more focussed and informative than is typically found within a formal EIA Environmental Statement. It may be argued that recognising the on-going nature of active mineral workings,

the decision-making process would be better informed by an environmental audit of the existing working, accompanied by a more restricted assessment of the potential environmental impacts and mitigation measures for the remaining unworked areas of the site. However, recognising the Court rulings on the use of EIA, it will be a matter for planning authorities to ensure through scoping that the form of assessment is appropriate for each particular review site.

4.25 It is evident that a particular aspect of concern in the use of EIA in review cases has been the comprehensive nature of assessments required under the terms of the Environmental Impact Assessment (Scotland) Regulations 1999 in order to comply in full with the requirements of the EU Directives. As noted above, the appropriateness of this form of comprehensive assessment could be considered questionable in many review cases, particularly as the potential scope for change on aspects of many sites can be restricted by compensation liability. As the Scottish Executive is already committed to legislative change in relation to review cases, there is some merit in suggesting that consideration is required to the issue of further guidance on the scope of EIA when undertaken for review purposes.

4.26 There is evidence to suggest that the use of EIA has contributed to major delays within the decision-making process for some review cases. An issue which has emerged in a number of cases is where an Environmental Statement has been requested subsequent to an initial review application but without an agreed timetable for submission as recommended in SODD Circular 25/1998. Such cases have been the subject of indefinite delay, and account for a number of the currently unresolved Phase 1 cases. This clearly illustrates the importance of careful management of individual review cases.

4.27 Finally, in relation to the use of EIA, reconciliation of the respective statutory periods for determination of applications will be achieved through the current proposals for legislative change. At present, applications for the approval of new schemes of conditions are subject to a 3 month statutory period, but the equivalent period for any application treated under the terms of the Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 1999 is 4 months.

Best Practice

All review cases should be screened to determine whether they would be the subjects of EIA.

All review submissions should be subject to EIA, unless there are particular circumstances or reasons that would justify otherwise.

The screening process should be undertaken as soon as practicable for each case, preferably at least one year in advance of the required submission date, in order to facilitate the assembly and evaluation of appropriate baseline data.

The onus to instigate the screening process rests with the mineral operator/ applicant through the formal request for the planning authority to issue a screening opinion.

Prior to the issue of a screening opinion, discussions should be held between the planning authority and the mineral operator/ applicant to provide sufficient understanding of the key issues relating to the site.

The screening opinion should be recorded in the planning register or other form available for public inspection.

Where EIA is required the scoping process should commence as soon as practicable after screening has confirmed the need for EIA

The onus for instigation of the scoping process rests with the planning authority in the first instance.

Following initial consultations with other relevant public agencies, the planning authority should organise a roundtable meeting involving all parties to finalise and agree the scope of the EIA.

The requirements for the EIA agreed at the meeting above should be recorded in writing and circulated to all parties.

In the event of unforeseen difficulties or problems arising in the preparation of the Environmental Statement, the planning authority should be informed without delay.

Pre-application discussions should commence as the preparation of the Environmental Statement proceeds, particularly as mitigation options emerge and appropriate conditions are framed to reflect such measures.

The objective of the process is to produce a submission which has already been agreed as mutually acceptable to all parties to facilitate an expeditious planning decision.

TIMESCALE FOR DETERMINATION/ REGISTRATION OF APPLICATIONS

4.28 The statutory period and arrangements for determination of review applications are unusual insofar as planning authorities have a 3 month period from receipt of all necessary information to take a decision, and unless an extension of time is agreed, the application is deemed to be approved if no decision has been taken. In all other respects, review applications are subject to the same procedural arrangements as any other planning application. In this regard, the statutory period for determination commences on the date the application is registered. While these arrangements may superficially appear quite simple, the study findings would suggest otherwise.

4.29 The most significant problem encountered centres on the basic assumption that a planning authority should be satisfied that all necessary information for decision-making purposes is available prior to registering the application. In reality, and bearing in mind the complexity of many review cases, it can be exceptionally difficult to establish whether all necessary information is available prior to commencing processing and assessment of the application. This position is potentially exacerbated by virtue of the nature of review cases, which are typically distinguished by the degree of negotiation required to produce a mutually acceptable decision. As such negotiations are progressed it is virtually inevitable that requirements for additional information will arise. Equally, and in common with most other planning applications, the need for additional information is often generated not by the planning authority, in the first instance, but arising from issues raised by statutory consultees.

4.30 The problem in these circumstances is that there appears to be no procedural mechanism through which the statutory period for determination can be stopped or reset to facilitate the process of obtaining further information once the application is registered. Although SODD Circular 34/1996 suggests that the 3 month period simply commences after all information has been received, this appears at odds with the usual implications of formal registration. This aspect requires clarification as there is considerable evidence to suggest that it represents a common issue arising for most planning authorities. Perhaps the significance of this matter rests in the fact that it potentially constitutes a basis for the successful legal challenge to the review decisions in the courts.

4.31 Although these circumstances are common to all planning applications, review cases are potentially problematic by virtue of the deemed approval feature of failing to take a decision within 3 months. This has placed very considerable pressure on the planning authorities to seek agreed extensions of time with applicants. Recognising that the prime beneficiary of a mineral operator refusing to agree such an extension is the mineral operator (i.e. resulting in the automatic approval of the operators proposed conditions) it is indicative of attitudes within the industry that no examples were found of a company seeking to take advantage of this position. However, it is evident that some planning authorities have failed to recognise the importance of formally agreeing extensions. This is best illustrated by two examples found during the study of local authority “decisions” which are in fact ultra vires for this reason. Two further examples were found where the original proposed conditions were approved by default on the part of the planning authorities.

4.32 Finally, it was noted in the study that a limited number of authorities had established a separate register (supplementary to the statutory register) for either all minerals development applications or for review cases only. This was seen as prudent in order that such applications were not “lost” within the general register. The advantage of doing so was

amply illustrated by a number of authorities who appeared to have experienced difficulties in tracking review applications from their general register for the purpose of assisting in this study! In the light of the periodic review requirements in the future, there is an obvious need for authorities to establish appropriate systems.

Best Practice

Pre-application discussions and agreement of both information and draft conditions provide the key to expeditious decision-making.

It is generally unreasonable that any of the parties identify new information requirements following receipt of an application for approval of a new scheme of conditions, except in situations where a significant change of circumstances has occurred, or the information requirement could not have been reasonably expected to be identified in advance.

The onus rests with the planning authority to positively manage the application process, including the direction of other consultees where requests for additional information arise. Applications for the approval of a new scheme of conditions should not be formally registered until such time as all necessary information has been submitted.

Where any such application cannot be determined within the statutory period, a request for agreement to extension of that period must be sought, explaining why it has not been possible for a decision to be given.

For the purposes of future periodic review and monitoring of development on sites, planning authorities should establish a minerals development register, separate and in addition to the general planning register.

LAPSED CONSENTS AND ENFORCEMENT

4.33 As noted at 3.11 above, the number of consents, which have lapsed due to non-submission of new conditions, is surprisingly high. Of particular concern, is the fact that for at least 3 such sites, working has simply continued without the benefit of planning permission. While the means of resolving this position lies in the instigation of enforcement action, it is evident that for various reasons there is extreme reluctance on the part of the planning authorities to pursue this option. Indeed in relation to one of these cases, due to unusual circumstances, enforcement by the planning authority is not legally possible.

4.34 The study found a number of cases where the planning authorities had refused to accept applications for the approval of new conditions on the basis that unauthorised development had occurred on the site. The relevant authorities had accepted that enforcement action was not feasible due to the very lengthy periods of time that had elapsed since the breach had occurred. They were only prepared to consider new applications covering the entire sites. In all 3 cases the applicants had refused to submit any such applications, but since they are immune from enforcement action, the authorities were powerless to take further action and the cases remain unresolved. It should be noted that in

these cases the relevant permissions remain valid as the applicants met their statutory requirements to submit a new scheme of conditions by the specified dates.

4.35 These are examples of situations that were not anticipated within the legislation, and now require further consideration.

PUBLIC PERCEPTION

4.36 A common feature of the review process is the fact that for most members of the public and elected councillors there is a lack of appreciation and understanding in relation to individual cases. In particular, there is a common perception that an application for the approval of a new scheme of conditions provides an opportunity to re-evaluate matters of principle relating to the working, including the prospect of closing an existing working through a refusal of planning permission. More than one authority suggested that this problem also extends to some statutory consultees. This is of particular concern recognising that the need for additional information during the processing of the application is often generated by the statutory consultees, and is identified in this study as a significant source of delay in decision-making.

4.37 It is indicative of the extent of the problem that at least two planning authorities have gone to considerable lengths to ensure that review submissions are never described or seen as “planning applications”.

Best Practice

There is an onus on planning authorities to ensure that all parties in the decision-making process, including consultees, are made fully aware that review applications for the approval of new conditions cannot reconsider the principle of minerals extraction from the site.

This aspect should be explained in acknowledging receipt of any objection received by the planning authority to an application for approval of new conditions.

Where significant levels of objection have been generated by such an application, the planning authority should consider arranging a public hearing prior to determination on a similar basis to those recommended for significant development plan departures.

At any such public hearing, an equal amount of time should be allocated for presentation by the planning officials, the applicant, consultees and objectors (collectively, not individually)

In common with conventional planning applications, following determination each objector should be advised of the decision, with an explanation of the reasons for that decision.

PLANNING AUTHORITY STAFF RESOURCES AND EXPERTISE

4.38 A significant number of planning authorities cited staff workload pressures and/ or a lack of staff with appropriate minerals expertise as a key factor explaining delay in decision-making or difficulties faced in undertaking the review process. The apparent lack of minerals expertise within a significant number of Scottish planning authorities is a long-standing and widespread matter of concern within the minerals industry. While it is generally accepted that the development control staff in particular of some councils are under some pressure to meet established performance indicator targets, the fact remains that this is a management issue for each authority. It is not the role of this study to evaluate the relative performance of the planning authorities in meeting the statutory requirements for review. However, it must be acknowledged that it is generally those authorities with the greatest number of review cases, or the higher development control workloads, which appear to have made greater progress in completing the review work. As such, it may reasonably be concluded that the issue is rather more one of relative priority given to the review work than a simple lack of appropriate staff resources.

4.39 It is also evident that the apparent lack of appropriately trained or experienced minerals planning staff is a consequence of management decisions in this regard, presumably based on perceived planning priorities within the authority. This aspect tends to reinforce the view that minerals planning matters continue to be given a low priority within many authorities, and is a matter of general concern within the minerals industry. The fact of the matter is that planning authorities have a statutory responsibility for the regulation of minerals development and in meeting that responsibility there is an onus on authorities to employ or otherwise engage appropriately qualified staff. Although beyond the scope of this study, it is somewhat surprising to find that in spite of increased concerns in recent years for protection of the natural environment and the importance of minerals extraction to local, regional and national economies this has not been reflected in the priorities of many Scottish planning authorities. It would appear that as the relative status of the entire planning function has been diminished within some local authorities, this has further reduced the priority given to mineral planning matters.

4.40 Although it would appear that some authorities have experienced some difficulties in meeting their statutory requirements for the review only one such authority has taken a positive initiative to address this issue. In this case, faced with restricted staff resources part of the workload was outsourced by the temporary re-employment of a recently retired member of staff on a consultancy basis. In the light of the increasing trend, particularly in England, to outsource planning work in circumstances where the local authorities do not have the in-house resources to provide an efficient and effective service to the public, it is suggested that consideration must now be given to adoption of a similar approach, where necessary.

CHAPTER FIVE SUMMARY CONCLUSIONS AND RECOMMENDATIONS

5.1 This chapter presents a summary of the principal conclusions of the study and recommendations for consideration by the Scottish Executive.

EFFECTIVENESS OF THE REVIEW PROCESS

5.2 The overall conclusion of the study is that the statutory requirements for the review of old mineral permissions have resulted in significant progress towards ensuring that such permissions have been updated to reflect modern expectations for protection of the environment consistent with best working practices. However, it is evident that progress in this regard has moved somewhat slower than anticipated, and much remains to be done before the potential problems associated with old mineral permissions can be considered to be eliminated throughout Scotland.

5.3 The current statutory provisions sought to address perceived problems inherent in the initial arrangements for the review of old minerals permissions established in the Minerals Act of 1981. It is evident that within the minerals industry many of the earlier concerns regarding the potential effects of the review process on existing operations have been removed. In part, this appears to be due to changed attitudes within the industry towards the need for environmental protection generally. However, it is also a reflection of changes introduced in the current statutory provisions and associated advice which explicitly seek to secure environmental improvement without prejudice to the asset value or continued economic viability of working sites. The study confirmed that this intention was reflected in practice, with no cases found where a planning authority had applied conditions that restrict working rights to a degree considered likely to prejudice the economic viability or asset value of a site.

5.4 It was widely acknowledged that the fundamental weakness in the earlier legislative provision was the failure to establish any time limits or dates for either commencement or completion of the review process. This aspect has been successfully addressed in the current arrangements insofar as all planning authorities instigated the review process through the publication of the first list within the timescale established within the statute. It is evident however that for many authorities delays commenced at the time of the first submissions by mineral operators.

5.5 The reasons for these initial delays in the decision-making process appear to vary considerably depending on individual case circumstances. However, it is not without significance that in many cases, where delays occurred, there appears to have been little or no dialogue between planning authorities and mineral operators/ applicants in the intervening period between publication of the list and deadline for receipt of the submission of new schemes of conditions. The study established that in many such cases contact was confined to the service of statutory notices. Bearing in mind that the required form of submission was in effect new and unfamiliar for all parties, it is not entirely surprising that a considerable number of the initial applications were found to be inadequate. This view is supported by

evidence that in cases where extensive pre-application discussions had occurred, there was often a comparatively straightforward progression towards a decision.

5.6 It is evident that the following range of factors have influenced progress in the review process:

- Complexity of individual cases
- Availability of appropriate staff resources within planning authorities– workload and expertise issues
- Quality of submissions and information from mineral operators
- Availability and quality of past planning records
- Quality of guidance given by the (former) Scottish Office
- Potential compensation liability issues
- Public perception of applications for approval of new schemes of conditions
- Relative planning priorities within authorities

There are very significant variations between planning authorities in terms of the extent to which these factors, or combinations of these factors, have influenced performance or ability to complete the initial review requirements.

5.7 It is evident that initial delays within the decision-making process have continued into the review of Phase 2 sites. As the number of review cases subject to EIA is likely to increase in the future, a corresponding increase in delays can be anticipated, assuming that no other change in current practice occurs. While the increased use of EIA in review cases may potentially improve the quality of decision-making, there is a clear onus on planning authorities to ensure that the credibility of the process is not undermined by excessive delays.

5.8 In spite of the delays within the review process, it is evident that significant environmental benefits have been achieved in relation to a number of sites where the review has been completed. The evidence of this study would suggest that the primary benefits most commonly arising from the review relate to land restoration and site after-use. This represents an area in which there have been considerable changes in approach in recent years. While in the past, restoration of land for agricultural use was the norm, changes in agriculture and associated government policies have placed less value and need for this form of after-use. The review process has provided an opportunity to establish or revisit proposals to create land restoration schemes and uses more appropriate to current demands on the countryside. Such demands include the provision of recreational uses, and habitat creation or enhancement for nature conservation purposes.

5.9 In addition to restoration related benefits, improvements to vehicular access arrangements have been secured in a significant number of cases. In many respects, this was to be anticipated particularly for the older sites which were originally granted planning permission with access arrangements that often failed to meet modern requirements and standards. Any upgrading work undertaken in more recent years was typically instigated by the mineral operator. Although improvements were sought through the review process, such physical alterations have proved problematic to achieve in many cases, often requiring the involvement of third party landowners.

5.10 However, the extent to which environmental benefits are solely attributable to a new set of planning conditions is highly questionable. The effectiveness of the review process

would appear to centre on the fact that it provides a focus and forum for reappraisal of the working arrangements and circumstances on a site. It requires mineral operators to give in-depth consideration to future operations in a manner which might not otherwise occur. As such, the effectiveness of the process possibly owes rather more to the opportunities it presents for dialogue between the parties than to the specific statutory provisions. As an industry whose future is increasingly dependant on its ability to demonstrate that minerals extraction can occur without significant, irreversible, detrimental effects on the environment, the review process provides such an opportunity.

RECOMMENDATIONS

5.11 Based on the findings of this study, the following recommendations are made:

A. Legislative change for consideration by the Scottish Executive

(a) It is recommended that the provisions of Schedules 9 and 10 of the Town and Country Planning (Scotland) Act 1997 be reviewed, specifically to address the following aspects:

- To establish deadlines for the completion of Phase 1 and 2 site reviews
- To clarify the status of review submissions as planning applications
- To amend the requirements for consultation by establishment of relevant statutory consultees for review applications
- To introduce requirements for notification of all review applications to the Scottish Executive, and an associated provision for referral
- To introduce requirements for publication of a new third list covering all periodic review sites (including potential review cases)
- To extend the statutory period for determination of all review applications to 4 months to provide consistency with EIA requirements, regardless of whether or not EIA is adopted in individual cases

(b) It is recommended that the Town and Country Planning (Environmental Impact Assessment)(Scotland) Regulations 1999 be amended without further delay to specifically require the screening of all review cases. The associated advice should clearly indicate that all review cases will normally be subject to EIA, unless there are particular circumstances which would justify otherwise. Such amendment should establish a commencement date, at which time all review cases will become subject to this provision.

B. Revised guidance for consideration by the Scottish Executive

- (a) It is recommended that Circular 34/ 1996 be reviewed as a matter of some urgency. Such review should seek to update the form and nature of guidance offered, and be rolled forward to remove those elements which are simply of historic interest (for example, reference and advice on the First list). It needs to reflect the changing nature of the review task with emphasis placed on periodic review requirements. The Annexes published as a separate volume to the Circular should be updated to incorporate the correct, current statutory references.
- (b) It is recommended that guidance on the use of EIA be reflected in the new Circular, as indicated above.

C. Action for consideration by planning authorities

- (a) It is recommended that planning authorities establish a coherent strategy for management for the review process in its entirety.
- (b) It is recommended that every planning authority establish a separate minerals register, in addition to the existing public statutory register of all planning application required under section 36 of the Town and Country Planning (Scotland) Act 1997, and Article 10 and Schedule 5 of the Town and Country Planning (General Development Procedure)(Scotland) Order 1992 as amended.
- (c) It is recommended that all review matters, including the processing of review submissions should be handled by a single or restricted number of appropriate staff in order to develop or reinforce specialist minerals planning knowledge and skills.
- (d) Where planning authorities do not employ staff with appropriate specialist skills in dealing with review matters, outsourcing of such work should be considered.
- (e) Action should be instigated as a matter of priority to regularise any active working continuing to operate without the benefit of a valid planning consent.
- (f) It is recommended that planning authorities should establish formalised procedures for the screening and scoping of all review cases for the purposes of EIA

D. Action for consideration by mineral operators

- (a) It is recommended that a programme and strategy for the review of the planning circumstances of all sites in a company's ownership is established.
- (b) It is recommended that the planning authority should be kept informed of any changes affecting a working site which might require further planning decision or become the subject of attention in any future review
- (c) It is recommended that any information requested during the review process be provided timeously, recognising that mineral operators have a role in seeking to reduce delay within the planning decision-making process.

E. Informal action for consideration by all involved in the review process.

- (a) It is recommended that planning authorities and mineral operators establish informal dialogue processes involving, as a minimum, periodic meetings to discuss and review progress in the development of sites. Any statutory requirements for the review of the relevant planning permission(s) can be considered as one output of these arrangements.
- (b) It is recommended that consideration be given to the greater use of planning and other forms of agreements as a means of resolving situations which could otherwise deadlock progress towards mutually acceptable outcomes in review cases.

BIBLIOGRAPHY

Department of the Environment/ Scottish Development Department (1976) "Planning Control over Mineral Working" Report of the Stevens Committee, HMSO

Pollock SHA (1990) "Implementation of the Town and Country Planning (Minerals) Act 1981 in Scotland" Minerals Pickup project report, University of Dundee

Pollock SHA (1997) "Old Mineral Permissions Revisited" Scottish Planning & Environmental Law 62, 76-78

Scottish Office Development Department (1996) Circular 12/ 1996 "Planning Agreements" SODD, Edinburgh

Scottish Office Development Department (1996) Circular 34/1996 "Environment Act 1995: Section 96 Guidance on the Statutory Provisions and Procedures" SODD, Edinburgh

Scottish Office Development Department (1998) Circular 25/1998 "Review of Old Mineral Permissions and Environmental Impact Assessment, Notes for Guidance" SODD, Edinburgh

Scottish Office Environment Department (1992) Circular 2/1992 "Planning and Compensation Act 1991: Commencement of Minerals Provisions" SOED, Edinburgh

Scottish Office Environment Department (1992) Circular 26/1992 "Planning and Compensation Act 1991: Interim Development Order Permissions (IDOs) – Operating, Restoration and Aftercare Conditions in Scotland" SOED, Edinburgh

ANNEX ONE

REVIEW OF OLD MINERAL PERMISSIONS IN SCOTLAND

Planning Authority _____ :

Sub-Area (where applicable): _____

Name of Respondent _____ :

Post within authority _____ :

Introduction

The statutory requirements for the review of old mineral permissions are established in S.74 and Schedules 9 & 10 of the Town and Country Planning (Scotland) Act 1997. In general terms, -

A **Phase 1** site is defined as one where the predominant permission was granted after 30 June 1948 and before 8 December 1969.

A **Phase 2** site is defined as one where the predominant permission was granted after 7 December 1969 and before 22 February 1982.

A **Dormant** site is one where no substantial minerals extraction was carried out since 22 February 1982.

In addition provisions contained within the Planning & Compensation Act 1991 relate to permissions granted under Interim Development Orders made between 1943 and 1948 (**IDO** consents)

Please complete the general section of this questionnaire Part A and a Part B section for each review site (as defined above, or subsequent periodic review.)

PART A

General

1. Please outline the general arrangements established by your authority for the review of sites

2. What arrangements have now been put in place for phase 2 sites and future periodic reviews?

3. Were any special dialogue arrangements established with local mineral operators for the specific purpose of progressing the review of sites?

Yes No

4. Please indicate the number of cases subject to the review provisions within your administrative area:

Phase 1 Phase 2

Dormant IDO consents

5. When did your authority publish the first list of sites _____
(month, year)

6. When did your authority publish the list of phase 2 sites _____

7. Since the first published list has the status of any sites changed (eg reopening of a dormant site, phase 2 site transferred to phase 1)

Yes No

If yes please give details _____

8. Please indicate the number of cases which have been completed through the issue of a decision

Phase 1 _____ Phase 2 _____

9. Have any of these decisions been the subject of a subsequent appeal to the Scottish Ministers?

Yes _____ No _____

If yes, please indicate the number of cases _____

10. Please indicate the number of cases where the original consent has lapsed e.g. through failure to submit a new scheme of conditions within the specified period

Phase 1 _____ Phase 2 _____

11. Please indicate the number of cases where the review requirement has been subsumed by virtue of a new planning application e.g. seeking extension of the site

Phase 1 _____ Phase 2 _____

12. In completing the work to date, has the resource commitment by your authority been

Greater than anticipated _____

Less than anticipated _____

As anticipated _____

13. What are the principal reasons for non-completion of the review process within your authority (if applicable)

14. Overall, please list any common difficulties experienced by your authority in undertaking the review process.

Thank you for taking the time to complete this questionnaire, your assistance in this study is greatly appreciated.

PART B: INDIVIDUAL CASES

PLEASE COMPLETE FOR EACH SITE

AUTHORITY : _____

NAME OF SITE : _____

APPLICATION REFERENCE NUMBER (scheme of conditions or new application)
: _____

TYPE OF MINERAL WORKING (e.g. hard rock quarry)
: _____

1. Which of the following categories does this site fall within?

Phase 1 Phase 2

IDO (for IDO cases only please complete questions 9 to 13 inclusive.)

2. Has the status of this site changed since April 1997?

Yes No

If yes, please explain

3. Has a new scheme of conditions been submitted for this site?

Yes No

4. Has the scheme of conditions been formally determined by the authority?

Yes No

5. Does the development of this site affect, or potentially affect, any land designated as

SSSI NSA SAC SPA

6. Was the application for the new scheme of conditions accompanied by an Environmental Statement?

Yes No

7. Did your authority require the submission of additional environmental information?

Yes No

8. Was the scheme of conditions accepted without amendment?

Yes No

9. Has your decision been the subject of any subsequent appeal to the Scottish Ministers?

Yes No

10. Please list the range of matters covered by the new conditions.

11. Was your decision on this case subject to a Section 75 Agreement?

Yes No

If yes, please indicate the broad areas covered by the Agreement.

12. Did the decision in this case affect the working rights of the site?

Yes No

13. Were there any objections from third parties to the application for revised conditions?

Yes No

14. What issues or difficulties (if any) arose in the review of this site?
Please list

ANNEX TWO

CASE STUDIES

In order to provide deeper insights on the review process, a series of case-studies were undertaken. These were of two types:

- Examination of the approach to the review process adopted by the planning authority. Recognising that considerable variations exist between planning authorities in progressing the review, it was considered appropriate to establish if a particular administrative/ organisational arrangement offered benefits that might usefully be adopted elsewhere.(Cases F- G below)
- Examination of individual review cases to provide a better understanding of common issues, and a context against which the effectiveness of the statutory provisions might be evaluated. (Cases A-E below)

Case Study A

This case refers to a hard rock quarry from which extraction had occurred for at least a century. Following the introduction of planning controls, permission was initially granted in 1949. A second planning permission to extend the quarry was granted in 1974. This latter consent imposed conditions to restrict the depth of working and landscaping works. The landscaping requirements extended to include part of the area covered by the 1949 consent. Under the terms of the review the site was classified as an active Phase 1 site.

Two planning applications to extend the entire quarry vertically in order to access recoverable reserves amounting to the equivalent of approximately 25 years of working were refused planning permission immediately prior to the submission of a new scheme of conditions under the review. The primary reasons for refusal related to potential problems of dust and ground vibration due to blasting, and inadequate landscape restoration. In this regard, a settlement adjacent to the quarry had expanded over the previous 30 years, bringing residential properties relatively close to, but visually well screened from, the working. Both of these decisions were the subject of appeal at the time of the review submission.

The submitted scheme of conditions, accompanied by an environmental impact assessment, also sought to deepen the quarry, although the extent of recoverable reserves had been significantly reduced from those of the recently refused applications. The review submission attracted objections from local residents, primarily on the grounds of ground vibration. Arguably, the key feature of this submission was a significantly enhanced restoration scheme, incorporating phased elements, and leading to the creation of a high quality recreational and nature conservation feature.

This initial submission was the subject of considerable negotiation with the quarry operator, leading to the approval of a revised scheme of conditions. This was essentially based on a mutually accepted compromise to facilitate a further 10 years of working, based on a significantly reduced vertical extension from that proposed, while maintaining the annual tonnage output at its existing level. The revised conditions included blasting arrangements to reflect the highest standards of protection as established the government's research report on ground vibration from mineral working. The appeals against the earlier planning decisions were subsequently withdrawn.

In this case, the review process provided a platform for securing an enhanced site restoration scheme that will provide a beneficial facility in the longer term, while reducing the potential environmental impact on the local community. For the operator, continuity of product production was ensured through secured working another 10 years. In this case, alternative progression of proposals through the appeals process would have produced an inevitable outcome of “winners” and “losers” among the various parties, and at best, would have created a land restoration scheme of inferior quality to that now to be pursued.

Case Study B

This case refers to an extensive sand and gravel working, located in open countryside adjacent to a trunk road which is a major tourist route through the area. The working had been based on an accumulation of planning permissions granted in the 1950's and 1960's. These permissions generally made no provision for eventual restoration of the land, except for removal of all buildings, plant and machinery on the cessation of extraction. In the early 1980's, an application for proposed working of gravel close to the trunk road was withdrawn prior to likely refusal, but created the impetus for extensive discussions between the planning authority and the operator. Such discussions resulted in a comprehensive review of the workings, and through the use of a (then) Section 50 Agreement a programme of site rationalisation and improvement was established. This incorporated agreement on the sequence of future working, the introduction of landscaping measures and screening through retention and enhancement of topographical features. The site was an active Phase 1 site for the purpose of the review.

At the time of the review submission, the operator was also seeking to provide continuity of working through a further extension to the site. This proposed extension was the subject of a separate planning application submitted at approximately the same time as the submission of a new scheme of conditions. The proposed extension was located out of sight from the public road and was acceptable in all other respects. The scheme of conditions would be applicable to the remainder of the working and provided an opportunity to revisit the matters originally subject to the Section 50 Agreement.

The proposed scheme of conditions covered site restoration, after-use, further landscape enhancement and screening, dust control, water discharge, hours of working and regulation of vehicles leaving the site. Although generally acceptable to the planning authority as submitted, the review process encouraged discussion on alternative after-uses in particular. The outcome was agreement that part of the site would not be returned to agricultural use but provide an opportunity to extend an existing adjacent woodland. This would have the effect of linking visually isolated landscaping introduced around the central processing plant to the naturally regenerating woodland on adjacent land. A new pond within the proposed wooded area initially required for watering of newly planted trees will be designed to enhance its nature conservation value. It is intended in the longer term that the area centred on the water feature could be opened to the public.

The primary benefit arising in this case was landscape enhancement, securing improved restoration of potential benefit to nature conservation interests and eventual creation of a new public recreational facility. The role of the review provisions was simply that it encouraged dialogue between the land- owner, mineral operator and planning authority in a manner that was unlikely to have otherwise occurred.

Case Study C

This case refers to a hard rock quarry that had been granted planning permission with no conditions attached in the 1950's. The initial issue raised in the review of this consent was that the area covered by the original decision was not adequately defined, and as such, potentially gave extraction rights over the entire land holding. In such circumstances, there was the obvious prospect that in seeking to restrict extraction to the existing working area, a very significant compensation liability could be created for the planning authority. In reality, the mineral operator restricting the extraction area in the scheme of conditions averted this possibility. The submission was accompanied by an environmental impact assessment.

Although the scheme of conditions was generally acceptable as submitted, the application attracted significant opposition from the local community, including a large number of objections seeking closure of the quarry. While this is not uncommon elsewhere, it places increased pressure on the authorities workload in ensuring that such objections are "seen" to be handled in an appropriate manner. The community opposition was primarily based on concerns over hours of working and the adequacy of vehicular access arrangements. The latter aspect was exacerbated by an objection from a third party, who also held property interests relevant to the resolution of the access problems. It was questionable whether the objection was simply lodged by this party in order to enhance its position in the negotiation process. In many respects, this form of potentially "tactical objection" is not unique to this case, but can lead to a more protracted negotiation process than might otherwise occur.

An amended scheme of conditions was approved, incorporating additional conditions to reflect the form of compromise position negotiated by the parties. The review process secured a much greater degree of environmental protection over a considerable area than might otherwise have occurred had the developer chosen to exercise the extraction rights of the original consent. The process resulted in improved access arrangements, with provision also extended to ensure future maintenance. It must also be noted that this case provides a good example of a mineral operator entering into the review process in a highly co-operative and positive manner in order to secure future working consistent with high standards of environmental protection.

Case Study D

This case refers to an extensive site with planning permissions granted in 1949 and 1952 for extraction of sand, sandstone and fireclay. These consents simply required the removal of buildings, plant and machinery on completion of extraction. There was evidence that minerals had been extracted from the site over a considerable period of time prior to these consents. The site was classified as an active Phase 1 site for the purpose of review.

The first issue to be addressed centred on establishment of which parts of the site might require to be excluded from the review process. This arose by virtue of the fact that while sand extraction continued on part of the area covered in the original consents, other uses had also been developed on parts of the site where mineral working had ceased. This included use of part of the site for landfill, storage use and reworking of mineral waste believed to have commenced as permitted development prior to such activities being brought under planning control requiring express consent of the planning authority. This issue was not

unique to this site, and has proved to be consistently problematic in all cases where subsequent consents were given to facilitate use of worked out areas.

Although a scheme of conditions relating to the entire site were submitted, the planning authority required the submission of further information through an environmental impact assessment. In doing so, the planning authority failed to set a deadline for the submission of such information. As a consequence, in spite of a series of reminders and reassurances from the applicant, no such information has been provided, and the case remains unresolved.

Case Study E

This case refers to a fireclay working for which planning permission was originally granted in the early 1950's. Although the consent covered a very large area, most remained unworked, with extraction confined to a relatively small part of the consented area. Unusually for a permission granted at that time, 11 conditions were imposed on the consent. These included restrictions on the annual rate of extraction, depth of working, storage of overburden and soils and restoration of the site. A feature of the site was that ownership had changed at least 4 times during the period of working, and extraction was undertaken sporadically, with minerals stored on site and transported off-site as and when required. The site was an active Phase 1 working for review purposes.

Although a scheme of conditions was submitted, it related only to that part of the site on which working had, or was likely, to occur. The mineral operator had indicated willingness to give up any right of extraction on other parts of the site, without compensation. The planning authority refused to deal with the application as a review case, instead requested that a new planning application be submitted for the site. It claimed that "unauthorised material changes" had occurred during the working of the site, notably in terms of the depth of working, rate of extraction and removal of materials other than fireclay from the site. The operator refused to submit a new planning application with such a requirement having no basis in law, but suggested that any outstanding matters could be incorporated within a Section 75 Agreement.

The planning authority sought to instigate enforcement action, but was unable to proceed as the mineral operator was able to demonstrate that the alleged breaches of conditions had occurred at least 15 years previously, and by a previous owner. As such, the alleged breaches were immune from enforcement action. As the mineral operator had submitted a new scheme of conditions as required by the statute, the planning consent did not cease to have effect, and working of the site continued.

The case remains unresolved, but working of the site has ceased and the mineral operator is in receivership. This case illustrates the problems that may arise when parties enter into the review process without willingness to negotiate to find mutually acceptable outcomes. It also highlights a potential "loop-hole" in the legislative framework, which simply requires the developer to submit a scheme of conditions.

Case Study F (Planning authority)

This case study refers to the approach adopted to the review by a rural authority responsible for an unusually large geographic area. The authority has an area office based structure, but for the purpose of the review all cases are handled centrally. The authority has a separate minerals register, facilitating ease of access for monitoring and management purposes, and incorporating information on each case specific to the review process. This includes, for example, recording of dates on which statutory notices, etc. were served.

The initial problem for the authority was in some cases to determine whether sporadically worked sites were active or not – an issue found in many other parts of Scotland. The authority tended to adopt a relatively cautious approach by including all potential sites in the first list, bearing in mind the implications of exclusion at this stage. As a consequence, a small number of sites were removed from the list as further information became available.

The key features of the approach adopted included:

- Development of a specific application form for the submission of schemes of conditions
- As a matter of policy, all review cases were the subject of EIA
- To ensure adequate scoping of each case, organised a formal meeting involving all agencies with a potential interest in the assessment
- Use of local hearings prior to determination of cases

The authority has completed review of all Phase 1 cases. It is of interest to note that the authority based on this initial experience, created some staggering of submission dates for the Phase 2 sites, to avoid workload peaking problems arising from the simultaneous submission of several applications.

Case Study G (Planning Authority)

This case study also refers to a large rural authority with significant numbers of mineral workings.

The authority operates a de-centralised area office structure, with decision-making also de-centralised.

Although the review is essentially undertaken as separate exercises within each of the area offices, a common register was initially established with guidance and significant input provided by a senior official with considerable minerals experience. As a matter of policy the authority has not required EIA for any cases to date, relying on statements of supporting information as the preferred method of securing the necessary information for decision-making. A notable feature of the review process has been allocation of cases within the area offices in a manner designed to encourage a degree of minerals expertise development within the staff of the authority. For this authority the most significant element of the process has been assembly of basic information for a high number of dormant sites. It has also experienced some unusually complex cases that have proved exceptionally difficult to resolve.

ANNEX THREE

EXAMPLE OF AN APPROVED SCHEME OF CONDITIONS (UNAMENDED)

- 1 Consent for the extraction of aggregates shall expire by 1 March 2042 by which time, unless with the express approval of the Planning Authority, all working shall have ceased and the quarry fully restored in accordance with the approved scheme, including the removal of all plant and buildings from the site.
- 2 Unless otherwise agreed in writing by the Planning Authority, the working of the site shall be carried out in accordance with the working programme and phasing plans as shown on Figures Nos. 2, 3, 4, 5a and 6b with the review statement and restoration of the site shall be undertaken in accordance with Condition 19.
- 3 From the commencement of this review the operators shall maintain records of their monthly output/production and shall make them available to the Planning Authority at any time upon request. All records shall be kept for at least 5 years.
- 4 The surfacing of the site access shall be maintained in a good state of repair and kept clean and free of mud and other debris at all times until completion of site restoration.
- 5 No loaded lorries shall leave the site unsheeted except those only carrying stone in excess of 75mm.
- 6 No slurry or water from the permitted operations shall flow onto the public highway.
- 7 Except in emergencies to maintain safe quarry working which shall be notified to the Planning Authority as soon as practicable or unless the Planning Authority has agreed otherwise in writing no operations other than water pumping, servicing, maintenance and testing of plant shall be carried out at the quarry except between the following times:-

08.00 hours and 18.00 hours Monday to Friday.
- 8 Despatch of Aggregates: no lorries shall leave or enter the site except between the following times:

0600 to 2100 hours Monday to Sunday.
- 9 Except in emergencies to maintain safe quarry working, which shall be notified to the Planning Authority as soon as practicable, or unless the Planning Authority has agreed otherwise in writing no blasting shall take place on site except between the following times:-

1000 hours and 16000 hours Monday to Friday inclusive.
- 10 The operator shall employ best blasting practice at all times to minimise the effects of ground vibration and air blast overpressure, having regard to blast design, methods of initiation and the weather conditions prevailing at the time. Peak particle velocity at

any blast sensitive property shall not exceed 8.5mm/sec at 95% confidence limits with a maximum of 10mm/sec.

- 11 Noise from the site shall not exceed 55dB(A) at the nearest noise sensitive property, except during periods of development of up to eight weeks in any twelve month period, where with the prior written approval of the Planning Authority, in consultation with Protective Services, levels up to 70dB(A) at the nearest sensitive property may be permitted.
- 12 All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times, and shall be fitted with an use effective silencers.
- 13 At all times during the carrying out of operations authorised or required by this planning permission, and in addition to requirements covered by EPA authorisation, the following dust control scheme, in accordance with the guidance given in PAN 50 Annex B, shall be implemented to the satisfaction of the Planning Authority:
 - i) Portable water sprayers shall be maintained on site and shall be used to minimise dust on haul roads;
 - ii) All vehicles used for movement of materials within the site shall be equipped with exhausts pointing away from the ground;
 - iii) All relevant heavy plant shall be fitted with radiator fan deflector plates;
 - iv) Drilling rigs shall be fitted with efficient dust control measures;
 - v) If, in extreme adverse conditions the aforementioned measures are not adequate, the following action shall be taken;
 - a) Restriction on the speed of vehicles on site
 - b) Temporary re-routing of vehicles on site
 - c) Temporary cessation of activities giving rise to concern
 - vi) In the event of a complaint concerning dust emission, the site manager shall immediately investigate and implement any necessary remedial measures.
- 14 Any oil fuel, lubricant or other potential pollutant shall be handled on the site in such a manner as to prevent pollution of any watercourse or groundwater. For any liquid other than water, this shall include storage in suitable tanks within a suitable bund or other means of enclosure to provide containment for 110% of the storage capacity and with no passive means of drainage.
- 15 Measures shall be taken to ensure that drainage from the areas immediately adjoining the site is not impaired or rendered less efficient by the operations authorised by this planning permission, and adequate precautions shall be taken to prevent the pollution of ditches, water courses and drains within and in the vicinity of the site as stated in Section 9 of the review statement. A detailed scheme for water management from the quarry and the processing area, shall be submitted to the Planning Authority no later than six months from the date of approval of these conditions by the Planning Authority. The water management scheme shall require the approval of the Planning Authority in consultation with SEPA and the scheme as approved shall be

implemented within a time period to be agreed with the Planning Authority in consultation with SEPA.

- 16 No turf, soil topside or subsoil shall at any time be removed from the site.
- 17 The rehabilitation of the site shall incorporate the use of any retained soils together with topsoil and subsoil which shall be brought into the site in sufficient quantities as specified in Section 7 of the review statement such that the final restoration is achieved and undertaken to the satisfaction of the Planning Authority.
- 18 No infill material other than topsoils and subsoils as exempted under the provisions of the waste Management Licensing Regulations 1994 (as amended) shall be brought onto the site without benefit of the requisite planning permission and Waste Management Licence.
- 19 Two years prior to completion of mineral extraction detailed schemes for final contours and restoration of the site shall be submitted to and require the approval of the Planning Authority.
- 20 At least 3 years prior to the commencement of the replacement of the topsoil on any part of the site, an aftercare scheme for the restored land shall be submitted to and require the approval of the Planning Authority prior to implementation, and the scheme shall specify such steps as may be necessary to bring the land to a suitable standard for the specified use. Spreading of topsoil shall take place within twelve months of the date of approval by the Planning Authority of the aftercare scheme.
- 21 Should the site cease operation for any reason before the proposed end date as contained in the time limit condition, within six months of final cessation of limestone quarrying and associated rock crushing, screening and milling operations a scheme for final landform restoration and aftercare, to be implemented by the operator, shall be submitted by the operator to and require the prior approval of the Planning Authority. Restoration operations shall commence no later than six months after the date of approval by the Planning Authority of the restoration and aftercare scheme.

ANNEX FOUR

EXAMPLE OF AN AMENDED SCHEME OF CONDITIONS

Changes from the scheme of conditions originally submitted are shown in italics

- 1 Consent for the extraction of aggregates shall expire by 21 February 2042 by which time, unless with the express approval of the Planning Authority, all working shall have ceased and the quarry fully restored in accordance with the approved schemes, including the removal of all plant and buildings from site.
- 2 *Unless otherwise agreed in writing by the Planning Authority, the working site shall be carried out in accordance with the working programme and phasing plans (figures 2a-2e) detailed in the Environmental Statement dated 30 July 1998 except as including the working method described in section 2.3 of the report on the Assessment of Environmental Noise dated 2 March 2000; and restoration of the site shall be undertaken in accordance with the conditions following.*
- 3 *For the avoidance of doubt, processing methods shall be restricted to the areas defined in Figure 5 Revision 1 dated 20 August 1998 and appended to the document entitled Modifications to Plant and Working dated 4 October 1999.*
- 4 From the commencement of this review the operators shall maintain records of their monthly output/production and shall make them available to the Planning Authority at any time upon request. All records shall be kept for at least 5 years.
- 5 The surfacing of the site access shall be maintained in a good state of repair and kept clean and free of mud and other debris at all times until completion of site restoration.
- 6 *With the exception of the quarry operator or its nominated contractor, no haulage vehicles shall be permitted to enter the quarry working with the exception of the council or its nominated contractor in respect of the removal of washed road chips, and for the purposes of removing armour stone.*
- 7 No loaded lorries shall leave the site unsheeted except those only carrying stone in excess of 75mm.
- 8 No slurry or water from the permitted operation shall *be allowed to* flow onto the public highway.
- 9 Should future monitoring of the AXX/access road junction show that lorries from the site are carrying deleterious material onto the junction then the operator shall take adequate mitigating measures to resolve the situation to the satisfaction of the Planning Authority in consultation with the Roads Authority.
- 10 *Except in emergencies to maintain safe quarry working, which shall be notified to the Planning Authority as soon as practicable, or unless the Planning Authority as agreed otherwise in writing, no operations other than water pumping, servicing, maintenance and testing of plant shall be carried out at the quarry except between the following times:-*

- i) *Extraction of rock – between the hours of 0600 and 2100 Monday to Friday*
 - ii) *Milling of limestone – this automated process shall operate on a 24 hour basis*
 - iii) *Crushing and screening of rock – between the hours of 0600 and 2100 hours Monday to Friday; between the hours of 0800 and 2000 hours on Saturday; and between the hours of 1000 and 1800 hours on Sunday.*
 - iv) *Despatch of aggregates and limestone – between the hours of 0600 and 2100 Monday to Friday; between the hours of 0800 and 2000 hours on Saturday and between the hours of 1000 and 1800 hours on Sunday.*
 - v) *Despatch of aggregates as part of ship loading operation – between the hours of 0600 and 2100 hours Monday to Friday and between the hours of 0800 and 2000 hours on Saturday. No Sunday activity.*
- 11 *During permitted hours of operation, for general quarry operations excluding soil and overburden handling works, the free-field equivalent continuous noise level ($L_{aeg,1h}$) shall not exceed 45 dB(A) at the nearest noise sensitive premises.*
- 12 *During permitted hours of operation and for a maximum of eight weeks in any year, for soil and overburden handling works, the free-field equivalent continuous noise level ($L_{aeg,1h}$) shall not exceed 70 dB(A) at the nearest noise sensitive premises.*
- 13 *Monitoring of noise arising from quarrying operations shall be carried out in accordance with a detailed scheme which shall be submitted to and require the approval in writing on the Planning Authority in consultation with the Environmental Health Authority within three months of the scheme of conditions being approved in order to ensure that the specified limits are not being exceeded. Such scheme shall include proposed monitoring locations, proposals for the frequency of monitoring; and provisions for reporting the results of the monitoring to the Planning Authority.*
- 14 All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times, and shall be fitted with an use effective silencers.
- 15 Except in emergencies to maintain safe quarry working, which shall be notified to the Planning Authority as soon as practicable, or unless the Planning Authority has agreed otherwise in writing, no blasting shall take place on site except between the following times:-
- 1000 and 1600 hours Monday to Friday inclusive.
- 16 The operator shall employ best blasting practice at all times to minimise the effects of ground vibration and air blast overpressure, having regard to blast design, methods of initiation and the weather conditions prevailing at the time. Peak particle velocity at any blast sensitive property shall not exceed 8.5mm/sec at 95% confidence limits with a maximum of 10mm/sec.
- 17 At all times during the carrying out of operations authorised or required by this planning permission, and in addition to requirements covered by SEPA authorisation,

the flowing dust control scheme, in accordance with the guidance given in PAN 50 Annex B, shall be implemented to the satisfaction of the Planning Authority:

- i) Portable water sprayers shall be maintained on site and shall be used to minimise dust on haul roads.
- ii) All vehicles used for the movement of materials within the site shall be equipped with exhausts pointing away from the ground.
- iii) All relevant heavy plant shall be fitted with radiator fan deflector plates.
- iv) Drilling rigs shall be fitted with efficient dust control measures.
- v) If, in extreme adverse conditions the aforementioned measures are not adequate, the following action shall be taken:
 - a) Restriction on the speed on vehicles on site
 - b) Temporary re-routing of vehicles on site
 - c) Temporary cessation of activities giving rise to concern
- vi) In the event of a complaint concerning dust emission, the site manager shall immediately investigate and implement any necessary remedial measures.

18 *With the exception of explosive boxes, there shall be no burning of waste within the site.*

19 Any oil, fuel, lubricant or other potential pollutant shall be handled on the site in such a manner as to prevent pollution of any watercourse or groundwater. For any liquid other than water, this shall include storage in suitable tanks housed within a suitable bund or other means of enclosure to provide containment for 100% of the storage capacity and with no passive means of drainage.

20 Measures shall be taken to ensure that drainage from the areas immediately adjoining the site is not impaired or rendered less efficient by the operations authorised by this planning permission, and adequate precautions shall be taken to prevent the pollution of ditches, water courses and drains with and in the vicinity of the site as stated in Section 7 of the Environmental Statement. A detailed scheme for water management from the quarry and the processing area, *including the proposed wetland treatment of run-off from the processing area*, and for surface run-off from the connecting haul road, shall be submitted to the Planning Authority. The water management scheme shall require the approval of the Planning Authority in consultation with SEPA and the scheme as approved shall be implemented within a time period to be agreed with the Planning Authority in consultation with SEPA.

21 *Details of the treatment and disposal of sewage effluent arising from the site facilities shall be submitted to and require the approval in writing of the Planning Authority in consultation with SEPA within three months of the date of approval of these conditions by the Planning Authority.*

22 Within three months of approval of these conditions by the Planning Authority the operator shall secure the processing area and the area of the quarry excavation as shown on Figure 5 and Figures 2a-2d of the Environmental Statement, by means of fencing or such other means in accordance with the requirements of the Health and Safety Executive to be agreed in writing with the Planning Authority.

- 23 *External stockpiles of material at the processing area shall not exceed 6 metres in height.*
- 24 The operator shall complete the diversion of the estate road around the plant and processing area and complete the construction and planting of the bund at this location, *including seeding the area between the bund and the processing area with native local grass species*, and the bund bounding the estate road on the northern side of the quarry, as shown on Figure 5 and Figures 2a-2d of the Environmental Statement respectively, within three months of the date of the approval of these conditions by the Planning Authority. The planting of the bunds shall comprise native species of shrubs *to the satisfaction of the Planning Authority in consultation with Scottish Natural Heritage.*
- 25 *Within six months of the date of approval of these conditions by the Planning Authority, detailed proposals to screen the quarry working, particularly from the east, by way of supplementary boundary tree planting, shall be submitted to and require the approval in writing of the Planning Authority in consultation with Scottish Natural Heritage. Such proposals shall include a phased programme for their implementation.*
- 26 *Within six months of the date of approval of these conditions by the Planning Authority, detailed proposals for the formation of an alternative footpath link segregated from the quarry access road and generally in accordance with the schematic plan illustrated in drawing number xxx.rev2 Figure A, shall be submitted to and require the approval in writing of the Planning Authority. Such proposals shall include a timetable for their implementation.*
- 27 No development operations shall commence in succeeding phases until all peat soil has been stripped to full available depth from the excavation areas and all associated working areas; following which all available glacial drift shall be stripped from the same areas.
- 28 The following scheme for the stripping, handling and storage of peat soils shall be implemented to the satisfaction of the Planning Authority.
- i) The stripping of peat soil *shall* only be carried out when ground conditions are such that no undue damage shall result to the soil.
 - ii) Work routines for stripping operations shall be designed to minimise vehicle traffic on unstripped land, and at all times the mechanical handling and compaction of the peat soil shall be minimised.
 - iii) Peat soil and glacial drift shall be carefully stored in separate mounds, as shown on Figures 2a-2d of the Environmental Statement, and shall be prevented from mixing; peat soil mounds shall not exceed two metres in height.
- 29 All storage mounds *of peat soil and glacial drift* shall be evenly graded, shaped and drained to prevent water ponding on or around them; the glacial drift shall be covered with a thin layer of peat soil (0.15m) to encourage long term natural revegetation.
- 30 No turf, peat soil topsoil shall at any time be removed from the site.

- 31 Two years prior to completion of mineral extraction, detailed schemes for final contours and restoration of the site, *including the processing area*, shall be submitted to and require the approval of the Planning Authority.
- 32 The infill and rehabilitation of the site shall incorporate the use of the peat soil and glacial drift which has been retained together with topsoil and subsoil which shall be brought into the site in sufficient quantities, as specified in Chapter 3 of the Environmental Statement, *and subject to the provision of condition 33*, such as the final restoration, as shown *indicatively* on Figure 2e of the Environmental Statement, is achieved and restoration is undertaken to the satisfaction of the Planning Authority.
- 33 No infill material, other than topsoils and subsoils as exempted under the provision of the Waste Management Licensing Regulations 1994 (as amended), shall be brought onto the site without benefit of the requisite planning permission and Waste Management Licence *and only in accordance with a scheme of restoration and in locations approved in writing by the Planning Authority*.
- 34 At least 3 months prior to the commencement of the replacement of the topsoil on any part of the site, an aftercare scheme for the restored land shall be submitted to and require the approval of the Planning Authority prior to implementation, and the scheme shall specify such steps as may be necessary to bring the land to a suitable standard for the specified use. Spreading of topsoil shall take place within twelve months of the date of approval by the Planning Authority of the aftercare scheme.
- 35 Should the site cease operation for any reason before the proposed end date as contained in the time limit condition, within six months of final cessation of quarrying and associated rock crushing, screening and milling operations, a scheme for final landform restoration and aftercare, to be implemented by the operator, shall be submitted by the operator to and require the prior approval *in writing* of the Planning Authority. Restoration operations shall commence no later than six months after the date of approval by the Planning Authority of the restoration and aftercare scheme. *For the avoidance of doubt, the scheme shall include provisions for restoration of the processing area.*

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