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**From:** [REDACTED]

**Sent:** Fri, 22 Jan 2021 16:25:57

**To:**

**Subject:** localplan@scotborders.gov.uk

**Sensitivity:** Normal

**Attachments:**  
[REDACTED]

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**CAUTION:** External Email

Dear Sir/Madam

Please find attached the MPA(Scotland) response to the above consultation.

We would welcome further dialogue with you on the points raised.

Could you please acknowledge receipt of this representation?

Yours faithfully

**Nick Horsley**

Director of Planning, Industrial Minerals and MPA Wales

Mineral Products Association

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Mineral Products Association



Quarries & Nature

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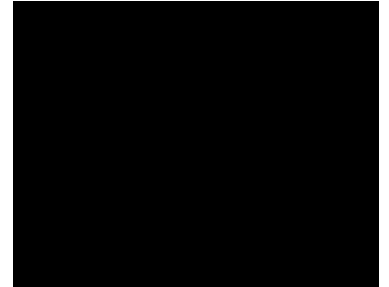
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22nd January 2021



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Dear Sir/Madam

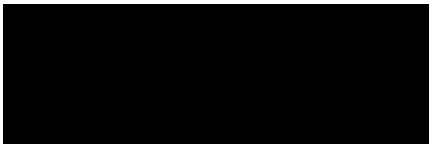
**SCOTTISH BORDERS COUNCIL PROPOSED LOCAL DEVELOPMENT PLAN**

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the affiliation of British Precast, the British Association of Reinforcement (BAR), Eurobitume, QPA Northern Ireland, MPA Scotland and the British Calcium Carbonate Federation, it has a growing membership of 530 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME quarrying companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of UK cement production, 90% of GB aggregates production, 95% of asphalt and over 70% of ready-mixed concrete and precast concrete production. Each year the industry supplies £20 billion worth of materials and services to the Economy and is the largest supplier to the construction industry, which had annual output valued at £151 billion in 2016. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors. For more information visit: [www.mineralproducts.org](http://www.mineralproducts.org).

With reference to the above consultation, we have the following comments to make.

We welcome the opportunity to discuss the comments with the council with a view to addressing our concerns.

Yours faithfully



Nick Horsley  
Director of Planning



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Registered at the above address

## SCOTTISH BORDERS COUNCIL PROPOSED LOCAL DEVELOPMENT PLAN

### Mineral Policies

#### Policy Ed11: Safeguarding of Mineral Deposits

Policy ED11 of the proposed local development plan seeks to address the issue of mineral safeguarding. This policy states:-

***“The council will not grant planning permission for development which will sterilise reserves of economically significant mineral deposits unless:***

- a) extraction of the mineral is likely to be environmentally and socially unacceptable, or***
- b) there is an overriding need for development, and prior extraction of the mineral cannot reasonably be undertaken.”***

The preamble to this policy recognises that Scottish Planning Policy (SPP) confirms the important contribution minerals make to the economy, providing materials for construction, energy supply and other uses, and supporting employment. Consequently the Local Development Plan should safeguard mineral resources and facilitate their responsible use. The aim of Policy ED11 should be to ensure that minerals are not unnecessarily sterilised through inappropriate development, protecting their potential for future generations.

However, Policy ED11 whilst initially direct in its message, that planning permission will not be granted for development which will sterilise mineral “reserves”, is very light on detail and would fall short in what it seeks to achieve.

Firstly, Policy ED11 only seeks to safeguard mineral “reserves” and not mineral resources. To be effective the policy needs to safeguard mineral resources. Arguably mineral reserves should be safeguarded under the “agent of change” principle, as planning permission exists to work the minerals and the development management process should protect the mineral working from the encroachment of inappropriate development.

In land-use planning terms, a *mineral resource* is a concentration or occurrence of material of intrinsic economic interest in or on the Earth’s crust in such form, quality or quantity that there are reasonable prospects for eventual economic extraction. Importantly, a mineral reserve is that part of a mineral resource which can be economically extracted. In the UK this means that for the mineral reserve, a valid planning permission for extraction exists. It is therefore important that the mineral resource is safeguarded by this policy, as the mineral reserve already has a degree of protection thorough a valid planning permission. Paragraph 237 of SPP requires local development plans to *“safeguard all workable mineral resources which are of economic or conservation value and ensure that these are not sterilised by other development.”* It is not clear how this is being achieved by the current policy as worded, as there does not appear to be a plan within the consultation or the supporting documents, which identifies the minerals to be safeguarded. The starting point for minerals safeguarding is usually British Geological Survey data and plans. The Local Planning Authority should identify which minerals it proposes to safeguard from inappropriate development, to ensure these resources remain available for future generations. This may be a range of minerals, including, but not limited too, aggregate minerals, building and dimension stone, industrial minerals and or energy minerals. These minerals may not be being worked in the area at the current time, however, their future economic importance should not be undervalued or overlooked.

Our second concern is sub paragraph ED11a. The wording to this sub-paragraph focusses more on determining that mineral development is not acceptable in an area, than identifying the measures and actions which a non mineral developer should pursue if proposing a development on or adjacent to a safeguarded mineral resource. Whether or not a mineral is likely to be environmentally and socially acceptable is more akin to an EIA associated with a mineral proposal. Any proposed non-mineral development within an area where the mineral is safeguarded should include a mineral resource assessment (MRA) which would determine the extent of the mineral which could potentially be sterilised and look at the wider setting of this. Sterilisation of a mineral is often not confined to the boundary of the proposed conflicting

development. The MRA is the tool which can be used by the local planning authority to assist in determining any non-mineral proposal within an area of safeguarded minerals.

Sub-paragraph ED11b would benefit from identifying the nature of developments which may be acceptable in an area where a mineral is safeguarded.

In addition, the issue of prior extraction needs to be addressed further. Again this may form part of an MRA and will need to look at the nature of the mineral, and other matters such as whether or not a nearby quarry could potential make use of the mineral.

It is also important that this policy seeks to safeguard mineral infrastructure, i.e. on-site and off-site mineral processing plant, ready mix plants, coating plants, transport facilities, etc. The agent of change principle should apply to these.

For information, I am attaching a copy of the Planning Officer's Society and Mineral Products Association Safeguarding guidance. We believe Policy ED11 should be rewritten to reflect the above concerns and would be happy to discuss more appropriate wording for a minerals safeguarding policy, with the Council.

## **POLICY ED12: MINERAL AND COAL EXTRACTION**

SPP requires that planning should take a “positive” approach to enabling high quality development and making efficient use of land. SPP includes a presumption in favour of sustainable development, supporting businesses and employment and promoting responsible extraction of resources.

SPP also requires that plans should support the maintenance of a landbank of permitted reserves for construction aggregates of “at least” 10 years, at all times through the identification of areas of search. As an alternative an LPA may take a criteria based approach. Both approaches may also be adopted by an LPA. At present it is not clear which approach Policy ED12 has followed. The principal aim of ED12 should be to set out the policy for the delivery of minerals to meet the demand, over the plan period, ensuring an adequate supply of individual mineral types and maintaining the requisite landbank.

Policy ED 12 is currently worded as follows.

***“Mineral and coal extraction will not be permitted where:***

***a) It may affect areas designated or proposed for designation under European Directives (Special Areas of Conservation and Special Protection Areas) or Ramsar sites, except in the most exceptional circumstances and where it can be demonstrated conclusively that:***

***- The proposed development will have no adverse effect on site integrity in terms of habitats and species, or***

***- There is an overriding national interest in allowing mineral extraction to take place, and no reasonable alternative exists.***

***b) It may affect National Nature Reserves, Sites of Special Scientific Interest or other environmental designations of national importance unless it can be demonstrated that:***

***- The underlying objectives and overall integrity of the designated area will not be compromised, or***

***- Any significant adverse effects on the environmental qualities for which the site has been designated are clearly outweighed by the national benefits that could accrue from mineral extraction.***

***c) It may affect areas of regional or Local Nature Conservation interest as defined in this Plan and the following other protected areas, namely Conservation Areas, Scheduled Monuments, Historic Gardens and Designated Landscapes, significant archaeological sites and where relevant, their settings, prime quality agricultural land, Special Landscape Areas, National Scenic Areas, peatland and water supply catchment areas, unless it can be demonstrated that:***

- *There is no materially damaging impact, or*
- *There is a public interest to be gained from mining which outweighs the underlying reasons for designating the site or area.*

*d) It is within 500m of a local settlement or proposals will adversely affect residential and other sensitive property or other activities within that community or areas of locally important landscape character unless it can be demonstrated that there are other mitigating circumstances, that the specific circumstances of a proposal indicate the figure should be varied, or that a significant public interest is to be gained from mining which outweighs this safeguarding.*

*e) It is likely to damage the local economy in terms of tourism, leisure or recreation to an unacceptable extent.*

*f) The roads are unsuitable as mineral haulage routes by virtue of their design and construction, the nature of other usage and the relationship of residential and other sensitive property to the road.*

*g) It results in adverse effects which, when combined with the effects of other existing, consented and currently proposed nearby workings, would have a significantly adverse cumulative impact on the environment or local communities.*

*Where the Council is minded to permit development appropriate mitigating measures will be sought to enable a satisfactory development to proceed, and to set out proposals for restoration and aftercare including the preferred financial guarantee option.*

*There will be a presumption against peat extraction and other development likely to have an adverse effect on peatland and/or carbon rich soils within class 1 and 2 peatland areas.”*

The wording of Policy ED12, and the preamble text, is contrary to the requirements of SPP. Firstly, it does not identify the scope of mineral working in the area, such as aggregates and dimension stone and/or other minerals. The policy does not plan positively to commit to the maintenance of a landbank of permitted reserves for construction aggregates of “at least” 10 years, at all times through the identification of areas of search or indeed provide a criteria based approach against which mineral development proposals will be considered. There is no indication in the plan, of the current status of permitted reserves within the area or within any supporting documents, or how the plan will maintain access to reserves throughout the plan period, thereby maintaining the requisite landbank. Neither the preamble nor the policy recognise that, without a steady and adequate supply of minerals, the built development, transport and infrastructure, or renewable energy aspirations of the plan, including protecting local vernacular, simply cannot be achieved. The plan also fails to recognise the economic benefits of minerals development. Further, the progressive restoration of mineral sites assist the delivery of non-built aspirations in the plan, such as biodiversity and amenity opportunities.

As presented Policy ED12 sub paragraph a) to c) are simply a repetition of the environmental policies applicable to a range of landscape, conservation, historic and cultural designations including, but not exclusively EP1, EP2 and EP3. These designations are applicable to all development proposals, not just minerals, and are wholly inappropriate in a policy which should be positively seeking to deliver the mineral needs of the plan area in a sustainable manner. Policy ED12 states where minerals will not be permitted, rather than where mineral development will be permitted. Figure ED12a, seeks to identify “Areas of Search”, and whilst we acknowledge the preamble to Policy ED12 states that Supplementary Planning Guidance will be prepared, it is not evident what criteria have been used to identify the areas of search or indeed the areas of constraint, either moderate or significant. The Council’s guidance on this would be appreciated. Figure ED12a is however illegible.

Subparagraph ED12d) - states that “Mineral and coal extraction will not be permitted where... It is within 500m of a local settlement”. We object strongly to the imposition of an arbitrary 500m buffer zone which is wholly unjustified for a variety of minerals development and seeks to circumvent the roll of the Environmental Impact Assessment. It is contrary to SPP. Minerals can only be worked where they are found and for over 3 decades, the use of EIAs has helped

determine the acceptability of minerals in the environment, including the proximity to settlements or other sensitive land uses.

It would appear that the 500m buffer zone may have been taken from SPP para 244 which is applicable to coal developments. However, para 242 is clear that the provision for other forms of mineral extraction is more flexible allowing for “*the provision of an adequate buffer zone between sites and settlements, taking account of the specific circumstances of individual proposals*”.

Subparagraph ED12d) is too prescriptive, would undermine the development management process, is unsustainable and contrary to SPP.

We believe Policy ED12 should be rewritten to reflect the above concerns and would be happy to discuss more appropriate wording for a minerals safeguarding policy, with the Council.

## **Other Policies**

### **Policy EP1: International Nature Conservation Sites and Protected Species**

Scottish Planning Policy, paragraph 214 states that;

#### *“Protected Species*

*The presence (or potential presence) of a legally protected species is an important consideration in decisions on planning applications. If there is evidence to suggest that a protected species is present on site or may be affected by a proposed development, steps must be taken to establish their presence. The level of protection afforded by legislation must be factored into the planning and design of the development and any impacts must be fully considered prior to the determination of the application. Certain activities - for example those involving European Protected Species as specified in the Conservation (Natural Habitats, &c.) Regulations 1994 and wild birds, protected animals and plants under the Wildlife and Countryside Act 1981 - may only be undertaken under licence. Following the introduction of the Wildlife and Natural Environment (Scotland) Act 2011, Scottish Natural Heritage is now responsible for the majority of wildlife licensing in Scotland.”*

Policy EP1 states that;

*“Where a development proposal is sited where there is the likely presence of European Protected Species (EPS), the Planning Authority must be satisfied that:*

- a) there is no satisfactory alternative, and*
- b) the development is required for preserving public health or public safety or for other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance to the environment, and*
- c) the development is not detrimental to the maintenance of the population of a EPS at a favourable conservation status in its natural range.”*

We appreciate that this policy seeks to provide the tools for the Local Planning Authority to determine planning applications, however, we feel the policy as worded goes beyond the requirements of SPP. SPP indicates that where a protected species is present on site or may be affected by a proposed development, there is a mechanism to manage any impacts. This is reflected within the protected species licencing legislation. Moreover, there is a range of accepted and widely used measures which can be deployed to mitigate potential adverse impacts upon protected species e.g. badger sett relocation, provision of bat boxes etc.

Policy EP1 would appear to present a barriers to any form of development which is sited where there is the likely presence of protected species. It would appear that the policy requires all three tests in subparagraphs a), b) and c) to be met if there is a presence of protected species. In particular, Test b) would appear to exclude all forms of development where there is the likely presence of Protected Species.

We feel this policy should be reviewed and reworded to accord with SPP and reflect the ability to licence the potential effects of development on protected species through Nature Scot’s licencing regimes.

### **Policy EP7: Listed Buildings, & Policy EP9: Conservation Areas**

Whilst in general we are supportive of the approach, we feel both policies would benefit from references to local vernacular and the use of local materials for both repair to existing buildings and to ensure new buildings enhance the character of the area and settings. This policy ethos should also be reflected in the Minerals Policy to support the use of local building and dimension stone. Both policies would benefit from identifying the criteria against which new developments are deemed to “adversely” affect a particular building, location and/or setting. As currently worded, Policy EP7 states “New development that adversely affects the setting of a Listed Building will not be permitted”. However, other policies such as Policy EP15 Development Affecting the Water Environment, set a test of “*significant*” *adverse effect*. We would seek parity and consistency of approach across policies.