

Response ID ANON-VDDE-RPSP-8

Submitted to **Proposed Scottish Borders Local Development Plan**

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About you

Are you responding as an: individual, group / organisation, agent?

Group / organisation

Group / organisation

Group / organisation

Group / organisation:

Breedon Northern Ltd

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Proposed Local Development Plan Menu

Where would you like to go?

Submit your response to the consultation (Exit)

Comment on Policies

Which Policy are you commenting on?

Policy:

Policy EP1 International Nature Conservation Sites and Protected Species

What are your comments regarding this Policy?:

Breedon has no objection to the first part of Policy EP1, which relates to designated sites. We do however have concerns relating to the section relating to Protected Species. 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."

This policy, as worded, sets significant barriers to any form of development which is sited where there is the likely presence of protected species. The policy, as worded, requires all three tests ((a) and (b) and (c)) to be met if protected species are likely to be present. Test (b) is particularly onerous and would limit the implementation of virtually all forms of development where there is the likely presence of Protected Species.

Scottish Planning Policy, paragraph 214 states that;

"Protected Species

214. 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."

It is considered that Policy EP1 is contrary with SPP para 214. Policy EP1 should recognise the mitigation measures which can be implemented, often under licence, in order to enable development to be undertaken in an area where protected species are present without causing an unacceptable impact on these species. We therefore consider that Policy EP1 should be amended to reflect these circumstances.

What would you like to do now?

Comment on other Policies

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Which Policy are you commenting on?

Policy:

Policy EP7 Listed Buildings

What are your comments regarding this Policy?:

With regards to impact on setting of a Listed Building, we would suggest the wording be amended to cater for instances where development leads to minor (but acceptable) impact on the setting of a listed building.

There can be circumstances where a major development could lead to a minor impact on the setting of a listed building, but this impact could be outweighed by the wider beneficial impacts of the development (such as economic, environmental or social benefits). As currently drafted, any impact on the setting of a listed building, no matter how minor, could be deemed a departure from the LDP.

It is suggested that the wording of the Policy is amended to allow a degree of balancing to be undertaken by the planning authority when assessing impacts, both adverse and beneficial, of a development proposal.

Which Policy are you commenting on?

Policy:

Policy ED12 Mineral and Coal Extraction

What are your comments regarding this Policy?:

Policy ED12 – General

The wording of Policy ED12, and the preamble text, is negatively worded towards mineral development and fails to identify beneficial effects of mineral development. The policy appears to gather together other environmental protection policy from elsewhere in the plan (Policies EP1 to 17) and contains little policy specifically related to minerals development.

Minerals can only be worked where they are found. Construction aggregates are relatively low value bulk products which are produced in large volumes. It is essential that minerals are produced close to market areas in order to minimise environmental impact and cost associated with their transportation.

Planning authorities have a responsibility to maintain at least a 10 year landbank of permitted reserves at all times in all market areas and this should be set out, first and foremost, within Policy ED12 (see SPP, para 238).

Virtually all forms of built development within Scotland rely on the provision of cement, concrete, asphalt and aggregates. The Minerals Industry is therefore an essential element of the national and local economy and provides vital support to, most notably, the construction and building industry. The construction of houses, schools, hospitals, roads etc all rely on a steady supply of construction aggregates.

Each year the industry in the UK supplies £20 billion worth of materials and services to the economy and is the largest supplier to the construction industry, which has annual output valued at around £144 billion. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors.

In addition, restored mineral working provide excellent opportunities for biodiversity enhancement, recreation and a range of other uses. Appropriate and sustainable minerals restoration represents potentially the biggest terrestrial habitat expansion opportunity across large swathes of land in the UK. The minerals industry, through its restoration work, is uniquely placed to help deliver against national and international biodiversity targets.

The 2019 State of Nature report is a healthcheck on how the UK's wildlife is faring. It is put together using wildlife data from a group of 50 conservation organisations. The report notes that biodiversity-led mineral restoration schemes can help counter declines in wildlife – for example, 13% of endangered Bittern now nest in UK restored quarries.

It is therefore considered that Policy ED12 and the preceding text should recognise the importance of the minerals industry in its support to the national and local economy and the beneficial social, environmental and economic impacts that the industry can bring to ensure that a planning balance can be found when determining planning applications for minerals development.

Policy ED12 (a), (b) & (c)

Policy ED12 parts (a), (b) & (c), state that;

"Mineral and coal extraction will not be permitted where:

(a) It may affect"

The use of the terminology "may affect" is ambiguous and is not consistent with SPP.

Paragraph 207 of SPP relates to Natura 2000 sites and refers to proposals likely to have a "significant effect" on these sites or impact on the "integrity of the site".

Similarly, paragraph 212 of SPP, relating to National Designations, refers to "significant adverse effects on the qualities for which the area has been designated".

Policies EP1 and EP2 of the proposed LDP adopts similar terminology as that contained within SPP and it is therefore requested that the wording of Policy ED12 is amended to reflect these policy tests and ensure the plan deals with these designations consistently for all forms of development.

Policy ED12 (d) – Buffer Zones

Policy ED12 part d), states that "Mineral and coal extraction will not be permitted where... It is within 500m of a local settlement". Breedon objects to the setting of an arbitrary buffer around settlements for all mineral sites.

Our objection to the use of a 500m buffer zone can be grouped into the following issues;

1. It is contrary to Scottish Planning Policy (SPP, 2020)
2. It devalues Environmental Impact Assessment (EIA)
3. Aggregate mineral extraction should not be treated in the same way as coal extraction.

Scottish Planning Policy (2020)

When reading the section of SPP titled "Promoting Responsible Extraction of Resources", it is clear that paragraphs 242 to 244 relate to different sub-sectors of the mineral industry.

Paras 242 to 244 of SPP state;

"242. Operators should provide sufficient information to enable a full assessment to be made of the likely effects of development together with appropriate control, mitigation and monitoring measures. This should include the provision of an adequate buffer zone between sites and settlements, taking account of the specific circumstances of individual proposals, including size, duration, location, method of working, topography, the characteristics of the various environmental effects likely to arise and the mitigation that can be provided."

243. Borrow pits should only be permitted if there are significant environmental or economic benefits compared to obtaining material from local quarries; they are time-limited; tied to a particular project and appropriate reclamation measures are in place.

244. Consent should only be granted for surface coal extraction proposals which are either environmentally acceptable (or can be made so by planning conditions) or provide local or community benefits which clearly outweigh the likely impacts of extraction. Site boundaries within 500 metres of the edge of settlements will only be environmentally acceptable where local circumstances, such as the removal of dereliction, small-scale prior extraction or the stabilisation of mining legacy, justify a lesser distance. Non-engineering works and mitigation measures within 500 metres may be acceptable."

It is clear from reading SPP that paragraph 244 relates specifically to coal extraction proposals.

For other forms of mineral development, such as construction aggregates, borrow pits, coal bed methane extraction, an 'adequate buffer zone' should be provided, 'taking account of specific circumstances of individual proposals', in accordance with paragraph 242 of SPP.

Setting a 500m buffer for all mineral development does not therefore take into account specific circumstances of individual proposals including size, duration, location, method of working, topography, the characteristics of the various environmental effects likely to arise and the mitigation that can be provided. The policy, as drafted, is therefore contrary to SPP, para 242.

Environmental Impact Assessment

Environmental Impact Assessment (EIA) is a requirement for the majority of proposals for new mineral sites, or extensions to existing mineral sites (see Schedules 1 & 2 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 "EIA Regs"). EIA is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects (See para 4, Circular 1/2017). Schedule 4 of the EIA Regs sets out the information which is required to be submitted with an EIA. Where EIA is not required for mineral development, individual assessments can still be undertaken to consider impact of the development in relation to issues such as noise, dust and vibration.

EIA will assess a minerals development proposal against existing policy and guidance relating to issues such as noise, dust, vibration and transport, which are the key issues which could lead to effects on residential amenity. EIA is therefore an important tool in assessing the potential environmental impact of a minerals development and determining an adequate buffer which should be applied to settlements and individual residential properties.

By applying an arbitrary 500m buffer around settlements, as proposed within Policy ED12, the policy devalues the EIA process and potentially sterilises large quantities of mineral which could otherwise be worked in accordance with all other policy and guidance.

Aggregate Mineral Extraction & Coal Extraction

Not all minerals development is the same. Minerals development can vary considerably in terms of its nature and scale and therefore in its potential to lead to impact on residential amenity.

The scale of both hard rock and sand and gravel quarry operations are not comparable to those of the surface coal mining industry. Quarry operations require to remove only a limited amount of material before reaching the product to be extracted, whereas Surface Coal Mining generally requires the removal of vast quantities of overburden (rock) before it reaches the coal it wishes to extract. This material is removed and stored in large overburden stores before (usually) being returned to the opencast coal void creating the potential for significant amenity impacts. Quarry operations are therefore far smaller in depth of excavation and lateral extent and tend to utilise smaller plant and machinery. As a result, quarrying tends to have a far smaller potential to cause amenity issues.

In this respect quarry operations are able to operate in closer proximity to residential dwellings, with limited potential for impacts, than coal extraction. For example, sand and gravel operations in the proximity of receptors can be limited, following an initial soil strip, to the operation of a single machine at a quarry face to dig/excavate the sand and gravel which is then placed directly onto a field conveyor by this machine and transported to a remote plant site for processing. These operations are therefore more similar to agricultural operations than coal extraction.

The amenity impacts of quarrying may therefore be very limited at standoffs significantly less than 500m to settlements. This has been demonstrated on many occasions whereby impacts on amenity resulting from noise, dust and vibration have been assessed by detailed study, often EIA, as part of a planning application. Thereafter, operations are regulated through planning condition with stringent limits imposed in accordance with the requirements of Scottish Government Guidance contained, for example, in Planning Advice Note 50 "Controlling the Environmental Effects of Surface Mineral Workings" and compliance with these limits is demonstrated through monitoring.

Summary

It is considered that Policy ED12, as currently drafted, is contrary to SPP, devalues the EIA process and should not treat aggregate mineral development in the same way as coal extraction.

A significant percentage of existing quarry sites across Scotland are permitted within 500m of residential property, including within Scottish Borders. If this policy is retained in its present form, Breedon considers that it will lead to the unnecessary sterilisation of aggregate resources and may severely prejudice the councils ability to secure an adequate and steady supply of minerals in accordance with the aims of the plan and the requirements of Scottish Planning Policy (Paragraph 238).

Taking all the above into account, buffer zones for sand and gravel and hard rock extraction should be considered on a case by case basis in accordance with paragraph 242 of SPP and the Council should not impose a buffer zone limit for aggregates.

Which Policy are you commenting on?

Policy:

Policy ED11 Safeguarding of Mineral Deposits

What are your comments regarding this Policy?:

It is understood that the Mineral Products Association have made representations with regards to Policy ED11 and we support these representations.

Which Policy are you commenting on?

Policy:

What are your comments regarding this Policy?:

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What would you like to do now?

Proposed Local Development Plan Menu (includes Exit option)