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Our ref: NOD/SLS/001  
9 February 2016

Dear Mr Kelly

**NOTICE OF INTENTION**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
THE TOWN AND COUNTRY PLANNING (REFERENCE OF APPLICATIONS) (SOUTH  
LANARKSHIRE COUNCIL) (PROPOSED EXTENSION TO MINERAL EXTRACTION  
OPERATIONS AND ASSOCIATED RESTORATION AND ENHANCEMENT WORKS AT  
HYNDFORD QUARRY, LANARK) DIRECTION 2013**

1. We refer to the planning application submitted by Cemex UK Operations Limited, for the above-mentioned development.
2. On 26 June 2015, Ministers issued a Notice of Intention to grant planning permission for the southern extension only. Consequently, the appointed reporters were instructed to prepare a supplementary report with their advice regarding what legal agreements/planning obligations and conditions would be appropriate in order for the southern extension to be granted. A copy of Mr Dan Jackman BA (Hons) MRTPI and Mr Alasdair Edwards MA (Hons) MRTPI supplementary report to Scottish Ministers is enclosed for your information.
3. Chapter 1 of the supplementary report provides the relevant factual background in relation to legal agreements and conditions for the southern extension only. Chapter 2 summarises the comments made by the main parties and Sir William Lithgow. Chapter 3 includes the reporters' reasoning and conclusions. The reporters' recommended heads of terms for a set of planning obligations under Section 75 of the Act and appropriate planning conditions are set out in Appendix 1.

4. The reporters' overall conclusions are set out on pages 17 and 18 and their recommendation is that planning permission should be granted, subject to conditions and the conclusion of the specified planning obligations covering the heads of terms set out in Appendix 1 of the report.

5. Scottish Ministers have carefully considered all the evidence presented at the conditions hearing session held on 21 August 2014 and by written representations as completed on 16 October 2015.

6. Scottish Ministers accept the reporter's findings and hereby give notice that they are minded to grant permission for the southern extension works at Hyndford Quarry, Lanark, South Lanarkshire, subject to conditions and the conclusion of the specified planning obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) covering the heads of terms as set out in Appendix 1 of the report. Scottish Ministers accordingly defer issuing formal planning consent for a period of three months to enable the relevant planning obligation to be completed and registered or recorded, as the case may be. If, by the end of the three months period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, Ministers will consider whether planning permission should be refused or granted without a planning obligation.

7. A copy of this letter and the reporters' report has been sent to South Lanarkshire Council and parties who participated at the hearing and in the exchange of written representations. Other interested parties have received a letter advising that they can obtain a copy of this letter and report from DPEA's website or from this office.

Yours sincerely

**LYNDSEY MURRAY**

Directorate for Planning and Environmental Appeals

## Supplementary report to the Scottish Ministers



### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by Dan Jackman and J Alasdair Edwards, reporters appointed by the Scottish Ministers

- Case reference: NOD-SLS-001
- Site Address: Hyndford Quarry, Lanark, South Lanarkshire, ML11 9TA
  - Application for planning permission dated 23 November 2012 called-in by notice dated 29 January 2014
  - The development proposed: extension to mineral extraction and associated restoration and enhancement works
  - Date of further written submissions: Comments requested 17 July 2015. Exchange completed 16 October 2015

Date of this report and recommendation: 16 November 2015

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DPEA case reference: NOD-SLS-001

The Scottish Ministers  
Edinburgh

Ministers

In accordance with your notice of intention dated 26 June 2015, we enclose a supplementary report providing advice as to the appropriate planning obligations and conditions that should be attached if planning permission was to be granted only for the proposed southern extension of Hyndford Quarry.

On the 17 July 2015, we sent to Cemex UK Operations Ltd, South Lanarkshire Council and the New Lanark and Falls of Clyde Working Group a draft heads of terms for an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) and a draft set of planning conditions for their consideration and comments. This draft had been prepared by the reporters based on their notes made during the conditions hearing session held on 21 August 2014. The initial exchange was completed on 21 August 2015. However, on 23 September 2015 the New Lanark and Falls of Clyde Working Group requested the opportunity to make further comments. We agreed to this request and invited the applicant and the council to comment. The final exchange of written comments was completed on 16 October 2015.

On 6 August 2015, Sir William Lithgow, who had made written submissions to the original examination, wrote to Scottish Ministers. Amongst other matters, this letter included a comment in relation to conditions. This letter was passed to the reporters on 7<sup>th</sup> September 2015 and the main parties were then invited to comment. The main parties had no comments to make.

Chapter 1 of the supplementary report provides the relevant factual background in relation to legal agreements and conditions for the southern extension only. Chapter 2 summarises the comments made by the main parties and Sir William Lithgow. Chapter 3 includes our reasoning and conclusions. Our recommended heads of terms for a set of planning obligations under Section 75 of the Act and appropriate planning conditions are set out in Appendix 1.

Throughout this supplementary report, in the interests of brevity, we have cross-referred to relevant documents and submissions by way of hyperlinks to the DPEA website. It should also be noted that any reference to a condition number refers to the draft prepared by us and circulated on 17 July 2015.

## CHAPTER 1: BACKGROUND

1.1 Hyndford sand and gravel quarry was first granted planning permission in 1964. The current quarry operations are controlled by planning permission reference CL/11/0285<sup>1</sup>. The current operator and applicant, Cemex UK Operations Limited, acquired the existing quarry in 2005. The quarry produces a range of sand and gravel products for the construction industry, including concrete blocks.

1.2 On 23 November 2012, the applicant submitted a planning application to South Lanarkshire Council to extend the existing quarry. The red line of the planning application generally relates to three areas: (1) the existing quarry operation; (2) an area to the south as far as the River Clyde; and (3) an area to the west, as far as the edge of the gorge. The areas of actual mineral extraction within the red line were the existing permitted quarry, a southern extension and a western extension. The proposed southern extension would expand the area of mineral extraction but this area was within the boundary of the existing permission for the quarry.

1.3 South Lanarkshire Council considered the application in December 2013 and were minded to grant planning permission, subject to conditions and a Section 75 agreement (now referred to as a planning obligation). On 29 January 2014, the planning application was called-in by Scottish Ministers for their determination. Consequently, two reporters were appointed to prepare a report and recommendations to Scottish Ministers.

1.4 Between 18 and 21 August 2014, we held three hearing sessions to inform our report. This included a hearing session on legal agreements/planning obligations and conditions in the event that Scottish Ministers should decide to grant planning permission. One of the items discussed at this hearing was item 5: “Planning conditions in the event Scottish Ministers’ grant planning permission for the southern expansion only”. Historic Scotland had no position in relation to these matters and took no active part in that hearing session.

1.5 Our report was submitted to Scottish Ministers on 20 February 2015<sup>2</sup>. The summary of cases for each of the main parties in our report included the parties’ position on conditions for the southern extension only. Our reasoning and conclusion in relation to legal agreements/planning obligations and conditions, including granting planning permission for the southern extension only are set out in paragraphs 9.153 – 9.170 of the report.

1.6 On 26 June 2015 Scottish Ministers issued a notice of intention<sup>3</sup>. Scottish Ministers were minded to grant planning permission for the southern extension only. Consequently, the reporters were instructed to prepare a supplementary report with their advice regarding what legal agreements/planning obligations or conditions would be appropriate if only the southern extension was to be granted.

1.7 Our original report contained a set of recommended conditions if Scottish Ministers had been minded to grant planning permission for the submitted application. These conditions were based on those proposed by South Lanarkshire Council, which were very largely agreed by the applicant. Many of these conditions are in turn based on the conditions that apply to the existing quarry. In general terms, if only the southern extension was granted, the following would need to be done:

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<sup>1</sup> [Planning permission reference CL/11/0285](#)

<sup>2</sup> [Report to Scottish Ministers dated 20 February 2015.](#)

<sup>3</sup> [Scottish Ministers Notice of Intention dated 26 June 2015.](#)

- Remove phase 1 (i.e. the western extension) from the approved plans.
- Require revised details of the area of land between the existing quarry and the proposed western extension that would not now be developed.
- Edit and/or delete conditions to make sure that they were relevant only to the existing quarry and southern extension.

1.8 Based on our notes of the discussion held at the hearings we prepared a set of proposed heads of terms for a legal agreement and a set of planning conditions. On 17 July 2015, we issued a procedure notice to the applicant, the council and the New Lanark and Falls of Clyde Working Group. The procedure notice requested comments on our draft and comments on the comments of the other parties. This exchange of written submissions was ultimately completed on 16 October 2015. Any reference to a condition number in this report therefore refers to the number used in the set of conditions circulated on 17 July 2015<sup>4</sup>.

1.9 Separately, Sir William Lithgow, who had made written representations to the original examination, wrote to Scottish Ministers on 6 August 2015. Amongst other matters, the letter included comments on conditions<sup>5</sup>. This letter was forwarded to the reporters on 7 September 2015. Comments on this letter were invited from the main parties. However, the main parties had no comments to make.

1.10 The legislative basis for planning obligations is set out in Sections 75, 75A, 75B and 75C of the Town and Country Planning (Scotland) Act 1997 (as amended). Scottish Ministers guidance is contained in [Scottish Government Circular 3/2012 – Planning Obligations and Good Neighbour Agreements](#).

1.11 The legislative basis for the imposition of planning conditions is set out in Sections 37 and 41 of the Act. Scottish Ministers guidance and advice on the use of planning conditions is contained in [Circular 4/1998 - The Use of Conditions in Planning Permissions](#), this includes reference to legal principles that have been developed through case law. It should be noted that Section 42 of the Act permits applications to develop land without compliance with conditions previously attached.

<sup>4</sup> [Issued procedure notice dated 17 July 2015 including proposed heads of terms and conditions.](#)

<sup>5</sup> [Letter from Sir William Lithgow dated 6 August 2015.](#)

## CHAPTER 2: COMMENTS MADE BY THE MAIN PARTIES

### Comments made on the reporters' draft conditions

#### Cemex UK Operations Limited<sup>6</sup>

- 2.1 No comments were made in relation to the proposed heads of terms for a planning obligation. Comments were made in relation to conditions 3, 5, 7, 11, 19 and 21.
- 2.2 Condition 3 – Instead of operations discontinuing in December 2030 they should be discontinued in December 2040. This is because the southern extension area is likely to contain only fine sands. There is less demand for fine sands as the core business is coarse aggregate for the concrete market. The reserves of coarse sand and gravel were predominately located in the western extension. Extraction of material has to align with market demand. The rate of extraction for the southern extension area only, is more likely to be between 150,000 to 200,000 tonnes per annum. Therefore, a longer timescale should be permitted.
- 2.3 Condition 5 – The period should be increased from 12 to 24 months. For similar reasons as stated above, the demand for fine sand is less, extraction may have to cease for periods of time in excess of 12 months so that the applicant can sell from sand stocks until levels of production are sustainable again.
- 2.4 Condition 7 – It is not reasonable to be required to provide enhancements to the southern extension area if consent is not granted for the more substantial and valuable coarse mineral rich western extension area. The existing restoration scheme approved under planning permission CL/11/0285 should suffice for restoration of phases 2A, 2B and 3<sup>7</sup>. If condition 7 was removed, there would be consequential changes to conditions 9 and 33.
- 2.5 Condition 11 – circumstances have moved on since the hearing session held a year ago and in order to remain competitive the quarry should be allowed to open between 06:00 – 20:00 week days with no restrictions on public or local bank holidays.
- 2.6 Condition 19 – this condition is unnecessary as the southern extension would not result in any changes to the roads currently used.
- 2.7 Condition 21 – the importation of cement and other materials should be increased from 50,000 to 100,000 tonnes per annum. As explained previously, without the coarse mineral deposits it is likely that the importing of aggregates on site for blending will be necessary if the quarry is to remain economic.

#### South Lanarkshire Council<sup>8</sup>

- 2.8 The council would request that an agreement under Section 96 of the Roads (Scotland) Act 1984 be secured as a planning obligation in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). The reason for this is that a

<sup>6</sup> [Response from Cemex UK Operations Limited dated 7 August 2015.](#)

<sup>7</sup> Restoration scheme plan from planning permission CL/11/0285 page 6 of submission <http://www.dpea.scotland.gov.uk/Document.aspx?id=289354>

<sup>8</sup> [Response from South Lanarkshire Council dated 7 August 2015.](#)



Section 96 agreement is difficult to enforce in practice. Any costs have to be recovered from the vehicle operator. However, it can sometimes be difficult to identify the operator. In particular, there can be many heavy vehicle movements, the site owner is often not the vehicle operator and operators can change over the duration of the planning permission. On the other hand, it is relatively easy for the site operator to identify the heavy vehicles visiting its premises.

2.9 The council has had other unfortunate experiences regarding the enforcement of Section 96 agreements. It is binding only on the party who signed the agreement. Any changes to the operator can render the Section 96 agreement unenforceable, resulting in the council being unable to recover significant amounts of money

2.10 It would be inappropriate to use a planning condition requiring a Section 96 agreement to be signed by the applicant. However, it would be competent and comply with the relevant tests for there to be a planning obligation to have a Section 96 agreement in place for the duration of the consent.

2.11 The council also suggested minor alterations to the detailed wording of conditions 1, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 18, 19, 22, 23, 24, 26, 27, 28, 31, 33, 36, 37, 38, 40 and 41.

### *The New Lanark and Falls of Clyde Working Group<sup>9</sup>*

2.12 A planning condition or the heads of terms for the planning obligation should include the requirement for the establishment of a liaison group. The group should include three representatives of the working group in order to ensure appropriate input from key stakeholders regarding the protection and enhancement of the New Lanark World Heritage Site and the Falls of Clyde Designed Landscape.

2.13 Condition 1 – should be revised to exclude any mineral extraction from the New Lanark World Heritage Site Buffer Zone, the Falls of Clyde Designed Landscape and 50 metres from these designated sites. The reason for the condition should be consistent with the reasoning contained in the decision letter, otherwise the decision would be vulnerable to judicial review.

2.14 Condition 2 – in addition, no mineral working should take place within a buffer strip of at least 50 metres adjacent to the Drove Road and its extension adjacent to the track towards the property known as Boat Haugh.

2.15 Condition 3 – As phase 1 was intended to take 5 years to quarry, it is questioned why the time for completion is reduced by only 2 years.

2.16 Conditions 12 and 13 – question the consolidation of the council's original wording with less specific terms.

2.17 Condition 44 – reword as the existing landforms should be fully recorded prior to their removal.

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<sup>9</sup> [Response from The New Lanark and Falls of Clyde Working Group dated 6 August 2015.](#)

## Comments made on other parties' comments

### Cemex UK Operations Limited<sup>10</sup>

#### *a) Comments on South Lanarkshire Council's comments*

2.18 No comments to make on the council's proposed revisions to the detailed wording of a number of conditions. The council's proposed revised wording for condition 19 and its new condition is also acceptable.

2.19 In relation to condition 7, it should be noted that the council did not require an enhancement scheme in relation to the conditions applied to consent reference CL/11/0285. The enhancements previously proposed related solely to the western extension area. As the southern extension area is some considerable distance from the New Lanark World Heritage Site, any enhancements (as opposed to restoration) are not necessary.

#### *b) Comments on The New Lanark and Falls of Clyde Working Group's comments*

2.20 The reason for the establishment of a liaison group was in relation to the significant proposals for enhancement regarding the western extension area. There is no reason for a liaison group in relation to the southern extension only. South Lanarkshire Council has access to expert advice, if appropriate. The southern extension is not controversial and is not comparable with the development at Menie Estate, Aberdeenshire or with other mineral developments. Neither a condition nor a planning obligation would comply with the relevant Scottish Government guidance. In any event, the detailed wording provided would only establish a liaison group, it would not oblige the council to consult with such a group.

2.21 Amendments to conditions 1 and 2 – It is unnecessary to create a further buffer strip. Condition 2 requires the details of the western boundary to be approved by South Lanarkshire Council, which will address the matters raised by the New Lanark and Falls of Clyde Working Group. The reporters' conditions 12 and 13 are considered appropriate. There are no noise or dust problems at the site at present.

2.22 Amended condition 44 – The reporters' wording is appropriate. It should be noted that a wide working face is used which is gradually worked. The most efficient way for geological and geomorphological recording is to allow access as the extraction proceeds. Allowing recording prior to extraction is impractical and would mean extraction operations would have to be suspended.

2.23 Due to the misapprehension by the New Lanark and Falls of Clyde Working Group, the process for commenting on conditions has had to be extended from 24 August 2015 to 16 October 2015, thus further delaying the final decision on the application.

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<sup>10</sup> Rebuttal responses from Cemex UK Operations Limited dated [21 August 2015](#) and [12 October 2015](#).

## South Lanarkshire Council<sup>11</sup>

### *a) Comments on CEMEX Operations UK Limited's comments*

2.24 The proposed amendments to conditions 3, 7, 11 and 21 would constitute a substantial change to the application proposed. Reference is made to the cases of *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another (1982) 43 P+CR 233*<sup>12</sup> and *Walker v City of Aberdeen Council 1998 SLT 427*<sup>13</sup>. These proposed amendments raise substantial new planning issues not raised in the original objection. It would not be competent for the reporters to impose such conditions.

2.25 In relation to extending the timescale of operations (condition 3) this could more appropriately be carried out by an application under Section 42 of the Act, should circumstances justify. An extension of time by 10 years beyond that originally proposed should not be accepted.

2.26 In relation to condition 5, 12 months is considered to be a reasonable period. Twenty four months would have an adverse impact on the amenity of the surrounding area and is not acceptable.

2.27 Condition 7 remains appropriate in order to make sure that restoration/enhancement works proposed in zones B, C and D are completed. The suggested changes to the hours of operation (condition 11) materially change the original proposal and therefore should not be accepted.

2.28 Increasing the limit on the importation of materials to the site (condition 21) will generate an increase in vehicle movements. This increase has not been assessed as part of the transport assessment that accompanied the original application. In any event, condition 21 as drafted by the reporters allows an increase to be agreed by the council if accompanied by the appropriate supporting information.

2.29 In the light of Cemex UK Operations Ltd comments on condition 19, the council has suggested an alternative wording. In addition, a new condition is suggested to prevent debris being carried onto the public road.

### *b) Comments on The New Lanark and Falls of Clyde Working Group's comments*

2.30 The establishment of a liaison group either by a planning condition or as a planning obligation is not necessary and would not be legally competent. South Lanarkshire Council can consult with Scottish Natural Heritage and Historic Scotland as well as its own Countryside and Greening Service. There is no need to consult with the New Lanark and Falls of Clyde Working Group in order to ensure that the restoration and enhancement proposals are acceptable. References by the council in its submissions to consulting with the Scottish Environment Protection Agency and the surrounding community are not comparable situations and do not provide suitable justification for the requirement to set up a liaison group.

<sup>11</sup> Rebuttal response from South Lanarkshire Council dated [13 August 2015](#) and [16 October 2015](#).

<sup>12</sup> [Copy of Wheatcroft Ltd v Secretary of State for the Environment and Another \(1982\) 43 P+CR 233](#).

<sup>13</sup> [Copy of Walker v City of Aberdeen Council 1998 SLT 427](#).

## New Lanark and Falls of Clyde Working Group<sup>14</sup>

### *a) Comments on Cemex UK Operations Ltd.'s comments*

2.31 Both the applicant and the council consider that the establishment of a liaison group is unnecessary. The New Lanark and Falls of Clyde Working Group would argue that a liaison group is both necessary and reasonable (and with precedent) and would comply with the relevant guidance. Arguments in favour include:

- Other proposed planning conditions refer to the council consulting with other parties as part of the condition approval process (see condition 28 which refers to the Scottish Environment Protection Agency).
- The council in response to some of the comments from Cemex UK Operations Ltd have stressed the need to consult with the surrounding community. The New Lanark and Falls of Clyde Working Group comprises a number of local and national organisations which can fairly be considered to represent the surrounding community.
- There was no objection from Cemex UK Operations Ltd and the council to the setting up of a liaison group for the western extension area.
- A liaison group is considered necessary to ensure the continuing protection of the setting of the buffer zone and the designed landscape. It is unreasonable that there should be no provision for the community or expert consultation in the approval of the various outstanding matters.
- The New Lanark and Falls of Clyde Working Group has a spread of expertise and could therefore fulfil a similar role as the Menie Environmental Management Group endorsed by Scottish Ministers for the golf course and resort complex at Menie Estate, Aberdeenshire.
- It is stressed that the New Lanark and Falls of Clyde Working Group is not seeking disproportionate measures for restoration and enhancement. However, detailed matters relating to working, finished levels, landscape treatment and access arrangements as they affect the setting of the World Heritage Site and the designed landscape require especially sensitive consideration.

2.32 The applicant considers that a 50 metre buffer strip is not necessary to protect the setting of the World Heritage Site. The New Lanark and Falls of Clyde Working Group argue that their revisions to conditions 1 and 2 are both necessary and reasonable, although the precise purpose can only be clarified with reference to the terms of the final decision letter.

2.33 It is anticipated that the justification for the Scottish Ministers' decision will not only include the setting of the World Heritage Site but also the setting of the Falls of Clyde Designed Landscape. The setting of the drove road, the boundary wall and the site of Boat Haugh also need to be protected in their own right.

2.34 In addition, the following points are relevant:

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<sup>14</sup> Rebuttal responses from the working group dated [13 August 2015](#) and [4 October 2015](#).

- There is already a buffer strip for the pre-existing consent.
- The extent of the workings would not be controlled unless a buffer strip is required.
- A buffer strip would screen the workings from the Bonnington Estate and other views. In the longer term, a buffer strip would also screen the inevitably man made restored workings. This would avoid an unfortunate contrast with the visually distinctive natural features of the designed landscape immediately to the west. The effectiveness of the screening by a buffer strip was noted on the site visit.
- The working group proposed a 100 metre buffer strip at the conditions hearing which was not objected to by Cemex UK Operations Ltd at the time<sup>15</sup>.

2.35 The extension of the life of the quarry (condition 3) cannot be agreed. Extending the life of the quarry was not discussed at the conditions hearing session under item 5. The original planning application and associated material is based on the tonnage to be extracted, not on its possible composition. Extending the life of the quarry would raise fundamental questions about the overall phasing and whether that should be altered to protect the New Lanark World Heritage Site's buffer zone and the Falls of Clyde Designed Landscape. Again, in relation to the proposed amendment to condition 5, the applicant did not say this at the appropriate hearing session.

2.36 In relation to condition 7, it is argued that the enhancement of the entire area surrounding the southern expansion, especially the Drove Road and Boat Haugh is an essential part of the Area of Great Landscape Value/Special Landscape Area. There is no basis for the deletion of condition 7, although it is accepted that the relevance and cost burden must be reasonable. The extension of the operating hours in condition 11 is also questioned.

2.37 In relation to condition 44, the applicant argues that the suggested addition would be unnecessary and result in the suspension of operations. The New Lanark and Falls of Clyde Working Group are not suggesting invasive investigation of deposits prior to working but the topographical survey of the landforms which need not impact on operations.

### **Sir William Lithgow**

2.38 In a letter dated 6 August 2015, Sir William Lithgow hopes that Scottish Ministers' would be able to attach conditions that deliver public access, sustainable conservation of the historic river side area of great beauty and the ruin of Boathaugh.

<sup>15</sup> [See condition 59 – Document A22, Conditions spreadsheet.](#)

## CHAPTER 3: OVERALL CONCLUSIONS AND RECOMMENDATIONS

3.1 Overall, there were relatively few areas of dispute between the three main parties. Where disagreements occur, we have primarily referred to the guidance and advice in relation to the use of planning conditions or planning obligations respectively.

3.2 We also took account of the fact that there is an existing planning permission which this decision is intended to consolidate. Finally, it is necessary to bear in mind the terms of the application itself.

3.3 We would remind Scottish Ministers that South Lanarkshire Council had reservations about the legal competency of granting planning permission for the southern extension only and to some of the suggestions made by the applicant. The New Lanark and Falls of Clyde Working Group also considered that it was important for the reasons for conditions 1 and 2 to be drawn from the overall justification in the final decision letter to avoid a successful legal challenge.

### Planning obligations

3.4 There was no dispute between the parties that it was necessary to revoke the existing planning permission CL/11/0285 and consolidate the planning conditions for the existing site and southern extension into a single planning permission. The most effective mechanism for this would be through a planning obligation. We concur with this view.

3.5 No party challenged South Lanarkshire Council's explanation of the practical difficulties of enforcing an agreement under Section 96 of the Roads (Scotland) Act 1984 and that this could be addressed by inclusion into a planning obligation.

3.6 We accept that South Lanarkshire Council has significant experience of dealing with large scale mineral operations. We consider that it is undesirable that wear and tear caused by lorries visiting a large scale mineral site should be paid solely from public funds because of practical difficulties in enforcing other mechanisms. We agree that in the particular circumstances of the proposal, a heads of term requiring the mineral operator to enter into a Section 96 agreement for the duration of the consent is appropriate. We recommend that this is added to the heads of terms for a planning obligation to be agreed before planning permission is issued.

3.7 There was a dispute between the parties as to whether the creation of a liaison group was necessary and reasonable. The New Lanark and Falls of Clyde Working Group argued that it was and should be included either in a planning obligation or a planning condition.

3.8 We can foresee difficulties in using a planning condition to set up a liaison group. Whilst a condition could require a group to be established, it would be difficult to word a condition to ensure its on-going effectiveness. Therefore, enforcing the on-going effectiveness of a liaison group if any party was unwilling to co-operate could also be problematic. If a liaison group is considered to be desirable, then a planning obligation would be a more appropriate mechanism.

3.9 Turning to the use of a planning obligation, the key issue in dispute is whether the formation of a liaison group, including members from the New Lanark and Falls of Clyde Working Group is necessary to make the proposed development acceptable in planning terms and therefore comply with Scottish Government Circular 3/2012.

3.10 We are aware that community liaison groups are often set up to liaise between an operator of various large scale developments and the local community to help resolve any potential conflicts. We are not aware of any existing liaison group for the existing quarry operations. We are not aware that the existing quarry operations have resulted in any significant issues of conflict.

3.11 We note that it would be open to South Lanarkshire Council and/or the applicant to voluntarily set up a liaison group or utilise existing forums that may exist. It would also be open to the council to consult with other parties, including the New Lanark and Falls of Clyde Working Group as part of the planning condition approval process, if the council considered that to be appropriate.

3.12 However, we can see no reason why consulting with the New Lanark and Falls of Clyde Working Group would of itself make an unacceptable development acceptable compared with South Lanarkshire Council as planning authority exercising its own judgement.

3.13 As both the council and the applicant, the main parties to any planning obligation, do not consider a group to be necessary, we can foresee a number of practical difficulties. If no agreement could be reached, Scottish Ministers would have to decide whether the application should be refused or approved without such an agreement. Refusing planning permission for the proposal solely due to the failure to agree a liaison group, when such a group does not operate for the existing quarry would not, in our opinion, be reasonable or proportionate.

3.14 In our experience, the effectiveness of liaison groups relies on the existence of goodwill between the parties. Even if a liaison group was set up, we have doubts as to its practical effectiveness if neither the operator nor the planning authority consider it to be necessary and worthwhile.

3.15 In paragraphs 9.152 and 10.1 of our original report we recommended the setting up of a liaison group in the event that the entire proposal (including the western extension) was granted planning permission. We considered that this was necessary in that circumstance to ensure that long term maintenance arrangements were in place for an extensive list of enhancements associated with the western extension. We do not consider that a comparable set of circumstances apply if planning permission is to be granted for the southern extension only.

3.16 We also consider that a distinction can be drawn between a condition requiring the council to consult with a statutory agency (such as the Scottish Environment Protection Agency), which has a statutory responsibility regarding a related regulatory matter, and community groups or bodies who happen to have a particular interest in a development.

3.17 We also do not consider that the Menie Environmental Management Group is directly comparable to the approval of the southern extension of the existing quarry. The Menie estate proposal related to two 18 hole golf courses, a 450 bed hotel, 950 holiday apartments, 36 villas, 500 houses and 400 units of staff accommodation. Some of this development was located on a Site of Special Scientific Interest. The environmental management group was proposed by the applicant to help with the implementation of the mitigation proposals. It was an integral part of the proposal. This would not be the case for the relatively small southern extension of Hyndford Quarry.

3.18 For all the above reasons, we agree with South Lanarkshire Council and Cemex UK Operations Ltd that a requirement to form a liaison group is not necessary to make the development acceptable in planning terms. With good will, the basic framework for the setting up of a liaison group and its operation could be included in a planning obligation. However, as both the planning authority and site operator do not consider such a group to be necessary we would not advise Scottish Ministers to include a requirement in any heads of terms.

## Planning conditions

3.19 No comments were received by any of the parties regarding our proposed conditions 10, 14, 16, 17, 20, 25, 29, 30, 32, 34, 35, 39, 42, 43 and 45. We therefore find that they are acceptable.

3.20 South Lanarkshire Council had relatively minor detailed wording points, which neither Cemex UK Operations Ltd nor the New Lanark and Falls of Clyde Working Group had any comments, for the following conditions: 4, 6, 8, 15, 22, 23, 24, 26, 27, 28, 31, 33, 36, 37, 38, 40 and 41. The changes suggested did not alter the planning purpose of these conditions and amounted to minor editorial changes. We accept that South Lanarkshire Council has considerable experience of controlling large scale mineral development and have accommodated South Lanarkshire Council's suggested conditions in our recommended conditions.

3.21 There were therefore relatively few conditions where the proposed wording was disputed between the parties. These will be considered below under separate sub headings.

### *Conditions 1 and 2*

3.22 The practical effect of the suggested amendment from the New Lanark and Falls of Clyde Working Group is to prevent mineral extraction within 50 metres of the boundary of the New Lanark World Heritage Site Buffer Zone. It should be noted that the buffer zone largely includes the Falls of Clyde Designed Landscape in the vicinity of the quarry and follows approximately the line of the former estate wall and drove road.

3.23 We agree that the relationship between the area of mineral extraction and the drove road, estate wall and adjoining land that is included within the buffer zone and designed landscape designations needs to be considered carefully. However, we doubt that any particular dimension, such as the suggested 50 metre buffer strip, would of itself secure a satisfactory relationship. It seems likely that a range of detailed factors would determine whether the relationship would be acceptable. We consider that this is best determined by a detailed assessment of the appropriate information, rather than specifying any particular dimension. Our suggested condition 2, which requires the submission of further plans and for South Lanarkshire Council to agree such details, would achieve this.

3.24 We note that the existing planning permission does not have a requirement for a 50 metre buffer strip. The New Lanark and Falls of Clyde Working Group's suggested amendment would therefore be more restrictive than the existing consent and this would not be reasonable.

3.25 We may have misunderstood the point that the New Lanark and Falls of Clyde Working Group made in relation to the reasons for the conditions 1 and 2. We agree that any reasons have to be consistent with the overall justification for Scottish Ministers' decision. However, the reasons for a planning condition obviously have a much narrower



purpose than the justification for a particular development proposal. However, we do accept that the reasons for conditions 1 and 2 should be expanded to make it clear which particular heritage assets are being considered. We have amended the reasons for conditions 1 and 2 accordingly.

### *Condition 3*

3.26 The effect of the change suggested by the applicant would be to extend the operational life time of the quarry from 2030 to 2040. It should be noted that under the existing planning permission, operations should cease by December 2027.

3.27 We accept that extraction rates are the key factor in determining the operational life time of a sand and gravel quarry. We also accept that in turn, extraction rates will be influenced by market demand. We are aware from our site visit to the quarry that for any given working face, the composition of sand and gravel can vary. We accept that market demand also varies for different sand and gravel products.

3.28 However, this variation in extraction rates, composition of sand and gravel and market demand would be hard to predict with any certainty. We note that the case for prolonging the operation of the quarry was not made by the applicant at the original conditions hearing. Paragraph 7.2 (page 19) of the Planning Application, Written Statement and Plans (Core Doc A4) states that phase 2B would take 3 years to work with restoration taking a further 2 years<sup>16</sup>. Therefore, extending the life time of the existing quarry by this period seems reasonable and proportionate. We also note the intention was that phase 1 (the western extension) was to be worked prior to phase 2B starting. The original proposal always envisaged phase 2B being worked independently of phase 1.

3.29 Should the applicant wish to revise its originally proposed phasing, for whatever reason, we agree with South Lanarkshire Council that this would be best achieved by making a separate planning application to amend the condition. We note that neither South Lanarkshire Council nor the New Lanark and Falls of Clyde Working Group support the suggested change and for the reasons set out above, cannot recommend such a significant time extension to Scottish Ministers.

### *Condition 5*

3.30 The effect of the change suggested by the applicant would be to increase the period when extraction operations could cease before the site was deemed to have ceased permanently from 12 months (as in the existing permission) to 24 months.

3.31 As stated in relation to condition 3, we accept the generality of the argument that variations in the mix of sand and gravel could ultimately impact on extraction rates. However, this general proposition does not seem to be a sufficient justification for automatically assuming such a significant drop in extraction rates. We note that this argument was not made to us at the conditions hearing session. As stated above, phase 1 (the western extension) was always intended to be worked independently of phase 2B.

3.32 We agree with South Lanarkshire Council that 2 years would be a long time for the site to remain inactive and share the concerns about the visual impact of such a situation. We note that it would be open to the applicant to apply to the council to subsequently amend the condition if detailed information was available to justify the need for such a change.

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<sup>16</sup> [Planning application – Document A4.](#)

3.33 For the above reasons we cannot recommend Cemex UK Operations Ltd suggested change to condition 5. We do agree to South Lanarkshire Council's minor changes to the wording.

#### *Condition 7*

3.34 The planning application included enhancement works for each of the 4 phases including the southern extension. We are aware of no reason why the proposed enhancement schemes for phases B, C and D should be dependent on the western extension area going ahead. This claim was not made at the conditions hearing.

3.35 We also note that the current consent requires a footpath link. It is therefore not fair to suggest that the current consent includes no enhancement works. In any event, we note that the wording of condition 7 allows a variation to the proposed enhancement works to be agreed with South Lanarkshire Council.

3.36 We cannot therefore recommend the suggested change to condition 7 proposed by Cemex UK Operations Ltd. We can agree to the minor changes suggested by South Lanarkshire Council.

#### *Condition 11*

3.37 The wording of condition 11 is the same as the condition that applies to the existing permission. We accept, in general terms, that the restrictions will have impacts on business operations. However, this has to be balanced against the impact of weekend, early morning or late working on the wider community. We note that no claim that the restrictions were unreasonable was made at the conditions hearing, either in the context of the agreed conditions or if the southern extension only was to be granted planning permission. We also note that the wording of the condition allows changes to be agreed in writing with South Lanarkshire Council. It would also be open to the applicant to apply to the planning authority for permission to amend the condition.

3.38 We agree with the council that the changes to the operational times suggested by Cemex UK Operations Ltd are significantly different from the existing consent. The justification for such a change would be more appropriately assessed separately by the council, rather than amending at this stage, long standing conditions that have previously been agreed.

3.39 We cannot therefore agree to the suggested change by Cemex UK Operations Ltd. We can agree to the minor changes suggested by South Lanarkshire Council.

#### *Conditions 12 and 13*

3.40 The New Lanark and Falls of Clyde Working Group questioned the consolidation of the council's original wording with less specific conditions. However, neither the council nor the applicant had any objections to the consolidation, bar some minor wording changes suggested by the council. Our proposed consolidation was discussed in general terms at the conditions hearing session and no objection was made.

3.41 In our opinion, requiring an overall scheme for noise and dust control is a better mechanism for controlling such matters than specifying particular actions that frequently, in our experience, have to be caveated with exceptions. The apparent certainty is therefore

undermined and can prove difficult to enforce. We also consider it appropriate to allow changes to the approved scheme if agreed in writing by South Lanarkshire Council.

#### *Condition 19*

3.42 In response to comments made by the applicant, the council suggested an amended wording and an additional new condition that would replace our suggested condition 15. We note that these changes were considered acceptable by the applicant. We therefore recommend that the proposed changes are incorporated into the revised list of conditions.

#### *Condition 21*

3.43 The practical effect of the suggested wording change proposed by the applicant is to increase the limit in imported materials from 50,000 to 100,000 tonnes. We note that the existing permission has a limit of 50,000 tonnes.

3.44 As indicated above in relation to a number of suggested changes from the applicant, we accept the general point that different mixes of sand and gravel can alter extraction rates. This in turn could potentially alter how much material should be imported.

3.45 The need to increase importation of material in the event of the southern extension only was not made at the conditions hearing session. It was always the intention that phase 1 (the western extension) would be worked prior to the start of phase 2B. We also note that the terms of the condition allow the limit to be varied with the written agreement of South Lanarkshire Council. It would also be open to the applicant to make an application to amend the condition.

3.46 We therefore agree with South Lanarkshire Council that increasing the limits without detailed consideration would not be appropriate. We cannot therefore recommend the suggested change to condition 21 proposed by Cemex UK Operations Ltd.

#### *Condition 44*

3.47 The New Lanark and Falls of Clyde Working Group has suggested an amendment to the proposed condition which aims to permit a topographical survey prior to the commencement of operations.

3.48 The condition was originally proposed by South Lanarkshire Council and discussed at the conditions hearing. No objections were made at that time. It would have been particularly pertinent if the western extension was to proceed. It should be noted that no equivalent condition applies to the existing permission. It is intended to allow recording of the geomorphological landforms caused by glacial activity. The onus rests with parties wishing to record the features rather than with the mineral operator. It is not intended that such recording interferes with authorised mineral operations. We do not consider that the wording of the condition would prevent geo-scientists from undertaking a topographical study if that is what they wished to do. We therefore do not consider that the change suggested by the working group is necessary or reasonable.

#### *Sir William Lithgow*

3.49 The letter dated 6 August 2015, does not suggest any particular wording for planning conditions but does set out a general aim. However, Scottish Government Circular 4/1998 states that planning conditions should only be used to address impacts as a result of the

development proposed. They should not be used to secure general improvements unrelated to the proposal. For this reason, we do not consider that it would be reasonable to attach conditions to the proposed southern extension requiring the general improvements suggested by Sir William Lithgow.

## Conclusions

3.50 At the conditions hearing held on 21 August 2014 the implications of granting planning permission for the southern extension only were discussed. Following the Scottish Ministers' notice of intention a draft set of heads of terms and conditions were circulated for comment from the three main parties. The main parties have also been able to comment on each other's comments.

3.51 Having considered the comments, we agree with the council that the heads of terms for a planning obligation should require the operator to enter into an agreement under Section 96 of the Roads (Scotland) Act 1984. We do not consider that the requirement to form a liaison group is necessary to make the proposal acceptable in planning terms.

3.52 There was general agreement over most of the conditions. However, we do not consider that it is necessary to specify a particular buffer strip. We consider that our recommended condition 2 would achieve the same objectives as set out by the New Lanark and Falls of Clyde Working Group. We were not persuaded that the changes proposed by the applicant to relax a number of conditions were necessary. Our recommended heads of terms for a planning obligation and a set of planning conditions are attached as Appendix 1.

## Recommendation

3.53 That the Scottish Ministers issue a further intentions notice and provides a period of time for South Lanarkshire Council and Cemex UK Operations Ltd to agree the detailed wording of a planning obligation and provide evidence of registration or recording covering the heads of terms set out in Appendix 1, subject to the list of planning conditions also listed in Appendix 1.

*Dan Jackman*  
Reporter

*J Alasdair Edwards*  
Reporter

## Appendix 1

### Reporters' recommended heads of terms for a planning obligation and appropriate planning conditions for southern extension only

#### 1. Heads of Terms for a Planning Obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended)

- a) An undertaking to cease, and not restart, operations under planning permission CL/11/0285, following commencement of operations under this permission.
- b) That the operator has an agreement under Section 96 of the Roads (Scotland) Act 1984 for the duration of the consent.

#### 2. Planning conditions

1. That notwithstanding the submitted plans there shall be no development or mineral extraction within the area identified as the New Lanark World Heritage Site Setting/Buffer Zone on plan number P2/1842/2 – May 2012.

*Reason: To protect the setting of New Lanark World Heritage Site and Falls of Clyde Designed Landscape*

2. That no development shall take place until plans have been submitted and approved in writing by the Planning Authority showing the extent of mineral extraction, landform level details and screening along the western boundary of phase 2A and the whole of phase 2B as shown on plan number P2/1842/5A – July 2013.

The approved plans shall be implemented unless otherwise agreed in writing by the Planning Authority.

*Reason: To protect the visual amenities of the area, which include the New Lanark World Heritage Site Setting/Buffer Zone, Falls of Clyde Designed Landscape, the existing footpath and boundary wall.*

3. That all extraction operations on the site shall be discontinued no later than 31 December 2030 and that the entire site shall be restored in accordance with the approved restoration and enhancement plan or plans (as required by conditions 6 and 7) by 31 October 2032.

*Reason: To ensure that the Council as Planning Authority retains effective control of the development.*

4. That the extraction operations shall proceed in accordance with phases 2A, 2B and 3, illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, with each phase being worked progressively in that order.

*Reason: To provide for progressive restoration.*

5. Notwithstanding the terms of condition 3 above, in the event of extraction operations on site ceasing for a period of 12 months or more, the Planning Authority shall deem site operations to have ceased permanently, and the application site area shall be restored within a period of 24 months in accordance with the approved restoration plan or plans (as required by condition 6).

That, in the event of extraction operations on any phase of the site ceasing for a period of 12 months or more, the operator, within 2 months of the phase having been deemed to have ceased, shall submit, for the written approval of the Council as planning authority, an interim restoration scheme for that part of the site, to include timescales for restoration, and shall thereafter undertake the restoration as detailed within the approved plan in line with the approved timescales.

*Reason: To secure the satisfactory reinstatement of the site.*

6. That no mineral extraction operation shall commence within either phases 2A, 2B, or 3, as illustrated on drawing P2/1842/5A – July 2013 – Proposed Block Phasing, until a detailed restoration plan or plans for that phase, and any other areas of the application site to be restored during the period mineral extraction operations are taking place within that phase, has been submitted to and approved in writing by the Council as Planning Authority. The detailed restoration plan or plans shall include detailed information on landform levels, drainage (including ground water and surface water run-off flowpaths). Soil coverage, surface treatment, planting schedules, final boundaries, paths, signage, parking and the progressive restoration of the phase.

All restorative works shall thereafter be undertaken in accordance with the details and timescale stipulated within the approved detailed restoration plan or plans, unless otherwise approved in writing by the Council as Planning Authority.

*Reason: These details were not submitted at the time of the application and are required. To ensure the application site is satisfactorily restored in a phased manner.*

7. That no mineral extraction operations shall commence within each phases 2A, 2B or 3 as illustrated on drawing P2/1842/5A – July 2013 – Proposed Block Phasing until a detailed Enhancement Plan(s) for the corresponding Enhancement Zone (as listed below) has been submitted to and approved in writing by the Council as Planning Authority. The Enhancement Plan(s) shall clearly set out the proposed enhancement works and timescales for implementation, including detailed specifications for works associated with ecological and biodiversity enhancement, tree and hedgerow planting, fencing, information boards, footpath construction and management of existing woodland areas. All enhancement works shall be undertaken in accordance with the details and timescales stipulated within the approved Enhancement Plan(s). There shall be no deviation from the approved Enhancement Plan(s) including the timescales stated therein, unless otherwise approved in writing by the Council as Planning Authority. For avoidance of doubt, the Phases and corresponding Enhancement Zones are illustrated on drawing P2/1842/5 - Proposed Block Phasing – May 2012, and are as follows:

- Phase 2A - Enhancement Zone B.
- Phase 2B - Enhancement Zone C.
- Phase 3 - Enhancement Zone D.

*Reason: These details were not submitted at the time of the application and are required. To ensure the application site is enhanced in accordance with the approved details.*

8. That no mineral extraction operations shall commence within Phases 2A, 2B or 3, as illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, until a detailed aftercare scheme for that phase, and any other areas of the application site to be restored during the period mineral extraction operations are taking place within that phase, is submitted for the written approval of the Council as Planning Authority. The aftercare scheme shall specify the steps to be taken, the period during which they are to be taken, and who will be responsible for taking those steps to bring the land to the required standard.

*Reason: To ensure effective landscape management to bring land to the required standard for the after uses.*

9. Each individual phase of mineral extraction, or such other phase as may be subsequently approved in writing by the Council as Planning Authority, shall be substantially restored in a progressive and phased manner in accordance with the provisions of the approved restoration plan or plans submitted as a requirement of conditions 6 and 7. Thereafter, the aftercare scheme submitted as a requirement of condition 8 shall be implemented in a phased manner from the first planting season following completion of each individual phase wherever practicable taking into account proposed working arrangements.

*Reason: To ensure satisfactory reclamation of the site and timeous completion of the work.*

10. That no development hereby approved shall commence until a guarantee to cover all site restoration and aftercare liabilities imposed on the expiry of this consent has been submitted for the written approval of the Council as Planning Authority. Such guarantee must, unless otherwise agreed in writing by the Council as Planning Authority:

- i. be granted in favour of the Council as Planning Authority;
- ii. be granted by a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;
- iii. be for a specified amount which covers the value of all site restoration and aftercare liabilities as agreed between the operator and the planning authority at the commencement of development;
- iv. either contain indexation provisions so that the specified amount of the guarantee shall be increased on each anniversary of the date of this consent by the same percentage increase in the General Index of Retail Prices (All Items) exclusive of mortgage interest published by or on behalf of HM Government or, in the event that that index is no longer appropriate or applicable, such other comparable index as the Planning Authority, acting reasonably, decide between the said date and such relevant anniversary. The amount shall be reviewable to ensure that the specified amount of the guarantee always covers the value of the site restoration and aftercare liabilities;
- v. come into effect on or before the date of commencement of development, and expire no earlier than 12 months after the end of the aftercare period.



No work shall begin at the site until (1) written approval of the Council as Planning Authority has been given to the terms of such guarantee and (2) thereafter the validly executed guarantee has been delivered to the Council as Planning Authority.

In the event that the guarantee becomes invalid for any reason, no operations will be carried out on site until a replacement guarantee completed in accordance with the terms of this condition is lodged with the Council as Planning Authority.

In the event the value of the guarantee held by the Council is less than the calculated site restoration and aftercare liabilities (calculated through condition 38 below), the operator shall, within four months of the submission of the annual progress plan required through condition 38, deliver a further guarantee to cover all site restoration and aftercare liabilities. Such guarantee must, unless otherwise agreed in writing by the Council as Planning Authority, comply with parts i to v, above. If this further guarantee is not submitted within four months of the submission of the annual progress plan required through condition 38, all extraction operations shall cease until the Council confirms, in writing, receipt of an acceptable guarantee.

*Reason: To ensure that provision is made for the restoration and after care of the site.*

11. That unless otherwise agreed in writing by the Council as Planning Authority:

(a) No haulage vehicles shall enter or leave the site; before 07.00hrs and after 17.00hrs on Mondays to Fridays, before 07.00hrs and after 13.00hrs on Saturdays and at any time on Sundays.

(b) No operations or activity (except water pumps for the management of water, security or in connection with essential maintenance within the plant site area) shall take place at the site, before 06.30hrs and after 19.00hrs on Mondays to Fridays; before 06.30hrs and after 13.00hrs on Saturdays and before 08.00hrs and after 16.00hrs on Sundays.

No activities (except water pumps for the management of water, security or in connection with essential maintenance within the plant site area) shall take place on Public Holidays or Local Bank Holidays.

*Reason: To ensure that the Planning Authority retains effective control of the development and in the interests of protecting local amenity.*

12. That no development shall commence until a scheme setting out how noise from the site shall be managed and monitored has been submitted and approved in writing by the Council as Planning Authority. The scheme shall include:

- The day and night time nominal noise limits from site operations.
- Noise monitoring arrangements.
- Noise complaint process.
- Measures in relation to vehicle reversing alarms.
- Operation of vehicles, plant and machinery.
- Mitigation measures for temporary or exceptional operations.

The agreed scheme shall thereafter be implemented unless otherwise approved in writing by the Council as Planning Authority.

*Reason: To minimise noise nuisance from the operation.*

13. That no development shall commence until a detailed scheme setting out dust control and monitoring has been submitted to and approved in writing by the Council as Planning Authority. The scheme shall include:

- A dust management plan.
- Dust monitoring arrangements.
- Dust complaint process.
- Arrangements for ceasing operations if a dust nuisance is caused.
- Arrangements for dust suppression.

The agreed scheme shall be implemented unless otherwise approved in writing by the Council as Planning Authority.

*Reason: To minimise the nuisance from dust.*

14. That all aggregates laden lorries leaving the site shall be sheeted before entering the public road.

*Reason: In the interests of road safety and protection of local amenity.*

15. The operator shall at all times be responsible for the removal of mud or other materials deposited on the public road by vehicles entering or leaving the site.

*Reason: In the interests of road safety.*

16. That the visibility splays for access onto the A73 shall be maintained at 2.5 x 215 metres unless otherwise agreed in writing with the Council as Planning and Roads Authority.

*Reason: In the interests of road safety.*

17. That all mineral dispatch vehicles shall only use the site entrance onto the A73 shown on plan number P2/1842/2 – May 2012, unless otherwise approved in writing by the Council as Planning Authority.

*Reason: To ensure that the Council as Planning Authority retains effective control of the development.*

18. That prior to the use of any new internal access roads a scheme setting how they will be surfaced and maintained and how debris will be prevented from being carried from them onto the public highway shall be submitted to and approved in writing by the Council as Planning Authority. The agreed scheme shall be implemented unless otherwise approved in writing by the Planning Authority. All existing internal access roads will be maintained in accordance with a scheme of works to be submitted to and approved by the Planning Authority within 3 months of the date of permission.

*Reason: To minimise the impact on local amenity and the chances of debris being carried onto the public highway.*

19. That in the event a written request is made by the Council the operator shall within 21 days of the written request being made submit, for the written approval of the Planning Authority, details setting out measures to minimise the deposit of mud and debris on the

public road, including details of the timescale within which these measures will be taken. Thereafter these measures shall be implemented within the approved timescale.

*Reason: To minimise the impact on local amenity and the chances of debris being carried onto the public highway.*

20. That the exportation of mineral from the site shall not exceed 650,000 tonnes per annum, without the prior written agreement of the Council as Planning Authority.

*Reason: In the interest of road safety and local amenity.*

21. That the importation of cement and other materials required for site processing shall not exceed 50,000 tonnes per annum without the prior written agreement of the Council as Planning Authority.

*Reason: In the interest of road safety and local amenity.*

22. Prior to the commencement of the development hereby approved, a sign shall be erected adjacent to the exit road from the quarry, at a location to be agreed in writing with the Council as Planning Authority, warning motorists departing the quarry that they may encounter cyclists. The sign shall accord with Drawing P950 produced by the Department of Transport.

*Reason: In the interests of road safety.*

23. That, unless otherwise agreed in writing with the Council as Planning Authority, top soil shall only be stripped, stockpiled and replaced when it is in a suitably dry and friable condition (suitably dry means that the top soil can be separated from the sub soil without difficulty so that it is not damaged by machinery passing over it).

*Reason: To minimise damage to the soils and sub soils.*

24. That all suitable soils, peat and soil making material shall be recovered where practical during the stripping or excavation operations and separately stored, on site, for use during restoration.

*Reason: To minimise damage to the soils, sub soils and peat.*

25. That topsoil, sub soil, peat and soil making material mounds shall be constructed with only the minimum amount of compaction necessary to ensure stability and shall not be traversed by heavy vehicles or machinery except during stacking and removal for re-spreading during site restoration. They shall be graded and seeded with a suitable low maintenance grass seed mixture in the first available growing season following their formation. The sward shall be managed in accordance with the appropriate agricultural management techniques throughout the period of storage.

*Reason: To minimise damage to the soils, sub soils and peat.*

26. That no development shall commence until a scheme of weed control and a scheme of movement of plant, vehicles and machinery has been submitted and approved in writing by the Council as Planning Authority. The agreed scheme shall be implemented unless otherwise agreed in writing by the Council as Planning Authority.

*Reason: To minimise damage to the soils and sub soils.*

27. That no development shall commence until a drainage plan has been submitted and approved in writing by the Council as Planning Authority. The drainage plan shall include:

- Measures to avoid contamination of surface and ground water.
- Treatment of any contamination.
- Managing any drainage from areas adjoining the site.

The agreed drainage plan shall be implemented unless otherwise agreed in writing by the Council as Planning Authority.

*Reason: In the interests of amenity and to protect watercourses from pollution.*

28. All containers being used to store liquids within the application site shall be labelled clearly to show their contents, and be located in a bund which shall be at least 110% of the capacity of the largest container stored within it. Bunds shall conform to the following standards:

- The walls and base of the bund shall be impermeable.
- The base shall drain to a sump.
- All valves, taps, pipes and every part of each container shall be located within the area served by the bund when not in use.
- Vent pipes shall be directed down into the bund.
- No part of the bund shall be within 10 metres of a watercourse.
- Any accumulation of any matter within the bund shall be removed as necessary to maintain its effectiveness and capacity.

*Reason: To ensure the safekeeping of such liquids.*

29. That prior to the commencement of development, a groundwater monitoring plan shall be submitted to and approved by the Council. The operator shall review and update the groundwater monitoring plan on an annual basis, in consultation with the Council and the Scottish Environment Protection Agency. The site operator shall monitor the levels and quality of groundwater in accordance with the approved plan for the duration of operations, unless otherwise approved in writing by the Council as Planning Authority.

*Reason: In the interests of the water environment.*

30. For the duration of extraction operations at the site, a flow meter record of any water that is abstracted from the River Clyde or from within the quarry shall be maintained on site and this record shall be made available to the Council as Planning Authority within 5 working days of a written request from the Council as Planning Authority.

*Reason: In the interests of the water environment.*

31. That not more than 3 months prior to the commencement of development within each phase of development a scheme for prestart checks shall be submitted and approved in writing by the planning authority, in consultation with Scottish Natural Heritage. The scheme for pre-start checks shall include:

- Measures for investigating the presence of otters, bats, badgers, amphibians and reptiles, birds and invertebrates within the site and within an appropriate buffer around the site.
- Mitigation measures to address impacts on otters, bats, badgers, amphibians and reptiles, birds and invertebrates.
- An implementation programme for such measures.

The agreed scheme shall be implemented in accordance with the approved programme unless otherwise agreed in writing by the Council as planning authority.

*Reason: In the interests of protected species.*

32. The removal of any trees and the cutting of rough grasslands that could provide habitat for nesting birds will take place outside the bird breeding season (April to July inclusive), unless a survey to establish the presence or otherwise of nesting birds has been undertaken and, where required, appropriate mitigating measures have been carried out to the satisfaction of the Council as Planning Authority.

*Reason: In the interests of breeding/nesting birds.*

33. That prior to the commencement of the development, the Council as Planning Authority shall approve the remit and reporting frequency of an Ecological Clerk of Works (ECoW), in consultation with Scottish Natural Heritage and the Scottish Environment Protection Agency. The ECoW shall be appointed prior to commencement of development and remain in post until the completion of restoration works by the operator. The scope of work of the ECoW shall include:

- Monitoring impacts of operations and compliance with ecological best practice and the mitigation works or measures relevant to the development, as detailed within:
  - the Restoration and Enhancement Plan(s), required through Conditions 6 and 7,
  - the mitigation measures identified in Chapter 13 of the Environmental Statement (Volume 2 - November 2012) and those arising from the pre-start checks required under the terms of condition 31 above;
  - the supplementary information, dated 7th May 2013, and;
  - the Species Protection and Habitat Management Plan required under the terms of condition 34 below.
- Advising on adequate protection of nature conservation interests and implementation of restoration on the site.
- Monitoring the impact of the development on protected species.

- Carrying out regular National Vegetation Classification habitat surveys of the site to establish any changes in habitat type.

*Reason: In order to minimise the developments potential impact on the environment.*

34. That prior to the commencement of development, a Species Protection and Habitat Management Plan shall be submitted to and approved in writing by the Council as Planning Authority, in consultation with Scottish Natural Heritage and Scottish Wildlife Trust. Thereafter, the operator shall comply with the Species Protection and Habitat Management Plan and implement all mitigation measures contained within the Species Protection and Habitat Management Plan to the satisfaction of the Council as Planning Authority.

*Reason: In the interests of protected, non-protected and habitats.*

35. That prior to the commencement of development the operator shall submit for the Council's approval an archaeological mitigation strategy. Thereafter the developer shall ensure that the approved strategy is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken in accordance with the approved scheme.

*Reason: In the interests of archaeology.*

36. The operator shall install a borehole between the site processing plant area and the Hyndford Crannog within 6 months prior to the commencement of extraction operations in the Phase 3, as illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing.

*Reason: In the interests of archaeology.*

37. That within 1 year of the commencement of extraction operations within Phase 2B, as illustrated on drawing P2/1842/5A – July 2013 - Proposed Block Phasing, the operator shall submit for the written approval of the Council as Planning Authority a monitoring programme for the borehole to be installed under Condition 36 above.

*Reason: In the interests of archaeology.*

38. That on the 31st March of each year following the commencement of development and for the duration of extraction and restoration operations approved through this permission, an annual progress plan shall be submitted to the Council as Planning Authority. The annual progress plan shall detail:

- The extent of extraction operations undertaken that year.
- Areas prepared for extraction, including any soil stripping and removal of vegetation etc.
- The extent of restoration operations carried out.
- Recent topographical site survey undertaken within 1 month prior to the submission of the annual progress plan.
- Current and anticipated production figures.
- Total tonnage of minerals dispatched from the site within the preceding year.
- The total tonnage of cement and other materials imported into the site for processing
- Estimation of remaining reserve of sand and gravel material (which are likely to be exported from site).

- A calculation of the costs of restoring the area of the site disturbed by the development and the associated area of the site to be enhanced at that time.
- Progress on the implementation and success of the Habitat Management Plan.
- Compliance with statutory permissions and legal agreements.
- Site complaint log and actions taken.
- Any incidents involving pollution of watercourses.

*Reason: To enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

39. That, within three months of completion of restoration works on site, a final progress plan containing the information listed in Condition 38 above, shall be submitted to the Council as Planning Authority.

*Reason: To enable the Council as Planning Authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.*

40. That, within four weeks following the completion of extraction operations within each phase or such other phasing plan as may be subsequently approved in writing by the Council as Planning Authority, the operator shall give notice to the Council as Planning Authority of the completion of that phase.

*Reason: In order to monitor the progress of the development. In accordance with Section 27B(2) of the Town and Country Planning (Scotland) Act 1997 (as amended).*

41. That no development shall commence until a scheme of stock proof fencing or other means of enclosure (including its maintenance), for the operational boundary has been submitted and approved in writing by the Council as Planning Authority. The agreed scheme shall be implemented unless otherwise agreed in writing by the Council as Planning Authority.

*Reason: To ensure that there is adequate site security and to prevent unauthorised entry of stock onto the site.*

42. That from the date of commencement of works on the site, until completion of the final restoration, a copy of this permission, and all approved documents and subsequently approved documents, shall be kept available for inspection in the site offices during the approved working hours.

*Reason: To ensure the site operator and visiting officials are aware of the approved details.*

43. Notwithstanding the details shown on the stamped approved plans, that before any work commences on the site (including enabling works), the following details shall be submitted to and approved in writing by the Council as Planning Authority, and such details as may be approved, shall be implemented unless otherwise agreed in writing by the Council as Planning Authority prior to the commencement of extraction works:

- (a) A detailed specification of all footpaths proposed within the application site.
- (b) Details of the location, style and height of all new boundary treatment such as fences, walls, gates and bunds and signage to be erected within or around the boundaries of the site.
- (c) Details of conveyor, including design, colour and route.

(d) Details, including location and design, of pedestrian crossing points over the conveyor, where appropriate.

*Reason: These details were not submitted at the time of the application and are required to ensure that the proposal is satisfactory.*

44. That the operator shall permit access to the site to geo-scientists to study and document the geological and geomorphological record at the site as extraction proceeds, for the duration of the extraction operations. The documentation reporting the findings of the geological and geomorphological studies shall be retained on site and shall be submitted to the Council as Planning Authority within 28 days of a written request.

*Reason: To ensure the geomorphological characteristics are recorded and made available.*

45. At no time shall the site be artificially illuminated with the exception of vehicle lighting during the permitted hours of working as set out in Condition 11(b), to the satisfaction of the Planning Authority.

*Reason: In the interests of amenity*