

Perth and Kinross Council  
Planning & Development Management Committee – 04 July 2018  
Report of Handling by Interim Development Quality Manager (Report No. 18/227)

**PROPOSAL:** Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to develop land without complying with Condition 1 of planning permission PK920831 (extraction of sand and gravel)

**LOCATION:** Marlee Quarry, Essendy, Blairgowrie

Ref. No: 17/01371/MWM

Ward No: P3 - Blairgowrie And Glens

### **Summary**

This report recommends approval of this application to extend the time to extract the mineral resource and undertake site restoration at Marlee Quarry. If works proceed in accordance with the recommendations of the Environmental Statement (ES), supporting information and planning conditions the proposal will comply with the Development Plan and National Planning Policy and there are no material considerations which are considered to outweigh the Development Plan. The proposals are recommended for approval, subject to conditions, including associated conclusion of a legal agreement to ensure satisfactory restoration measures are secured.

### **BACKGROUND AND DESCRIPTION OF PROPOSAL**

- 1 Marlee Quarry is an existing operational sand and gravel quarry situated in a rural location some 1.6km to the west-south-west of Blairgowrie. The quarry is located adjacent to the B947. The Loch of Drumellie or Marlee Loch part of the Blairgowrie Lochs is to the north-west of the site; this water body is designated as a Special Area of Conservation (SAC) and a Site of Special Scientific Interest (SSSI). The Lunan Burn flows from Marlee Loch to the south of the site and also falls under the River TAY SAC designation. Ardblair and Myreside Fens Site of Special Scientific Interest (SSSI) lies 0.8km to the north-east. The land surrounding the quarry is predominantly in agricultural use with intermittent areas of woodland. There are individual residential properties located at varying distances around the site.
- 2 The planning permission area at Marlee Quarry extends to some 40.18ha, of which some 35.29ha is consented for sand and gravel extraction. The main operational areas are split by the access road to Marlee Mill. The agent notes that during the final phase of operations the sand and gravel is excavated under this access route which is then reinstated on the same line.
- 3 To the west of the Marlee Mill access route a significant area of land has been quarried and reinstated to grassland, mixed woodland and a water feature. The

remainder of the western area is utilised for site access and offices, processing and stockpiling, the ready-mix concrete plant and settlement ponds.

- 4 To the east of the Marlee Mill access route over half of the area has been quarried and reinstated to grassland with a small central pond. The current excavation area is located in the south-eastern corner of the site. The remaining land within the site has been unaffected by operations and comprises either agriculture or woodland. A small area in the north-east of the site is being utilised by Tayside Contracts under a separate permission as a training centre.
- 5 The agent has confirmed that there are still 6 years of aggregate reserves within the planning permission area which remain to be extracted. The reason that this area has not been extracted to date is partially due to a delay in the commencement of the site following the grant of permission and partially due to the economic recession which saw a significant downturn in demand between 2008 and 2014.
- 6 This section 42 application therefore seeks an extension in the duration of operations at Marlee Quarry to provide sufficient time to allow the extraction of the full consented mineral reserve. The proposal if approved would allow the extraction of the remaining reserve, the continued processing of sand and gravel, the operation of a concrete ready mix plant and the final restoration of the site.
- 7 Aggregates will be recovered in two phases. The initial phase of operations is located in the south-east corner of the site, an area of some 5.34ha of land which is currently either stripped of soils or in agriculture use. Sand and gravel will be extracted to between 46.2m and 53.5m AOD at a varying extraction depth of up to 12.4m. It is estimated that some 420,000 tonnes of sand and gravel will be released from this area over a period of just over four years.
- 8 As operations approach completion in this area the Marlee Mill access route will be temporarily diverted within the quarry to allow the final phase of quarrying which will release the removal of some 180,000 tonnes of sand and gravel over a two year period.
- 9 All future workings at the quarry will be dry working and above the water table. The extracted sand and gravel will be hauled within the site to the processing and stock piling area.

## **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

- 10 Directive 2011/92/EU requires the 'competent authority' (in this case Perth and Kinross Council) when giving a planning permission for particular large scale projects to do so in the knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before 'development consent' can be given.
- 11 This procedure, known as Environmental Impact Assessment (EIA), is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of

the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the relevant competent authority before it makes its decision.

- 12 An Environmental Statement has been submitted with the proposal following a scoping exercise, see 17/00903/SCOP. The content and the associated background information of the ES are considered to meet the requirements of the associated Regulations.

### **PRE-APPLICATION CONSULTATION**

- 13 Due to the size of the application site, which is over 2 hectares, this proposal is classed as a Major Application as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. The amended Regulations, which came into force on the 30 June 2013, removes the requirement for Pre-application Consultation for Section 42 applications (which relates to a 'major planning application') made on, or after the 3 February 2013.
- 14 Accordingly there is not a requirement to carry out a pre-application public consultation on this major application due to the inclusion of Regulation 49(5) in the above Regulations.

### **NATIONAL POLICY AND GUIDANCE**

- 15 The Scottish Government expresses its planning policies through The National Planning Frameworks, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

#### **National Planning Framework**

- 16 NPF3 is a long-term strategy for Scotland and is a spatial expression of the Government's Economic Strategy and plans for development and investment in infrastructure. Under the Planning etc. (Scotland) Act 2006 this is now a statutory document and material consideration in any planning application. The document provides a national context for development plans and planning decisions as well as informing the on-going programmes of the Scottish Government, public agencies and local authorities.

#### **Scottish Planning Policy 2014**

- 17 The Scottish Planning Policy (SPP) was published in June 2014 and sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:
  - The preparation of development plans;
  - The design of development, from initial concept through to delivery; and
  - The determination of planning applications and appeals.

- 18 The following sections of the SPP will be of particular importance in the assessment of this proposal:
- Sustainability : paragraphs 24 – 35
  - Placemaking : paragraphs 36 – 57
- 19 A Successful, Sustainable Place:
- Paragraphs 92- 108 Supporting Business and Employment
- 20 A Natural, Resilient Place:
- Paragraphs 193 – 218 The Natural Environment
  - Paragraphs 219 – 233 Maximising the Benefits of Green Infrastructure
  - Paragraphs 254 – 268 Managing Flood Risk & Drainage

### **Planning Advice Notes**

- 21 The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:
- Air Quality and Land Use Planning (2004)
  - PAN 1/2011 Planning and Noise
  - PAN 2/2011 Planning and Archaeology
  - PAN 3/2010 Community Engagement
  - PAN 1/2013 Environmental Impact Assessment
  - PAN 40 Development Management
  - PAN 50 Controlling the Environmental Effects of Surface Mineral Workings
  - PAN 51 Planning, Environmental Protection and Regulation
  - PAN 60 Planning for Natural Heritage
  - PAN 61 Planning and Sustainable Urban Drainage Systems
  - PAN 64 Reclamation of Surface Mineral Workings
  - PAN 75 Planning for Transport
  - PAN 79 Water and Drainage
  - PAN 81 Community Engagement: Planning with People

### **National Roads Development Guide 2014**

- 22 This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

### **DEVELOPMENT PLAN**

- 23 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2014.

## **TAYPlan Strategic Development Plan 2016-2036**

- 24 TAYPlan sets out a vision for how the region will be in 2036 and what must occur to bring about change to achieve this vision. The vision for the area as set out in the plans states that:
- 25 *“By 2036 the TAYplan area will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice where more people choose to live, work, study and visit, and where businesses choose to invest and create jobs.”*
- 26 The following sections of the TAYplan 2016 are of particular importance in the assessment of this application.

### **Policy 7: Energy, Waste and Resources**

- 27 Seeks to deliver a low/zero carbon future. Development proposals should ensure all areas of search, sites and routes for energy, waste and resource management infrastructure have been justified against a series of considerations including: the specific land take requirements, the proximity of resources, the sensitivity of the surrounding environment, health and safety considerations, cumulative impacts, strategic cross-boundary impacts, and consistency with the National Planning Framework.

### **Policy 9: Managing TAYplans Assets**

- 28 Seeks to ensure responsible management of TAYplan’s assets by: using the locational priorities of the Plan to identify and protect finite resources (mineral deposits and important soils); Protecting Natura 2000 sites; and safeguarding the integrity of natural and historic assets including habitats, wild land, sensitive green spaces, forestry, water environment, wetlands, floodplains (in-line with the Water Framework Directive), carbon sinks, species and wildlife corridors, and also geo-diversity, landscapes, parks, townscapes, archaeology, historic battlefields, historic buildings and monuments and by allowing development where it does not adversely impact upon or preferably enhances these assets.

## **Perth and Kinross Local Development Plan 2014**

- 29 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. The LDP sets out a vision statement for the area and states that, *“Our vision is of a Perth and Kinross which is dynamic, attractive and effective which protects its assets whilst welcoming population and economic growth.”* It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 30 The principal relevant policies are, in summary

### **Policy PM1A - Placemaking**

- 31 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All

development should be planned and designed with reference to climate change mitigation and adaption.

**Policy TA1B - Transport Standards and Accessibility Requirements**

- 32 Development proposals that involve significant travel generation should be well served by all modes of transport (in particular walking, cycling and public transport), provide safe access and appropriate car parking. Supplementary Guidance will set out when a travel plan and transport assessment is required.

**Policy HE1A - Scheduled Monuments and Non Designated Archaeology**

- 33 There is a presumption against development which would have an adverse effect on the integrity of a Scheduled Monument and its setting, unless there are exceptional circumstances.

**Policy HE1B - Scheduled Monuments and Non Designated Archaeology**

- 34 Areas or sites of known archaeological interest and their settings will be protected and there will be a strong presumption in favour of preservation in situ. If not possible provision will be required for survey, excavation, recording and analysis.

**Policy NE1A - International Nature Conservation Sites**

- 35 Development which could have a significant effect on a site designated or proposed as a Special Area of Conservation, Special Protection Area or Ramsar site will only be permitted where an Appropriate Assessment shows that the integrity of the site will not be adversely affected, there are no alternative solutions and there are imperative reasons of overriding public interest.

**Policy NE1B - National Designations**

- 36 Development which would affect a National Park, National Scenic Area, Site of Special Scientific Interest or National Nature Reserve will only be permitted where the integrity of the area or the qualities for which it has been designated are not adversely affected or any adverse impacts are clearly outweighed by benefits of national importance.

**Policy NE2A - Forestry, Woodland and Trees**

- 37 Support will be given to proposals which meet the six criteria in particular where forests, woodland and trees are protected, where woodland areas are expanded and where new areas of woodland are delivered, securing establishment in advance of major development where practicable.

**Policy NE3 - Biodiversity**

- 38 All wildlife and wildlife habitats, whether formally designated or not should be protected and enhanced in accordance with the criteria set out. Planning

permission will not be granted for development likely to have an adverse effect on protected species.

**Policy ER3A - Minerals and Other Extractive Activities**

- 39 Development which would sterilise important economically workable mineral deposits will not be allowed unless there is an overriding need for the development and prior extraction of the mineral cannot reasonably be undertaken; or extraction of the mineral is unlikely to be practicable or environmentally acceptable.

**Policy ER3B - Minerals and Other Extractive Activities**

- 40 The extraction of proven mineral deposits in advance of other planned development will be permitted provided that it accords with the criteria set out.

**Policy ER4A - Minerals and Other Extractive Activities**

- 41 Favourable consideration will be given to proposals for the extraction of minerals where they are in accordance with the criteria set out and where they do not have an adverse effect on local communities and the environment.

**Policy ER4B - Minerals and Other Extractive Activities**

- 42 Restoration, after use and aftercare proposals will require to be agreed in advance of mineral and other extractive operations. Financial bonds for restoration will be required.

**Policy ER4C - Minerals and Other Extractive Activities**

- 43 Greater efficiency in the use of primary mineral resources is encouraged.

**Policy ER5 - Prime Agricultural Land**

- 44 Development on prime agricultural land will not be permitted unless it is necessary to meet a specific established need such as a major infrastructure proposal, there is no other suitable site available on non prime land or it is small scale development (generally single buildings) linked to rural business.

**Policy ER6 - Managing Future Landscape Change to Conserve and Enhance the Diversity and Quality of the Areas Landscapes**

- 45 Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross and they meet the tests set out in the 7 criteria.

**Policy EP5 - Nuisance from Artificial Light and Light**

- 46 Permission will not be granted for proposals where the lighting would result in obtrusive and / or intrusive effects.

## **Policy EP8 - Noise Pollution**

- 47 There is a presumption against the siting of proposals which will generate high levels of noise in the locality of noise sensitive uses, and the location of noise sensitive uses near to sources of noise generation.

## **Policy EP12 - Contaminated Land**

- 48 The creation of new contamination will be prevented. Consideration will be given to proposals for the development of contaminated land where it can be demonstrated that remediation measures will ensure the site / land is suitable for the proposed use.

## **Proposed Perth and Kinross Local Development Plan 2 (LDP2)**

- 49 Perth & Kinross Council is progressing with preparation of a new Local Development Plan to provide up-to-date Development Plan coverage for Perth & Kinross. When adopted, the Perth & Kinross Local Development Plan 2 (LDP2) will replace the current adopted Perth & Kinross Local Development Plan (LDP). The Proposed Local Development Plan 2 was approved at the Special Council meeting on 22 November 2017. The Proposed LDP2 sets out a clear, long-term vision and planning policies for Perth & Kinross to meet the development needs of the area up to 2028 and beyond. The Proposed LDP2 is considered consistent with the Strategic Development Plan (TAYplan) and Scottish Planning Policy (SPP) 2014.
- 50 The Proposed LDP2, as approved by Perth & Kinross Council, was subject of a 9 week period of representation, which ended on 2 February 2018. Any unresolved representation to the Proposed Plan after this period is likely to be considered at an Examination by independent Reporter(s) appointed by the Scottish Ministers. The Reporter(s) will thereafter present their conclusions and recommendations on the plan, which the Council must accept prior to adoption. It is only in exceptional circumstances that the Council can elect not to do this.
- 51 The Proposed Plan represents Perth & Kinross Council's settled view in relation to land use planning and as such it is a material consideration in the determination of planning applications. The Proposed Plan is, however, at a stage in the statutory preparation process where it may be subject to modification. As such limited weight can therefore currently be given to its content and the policies and proposals of the plan are only referred to where they would materially alter the recommendation or decision. The weight of the Proposed Plan may change following consideration of representation received during consultation, at which time the level of significance of any objection to strategy, policies or proposals within the plan will be known.



## **OTHER POLICIES**

### **Perth & Kinross Corporate Plan 2013-2018**

- 52 Corporate Plan Vision includes – Promoting a prosperous, inclusive and sustainable economy. Creating safe and sustainable places for future generations.
- 53 The following supplementary guidance and documents are of particular importance in the assessment of this application:
- Tayside Landscape Character Assessment (TLCA)
  - Flood Risk and Flood Risk Assessments – Developer Guidance (June 2014)
  - Green Infrastructure Supplementary Guidance (Draft) (July 2014)
  - BS 4142: 2014 Methods for rating and assessing industrial and commercial sound

## **SITE HISTORY**

- 54 92/00830/FUL Extraction of sand and gravel. Approved 9 December 1994
- 55 17/00903/SCOP Request to extend the operational life of the quarry to allow extraction of remaining consented reserves - Section 42 application to operate not in compliance with Condition 1, Scoping issued on 19 October 2017.

## **CONSULTATIONS**

- 56 As part of the planning application process the following bodies were consulted:

### **EXTERNAL**

#### **Scottish Environment Protection Agency (SEPA)**

- 57 No objection to the application. Advice provided on flood risk, ground water and surface water as well as regulatory advice for the applicant.

#### **Scottish Natural Heritage (SNH)**

- 58 No objection. There are natural heritage interests of international importance in the River Tay Special Area of Conservation (SAC), but SNH considers that these will not be adversely affected by the proposal. The Environmental Statement appears competent in identifying the protected species across the site and provides appropriate mitigation, which, if followed, should ensure compliance with the Wildlife and Countryside Act 1981 (as amended) and avoid harmful and illegal impacts to the protected species.

#### **Historic Environment Scotland (HES)**

- 59 Have considered the information received and do not have any comments to make on the proposals.

**Scottish Water**

60 No objection.

**The Scottish Government**

61 No response.

**Blairgowrie and Rattray Community Council**

62 No response.

**INTERNAL****Environmental Health**

63 No objection. This application seeks to extend the life of a long standing quarry and as such there could be implications to local residents through noise and dust impacts. Environmental Health is unaware of any complaints locally arising from dust or noise and there is no proposed change in operation of this quarry. Planning conditions are recommended.

**Transport Planning**

64 No objection.

**Biodiversity Officer**

65 No objection. An extended Phase 1 Ecological Survey has been provided to support the application. A number of recommendations are made in the survey report which should be conditions of any approval.

**Structures and Flooding (SF)**

66 No objection.

**REPRESENTATIONS**

67 None.

**ADDITIONAL STATEMENTS**

68

Environment Statement	Submitted
Screening Opinion	Not Required
Environmental Impact Assessment	Required
Appropriate Assessment	Not Required
Design Statement / Design and Access Statement	Not Required
Reports on Impact or Potential Impact	Phase 1 Habitat Survey

## **APPRAISAL**

- 69 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) require the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The adopted Development Plan comprises the TAYplan Strategic Development Plan 2016–2036 and the Perth and Kinross Local Development Plan 2014. The relevant policy considerations are outlined in the policy section above and are considered in more detail below.
- 70 From my review of the application I consider the main issues to be assessed are need, traffic, noise, lighting, air quality and dust, hydrology, ecology as well as landscape and visual impact.

### **Requirement for the Proposal**

- 71 The TAYPlan recognises the importance of resources and assets with potential to support economic growth. The Plan highlights that development and growth in the economy should occur in a way that does not place unacceptable burdens on environmental capacity and should not increase the exposure of users or inhabitants to risks. Policy 9: Managing TAYplan's Assets deals with finite resources and specifically refers to mineral deposits of economic importance; while emphasising the protection of prime agricultural land, forestry areas and carbon rich soils.
- 72 LDP Policy ER4 applies to proposals for the extraction of minerals. It gives support for the proposed development, provided the proposal complies with the criteria in the policy; and with other national, strategic and local planning policy.
- 73 The reserve at Marlee forms part of the consented sand and gravel reserves within the current Perth and Kinross and TAYplan landbank. Marlee has consistently served a local market for both sand and gravel and ready-mix concrete over the last 18 years; this includes the provision of high spec asphalt sand to Tayside Contracts and road grit to both Tayside Contracts and Fife Council. Having regard to existing consented reserves in the wider area, it is considered that demand within this market area will continue.
- 74 This application seeks an extension in the duration of operations at Marlee Quarry to provide sufficient time to allow the extraction of the full consented mineral reserve. The proposal allows for the extraction of the remaining reserve, the continued processing of sand and gravel, the operation of a ready-mix plant and the final restoration of the site. No operational changes are proposed to the existing consented operations. A reserve of approximately 600,000 tonnes of sand and gravel remains. It is proposed that the remaining reserve will be excavated at a rate of 100,000 tonnes per annum over a period of 6 years with a further year required to complete restoration. Planning permission is therefore sought for a period of 7 years.

## **Traffic and Transport**

- 75 Paragraph 271 of SPP 2014 requires development plans and development management decisions to take account of the implications of development proposals on traffic, patterns of travel and on road safety. PAN 50 Controlling the Environmental Effects of Surface Mineral Workings is also relevant, providing good practice advice, including the assessment of traffic at mineral working sites, which has been reflected in the ES. While Policy TA1B of the LDP requires the impact of the development to pedestrian and traffic safety to be assessed.
- 76 Traffic and transport was previously assessed under application 92/00830/FUL. This resulted in conditional control to deal with road access construction, geometry, gradient, visibility splays, turning facilities and facilities at the exit to avoid materials being deposited onto the public carriageway.
- 77 During the site visit, which included inspection of the site with the Planning Monitoring Officer, it was identified that repair work to the bell mouth entrance was required. Landscape planting at the site entrance required pruning to improve visibility splays and remedial work was required to avoid materials from vehicles being deposited on the road network at the site entrance. These issues were pointed out at the site visit and the operator has progressed with works to rectify these issues however it is still necessary to control these matters by condition (Conditions 6, 7 & 9).
- 78 Taking the above into account there is still a need to maintain safe access and egress to the site, accordingly conditional control should be updated to ensure the measures previously secured by condition are installed and maintained to enable compliance with the SPP, the PAN and Policy TA1B (See conditions 6-10). From discussions with the Road's Engineer there have historically been discussions regarding the re-grading the road near the Bridge of Essendy (condition 47 of the 1992 permission) and it was concluded that this was not required. Taking this into account there is no need to re-apply condition 47.

## **Noise, Air Quality and Dust**

- 80 The agent confirms that the current consent contains planning conditions which sets specific noise limits. There will be no change in relation to the permitted operations or noise levels in relation to operations. There have been changes to the Air Quality objectives in recent years, as such a review has been undertaken in relation to site operations and air quality. With the implementation of the submitted Site Dust Management Strategy it is considered that the potential for dust emission from the site is negligible to slight and it is unlikely that there will be any significant reduction in air quality.
- 81 The Environmental Health officer has been consulted on the application and has confirmed that they are unaware of any complaints locally arising from dust or noise. As there is no proposed change in operation of this quarry they recommend the retention of conditions to deal with noise and dust (see conditions 11-14).

- 82 With this conditional control in place the application is considered to comply with Policy EP8.

### **External Lighting**

- 83 Policy EP5 of the LDP relates to light pollution, seeking to prevent statutory nuisance from occurring due to artificial lighting. Conditional control was previously utilised to minimise light spillage beyond the boundaries of the site. This conditional control is still required (see condition 15).

### **Hydrology**

- 84 The site is not located within an area identified as being at risk of flooding. SEPA confirm that they do not consider that flood risk is a potential significant impact but they do highlight the importance of ensuring that the surface water ponding is not discharged off site.
- 85 All processing and stockpiling is located within the existing quarry and works are contained to ensure that there is no potential of particulate dispersal by run-off; this shall continue for the proposed extension in time. Water used for processing will continue to be recycled through ponds on a closed circuit; with no discharge from the site.
- 86 Any oil, fuel, lubricant or other potential pollutant will continue be handled on the site in such a manner as to prevent pollution of any watercourse or aquifer. For any liquid other than water, this will include storage in suitable tanks, either double skinned or housed within a suitable bund or other means of enclosure to provide containment for 110% of the storage capacity of the tanks and with no passive means of drainage.
- 87 Excavation is above the water table and, therefore, no dewatering will be undertaken. SEPA confirm that there is a private water supply (PWS) adjacent to the site the applicant states there has been no unacceptable impact on the PWS in the 18 years of operation of the quarry.
- 88 Supporting information indicates that the appropriate pollution prevention measures and industry best practice will be implemented to ensure that there is no unacceptable impact to the water environment. Nevertheless it is prudent to re-apply conditional control to protect the water environment (see conditions 16-17).

### **Ecology**

- 89 The LDP contains a number of policies that seek to protect important species and sites designated for their natural heritage interest and to ensure that proposals that may affect them are properly assessed. NE1A relates to International Nature Conservation Sites, NE1B relates to National Designations, NE1C covers Local Designations while NE3 Bio-diversity confirms that protection should apply to all wildlife and wildlife habitats, whether formally designated or not.

- 90 Ardblair and Myreside Fens Site of Special Scientific Interest (SSSI) lies 0.8km to the north-east. The Lochs Clunie and Marlee SSSI lies 1km to the west of the site and is included within the Dunkeld - Blairgowrie Lochs Special Area of Conservation (SAC).
- 91 The Lunan Burn, which flows from Marlee Loch and within 60m of the south-east corner of the consented Burnside of Marlee, is a tributary of the River Isla and as such is included within the River Tay SAC.
- 92 Consultation has been undertaken with Scottish Natural Heritage. Their consultation response focuses on the sites relationship with the River TAY SAC as this site is the site that is most vulnerable from the quarrying operation due to the potential for sedimentation and pollution which can affect the protected interests and their habitats. In SNH's view it is unlikely that the proposal will have a likely significant effect on the qualifying interests of the SAC either directly or indirectly, therefore, an appropriate assessment is not required. SNH have come to this conclusion based on the following factors:
- The long running operation of the quarry, which, to their knowledge, has not previously had a detrimental impact upon the SAC.
  - The description of water management, which includes the use of settlement ponds, no dewatering, the reduction of direct flows to the Lunan Burn and management of run-off.
  - Work on the area closest to the Lunan Burn is complete, which creates a further buffer to the SAC.
  - The proposed restoration scheme is designed to minimise surface water flow flowing directly to the burn and to increase dispersal by infiltration, which will have a localised benefit to water quality.
- 93 Taking the above into account I do not consider there will be a conflict with Policy NE1A International Nature Conservation Sites or Policy NE1B National Designations when taking account of the surrounding SSSI and SAC designations.
- 94 With regards to protected species an extended Phase 1 Ecological Survey has been provided to support the application. This appears competent in identifying the protected species across the site and provides appropriate mitigation, which, if followed, should ensure compliance with the Wildlife and Countryside Act 1981 (as amended) and avoid harmful and illegal impacts to the protected species. A number of recommendations are made in the survey report which should be conditions of any approval (see condition 18).

### **Landscape, visual impact and restoration**

- 95 Scotland's landscape is one of its most valuable assets it is therefore essential that this quality is maintained and enhanced. Development and land use change should be compatible with the distinctive characteristics and features of Perth & Kinross's landscape. Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross, as detailed in policy ER6.

- 96 The site is located within the Highland Foothills character unit of the Tayside Landscape Character Assessment. This landscape character type has a complex geological structure due to their position along the line of the Highland Boundary Fault. It consists of glacial deposits, steep whale backed hills and south west to north east valleys. It is a complex and sometimes disorientating landscape with glimpses of the Highlands and lowlands.
- 97 The earlier application accepted the landscape and visual impact of the quarrying scheme within the landscape character type but secured mitigation measures in the form of tree planting, phasing and restoration.
- 98 Landscape planting has now been formed which screens part of the quarrying operation. I consider that this planting should be retained during the operation of the quarry. I note that the final phase of quarrying will result in the loss of the tree lined drive to extract material but this landscape feature will be re-established. While the operation of the quarry will undoubtedly result in harm and be contrary to Policy ER6 the mitigation measures deployed during the operation of the site will go some way to reducing adverse effects. Conditional control will be applied to this permission to retain long-term benefits associated with restoration and aftercare to comply with Policy ER6 and ER4B (see conditions 19-28).

#### **Developer Contributions**

- 99 The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

#### **Economic Impact**

- 100 There will be a positive economic impact associated with the extraction of minerals from the quarry through the continuation of employment at the site as well as supplying the local market leading to a reduction in transport mileage.

#### **LEGAL AGREEMENTS**

- 101 It is anticipated that the Section 75 will require to be updated in order to adequately secure the terms of the bond or financial instrument associated with required site decommissioning, restoration and aftercare over the lifetime of the development and beyond.

#### **DIRECTION BY SCOTTISH MINISTERS**

- 102 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, regulations 30 – 33 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

#### **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 103 To conclude, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, I have taken account of the Local Development Plan and

material considerations as well as the Environmental Report submitted with the application. In this case I am content that the development proposed does not conflict with the Development Plan. Accordingly the proposal is recommended for approval subject to conditional control to secure mitigation measures and a legal agreement.

## **RECOMMENDATION**

### **Approve the application**

#### **Conditions and Reasons for Recommendation**

- 1 The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason - To ensure the development is carried out in accordance with the approved drawings and documents.

- 2 All sand and gravel extraction within the site shall be completed within seven years of the date of this Decision Notice. All plant and machinery shall be removed from the site and the land entirely reinstated to the satisfaction of the Council as Planning Authority at the termination of operations or the expiry of the term of approval, whichever is the earlier. Termination of operations shall be assumed on the cessation of operations for a period of 6 consecutive months.

Reason - In accordance with the terms of the application and in order for the Planning Authority to maintain control of the period of application in the interests of visual and residential amenity.

- 3 The extraction of sand and gravel shall commence and proceed only in accordance with the submitted details of phasing, direction and depth of working, as shown on the plans herewith approved. No deviations from the phasing plan shall be permitted. No more than one phase shall be worked at any one time. Restoration of the land to the agreed 'after use' shall take place concurrently with extraction to the entire satisfaction of the Council as Planning Authority.

Reason - In the interests of visual and residential amenity.

- 4 The rate of extraction of material from the site shall not exceed 250,000 tonnes per annum.

Reason - In order to secure the proper development of the site.

- 5 A record of the quantity, type and principal destinations of material leaving the plant shall be submitted to the Council as Planning Authority on an annual basis.

Reason - In order to secure the proper development of the site.



- 6 The vehicular access shall be maintained in accordance with Perth and Kinross Council's Road Development Guide specification Type E access detail and in line with Roads Standards for Vehicular Accesses to the satisfaction of the Council as Planning Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 7 The gradient of the access shall not exceed 3% for the first 10 metres measured back from the edge of the carriageway and the access shall be constructed so that no surface water is discharged to the public highway.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 8 Turning facilities shall be maintained within the site to enable all vehicles to enter and leave in a forward gear to the satisfaction of the Planning Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 9 Full visibility splays of 4.5m x 90m shall be provided to the left and right of the access measured between points 1.05m above the road level insofar as the land is in the control of the applicant within 2 months of the date of this consent and thereafter maintained for the duration of the permission to the satisfaction of the Council as Planning Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 10 An updated wheel cleaning strategy shall be submitted for the approval of the Planning Authority in consultation with the Transport Planning Section within 14 days of this decision notice. Thereafter the approved wheel cleaning strategy shall be provided and maintained throughout the operation of the proposed extraction so that no mud, debris or other deleterious material is carried by vehicles on to the public roads.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 11 No working or operations shall take place outwith the hours of 7.00am – 7.00pm Monday to Saturday inclusive other than water pumping, servicing, maintenance and testing of plant. Emergency work required to maintain safe working shall be notified to the Planning Authority in writing as soon as practicable.

Reason - In the interests of residential amenity.

- 12 Noise from any plant and machinery associated with this development shall be so controlled that it does not exceed 10 decibels (dBA) above ambient background (L90) noise levels, at any adjacent dwellinghouse, when measurements and

assessments are carried out in accordance with British standard BS4142:1990 to the satisfaction of the Council as Planning Authority.

Reason - In the interests of residential amenity.

- 13 A stock pile strategy for the site shall be submitted to the Planning Authority for approval within 14 days of this decision notice, this shall detail the area for stock-piling of extracted material and also the maximum height of the stockpiles. Thereafter the approved strategy shall be implemented in full throughout the duration of the development.

Reason - In the interests of the visual amenity of the area.

- 14 The Dust Management Strategy shall implemented in full throughout the duration of the development to the satisfaction of the Council as Planning Authority.

Reason - In the interests of residential amenity.

- 15 All external lighting shall be sufficiently screened and aligned so as to ensure that there is no direct illumination of neighbouring land and that light spillage beyond the boundaries of the site is minimised to a degree that it does not adversely affect the amenity of the neighbouring land.

Reason - In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.

- 16 There shall be no workings nor the use of vehicles nor the dumping of spoil or other materials within 10 metres of the Mill Lade and within 30 metres of the Lunan Burn. There will be no discharge of sand, gravel, silt or other particulate matter into the Lunan Burn.

Reason - To maintain water courses and in the interests of nature conservation.

- 17 The operation of the silt ponds and settling beds required shall be on a closed circuit system to ensure no discharge to the water environment to the satisfaction of the Planning Authority.

Reason - In order to secure the proper development of the site and avoid pollution.

- 18 The conclusions and recommended action points within the supporting biodiversity survey submitted and hereby approved shall be fully adhered to, respected and undertaken as part of the construction phase of development.

Reason - In the interests of employing best practice ecology and to ensure there is no adverse impact on any protected species as identified under the Wildlife and Countryside Act (1981).

- 19 The structural tree/landscape planting delineated as green blocks on the approved plans shall be retained and maintained.

Reason - To ensure a satisfactory standard of development and environmental quality and to reserve the rights of the Planning Authority.

- 20 A weed control plan to deal with all injurious weeds and invasive species on the whole application site shall be submitted to the Planning Authority for approval within 14 days of this decision notice. Thereafter the weed control plan shall be implemented in full throughout the duration of the development.

Reason - In order to secure the proper development of the site.

- 21 Topsoil shall be retained on the site and none shall be sold off or removed from the site. The working area shall be stripped of available topsoil. To minimise damage to soil structure, topsoil stripping shall only be permitted when the soil is reasonably dry and friable (usually May to September) and shall not take place during or immediately after periods of heavy rain. Wherever possible, stripped topsoil shall immediately be evenly spread over a suitably prepared similarly sized area on which extraction has ceased.

Reason - In order to secure the proper development of the site.

- 22 Where not used for progressive restoration, stripped topsoil shall be carefully stored on site and prevented from mixing with any other material. Topsoil dumps shall not exceed 6 metres in height to avoid excessive compaction. The topsoil dumps shall be evenly graded and seeded with grass to prevent wind and water erosion; they shall not be planted with trees. Weed control measures shall be taken as necessary to prevent weed infestation of topsoil stacks and weed contamination of adjoining agricultural land.

Reason - In order to secure the proper development of the site.

- 23 Topsoil shall be replaced at the next consecutive restoration cycle and shall be rooted and cross rooted to its full depth and stones exceeding 150mm in any one dimension will be removed.

Reason - In order to secure the proper development of the site.

- 24 After extraction is complete and before soil is restored restoration areas shall be rooted to a minimum depth of 350mm. Boulders and stones exceeding 200mm in any one dimension shall be removed.

Reason - In order to secure the proper development of the site.

- 25 Final grading shall be carried out to ensure a true specified level and slope and to avoid dishing or other depressions where water may collect. The land shall be restored so as to equate with surrounding land levels as agreed with the Planning Authority.

Reason - In order to secure the proper development of the site.

- 26 Provision shall be made at all times to ensure the site is adequately drained so as to prevent flooding or water seepage on to adjoining agricultural land.

Furthermore, the applicant shall reinstate or lay ditches and field drains as required by the Planning Authority for the continued use of the field for agriculture. Such obligation shall extend for a 5 year period after the laying of the topsoil is complete.

Reason - In order to secure the proper development of the site.

- 27 Restoration shall be undertaken in a progressive manner in accordance with the restoration commitments detailed in 8.4 to 8.4.5 of the Dalgleish Associates Ltd Environmental Impact Assessment Report dated August 2017 and the indicative restoration plan Figure 3.3.

Reason - In the interests of visual amenity, landscape quality and ecological interest and diversity.

- 28 Within six months of final cessation of quarrying a scheme for final landform restoration and aftercare, shall be submitted for the prior approval of the Planning Authority and shall be based on the restoration and aftercare commitments detailed in 8.4 to 8.5 of the Dalgleish Associates Ltd Environmental Impact Assessment Report dated August 2017. Thereafter final landform restoration operations and aftercare scheme shall be implemented in accordance with the approved details.

Reason - To ensure that final contours and updated restoration plan and an after care management plan for the site are adopted to ensure the site is capable of beneficial after use and to minimise adverse impacts on the landscape, nature conservation and amenity of the surrounding area.

## **B JUSTIFICATION**

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

## **C PROCEDURAL NOTES**

Consent shall not to be issued until a Section 75 Agreement to secure the terms of the bond or financial instrument associated with required site decommissioning, restoration and aftercare over the lifetime of the development and beyond has been completed and signed. The legal agreement should be concluded and completed within 4 months of the date of any Committee approval. Failure to conclude a legal agreement within 4 months may result in the planning application being re-assessed through failing to comply with the Minerals and Other Extractive Activities Policy ER4B and will be ultimately recommended for refusal under delegated powers.

## **D INFORMATIVES**

- 1 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement

would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

- 2 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 3 This development will require the 'Display of notice while development is carried out', under Section 27C(1) of the Town and Country Planning Act 1997, as amended, and Regulation 41 of the Development Management Procedure (Scotland) Regulations 2013. The form of the notice is set out in Schedule 7 of the Regulations and a draft notice is included for your guidance. In accordance with Regulation 41 the notice must be:
  - Displayed in a prominent place at or in the vicinity of the site of the development
  - Readily visible to the public
  - Printed on durable material.
- 4 The applicant is reminded that, should any protected species be present a licence may be required from Scottish Natural Heritage to disturb a protected species. Failure to obtain a licence may constitute a criminal act under the Habitats Regulations and penalties are severe for non-compliance.
- 5 The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended, it is an offence to remove, damage or destroy the nest of any wild birds while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act.

Background Papers: None

Contact Officer: John Russell 01738 475346

Date: 21 June 2018

**ANNE CONDLIFFE**  
**INTERIM DEVELOPMENT QUALITY MANAGER**

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