



Minerals Financial Guarantees Supplementary Planning Guidance

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Fermanagh & Omagh
District Council
Comhairle Ceantair
Fhear Manach agus na hÓmaí

1. Introduction

- 1.1 This Supplementary Planning Guidance (SPG) provides advice and guidance in relation to restoration and aftercare bonds or other financial provisions in the context of site restoration and aftercare for minerals development. The SPG outlines why financial provisions are required, different types of provision and how the Council will deal with these during the planning process. The SPG has been prepared to give guidance in the implementation of policy MIN02 'Restoration and Aftercare' and is intended for use by developers, the public and by planning officers in the assessment of all planning applications for minerals development in our District.
- 1.2 SPG represents planning guidance which supports, clarifies and/or illustrates by example policies included within the Fermanagh and Omagh Local Development Plan Strategy (PS). The information set out in this SPG should therefore be read in conjunction with the LDP, copies of which are available online or from the Planning Department. The SPG is a material consideration in the determination of planning applications.
- 1.3 The Pre-application Discussion (PAD) stage is the appropriate time for developers/applicants to discuss queries relating to a restoration and aftercare bond or other financial provision. This should act to front-load the planning application and result in a speedier planning decision. This SPG should be read in conjunction with the Council's other advice guides and protocols, including the Validation Checklist Applicant/Agent Protocol – A Good Practice Guide and the Pre-Application Discussion advice and guidance.

2. Planning Policy and Guidance Context

Regional Development Strategy (RDS) 2035

- 2.1 The RDS provides an overarching strategic planning framework to facilitate and guide the public and private sectors. It seeks to promote balanced economic growth across Northern Ireland whilst protecting and enhancing the environment. The Regional Development Strategy 2035 lays out eight aims, two of which include 'Support strong, sustainable growth for the benefit of all parts of Northern Ireland' and also to 'Protect and enhance the environment for its own sake'.

Strategic Planning Policy Statement (SPPS) for Northern Ireland

- 2.2 The SPPS acknowledges that the minerals industry makes an essential contribution to the economy and to our quality of life, providing primary minerals for construction and recognises it as a valued provider of jobs and employment, particularly in rural areas.
- 2.3 The SPPS recognises that while minerals development delivers significant economic benefits, there are also a number of challenges arising from this form of development, which fall to be addressed through the planning system. It

acknowledges that specific proposals can have significant adverse impacts on the environment and on the amenity and wellbeing of people living in proximity to operational sites. The document also acknowledges the challenges relating to the restoration of sites upon completion of work associated with the extraction and processing of minerals.

- 2.4 It is clear within the SPPS that the planning system has a key role to play in facilitating a sustainable approach to minerals development, and ensuring the appropriate restoration of sites after working has ceased.

Fermanagh and Omagh District Council - Local Development Plan 2030 Policy Context

- 2.5 The geology of the Fermanagh and Omagh area is rich in minerals. Mineral resources within the area range from peat, basalt, igneous rock, limestone to sand and gravel and they can often be found in areas of high scenic value and environmental sensitivity. The Council's approach is to promote the sustainable development of mineral resources in a way that protects the environment and communities and the provision of a financial guarantee underpins this.
- 2.6 The Council's planning policy in relation to restoration and aftercare of minerals development sites and the required Restoration/Aftercare Bond or other Financial provision to accompany this is contained within policy MIN02 – 'Restoration and Aftercare' in the Local Development Plan 2030 - Plan Strategy.
- 2.7 This policy requires all applications for mineral development to be accompanied by satisfactory proposals for a final restoration scheme and proposed future land use, timescales for the completion of restoration including details of phases, aftercare arrangements and site management arrangements including security during and after the process of restoration.
- 2.8 A restoration and aftercare bond or other financial provision is also required to ensure full restoration and reinstatement of the site should the developer fail to implement the previously agreed restoration plan.
- 2.9 MIN02 sets out, that to ensure restoration and aftercare proposals are carried out, the Council will require developers to provide a Restoration/Aftercare Bond or other Financial provision. The Council will ordinarily expect the applicant to appoint a person to undertake an appraisal of the financial information supplied with the application, including, but not limited to, the financial amount provided for, the method of quantifying the materials for extraction and restoration and to undertake regular reviews of works at the site as extraction progresses. Failure to satisfy the Council that appropriate financial provision is in place to cover restoration, should the applicant or developer default will result in the application being refused. It is the responsibility of the applicant to satisfy the Council that adequate provisions have been made. Sufficient evidence must be provided by the applicant.

- 2.10 Any restoration and aftercare bond or other financial guarantee will be secured by way of legal agreement.

3. What is a Restoration/Aftercare Bond or Financial Guarantee and why does the Council need it?

- 3.1 A financial guarantee or bond is an agreed financial sum secured to ensure financial resources are in place to enable restoration and aftercare proposals to be carried out in accordance with the agreed restoration plan.
- 3.2 In granting permission for minerals development, planning conditions and/or legal agreement will be used to ensure the satisfactory restoration and aftercare of each site, ensuring no future liability from land instability and/or costs of restoration or aftercare to the public purse will ensue as a result of works undertaken. The use of financial guarantees will safeguard against those instances where there is a planning breach, the applicant does not fulfil their obligations as stipulated in planning conditions or a planning agreement, restoration is not carried out in line with the approved plan or if the applicant ceases extraction work prematurely for any reason and there is inadequate evidence available that restoration will take place as required. It may also cover cases where the applicant may enter liquidation or does not have the financial capability towards the end of the lifetime of the development to undertake the agreed restoration or aftercare works. The examples listed are not exhaustive, there may be other examples and each case will be considered on its own merits, reflecting on the specifics of each site and the terms of any legal agreement entered into. The decision to call down a Restoration/Aftercare Bond or other Financial provision, will be a matter of judgement, which will be considered during any relevant enforcement investigation.
- 3.3 Financial Guarantees will also offer reassurance to neighbouring residents and the wider community that a guaranteed mechanism is in place to provide for site restoration and aftercare, should the need arise. In line with the Council's Enforcement Strategy, the Council will generally attempt to resolve any issues informally and by agreement in the first instance before formally calling down any bond. Developers are encouraged to engage constructively with the Council and to inform it in good time about any likely difficulties in complying with restoration or aftercare obligations and the steps being taken to address these difficulties.
- 3.4 An effective financial guarantee will reflect the nature and scale of the development and will, at all times, be a sum sufficient to cover all the outstanding works required for the full restoration and reinstatement of the entire works and this will also include adequate provision to cover associated costs for professional fees, procurement fees, optimum bias, inflation (cost increases), indexation and contingencies. It may also include the costs associated with long term monitoring of restoration proposals, where that is a relevant consideration in any particular case.
- 3.5 The cost of restoration will vary over the course of the development particularly if restoration is phased. Therefore, regular reviews of the Restoration/Aftercare

Bond or other Financial provision, undertaken by the applicant to satisfaction of the Council, throughout the lifespan of the development will likely be necessary to ensure the financial guarantee in place reflects the financial burden of restoration and aftercare required for each site, especially on sites with longer life times, this will be delivered by condition or planning agreement. The need for and exact period of any review will be considered on a case by case basis.

- 3.6 Where the developer and/or landowner comply with conditions of their planning permission and/or agreement as required, the Restoration/Aftercare Bond or other Financial provision will not need to be drawn upon.
- 3.7 Following restoration, a period of aftercare will ensue. The period of aftercare will allow the restored land to recover and settle to a condition where it is fit for the intended after use. This aftercare period also allows for any unseen consequences of restoration to surface.
- 3.8 Some of the key stages that must be considered when considering restoration and aftercare are outlined below. This is not an exhaustive list and the assessment of restoration and aftercare will be considered on a case-by-case basis.
 - Stripping of soils and soil making materials and either their storage or their direct replacement (i.e. 'restoration') on another part of the site;
 - storage and replacement of overburden;
 - achieving the landscape and landform objectives for the site, including filling operations if required, following mineral extraction;
 - achievement of any relevant ecological mitigation, compensation or enhancement measures;
 - restoration, including soil placement, relief of compaction and provision of surface features; and
 - aftercare and/or monitoring.
- 3.9 The security amount offered by the Restoration/Aftercare Bond or other Financial provision may be revised upwards to reflect the financial requirement necessary to enable full restoration/aftercare at any given time in accordance with the terms of the relevant legal agreement.
- 3.10 To ensure successful aftercare of the site, details will be agreed (including any phasing or monitoring arrangements) at the planning application stage. This will also be delivered by planning condition or legal agreement and this must also be covered by the restoration/aftercare bond or other financial provision.
- 3.11 The legal agreement will require, where a site is transferred or sold during the extraction, restoration and/or aftercare process, the requirements and liabilities of the bond will transfer to the new owner.

- 3.12 It is appropriate that the restoration and aftercare bond or other financial provision will be held with the planning authority who assesses and determines any planning application.

4. Types of financial guarantee

- 4.1 There are several different types of Restoration/Aftercare Bond or other financial provision. The financial guarantee should be appropriate to the location, nature and scale of the planning application and the financial capability of the applicant. The Council will determine the appropriate financial provision on a case by case basis. It will seek to ensure that the provision offered carries with it a low risk to the Council. It will be the responsibility of the applicant to clearly explain why a certain Restoration/Aftercare Bond or other Financial provision has been chosen, including the final costs and how these have been determined. The level of detail provided must be appropriate and sufficient to enable the Council to make an informed assessment.

- 4.2 The most common financial guarantees likely to be appropriate are:

- **Cash Bond** – The applicant provides a cash sum covering the restoration and reinstatement obligations to be held on account by the Council.
- **Surety Bond** – This is a type of insurance or agreement to guarantee the restoration and reinstatement obligations. The bond is based on a technical appraisal, financial structure and track record of the applicant.
- **Bank Guarantee** – A bank guarantee is a type of financial guarantee offered by a lending institution such as a bank. The bank guarantee means that the bank or other lender will ensure that the liabilities of the applicant in relation to restoration and reinstatement obligations will be met. A bank or lender will normally provide a restoration guarantee and take security over an asset or provide an overdraft facility.
- **Escrow Account** - Escrow involves the deposit of funds into a joint ring fenced account to a value equal to the outstanding liability of the applicant's restoration and reinstatement obligations. Money is normally paid to the applicant as the value of the restoration and reinstatement obligations are reduced.
- **Pay as you go Escrow and Bond Hybrid** – The bond provides a restoration guarantee while the pay as you go Escrow account is growing.

5. Information required for Planning Applications

- 5.1 It is essential that consideration of the most appropriate form of restoration and aftercare of any minerals site, and the accompanying Restoration/Aftercare Bond or other Financial provision take place at an early stage of the planning process. Engagement with the Council at an early stage through the Pre Application Discussion (PAD) process is encouraged and will be beneficial, as it will identify key considerations and any significant issues. It will also help to

ensure that any application is front loaded with the relevant information, surveys and costings.

- 5.2 The level of supporting information, surveys and costings required as part of the financial guarantee submission accompanying any planning application will vary depending on the size, scale and location of the minerals development and the physical characteristics of the site. It will also be influenced by the type of mineral that will be extracted from the site.
- 5.3 The information requirements set out below in terms of a financial guarantee are not considered exhaustive and additional information may be required depending on the specific circumstances of each application.
- 5.4 All applications for minerals developments must be accompanied at submission stage with satisfactory details on the final restoration scheme for the site and aftercare arrangements including any monitoring of restoration, including any phasing and timescales for completion. The application should also be accompanied with a full and detailed breakdown of the costs associated with delivering the restoration scheme or the various phases of it, including aftercare arrangements and monitoring. The level of detail must be sufficient to enable the Council to reach an informed decision on the acceptability of the restoration scheme and Restoration/Aftercare Bond or other Financial provision.
- 5.5 The costs should also include a contingency sum for unexpected costs arising, factor in indexation, inflation based on proposed phasing or timelines for completion and a prediction of the costs that would likely be incurred by the Council in delivering the restoration and aftercare scheme, should that situation arise. Any submission should also contain an explanation why a particular Restoration/Aftercare Bond or other Financial provision for the scheme has been chosen, suggestions for review periods and an in-principle confirmation that this can be obtained.
- 5.6 These matters will all be material considerations in the determination and the Council may request consideration of alternative financial guarantees if necessary.
- 5.7 The Council will ordinarily expect the applicant to appoint a suitably qualified person to undertake an appraisal of the information supplied with the application, including, but not limited to, the financial amount provided for, the method of quantifying the materials for extraction and restoration and to undertake regular reviews of works at the site as extraction progresses. Failure to satisfy the Council that appropriate financial provision is in place to cover restoration, should the applicant or developer default will result in the application being refused.
- 5.8 The evidence submitted by the applicant with an application should examine, but not be limited to, the lifetime of the permission and the extent and impact on the natural and physical infrastructure.

- 5.9 The Council will generally seek to ensure that the reasonable worst case cost scenario estimated is taken as the sum required for the bond or financial guarantee, taking into account phasing or timelines, inflation and the potential need for the Council to recruit or enlist specialist services in the event the Council has to commence and complete the restoration or aftercare scheme.
- 5.10 The final details of the restoration scheme, Restoration/Aftercare Bond or other Financial provision and the review process will be decided by the Council in consultation with other relevant consultees as required. These matters will be conditioned as part of any mineral extraction permission or form part of a planning agreement and the Restoration/Aftercare Bond or other Financial provision will be made before the permission is granted.

6. Monitoring and review of financial guarantee

- 6.1 Monitoring of the development to ensure that works are being carried out in accordance with the permission granted, and to ensure that any restoration and aftercare requirements are also complied with is essential. This will ensure compliance with the requirements of the permission and ensure that any breach of planning permission will not affect the ability of the financial guarantee to deliver site restoration or reinstatement as required.
- 6.2 In addition, to assess the effectiveness of any bond or financial guarantee, regular agreed reviews of the approved Restoration/Aftercare Bond or other Financial provision will ordinarily be necessary. The review will ensure the agreed bond or other financial provision is fit for purpose, and that the sum in place will fully cover the costs of restoration, reinstatement, aftercare and monitoring of the site during the development or each phase thereof. Reviews should be undertaken by the applicant to the satisfaction of the Council in accordance with the required conditions of the permission or planning agreement. Reviews should assess the extent of development undertaken up to the review date and include an assessment of any future works that will be undertaken on site until the next review date. The review will be submitted to the Council for consideration in line with the agreed provisions of any planning condition or legal agreement.
- 6.3 The review will ordinarily include a review of the bond or other financial provision itself and the inflationary factors initially used to make sure they are still appropriate and cover the costs of any restoration and reinstatement. Any review should be undertaken by a suitably qualified person to the satisfaction of the Council. If the review process concludes that the financial guarantee needs to be increased or can be decreased, formal notification of this will be carried out by the Council following the review.
- 6.4 If following review, the existing bond or other financial provision requires to be amended, then this should be done by the applicant in line with the agreed provisions of any planning condition or legal agreement. If there is a failure by the applicant to provide a financial guarantee which equates to the financial liability or for the operator to undertake works to reduce financial liability in an

agreed time frame, this will be dealt with consistently with the terms of the legal agreement.

- 6.5 The regularity of the financial guarantee reviews will be considered and agreed during the processing of the application and secured by way of planning condition or planning agreement. The extent of reviews will be dependent on the location, nature and scale of any proposal and the type of financial guarantee agreed.
- 6.6 If a developer complies with conditions stipulated in their planning approval regarding the restoration of each site, the financial guarantee shall not be drawn upon or invoked.