Request 1

a list of the Screening Directions issued by Scottish Ministers in the last 5 years;

DPEA Case Reference	Case description	Site
PPA-100-2078	Demolition and mixed use development comprising purpose built student accommodation and associated development	BT Engineering Depot, Froghall Terrace, Aberdeen
CIN-FLK-001	Residential development	Milnquarter Farm, Roman Road, Bonnybridge
PPA-320-2114	New access including new roundabout	150 Dumcavel Road, Muirhead, Glasgow
PPA-160-2022	Alteration to permitted extent of quarry operations and consequential amendments to approved landscape, tree protection and restoration schemes	Dumbuckhill Quarry, Stirling Road, Dumbarton

Request 2

a copy of each Screening Direction where that Direction relates to development that can be described as "extractive industry". Direction relating to PPA-160-2022.

TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2011
APPEAL PPA-160-2022: ALTERATION TO PERMITTED EXTENT OF QUARRYING OPERATIONS, DUMBUCKHILL QUARRY
NOTICE UNDER REGULATION 12 THAT AN ENVIRONMENTAL STATEMENT IS REQUIRED AND REGULATION 5 SCREENING DIRECTION

1. The above appeal was made in respect of an application under section 42 of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"). The proposed development was described in the application as follows:

"Section 42 planning application for the continued working of Dumbuckhill Quarry without complying with conditions subject to which planning permission DC02/187 was granted"

2. The application was submitted without an environmental statement. Following an amendment to the application, West Dumbartonshire Council screened it as not requiring environmental impact assessment.

3. In an email dated 16 November, I informed the appellants and the Council that I had reached a preliminary view that the application was for development falling within schedule 1 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 ("the EIA Regulations") and was therefore EIA development. I invited their submissions in respect of this. The appellants and Council provided responses as requested on 23 November.

4. I have considered these responses. Although both the appellants and Council argued against my analysis, I nevertheless confirm my view that EIA is required. My

reasoning is set out in paragraphs 5 to 7 below. I then deal with submissions by the appellants and Council in paragraphs 8 to 11, and thereafter set out the procedural consequences.

Reasons for determining that the proposed development is EIA development

5. A section 42 application is an application for planning permission. If granted it will result in a new planning permission. It will not vary the terms of any other existing planning permission. The description of the development for which permission is sought under a section 42 application is the same as that for which there is existing permission.

6. The EIA Regulations require an environmental impact assessment ("EIA") where an application for planning permission is an EIA application, i.e. the development proposed is EIA development. If the development for which planning permission is sought is schedule 1 development then that application is automatically an EIA application. Unlike an application for a schedule 2 development, there is no further exercise to consider whether or not the development would have significant effects on the environment.

7. Quarries where the surface of the site exceeds 25 hectares fall within paragraph 19 of schedule 1 of the EIA Regulations. I take the reference in schedule 1 to the "surface of the site" to mean all land within the application boundary, rather than merely the extractive area. In the present case, the application is for a development of the same description as that for which consent was granted under permission DC02/187, i.e. a quarry where the surface of the site extends to 30 hectares. Therefore in the present case, the application falls within schedule 1 of the EIA Regulations. It follows that EIA is required in respect of the application.

Response to the appellants' and Council's submissions

1. The appellants made the submission that the proposed changes in this case are modest when taken in the context of the whole quarry; that they raise a narrow range of issues; and that the interpretation of the law I have set out would lead to absurd and potentially extreme results where a section 42 application is made in respect of an existing development falling within schedule 1 of the EIA Regulations. I acknowledge that there is some force in these submissions. However, I find that they must be wrong for the following reasons:

First, if the appellants were correct, the description of the development proposed in the planning application would have to be different for the purposes of section 42 of the 1997 (in which the "development" would be the whole quarry) from that for the purposes of the EIA Regulations (in which the "development" would be solely the changes proposed to the quarry's profile). I cannot accept this. The EIA Regulations were drafted to work alongside the 1997 Act. Their use of the term "development" is drawn from the 1997 Act – the regulations use "development" rather than "project", the term used in the parent Directive. "Development" is clearly used in the EIA Regulations to mean the development as described in the planning application. Therefore, I find I cannot agree with the appellants' interpretation.

Second, although (in the appellants' view) the proposed changes from the existing development are modest in the context of the whole quarry, it nonetheless falls to me to determine planning conditions for the whole quarry as part of my determination of the present appeal. It follows that I must give consideration to the environmental

effects of whole quarry in determining the appeal. Therefore, I cannot agree with the appellants' view that, for EIA purposes, consideration of the proposed development can be restricted to one part of it.

2. The appellants also argue that it would be difficult to envisage any real use of the provisions relating to changes or extensions of schedule 1 developments in paragraph 14 of schedule 2 to the EIA Regulations. I disagree with the appellants on this point. The appellants' application was for planning permission for the whole quarry. It is quite possible to conceive of a situation where a change or extension of an existing schedule 1 development was made by a planning application relating only to part of that overall existing development. For example, if new buildings or machinery were required within the quarry or an extension was to be made to the quarry, a planning application could be made for that development alone. In such circumstances, the proposed development would fall to be considered in respect of EIA under paragraph 14 of schedule 2 of the EIA Regulations.

3. The Council in their response refer to the English guidance in respect of section 42's counterpart in English planning legislation (section 73 of the Town and Country Planning Act 1990). The Council appear to interpret the guidance as indicating that the planning authority has some discretion in requiring EIA where there is a "minor material amendment" to an existing development. This is not my reading of the guidance. It must be borne in mind that the guidance is written to cover both schedule 1 development and schedule 2 development – for the latter there is an element of judgement for the planning authority in determining whether EIA is required, but for the former there is not. Although the guidance states that "an environmental statement must be submitted with a section 73 application for development which the local planning authority considers to be environmental impact assessment development", since in the present case the development in question is schedule 1 development, there is no element of judgement for planning authority. It must find that the proposed development it is EIA development and therefore that EIA is required.

4. I can appreciate that, generally speaking, it might be perceived as disproportionate to require EIA in a case where the nature of the application is really just to change, for instance, to a minor operating condition. However, leaving aside the mechanism for non-material variations in section 64, there is no freestanding application process to vary a planning permission. In the present case, the changes proposed to the existing development by the appellants are material - otherwise the appellants need not have made a planning application, but could have relied on section 64.

Procedural matters

5. Having concluded that the development is EIA development, I am required to set out this view in the form of a screening direction, along with the regulation 12 notice. This letter constitutes a screening direction under regulation 5 of the EIA Regulations that the proposed development before me in the present appeal is EIA development in terms of the EIA Regulations.

6. Regulation 12 of the EIA Regulations (read with regulation 2(6)) provides that, where it appears to the reporter that an application to which an appeal relates is an EIA application but is not accompanied by an environmental statement, then the reporter must notify the appellant that a submission of an environmental statement is required (and copy this to the planning authority). This letter therefore also constitutes notice to the appellant under regulation 12 that EIA is required.

7. I am required by regulation 12(2) of the EIA Regulations to give the appellants three weeks to confirm if they will be providing an environmental statement. Therefore - although I understand from their previous response that it would be their intention to do so – I have to ask for confirmation of this. Once I have a response from the appellants on this point, I will write to parties to make arrangements for further procedure in the appeal.

8. This notice has also been provided to the Council, as required by regulation 12(1) of the EIA Regulations.

Robert Seaton
Reporter