

05/00835/EEIA

MINUTE OF AGREEMENT

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between

THE FIFE COUNCIL, constituted in terms of section 2 of the Local Government etc. (Scotland) Act 1994 and having our principal offices at Fife House, North Street, Glenrothes, Fife, the local authority for the local government area of Fife in terms of the Town and Country Planning (Scotland) Act 1997 (who and whose successors are hereinafter referred to as "the Fife Council").

and ENNSTONE THISTLE LIMITED, incorporated under the Companies Acts and having their registered office at Ennstone House, Ethiebeaton Quarry, Kingennie, Monifieth, Angus (who and whose successors are hereinafter referred to as "the Mineral Operators").

WHEREAS the Mineral Operators submitted to the Fife Council an application Reference 05/00835/EEIA (hereinafter referred to as "the Application") for planning permission for the extension to Balmullo Quarry and construction of new access route at Balmullo Quarry, Lucklaw, Quarry Road, Balmullo in the local government area of Fife (hereinafter referred to as "the Development Site");

AND WHEREAS the Fife Council has agreed to approve the Application subject to a number of planning conditions;

AND SUBJECT ALSO to the relevant parties entering into an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, to regulate the restoration of the land comprised in the said application to constitute and establish a community liaison group and also to regulate other matters in connection with the proposed development;

AND WHEREAS the Mineral Operators for their interests as heritable proprietors of the Development Site but have agreed to enter into this Agreement;

NOW THEREFORE the Fife Council and the Mineral Operators for their respective interests under and by virtue of Section 75 of the Town and Country Planning (Scotland) Act 1997, HAVE AGREED AND DO HEREBY AGREE in manner following:-

- FIRST The Agreement is, so far as may be competently done, entered into under and in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997, provided that, if and to the extent that any term, provision, condition or obligation contained in this Agreement shall be held in any proceedings arising under this Agreement or otherwise, to be a term, provision, condition or obligation, which cannot be competently included or enforced under an Agreement entered into under and in terms of Section 75, such term, provision, condition or obligation shall be and remain enforceable to the same extent and effect as if this Agreement was an Agreement in common form between the parties hereto; And, further, the whole rights and remedies of the parties arising from this Agreement, with and under the foregoing proviso, shall be exercisable without prejudice to any other rights and remedies competent to the parties either under statute or at common law, or otherwise.
- SECOND Any difference or dispute arising as to the interpretation or meaning of this Agreement or any other matter arising therefrom shall be submitted to the amicable and final decision of an Arbiter to be mutually appointed or failing agreement as to such appointment to be appointed by the Sheriff Principal of Tayside, Central and Fife on the application of any party hereto.
- THIRD This Agreement shall come into effect and shall be enforceable upon the issue of Notice of Planning Consent in respect of the Application, to be issued following hereon, notwithstanding the date or dates hereof;
- FOURTH The parties hereto hereby consent to the Registration hereof, and also any Decrees, Interim or Final, of said Arbiter, in the Books of Council and Session for preservation and execution and hereby appoint these presents to be recorded in the Division of the General Register of Sasines applicable to the County of Fife or the Land Register as appropriate immediately following the execution and delivery hereof.

FIFTH

The Mineral Operators hereby bind and oblige themselves to carry out all necessary restoration works, reinstatement works and landscaping works in accordance with the requirements contained in the draft planning decision notice under application reference number 05/00835/EEIA annexed and executed as relative hereto and in the Environmental Statement and Plans referred to in Condition 1 therein, or with any replacement or additional conditions to be imposed in any renewal or subsequent grant of planning permission relating to the Development Sites or any part thereof.

SIXTH

Prior to the Mineral Operators carrying out any operations in accordance with the Application, they shall provide documentary evidence to the Fife Council of their membership of the Quarry Products Association (QPA) restoration guarantee scheme ("the scheme"). The Mineral Operators shall maintain their membership of the scheme at all times until the restoration of the quarry has been completed in terms of Clause FIFTH above. In the event that the Minerals Operators cease to be members of the scheme, they shall within one month of their membership ceasing underwrite their obligations under clause FIFTH above by purchasing and maintaining a Bond or Guarantee from a Bank or other appropriate financial institution to meet the entire cost of the execution, or if appropriate, the completion, or both, of the restoration, landscaping and other works referred in clause FIFTH hereof in the event of the Mineral Operators going into liquidation whether voluntary or otherwise (other than a voluntary liquidation for the purpose of reconstruction or amalgamation) or having a Receiver appointed to the business and undertaking of the Mineral Operators or otherwise ceasing operations either general or in respect of the Development Sites to which these applications relate before the Mineral Operators have complied with the relevant planning conditions referred to under the planning consent hereinbefore mentioned in clause FIFTH hereof, and for any appropriate replacement or additional conditions as above referred to. The interest of the Fife Council under this Agreement as Planning Authority will be endorsed on any bond or guarantee and the Fife Council shall at its sole discretion have the right to call-up payment of the monies retained in said bond or guarantee to meet the cost of the execution and/or completion of the restoration,

landscaping and other works in the event of default by the Mineral Operators as detailed herein. The said bond or guarantee shall be deposited with the Fife Council prior to any works commencing on the Development Site. The initial sum comprised is said bond or guarantee shall be agreed between the Fife Council and the Mineral Operators, which failing, by an independent professional Valuer appointed by the Fife Council and shall be reviewed every three (3) years having regard to the ongoing nature of the mineral extraction operations and the progressive phased restoration and landscaping, if any, which may have been implemented by the Mineral Operators.

In the event of the Mineral Operators complying entirely with the relevant planning conditions referred to in this and the preceding clause hereof to the satisfaction of the Fife Council, the Mineral Operators shall be entitled to obtain an appropriate discharge.

SEVENTH

(i) Prior to the commencement of the proposed development under the Application "development" in this context meaning extraction of rock as more fully set out under the Application, a Liaison Committee (as after defined) shall be constituted by the Mineral Operators at their expense.

(ii) In the context of this Agreement, a "Liaison Committee" shall mean the Liaison Committee constituted under this Agreement and the following shall apply:-

(a) The objects of Liaison Committee shall be to monitor the Mineral Operators' operation of the Development Site and compliance with the appropriate planning consents pertaining thereto.

(b) The Liaison Committee shall comprise the following parties as follows:-

1. An elected Member of the Fife Council for the ward in which the Development Site is located to be nominated by the Fife Council.
2. Two representatives of the Mineral Operators.
3. A member of the Balmullo and District Community Council ("the community council") to be nominated by the community council.
4. A maximum of two residents living within the area of the community council to be nominated by the community council.
5. A representative of the Fife Council as Planning Authority.

which persons referred to in the paragraph (b)1-5 above are hereinafter referred to as "the Liaison Committee Members".

(c) The Member of the Fife Council as set down in paragraph (b)1 above shall Chair the inaugural meeting of the Liaison Committee.

(d) The Liaison Committee shall meet from on a regular basis during the operation of the quarry and the inaugural meeting of the Liaison Committee will establish the venue, frequency of meetings, secretaryship and chair of future meetings.

EIGHTH

Prior to any work commencing on the Development Site in accordance with the Application the Mineral Operators shall submit to the Council for approval a Management Plan to secure the long term management of the natural heritage interest of the Development Site. In particular, the Management Plan should address the measures necessary for public safety, vegetation management, habitat enhancement and matters relating to geological interest, tidiness and public amenity. Following the approval of the said Management Plan, the Mineral Operators shall implement the plan.

NINTH

In the event of the Mineral Operators deciding to sell or otherwise dispose of any part of the heritable subjects affected by this Agreement, they shall take bound in like manner any person, limited company, firm or other to whom the said subjects may be sold or otherwise disposed of.

And the Parties consent to registration hereof for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding pages

Register on behalf of the within-named THE FIFE COUNCIL in the Register of the County of Fife.