

Hazelbank Quarry – 21 Year Lease

Transport Infrastructure and Environment Committee

18 June 2012

1 Purpose of report

- 1.1 To advise the Transport, Infrastructure and Environment Committee of the current situation with Hazelbank Quarry, with a recommendation to refer this report to the Finance and Resources Committee for approval to enter into a 21 year lease with Aggregate Industries UK Ltd (AI Ltd). Appendix 1 shows the existing mined quarry in yellow, immediately east of the A7, and the proposed existing quarry plus extension within the red boundary line.

2 Summary

- 2.1 Hazelbank Quarry is a source of dry stone products for the construction industry and is located adjacent to and north-east of the A7 Edinburgh to Galashiels road, in Scottish Borders Council, 7km from Stow. It is understood that quarry operations at the existing site commenced in 1927.
- 2.2 During the early 1990s the quarry produced 200,000 Tonnes of high quality dry stone material and 60,000 tonnes of coated stone material per annum. From 1995 the lease transferred to Tarmac Quarry Products who took over the existing lease holder Wimpey Minerals. There has been only limited stone production since 1995 as Tarmac chose to “mothball” the quarry.
- 2.3 Although situated in Scottish Borders Council, ownership of the quarry previously lay with Lothian Regional Council and was transferred equally to East Lothian, West Lothian, Midlothian and City of Edinburgh Councils following Local Government reorganisation in 1996.
- 2.4 In June 2010 the four owning Councils of Hazelbank Quarry entered into a three year lease with AI Ltd granting them access rights through the quarry and the right to mineral extraction, subject to minimum rent and royalty payments, through delegated powers.

3 Main report

- 3.1 The purpose of the lease was primarily to give AI Ltd an element of security to allow them to progress a new planning application for a new quarry comprising the existing quarry (owned by the four Councils) and substantial adjacent land holdings north of the quarry (over which AI Ltd had control) which would secure the prospect for a significant future quarrying operation.
- 3.2 Throughout 2010 and 2011 officers from the four Councils met with AI Ltd and have jointly agreed, subject to the relevant approvals, that the Councils could enter into a 21 year lease of the existing Hazelbank Quarry while retaining an option to pursue a Joint Venture (JV) arrangement with AI Ltd if terms for this can be agreed. This agreement would need to be within a three year period following commencement of extraction from the new quarry.
- 3.3 The proposed Heads of Terms of the 21 year lease and JV, should this option be taken up, are detailed in Appendix 2 of this Report.
- 3.4 East, Mid and West Lothian Councils have already approved the award of a 21 year lease to AI Ltd.
- 3.5 Throughout the 1990s the quarry produced 200K tonnes of dry stone materials and 60K tonnes of coated road stone per year. The quarry was moth-balled from 1995 by the previous lease holder Tarmac. Tarmac did not regard the existing quarry as a viable option when considered alongside their other mineral deposits in South East Scotland. Their interest lay in protecting the quarry from operation by their competitors.
- 3.6 As a result of changes to quarrying legislation in 1999, despite having planning consent until 2042, the existing quarry footprint (owned by the four ex-Lothian Regional Councils) had severely limited opportunity to efficiently extract stone.
- 3.7 In 2008 AI Ltd gained an exclusive option on ground adjacent to the north of the existing quarry. This land is only accessible through land belonging to the four Councils, which when accessed, would present the opportunity to develop a major quarry over 20-40 years with 12-16M tonnes of stone reserves.
- 3.8 The existing owned quarry has limited extraction potential of only 200-300K tonnes of stone with questionable viability therefore exposing this to competition is not realistic.

4 Financial Implications

- 4.1 Currently the rent is £5K per annum to be shared between all four owning Councils. Granting the 21 year lease to AI Ltd will permit them to invest the necessary capital to gain access to the quarry extension area and allow them to mine and sell the mined stone with a £0.54/tonne royalty resulting in an estimated £54K per annum income to the Councils.

4.2 If a JV would represent best value to the Councils and subsequently realise more income, there is a requirement on both the Councils and AI Ltd to explore a JV within the first three years following commencement of extraction.

4.3 Under the terms of the proposed 21 year lease all remediation costs that currently lie with the owning Councils for the existing quarry will transfer to AI Ltd in addition to their remediation costs for their extension area.

5 Equalities Impact

5.1 The subject of this report has no relevance to public sector duty contained in the Equality Act 2010 and a full Equalities Impact Assessment is not required.

6 Environmental Impact

6.1 The granting of a 21 year lease to AI Ltd will reopen a quarry that has lain dormant for nearly 15 years. All relevant environmental considerations were an inherent part of the granting of the planning consent by Scottish Borders Council.

6.2 Remediation of the entire quarry will be responsibility of AI Ltd once all quarrying resources have been exhausted.

7 Conclusions

7.1 As AI Ltd have the exclusive rights to any viable extension area to Hazelbank Quarry and the four Councils have ownership of the existing quarry and subsequently the only viable access to the quarry extension area, the granting of a 21 year lease to AI Ltd to access and sell products from the quarry, is ultimately the only option to reopen the quarry and maximise income to the Councils.

7.2 A JV may provide better value to the four owning Councils than the lease option therefore an obligation has been included in the terms of the lease that this must be explored within three years following commencement of extraction. A report of the findings will then be made to each owning Council, if a JV is the best value option.

8 Recommendations

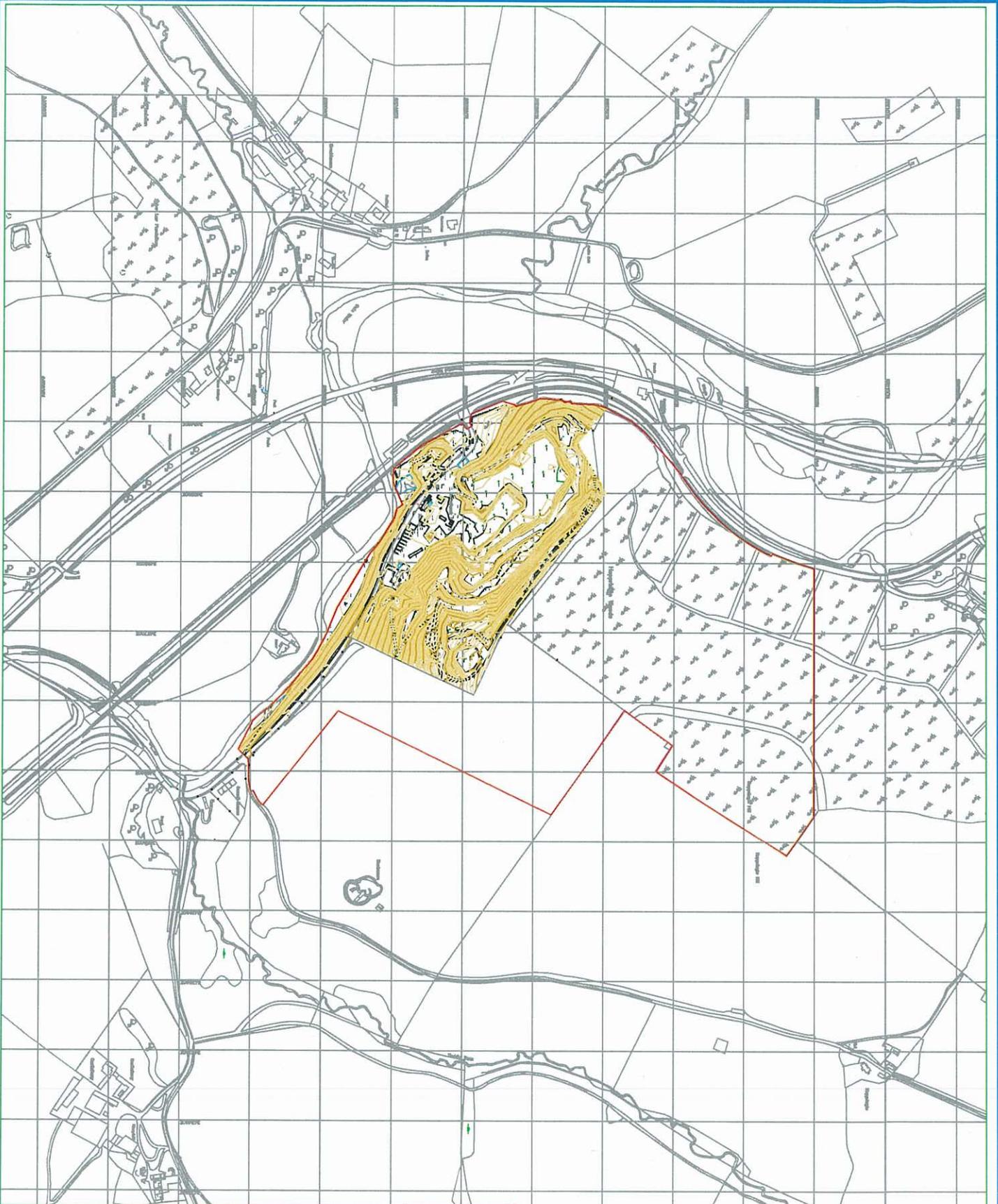
8.1 It is recommended that the Committee, refers this report to the Finance and Resources Committee with a recommendation that the City of Edinburgh Council, as one of the four owning Councils of Hazelbank Quarry, enters into a 21 year lease with Aggregate Industries UK Ltd, subject to the following terms and conditions:

- a) The tenant will be Aggregate Industries UK Ltd.
- b) The area of ground is as shown on the attached plan (Appendix 1) within the red boundary line.
- c) The lease is for 21 years from an agreed date of entry and that within three years a Joint Venture option will be explored with a follow-up report being required should the JV represent best value.
- d) The land will eventually be used for the extraction, processing, sale and distribution of rock and ancillary use.
- e) The initial lease is £5K per annum, paid annually in advance, until the third anniversary or until commencement of extraction, whichever is earlier.
- f) At the third anniversary or the date of commencement of extraction the minimum payments, paid annually in arrears, will be equivalent to the Royalty/Management Fee as detailed in Appendix 2.

Mark Turley
Director of Services for Communities

Appendices	1 Plan of Hazelbank Quarry 2 Lease Agreement – Proposed Heads of Terms
Contact/tel/Email	Euan Kennedy - 0131 529 3732 - euan.kennedy@edinburgh.gov.uk
Wards affected	None
Single Outcome Agreement	National Outcome (14) – We reduce the local and global impact of our consumption and production.
Background Papers	None

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CLIENT Hazelbank Quarry Extension	JOB TITLE Proposed Extension Boundary
SCALE 1:5000 @3	DRAWN BY G.M.
DATE Mar 09	APPROVED A.D.
PROJECT NO. A/6/08	REV. 03

LEASE AGREEMENT BETWEEN THE FOUR LOTHIAN AUTHORITIES AND AGGREGATE INDUSTRIES UK LTD INCORPORATING OPTION TO FORM A JOINT VENTURE

PROPOSED HEADS OF TERMS:

Parties: The Four Lothian Authorities (The Authorities) & Aggregate Industries UK Ltd (AI).

Subjects: To comprise of:

The area of ground shown shaded pink on the enclosed plan; and

The area of ground shown shaded purple on the enclosed plan over which AI will have a non exclusive right of access to the public road.

[NOTE – this plan is identical to the plan attached to the Report. The area shown hatched is the area referred to as ‘shaded pink’ and the area shown cross hatched is the area referred to as ‘shaded purple’]

Greater Site: Hazelbank Quarry including the adjacent landholdings under quarrying.

Term: 21 years from the Date of Entry.

Date of Entry: on conclusion of missives.

Permitted Uses: The extraction, processing, sale and distribution of rock and ancillary uses related to these activities including the right to erect fixed plant and machinery including a concrete batching plant and the right to bring minerals across the subjects from adjacent lands to the public road, the route/standard of which can be modified and upgraded as necessary.

Initial Rent: £5,000 per year payable annually in advance from date of entry until third anniversary of the date of entry or until commencement of extraction whichever is the earlier.

Minimum Payment: Payable, annually, in arrears from third anniversary of the date of entry or following commencement of extraction whichever is the earlier. The Minimum Payment will be equivalent to the Royalty/Management Fee payable on 100,000 tonnes of rock extracted and sold, or otherwise disposed of over the weighbridge. The Minimum Payment will merge with all payments relating to extraction within the Subjects and the Greater Site i.e. the Royalty/Management Fee which are detailed below. At the proposed Management Fee/Royalty rates the Minimum Payment at the present time would be £54,000 per annum.

Royalty: £0.54 per tonne payable on rock extracted from the Subjects and sold or otherwise disposed of over the weighbridge in excess of the Minimum Payment.

Management Fee: £0.54 per tonne on all minerals extracted from adjoining lands not owned by The Authorities and transported across the subjects to the public road in

excess of the Minimum Payment. The Management Fee shall reimburse The Authorities for any management costs relating to the operation of the lease.

Shortworkings: In the event that in any year AI remove from the Greater Site a quantity of Minerals which would result in the Royalty and Management Fee Payments in that year being less than the Minimum Payment (“the Deficiency”) AI shall be entitled to deduct the amount required to make up the Deficiency from the Royalty/Management Fee Payments which would otherwise be payable in any subsequent year over and above the Minimum Payment due for that year or those subsequent year(s). The Deficiency shall not be capable of being carried forward for a period in excess of three years.

An example of the workings of this clause is illustrated below.

Year	Year 1	Year 2	Year 3
Tonnage Removed	70,000	80,000	150,000
Minimum Payment Tonnage	100,000 @ £0.54 per tonne = £54,000	100,000 @ £0.54 per tonne = £54,000	100,000 @ £0.54 per tonne = £54,000
Shortworkings Tonnage Carried over (cumulative)	30,000	50,000	0
Shortworkings Claimed	0	0	50,000
Payment	£54,000	£54,000	£54,000

Review of Minimum Payment, Management Fee, & Royalty: Shall take place (in an upwards direction only) on the third anniversary of the date of entry and three yearly thereafter in proportion to the increase in the Consumer Price Index between the date of entry and the date of review.

Termination:

AI shall have the right to terminate the agreement by giving not less than 1 year’s prior written notice:

- 1) On the exhaustion of economically workable deposits of rock within the subjects and adjoining subjects. AI shall be the sole judge of such exhaustion but must act reasonably in so deciding.
- 2) Due to the expiry of planning consent.

The Authorities shall have the right to terminate the lease on giving 1 years prior written notice (but shall not be obligated to do so) if during the period of the lease commencing on the fifth anniversary of the date of entry and for the remaining term

sales of product from the greater site do not exceed the Minimum Payment tonnage (100,000 tonnes) in each year for five consecutive years.

On termination the restoration provisions contained within the S75 Agreement will apply.

Joint Venture:

The Authorities shall be able to serve notice on AI at any time during the first 3 years following commencement of extraction on the site to require it to enter into a Joint Venture for the operation of the Quarry. Basic Heads of Terms for this Joint Venture are detailed below.

1. Structure of the Agreement: The formation of a Special Purpose Vehicle between:
 - 1) The Authorities (East Lothian Council, West Lothian Council; Midlothian Council and Edinburgh City Council) and;
 - 2) Aggregate Industries UK Ltd.

The issued shares in the Company shall be beneficially owned as follows: 125 ordinary shares of £1 each by Edinburgh City Council; 125 ordinary shares of £1 each by West Lothian Council; 125 ordinary shares of £1 each by Midlothian Council; 125 ordinary shares of £1 each by East Lothian Council; and 500 ordinary shares of £1 each by Aggregate Industries UK Ltd.

2. Objectives of the Company: To operate Hazelbank Quarry for the Permitted uses defined in the lease agreement.

3 Board of Directors: Not more than 4 directors shall be appointed by Aggregate Industries UK Ltd and not more than 1 director shall be appointed by each one of the other shareholders. The board shall meet at intervals not exceeding 2 month. Voting rights shall be split according to shareholding, in order that in the event of a poll every member shall have one vote for every share of which it is the holder.

4. Registered Office: To be agreed

5. It is an essential condition of this agreement that The Authorities interest in the existing Hazelbank Quarry and Aggregate Industries UK Ltd interest in the lease agreement between Lord/Alexandra Borthwick and Aggregate Industries UK Ltd shall be let to the Hazelbank Quarry Company Ltd

6. Aggregate Industries UK Ltd will act as exclusive selling agent for all products not purchased by The Authorities. There will be no fee payable to Aggregate Industries UK Ltd for this purposes. Aggregate Industries UK Ltd will provide evidence that sales are at market prices.

7. The costs of each party in undertaking the Joint Venture including the provision of labour and equipment will be agreed between the shareholders and met accordingly by the Hazelbank Quarry Company Limited. Where capital investment is required on behalf of the shareholders including the initial set up costs these shall be borne by

Appendix 2

each shareholder in accordance with their share of the company. The parties will agree the method of funding and any cap on liabilities at this time as required.

8. In the event that Capital Expenditure is expended by AI in advance of this Option to Joint Venture being triggered the other shareholders shall reimburse AI for an equitable share of these costs in accordance with their shareholding. The parties will agree the method of funding at this time as required.

Arbitration: In the event of any dispute arising between the parties in terms of the agreement, this dispute shall failing resolution be referred to a mutually chosen arbiter who failing which be appointed at the instance of either party by the then Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors. The decision of any appointed arbiter shall be binding upon both parties.

Alienation: The tenants shall not assign sublet or otherwise dispose of their interest in the subjects except with the written consent of the landlords such consent not to be withheld or delayed in the case of a substantial and respectable assignee or sub tenant as the case may be who is of sound financial standing and is in the reasonable opinion of the Landlords able to perform the tenants obligations under the lease. Declaring that no such consent shall be required where the assignee or subtenant is either the holding company or a subsidiary of the tenant or a subsidiary of such holding company.

No contract: Please note these heads of terms are not intended to be and do not form part of any contract and thus cannot be founded upon in any proceedings whatsoever and are subject to Aggregate Industries UK Ltd Board Approval.