**Consultation on Minerals Extraction and Archaeology:**

**a Practice Guide**

**MHEF feedback form**

On behalf of the Minerals and Historic Environment Forum (MHEF), welcome to the consultation on Minerals Extraction and Archaeology: A Practice Guide.

Following this introduction, this survey of 10 questions is divided into three parts to ensure structured responses to our consultation:

* Part 1 provides the opportunity to comment on different sections of the draft text
* Part 2 focuses on evaluation trenching
* Part 3 outlines next steps and provides the opportunity to add any other comments

The consultation seeks to take account of the views of our different member organisations. **Please return this form to your organisational lead by Friday 22 September 2017, who will then prepare a single, summary organisational response. Questions 1 and 2 are to be completed by the organisational lead when submitting the response.**

1. **What is the name of your organisation? This is needed to identify which MHEF members have responded.**

Chartered Institute for Archaeologists (CIfA) and Council for British Archaeology (CBA)

1. **Please provide a contact email address. The names of individuals will not be included in subsequent analysis, but it is important that MHEF is able to follow-up with any queries about the responses received.**

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**PART 1: COMMENTS ON DIFFERENT SECTIONS**

**Here we offer the opportunity to comment on different sections in the draft guidance. Please be as specific as possible, quoting the paragraph number and your comment. If you think that the current wording should be changed, please suggest alternative wording.**

There were mixed views from internal consultees upon the revised draft guide. However, the majority of views were generally positive, instanced by the following response: *‘I am delighted to see how well the* [principles and approaches promoted in the original guide] *have stood the test of time and have been further developed and “codified” in the latest document.’*

Indeed, there is much to commend in the draft guide which provides a necessary updating and revision of the current practice guide embracing the NPPF and providing greater emphasis upon sustainable development and public benefit. Nevertheless, there were concerns (even amongst those consultees who were generally positive) focusing on issues such as potential divergence from the National Planning Policy Framework (NPPF) and evaluation trenching. The following comments highlight some of those concerns.

More detailed comments can be found in the annotated draft which accompanies (and forms part of) this response. Please note that although the comments are attributed to one author (by virtue of editing and synthesis) they represent the views of a number of internal consultees who are not always in agreement. Likewise, suggested revisions to the text emanate from a variety of consultees and may not always be internally consistent.

1. **Preface and Introduction (pages 2-4)**

Notwithstanding the expressed aim in paragraph 2 of the Introduction, there appears to be a shift in tone of the document as a whole (when compared to the current practice guide) from concentrating primarily upon the archaeological implications of development to explaining the implications of archaeological intervention for the minerals industry. This is consistent with the results of the survey undertaken by MHEF and subsequent discussion which concluded that that it would be helpful for the guide to explain the economics and issues of the minerals industry better to archaeologists However, this should not be allowed in any way to undermine the principles of the NPPF and the basic tenet (recognised in text box 2 of the draft) that *‘Archaeological evaluation must take place at the pre-determination stage (NPPF, para 128) rather than post-permission via condition.’*

1. **Key Issues to Consider (pages 5-14)**

Although some understanding of the nature and requirements of the minerals sector is useful, some parts of this section (for instance, paragraphs 22 to 25 on *‘Understanding the economics’)* at times approach ‘special pleading’. For instance, the last sentence of paragraph 22 reads *‘It is therefore important to ensure that, because the cost is high and the risk is high at this stage, no more work takes place than is sufficient, proportionate to the assets’ importance, to inform the planning decision.’* However, planning policy dictates such a proportionate approach regardless of the cost or risk.

Moreover, the reference in text box 2 (‘*Common approaches for all mineral planning authorities’*) to the need for *‘open-minded discussion’* perhaps reflects a partisan perception.

1. **From Pre-Application to Determination (pages 15-24)**

Once again, the text of the draft, in places, appears over-eager to promote the case for development. For example, the draft guidance in paragraph 53 (*‘Where proposals are not in accord with the Development Plan pre-application consultation must first focus on the material considerations which might nonetheless justify the grant of permission.’*) at first glance inverts the plan-led system which requires that the primary focus should be the plan and the reasons why the proposals are not in accord with it.

The issue of evaluation trenching is dealt with separately under paragraph 9.

1. **Post-determination (pages 25- 28)**

The major concern with this section is to ensure that the post-determination mechanism of the watching brief (although a widely-used and valuable mechanism in minerals schemes) is not seen to be promoted as a means to avoid the need for pre-determination assessment and evaluation, notwithstanding the challenges presented in a minerals context.

1. **Sustainability (pages 29-31)**

We welcome the increased emphasis on sustainability and public benefit in the draft guide. The emphasis on community involvement and engagement is a significant feature of the guide and one which we strongly support.

Although Historic Environment Records (HERs) are mentioned in footnote 14 to the draft guide, we would like to see greater recognition in the guide of the important role which HERs play.

**8. Would you like to review the appendix document on archaeological techniques?**

To avoid ‘overload’ of material, this appendix would be shared separately once consultation on the main body of the text has been completed.

√Yes

Any comments…

**PART 2: EVALUATION TRENCHING**

**9. As noted in the separate commentary paper, MHEF is still in the process of reaching consensus on evaluation trenching. We’d like your views on paragraph 68 and whether it gives clear guidance aligned with the requirements of the NPPF.**

For convenience this is reproduced below, but it should be read in context as set out in the practice guide, especially with reference to Box 7. Please explain your rationale, and if you do not support paragraph 68 as currently worded please suggest alternative wording or if you do support the paragraph or its general thrust then please indicate.

Paragraph 68

*Landforms and deposits within the proposed development area with higher archaeological sensitivity may require a higher level of targeted investigation than those areas with lower archaeological sensitivity. Following early consultation, a thorough and well-thought out desk-based assessment and prospection work (e.g. geophysical survey, fieldwalking, sub-surface topographic modelling, sediment coring etc.), targeted evaluation trenching will normally comprise no more than 0.5 – 2% of the proposed development area. Whilst all sampling levels require justification, higher sampling levels will require special justification. Box 7 provides more information on how to approach this important issue.*

Once again, the views of internal consultees were varied. There was acknowledgement on all sides of the practical reality and challenges of dealing with minerals development and, with that in mind, several consultees felt that the balance in the draft text was ‘about right’. Indeed, it is accepted that, where the ‘mitigation’ strategy is strip, map and sample, the questions that evaluation needs to answer are: are there likely to be sufficiently significant heritage assets to cause the application to be refused (or modified to reduce the available area to the extent that the application is not worth proceeding with), or to make post-determination archaeological intervention too costly for it to be worth taking the application forward?

Nonetheless, others still had concerns with the approach relating to evaluation trenching which included the following:

• Statistical evidence of current practice in terms of the outcomes of evaluation is lacking.

• Consultees referred to anecdotal evidence that the current industry standard mean percentage is in the range of 1-5% (possibly with some regional variation with perhaps 2-5% in the south and 1-4% in the midlands and north). However, relying on such anecdotal evidence in itself highlights the urgent need for empirical evidence in this area.

• As such, without good empirical evidence of current practice it is not appropriate to say in paragraph 68 that the new norm is 0.5-2% and all outside this should require special justification, if (as is believed) this is a departure from the current industry standard. (Doubts have been expressed as to whether any local authority archaeological advisor who would currently recommend or accept 0.5% without the type of special justification referred to in the text.)

• For example, in the specific case of areas of deeper soil that mask the archaeology from AP survey and geophysics, any archaeological remains present are also likely to be well preserved and are unlikely to be characterised in any form from geotechnical works. For such areas it could reasonably argued that 5% would be a minimum, unless there was good evidence (special justification for a lower percentage) from geology and geomorphology that that archaeological potential was very low and the % below 5.

• If the proposed % range is a departure from current industry standards this needs further justification and explanation.

With those very real concerns expressed by some consultees, we cannot at this stage fully endorse the approach in paragraph 68.

**PART 3: ANY OTHER COMMENTS AND NEXT STEPS**

Thank you for taking part in this survey. MHEF will review all responses and agree next steps. It is envisaged that a summary of responses will be issued to all respondents on completion of the consultation.

If you have any further comments you'd like to make, please include them in your answer to question 10 below.

**10. If you have any other comments on the Practice Guide, or suggested next steps please state them here...**

Other issues raised by internal consultees included the need for:

* the Practice Guide to be promoted and supported as a tool in professional training by all parties involved in MHEF (whether minerals operators, archaeologists or whomever)
* the “significance” of assets/archaeological remains to be referred to throughout for consistency with the NPPF, rather than “value” or “interest” or “importance” (a point reflected in several suggested, textual revisions)
* references to setting to make clear that it is “changes to setting where setting makes a contribution to significance of assets” that is the crux of issue
* the guidance to deal with historic landscape issues. Unlike historic buildings this is an area where there is little good and relevant guidance about how to approach issues of historic landscapes (other than setting of designed landscapes). A section on this would be very helpful.