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## **INTRODUCTION**

This document comprises the County Council's Statement of Response to objections and other representations in respect to the Schedule of Proposed Modifications (June 2005) to the Replacement Nottinghamshire Minerals Local Plan Revised Deposit (May 2003).

## **RESPONSE TO THE PROPOSED MODIFICATIONS**

The Schedule of Proposed Modifications was placed on deposit and made available for a six week period of public consultation which ended on 19<sup>th</sup> August 2005. During this period, a total of 19 objections and 10 supporting representations were received. One objection was subsequently withdrawn. A small number of factual comments were also made. Six objections were ruled invalid as they did not relate to any of the proposed modifications. No late representations were received. A full list of valid representations is set out in Appendix 1. All objectors submitting invalid objections were advised as to why this was the case and given an opportunity to challenge this view if they did not accept it. None have done so.

## **CONSIDERATION OF OBJECTIONS TO THE PROPOSED MODIFICATIONS**

A summary of the objections to the Proposed Modifications and the County Council's detailed response forms the main body of this document. This is followed by a response to some factual corrections received. The County Council has not accepted any of the objections but does propose some minor factual corrections to the opencast coal constraint areas shown on the proposals map insets. Details are set out at the end of this document.

The factual amendments are not considered to materially affect the Plan and therefore do not require being advertised and placed on deposit for a further 6 week period of public consultation. The County Council does not believe that the new objections raise new issues of sufficient significance to warrant a further public inquiry. Accordingly, the County Council intends to adopt the Plan 28 days after giving due notice. On this basis, the Plan should be adopted after 2<sup>nd</sup> December 2005. Once the Plan is adopted a further notice will be published to this effect.

This statement and the resolution to proceed towards adopting the Plan were approved by County Council on 20<sup>th</sup> October 2005. A copy of the County Council report forms Appendix 2 of this document. The report sets out the reasons for proceeding towards adoption of the Plan without recourse to a further period of public consultation or a further public inquiry.

## **INTERVENTION BY THE SECRETARY OF STATE**

During the period leading up to adoption, only the Secretary of State can intervene by calling in the Plan. Such intervention is exceptional but may occur for example if the Plan raises issues of national or regional importance or where the Plan gives rise to substantial controversy.

In addition to this, the Secretary of State can direct the County Council to modify the Plan prior to its adoption if he considers it to be unsatisfactory, particularly in terms of how it interprets national or regional planning policies. If the County Council receives such a direction, it must decide what changes are necessary in order to comply with the direction and carry through the normal procedures in order to modify the Plan. The Secretary of State must be satisfied that the modifications made to the Plan comply with the direction prior to the Plan being adopted.

## **LEGAL CHALLENGES AND COMPLAINTS**

Any individual or organisation aggrieved by the Plan who questions its validity can apply (on certain grounds) to the High Court to have the Plan quashed. Any application must be made within six weeks from the date of the first advertisement of the notice that the Plan has been adopted.

Anyone who considers they have suffered injustice because of maladministration in connection with the Plan can ask for the matter to be investigated by a local commissioner (Local Government Ombudsman). Maladministration broadly relates to the way the County Council has acted and not the merits of the decisions and actions it has taken. Any complaint should be addressed directly to a local commissioner and normally within 12 months of the alleged maladministration coming to notice.

## **FURTHER INFORMATION**

For further information or assistance, please contact the County Council at the following address:

Environment Department  
Trent Bridge House  
Fox Road  
West Bridgford  
Nottingham  
NG2 6BJ

Telephone: 0115 977 2109 or 0115 977 4547

Fax: 0115 977 2418

An explanatory booklet produced by the former Department of the Environment, Transport and the Regions entitled "Local Plans and Unitary Development Plans – A Guide to Procedures" can be provided free of charge on request.

## STATEMENT OF RESPONSE TO OBJECTIONS

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### Proposed Modification Number 6

### Paragraph 2.5 – Sustainable Development Objectives

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**Objector's Reference:**   **3010 Countryside Agency**  
                                  **3018 CPRE (Nottinghamshire Branch)**  
                                  **3029 Nottinghamshire Wildlife Trust**

#### Summary of Representations

**Objection 3010**   The previous wording of Criterion (iv) should be reinstated as the new wording only seeks to protect areas of designated landscape value and not non-designated areas.

**Objection 3018**   The previous wording of Criterion (iv) should be reinstated or 'landscape' should be included in Criterion (v) as the changes remove any protection for undesignated landscapes.

**Objection 3029**   The criterion should refer to PPS9 and reflect its increased strength over PPG9 with regards to the importance of biodiversity as a material consideration.

#### Response

**Objections 3010 and 3018 – Not accepted.** The wording in the proposed modification now precisely reflects Government guidance in MPG1, as recommended by the Inspector. While this guidance does not highlight the protection of non-designated landscape areas as a specific objective for sustainable development in minerals planning, Policy M3.23 provides sufficient protection for landscape character and distinctiveness when assessing proposals for mineral extraction.

Criterion (v) has been added because Paragraph 35(v) of MPG1 does not refer to cultural heritage. The wording of this criterion reflects guidance in PPG16 which affords the same protection to nationally important archaeological remains, whether they are scheduled or not. It would be inappropriate to afford similar emphasis and protection to non-designated landscape areas when such protection is not Government policy.

**Objection 3029 – Not accepted.** Where possible, the County Council has followed the Inspector's advice on dealing with new Government guidance, as set out in the covering letter of his report dated 23<sup>rd</sup> February 2005. Consequently, where Government policy and guidance has been formally published subsequent to the close of the Public Inquiry but before the publication of Proposed Modifications, the County Council has expressly taken this into account. An example of this is Proposed Modification Number

10 which updates the Plan with respect to MPS2, which was published in March 2005. However, there needs to be a cut-off point beyond which it is no longer practical to expect the Plan to take on board new guidance. PPS9 was only at the consultation stage when the Inspector's Report was published and was only issued in its final form in August 2005, after the Proposed Modifications had been published. Amending the Plan to reflect PPS9 would require other changes to be incorporated into the Plan to be consistent. Ultimately, this is likely to lead to delay in adopting the Plan. The County Council will, of course, need to have regard to subsequent guidance such as PPS9 when determining any future planning application.

Action

No change

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**Proposed Modification Number 9**

**Policy M3.3 – Visual Intrusion**

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**Objector's Reference: 3019 CPRE (Nottinghamshire Branch)**

Summary of Representation

The policy should be stronger by stating that “measures...will be required”, not “measures should be taken”.

Response

**Not accepted.** The wording reflects the fact that light pollution is not a main environmental impact compared to other issues, such as noise, dust and traffic. It is therefore considered that the policy is of sufficient strength on this issue.

Action

No change.

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## Proposed Modification Number 11

### Panel 3.1 – How Noise is Measured

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**Objector's Reference: 3020 CPRE (Nottinghamshire Branch)**

#### Summary of Representation

The wording on temporary activities reads as though it is the intention to ensure that temporary periods of increased noise are introduced, whereas the intention surely is to limit the periods of increased noise to this maximum.

#### Response

**Not accepted.** The proposed modification simply notes that higher maximum noise levels may have to be considered for temporary activities. There is no inference that higher levels are being promoted, but rather they may be considered acceptable if it is impracticable to keep to lower levels. It would be at the detailed planning application stage that actual noise emissions would be assessed and limits set which would need to take account of MPS2.

#### Action

No change.

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## Proposed Modification Number 16

### Policy M3.9 - Flooding

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**Objector's Reference: 3017 Mr Fell**

#### Summary of Representation

The policy should be reworded so that any proposal for minerals development must prove that there is no detrimental impact on neighbouring communities and buildings within the defined 1000 year floodplain. Detailed proposed rewording of policy provided.

#### Response

**Not accepted.** This objection proposes significant revisions to Policy M3.9 including some aspects which arguably fall outside the modified policy, albeit they may be linked to it. It is nevertheless helpful to refer to all of the points raised to help explain why this objection has not been accepted.

The purpose of Proposed Modification Number 16 was to make clear that flood flows and storage capacity are also key considerations when assessing potential flooding impacts, whether they are temporary or permanent. The original wording simply referred to flood defences and local land drainage, and, whilst this embraces flood flows and storage capacity, a more explicit reference was considered helpful and added clarity.

In essence, the objector seeks to make the policy even more explicit, in particular through a far more exhaustive definition of "unacceptable impact". This additional detail is not considered to be either necessary or appropriate. "Unacceptable impact" is broad enough to cover risks to residential and commercial development. What is and what is not "unacceptable" will vary according to the nature of the proposal and what risk it poses. The distance of settlements from proposed development is not necessarily any guide to the risk posed to them. Standards of flood protection set by Central Government may also change through time as its strategies and policies evolve. For this reason general environmental protection policies, such as Policy M3.9, avoid setting out specific values. The objector's suggestion that this policy should be applied to the 1:1,000 year floodplain area is therefore not accepted.

It is Central Government that sets standards for the degree of protection that is applicable when dealing with any planning application that falls within the floodplain. Whilst a 1:100 year floodplain is a common basis for assessing acceptable risk levels, the impact of a particular proposal and the degree of risk it presents may vary depending on many factors. Proposals falling outside the 1:100 year floodplain may still need to consider flood risk.

The remaining changes proposed by the objector (whether valid or not as part of this objection) are in practice already covered by this policy both in its modified and original form – albeit in a more general way. For example, the re-enforcement of existing flood defences, or construction of new ones, could be an essential requirement if this is the only effective means of mitigation.

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## **Proposed Modification Number 18**

### **Paragraph 3.58 – Green Belts**

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**Objector's Reference: 3022 CPRE (Nottinghamshire Branch)**

#### Summary of Representation

The previous wording should be reinstated as the new text weakens the presumption against industrial development in the green belt to an unacceptable degree.

## Response

**Not accepted.** The additional text reflects PPG2 and does not weaken the presumption against industrial development in the green belt. As the text now states, there would need to be very special circumstances required to justify such development and it is considered that the occasions when such a scenario would occur would be minimal.

## Action

No change.

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## **Proposed Modification Number 20**

### **Policy M3.17 – Biodiversity**

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**Objector's Reference: 3030 Nottinghamshire Wildlife Trust**

## Summary of Representation

The words “where practicable” could be used as a loophole to avoid the provision of adequate ecological compensation.

## Response

**Not accepted.** The term “where practicable” has replaced “where practical”, as suggested by the Inspector in Paragraph 3.49 of his report. The objection above has already been raised by the objector following the publication of the Revised Deposit Plan and was not accepted by the Inspector. The detailed wording change does not alter the Inspector's conclusions on this issue and so the objection is not accepted.

## Action

No change.

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## **Proposed Modification Number 21**

### **Paragraph 3.74 and Policy M3.19 – Sites of Special Scientific Interest**

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**Objector's Reference:**   **3023 CPRE (Nottinghamshire Branch)**  
                                  **3031 Nottinghamshire Wildlife Trust**

#### Summary of Representations

**Objection 3023**   The previous text should be reinstated as it refers to the need for development having to be of “national” importance to override the importance of the SSSI.

**Objection 3031**   Criterion (a) of the previous policy should be reinstated and the policy should recognise that it is almost impossible to compensate for the loss of SSSI habitat.

#### Response

**Not accepted.** Although SSSIs are recognised in PPG9 as being of national importance, PPG9 does not require development to be of national importance in order to outweigh the importance of SSSIs. This is now reflected in the amended policy. The changes sought by these objections are therefore contrary to Government guidance.

#### Action

No change.

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## **Proposed Modification Number 23**

### **Policy M3.23 – Landscape Character**

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**Objector's Reference:**   **3009 Countryside Agency**

#### Summary of Representation

The policy should include reference to providing opportunities for enhancement as well as ameliorative measures.

#### Response

**Not accepted.** The Inspector concluded that the basic test is not to cause harm to landscape character. For some proposals, landscape enhancement may be part of a package of measures aimed at overcoming harm but the Inspector did not see it as reasonable to make this a requirement for every

proposal, nor did he see it as reasonable to impose landscape improvement measures which go beyond mitigating harm. Whilst some proposals may be able to secure net gains, these are not measures which the County Council can reasonably impose.

This position can be contrasted with Policy M3.24 (Mature Landscape Areas) as the Inspector highlights in his report (Paragraph 3.67). MLAs are normally distinctive landscape types which are relatively unspoilt and, due to their limited extent, are worthy of an extra level of protection. It is therefore considered that the two policies provide the correct level of protection for all landscape types.

#### Action

No change.

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### **Proposed Modification Number 39**

#### **Policy M6.4 – Attenborough Plant – Environmental Improvements**

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**Objector's Reference: 3004 Mr R T Henson**

#### Summary of Representation

**Objection 3004** The original policy should be reinstated regarding the re-location of the sand tower away from residential areas to reduce noise and visual impact.

#### Response

**Objection 3004 – Not accepted.** The redrafting of Criterion (a) of Policy M6.4, plus the addition of Criterion (g), result in the policy now seeking improvements to noise and visual impact across the whole plant site, not just the sand tower. Should the re-location of the sand tower be seen as the best means of achieving this, then the policy would not preclude this from taking place.

#### Action

No change.

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## Proposed Modification Numbers 47 and 48

### Paragraphs 6.114 – 6.114b – Misson: Future Assessment

### Policy M6.10(a) – Misson Newington Allocation

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**Objector's Reference:**   **3006 Environment Agency**  
                                  **3007 Misson Parish Council**  
                                  **3008 Misson Parish Council**  
                                  **3016 Mrs J O'Neill**  
                                  **3026 CPRE (Nottinghamshire Branch)**

The objections to Proposed Modifications 47 and 48 all concern the allocation of the Newington site for sand and gravel extraction so, for convenience, they are considered together as follows:

**3007, 3008 and 3016** – the allocation in principle;  
**3006** – the proposed reclamation scheme;  
**3026** – the emphasis given to meeting the main planning requirements.

The County Council's response deals with each of these issues in turn.

### Objections to the allocation in principle

#### Summary of Representations

**Objections 3007 and 3008**       The site should not be allocated and the previous text should be reinstated. Increases in traffic and extensions to planning permissions resulting in the development extending beyond the forecast date of 2017, would impose unacceptable environmental impact on the area.

**Objection 3016**       Sufficient reserves of sand and gravel have already been allocated in the Plan so there is no need to allocate an additional site. Other sites have been rejected on this basis so it would be inconsistent to allocate this site. Scarce resources should be conserved for future generations.

#### Response

**Objections 3007 and 3008 – Not accepted.** The site was originally rejected for allocation due to significant environmental constraints, such as archaeology and the SSSI. Over a period of time, these constraints have been investigated and reassessed and it is now considered that these issues could be dealt with satisfactorily and the site developed without causing considerable environmental harm. For example, the SSSI, which was originally part of the allocation, has now been excluded. For these reasons,

the Inspector recommended that the site be allocated, a recommendation that the County Council has accepted.

It is likely that the site would only be worked as an extension to the existing site so, if not allocated now, an important resource is likely to become sterilised. Even if the site was worked separately at some point in the future, this would probably cause greater environmental harm than if worked as an extension. This is because an on-site plant would probably be required to process the mineral instead of it being processed off-site as presently proposed. Also, working the allocation immediately after the existing site provides greater reclamation opportunities which are going to be of long-term benefit to the environment and the local area.

There should be no increase in existing HGV traffic volumes which, as confirmed in the recent planning decision to approve Newington North quarry, have not raised any unacceptable impacts. The allocation will mean that quarry traffic will be generated for a further 10 years, but this impact has to be weighed against the benefits of exploiting what may be one of the last remaining sand and gravel resources in the Misson area, if not the Idle Valley as a whole.

The concerns over the allocation not being worked within the expected timescale are ones that apply to any proposal. There is, however, no evidence to suggest that this is a particular risk at Misson. In the event that planning permission is granted and the site is not worked as quickly as proposed, then the County Council would consider the environmental and other planning implications before agreeing to such an extension.

**Objection 3016 – Not accepted.** It is accepted that, in countywide terms, sufficient reserves have already been allocated in the Plan, despite the full apportionment having not been allocated. However, ‘need’ was never one of the main issues on which the allocation of the site hinged. The allocation provides an additional 1.5 million tonnes of sand and gravel to be worked over a 10 year period so the impact of this allocation on the county’s landbank is negligible and will not result in an over-provision. Rather than conserving scarce reserves for future generations, removing the allocation could result in the resource being sterilised as it is much less likely to be worked as a stand-alone site in the future.

## **Objections to the proposed reclamation scheme**

### Summary of Representations

**Objection 3006** Paragraph 6.114a should state that careful working and restoration must reinstate the ecological value of the site.

## Response

**Objection 3006 – Not accepted.** The purpose of Paragraph 6.114a is simply to provide a context for the main planning requirements set out in Paragraph 6.114b which the Environment Agency has not objected to. It would therefore be inappropriate for Paragraph 6.114a to repeat what is set out as a requirement in Paragraph 6.114b.

## **Objections to the emphasis given to meeting the main planning requirements**

### Summary of Representation

**Objection 3026** The planning issues in Criteria (b), (c) and (d) should be worded more strongly.

**Objection 3026 – Not accepted.** The nub of this objection is that the term ‘*should*’ is too weak when describing the key planning issues that need to be addressed. The purpose of listing key planning requirements is to provide guidance for the applicants and reassurance to local communities who may be potentially affected by the proposal. The use of the term ‘*should*’ has been widely used to describe such requirements at most of the allocations proposed in the Plan. This is considered to give an appropriate emphasis bearing in mind the Plan is setting out principles and is not looking at a specific detailed proposal. The actual requirements are backed up by general environmental protection and reclamation policies in Chapters 3 and 4 of the Plan against which a planning application could be refused permission if they are not met.

### Action

No change.

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## **Proposed Modification Number 60**

### **Policy M12.1 – Coal Development**

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**Objector’s Reference: 3028 CPRE (Nottinghamshire Branch)**

### Summary of Representation

The policy in the Revised Deposit Plan should be reinstated. Criterion (b) effectively states that coal extraction can be allowed where the proposal is not, and cannot be made, environmentally acceptable. This is unacceptable.

## Response

**Not accepted.** The Inspector recommended that the original policy wording be reinstated as it was in accordance with MPG3 whilst the revised policy (as detailed in Pre-Inquiry Change 13) was not. Government guidance, as set out in MPG3 (Paragraph 8 (ii)), states that, if a proposal for coal development is not environmentally acceptable, there should be a presumption against it unless “it provides local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission”. The County Council accepts this recommendation because Paragraph 8 of MPG3 states “MPAs should ensure that this general approach is incorporated into their development plan policies...”

The objection provides no new evidence to support the version of the policy previously supported by the County Council. It is not therefore considered appropriate to accept it for the reasons given above.

## Action

No change.

## **FACTUAL COMMENTS**

### **Opencast coal constraint area insert maps**

Although not submitted as a formal representation Broxtowe Borough Council raised two minor issues regarding the maps showing the opencast coal constraint areas (Inset Maps 15a – 15f). These maps show the areas protected from opencast coal extraction under Policy M12.7 which primarily comprise Mature Landscape Area (MLAs) .

First, the boundaries of two small areas of on Inset Map 15d, one on Inset Map 15e and one on Inset Map 15f have been identified as having minor draughting errors and are inconsistent with the Broxtowe Local Plan which is responsible for actually defining the extent of MLAs. The County Council accepts these and will amend the maps accordingly prior to the Plan's adoption to ensure factual consistency.

Secondly, Broxtowe Borough Council raises concerns about the Babbington/Swingate MLA on Inset Map 15e. Part of this MLA lies within the opencast coal resource area and part of it outside. On Inset Map 15e, only the portion of the MLA which is within the opencast coal resource has been highlighted and this is the only part of the MLA that could potentially be affected by any future opencast coal proposal.

Broxtowe Borough Council has, however, highlighted an inconsistency between this and other MLAs, such as those at Stanley and Teversal/Skegby Dawgates on Inset Map 15a, which continue across the boundary of the limit of the opencast resource and which have been shown in full. They note that it would be consistent if either Inset Map 15e was amended to show the whole MLA, or that no constraint areas were shown east of the limit of resource boundary. Clear cut off lines should be used as the boundary of the constraint area in question appears to be rather arbitrary.

The County Council accepts that there are some inconsistencies in the opencast coal constraint maps, which, if highlighted earlier in the Plan's preparation, could have been rectified. At this late stage in the preparation of the Plan, it is proposed to make a minor amendment to Inset Map 15e to create a clear cut off between the part of the MLA which lies within the opencast coal resource and that part which lies outside. The part of the MLA outside the opencast coal resource will in any event be protected under Policy M3.24 of the Plan.

These above minor alterations to the coal constraint maps are highlighted on the following pages. They are considered to be very minor and do not materially affect the Plan.



## Appendix 1 – Schedule of objections and statements of support to the proposed modifications

Rep No	Name		Organisation	Mod No	Policy/ Paragraph No	Object/ Support
3018	Carol	Collins	C.P.R.E. (Notts Branch)	6	Paragraph 2.5	Object
3029	Janice	Bradley	Nottinghamshire Wildlife Trust	6	Paragraph 2.5	Object
3010	Karen	Devonport	Countryside Agency	6	Paragraph 2.5	Object
3019	Carol	Collins	C.P.R.E. (Notts Branch)	9	Policy M3.3	Object
3020	Carol	Collins	C.P.R.E. (Notts Branch)	11	Panel 3.1	Object
3017	Roger	Fell		16	Policy M3.9	Object
3005	David	Marsh	Environment Agency	16	Policy M3.9	Support
3021	Carol	Collins	C.P.R.E. (Notts Branch)	17	Policy M3.10	Support
3022	Carol	Collins	C.P.R.E. (Notts Branch)	18	Paragraph 3.58	Object
3030	Janice	Bradley	Nottinghamshire Wildlife Trust	20	Policy M3.17	Object
3023	Carol	Collins	C.P.R.E. (Notts Branch)	21	Paragraph 3.74 and Policy M3.19	Object
3031	Janice	Bradley	Nottinghamshire Wildlife Trust	21	Paragraph 3.74 and Policy M3.19	Object
3009	Karen	Devonport	Countryside Agency	23	Policy M3.23	Object
3024	Carol	Collins	C.P.R.E. (Notts Branch)	31	Paragraph 4.38	Support
3004	R.T.	Henson	Attenborough Quarry Long Lane Residents Liaison Group	39	Policy M6.4	Object
3003	PJ & D	Banks		39	Policy M6.4	Support
3002	Wendy	Hales		39	Policy M6.4	Support
3001	Bernard	Hales		39	Policy M6.4	Support
3006	David	Marsh	Environment Agency	47	Paragraphs 6.114 - 6.114b	Object
3007	J	Hutchinson	Misson Parish Council	47	Paragraphs 6.114 - 6.114b	Object
3015	Kirsty	Stocks	Scott Wilson (for Robin Hood Airport)	47	Paragraphs 6.114 - 6.114b	Withdrawn objection
3026	Carol	Collins	C.P.R.E. (Notts Branch)	47	Paragraphs 6.114 - 6.114b	Object
3008	J	Hutchinson	Misson Parish Council	48	Policy M6.10(a)	Object
3016	J	O'Neill		48	Policy M6.10(a)	Object
3012	Simon	Green	Ibstock Brick Ltd	57	Paragraph 11.27b	Support
3013	Simon	Green	Ibstock Brick Ltd	58	Policy M11.2	Support
3027	Carol	Collins	C.P.R.E. (Notts Branch)	59	Paragraph 12.6	Support
3028	Carol	Collins	C.P.R.E. (Notts Branch)	60	Policy M12.1	Object
3014	W	Wilhardt	(Brinsley Parish Council)	70	Inset Map 15.d	Support

