

Minerals Enforcement Charter



Foreword

The enforcement of planning conditions, planning obligations, legal agreements, development construction and the investigation of complaints about the unauthorised use of land or buildings in Fife associated with minerals extraction is taken very seriously by Fife Council. Although it is often a complex legal area and can sometimes appear to be a slow process, Fife Council has a specialist team of experienced officers who monitor and regulate development activities in Fife on behalf of the public.

The enforcement of minerals development is an area of planning enforcement which Fife Council considers as a priority when there has been an alleged breach of any planning consent issued. Having a robust enforcement system is essential for ensuring continued public confidence in the planning system especially where a minerals development is located adjacent to a town, village or small community, or is located within a sensitive landscape.

Fife Council will investigate each complaint thoroughly and in the first instance try to resolve the matter, as the role of planning enforcement is not to punish or stop businesses operating but to regularise the breach. Fife Council will consider what the proportionate response is to the level of harm evidenced from the investigation. However formal enforcement action will be taken if Fife Council considers that there is a high level of harm being caused or a public safety issue has been created.

This Minerals Enforcement Charter will provide all customers and interested parties

with an informative introduction to how we enforce planning controls across Fife in relation to minerals development.

If you need further information on enforcement matters or you wish to check on a particular site or building then please contact one of our enforcement officers or planning staff by following the links at the bottom of each page.

The Council's Enforcement Charter is also a useful reference for general concerns about enforcement and how the Council investigates concerns from local communities.

[Click here to go to Enforcement Charter](#)

Introduction

Fife has for many centuries been a location where minerals have been worked and won, being predominantly limited to deep mining and small localised quarrying of stone, however over the last 40 – 50 years the loss of deep mining gave way to opencast coal extraction, and small local quarries to larger hard rock quarries and sand and gravel quarries have also flourished across the Kingdom.

Minerals extraction therefore has become a matter which Fife Council as planning authority has had to consider on a regular basis over the years and as such has developed the Fife Minerals Subject Local Plan which when read in conjunction with the Development Plan sets out a Planning Context of where in Fife mineral extraction is acceptable, and where it is not.

Minerals policy in Fife currently is set out in TAYplan, SESplan and developed further in the Minerals Subject Local Plan (April 2011). With the move to one Local Development Plan for Fife (FIFEplan), it is proposed to incorporate the existing policy framework, in the Minerals Subject Local Plan, into FIFEplan and provide detailed minerals guidance as Supplementary Guidance. The Local Development Plan sets policy principles for minerals; Supplementary Guidance provides more detailed guidance. The Minerals Planning Policy will be a material consideration during the consideration of planning applications. Initially it will only be used as non-statutory guidance until the examination is complete and FIFEplan can be adopted. Thereafter the guidance will be submitted to Scottish Ministers for approval as statutory Supplementary Guidance.

Therefore in order to underpin the clear policy basis for allowing minerals development, Fife Council has had to put in place a robust means of ensuring those developments that are acceptable to proceed, do so within the terms of their planning consent.

Proactive On Site Checking

Fife Council has for the last 20 years or so required new minerals developments which have gained planning consent, to be overseen by an independent Minerals Compliance Officer who reports on a periodic basis to the Council on the operator's compliance with the consent they are implementing.

The Minerals Compliance Officer (MCO) is employed by Fife Council who recovers the cost of the appointment from the minerals operator via a Section 75 Legal Planning Agreement. This model of assessment has become an exemplar of procedure which has been adopted by many other local authorities across Scotland as the assessment of compliance of minerals development is a specialised area of planning.

The MCO requires to be independent from the planning application process for the site concerned and will not have been involved in related areas of work, including Environmental Assessments.

The MCO will normally submit a full report to the Council on all site monitoring activities, planning conditions and any other requirements on a 6 monthly basis.

Therefore where a breach takes place, the matter will be informed to Fife Council at the submission of the next report by the compliance officer and addressed with the site operator.

Fife Council as Planning Authority will then seek with the operator that the breach is rectified and the development continues to operate in accordance with the planning consent issued. Where a breach is of a serious matter, the Fife Council will be contacted by the Minerals Compliance Officer immediately.

Reactive Monitoring

In a few cases however, the minerals development pre-dated the requirement for a Minerals Compliance Officer or where a complaint is received from a member of the public or another organisation an Enforcement Officer will investigate the claimed breach of planning consent and seek to establish if a breach has in fact taken place.

Such investigations may be against occasional or isolated breaches and may not have an obvious route of re-course such as an isolated breach of an operating time, or the matter may be a more regular occurrence such as equipment being switched on every morning in preparation for a planning controlled start time.

All matters investigated are considered important matters and will be visited as a priority. The nature of the breach and its

negative impacts on the environment or surrounding properties will be fully assessed. In some circumstances, amended operating practices may require the benefit of an amendment to an existing planning consent, but the altered practice is upon investigation and assessment found to be wholly acceptable with no additional negative consequences being experienced.

The operator will be encouraged to regularise the planning consent which they work to, or revert to that which they have approval. In such circumstances the alternative practice may be allowed to continue whilst the planning consent is regularised. This does not however remove any rights an individual has to object or make representation against such an amendment application. Nor does the continued operation under consideration reduce the material weight of the representation made against it.

When will Action be taken?

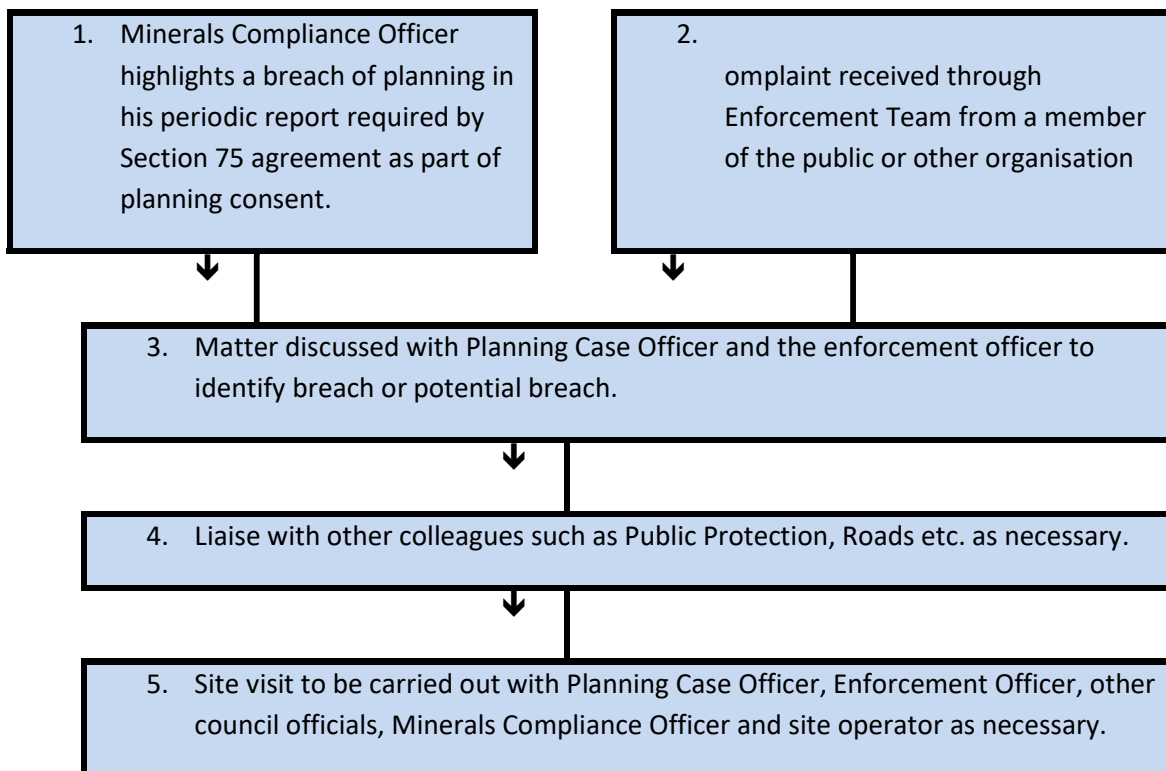
Where a breach is identified, the need for enforcement action is wholly dependent upon the nature of the breach. Where officers identify a clear breach of planning control within the minerals operation and that breach has unacceptable impacts on the environment, individuals or properties, then Fife council will take all steps necessary to have the breach ceased.

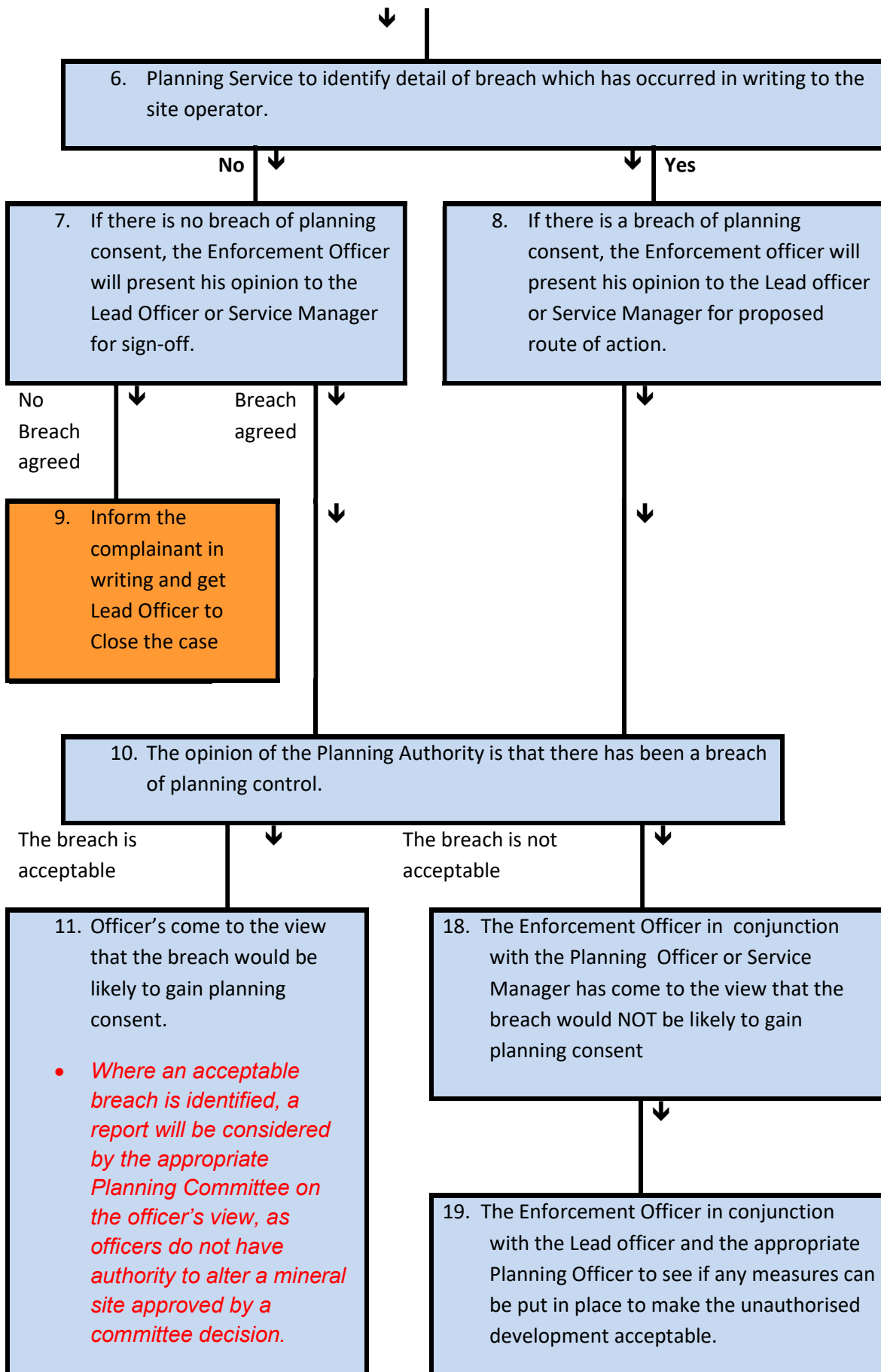
Fife Council has many powers open to it through the Planning Acts such as Breach of Condition Notices, Enforcement Notices, Temporary Stop Notices and Stop Notices, or if necessary seeking legal route of recourse through the court system such as an interdict or interim interdict.

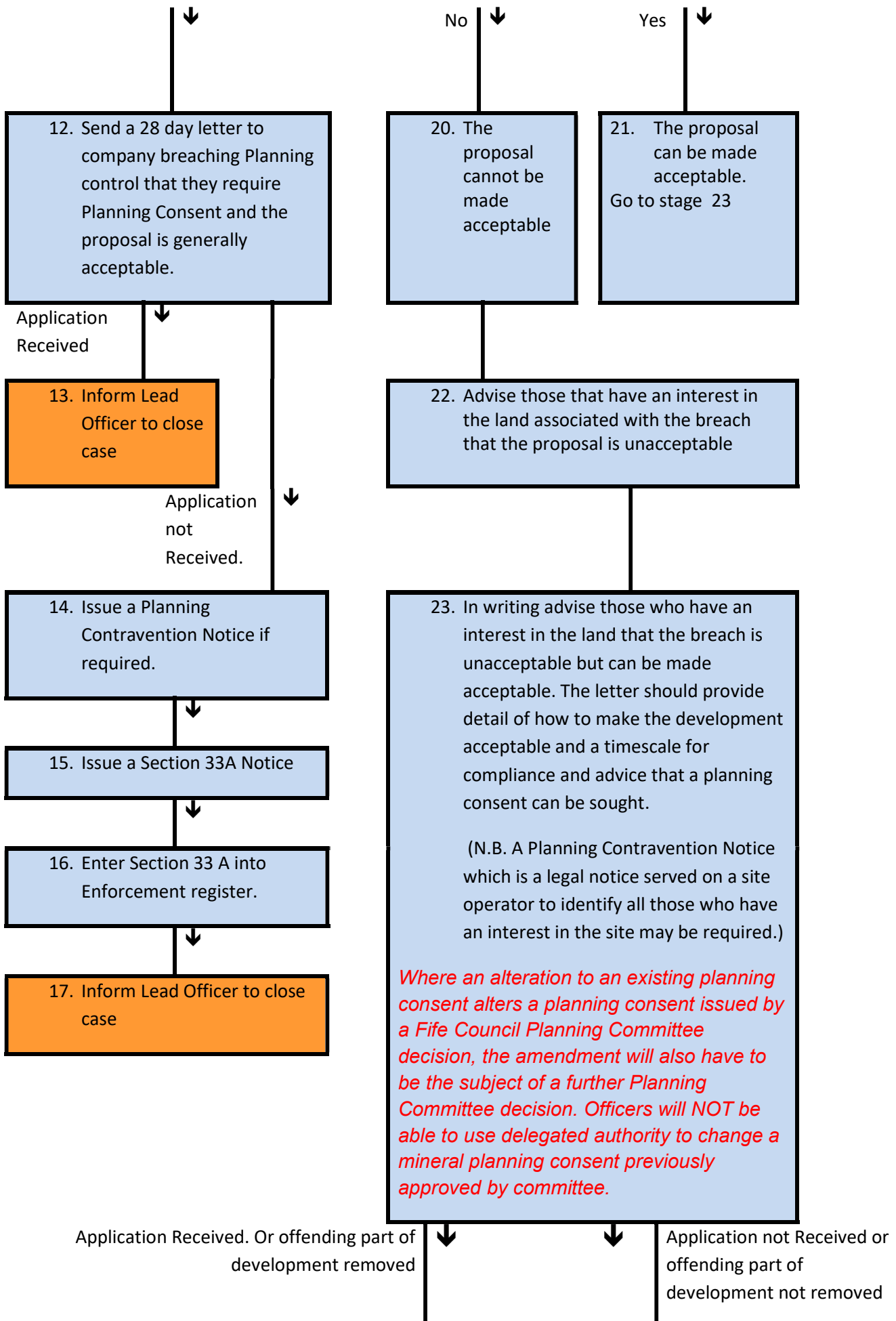
Where issues are better controlled with other legislation, such as noise or discharge to watercourses, the Planning Service may work with other Fife Council Services or external agencies whose legislation is better equipped to stop the breach or environmental impact.

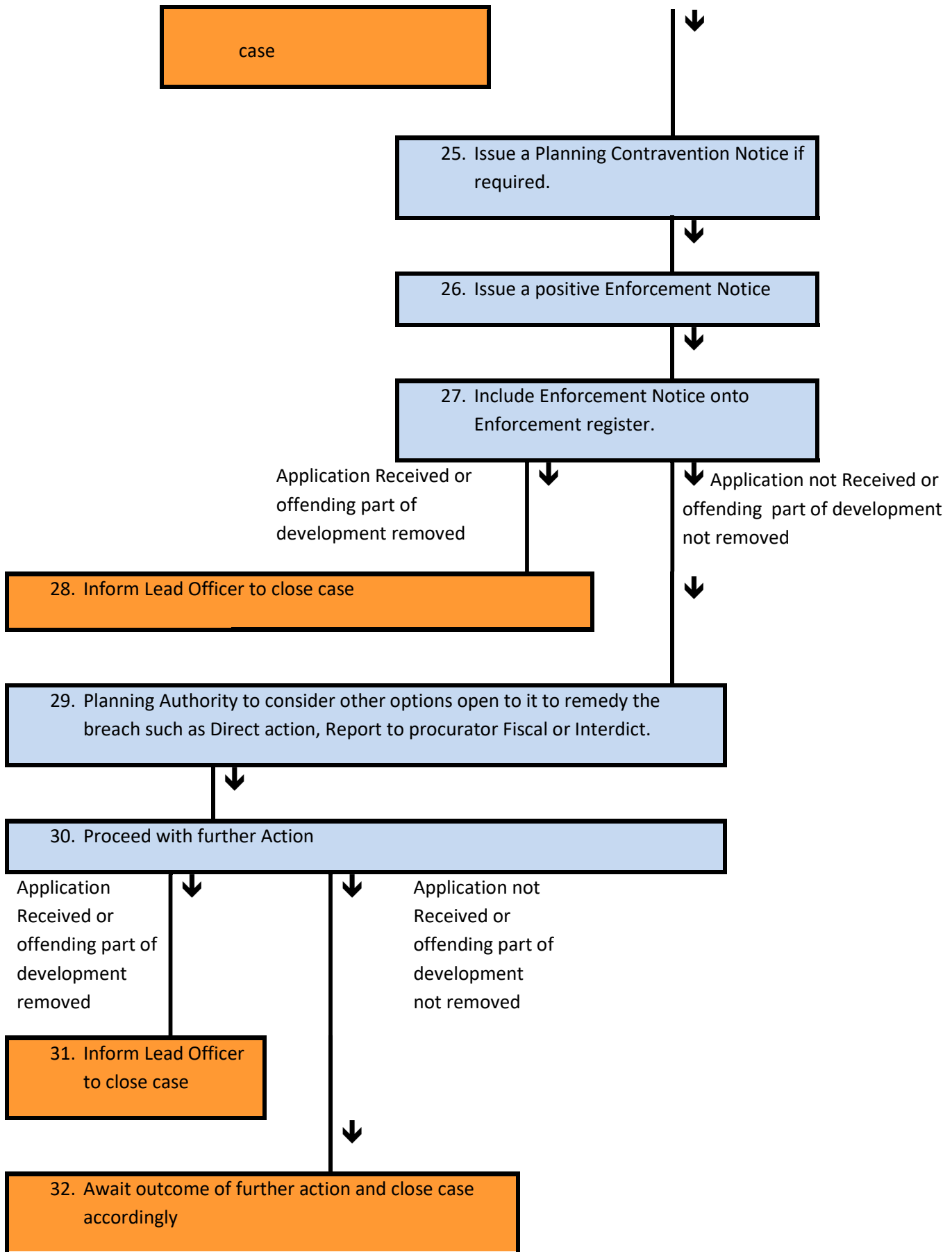
Flow chart for Minerals Enforcement

The flow chart below details Fife Council's enforcement of investigations into mineral sites.









How Long Will Corrective Action Take?

It is always the aim of Fife Council to have a breach of planning ceased as soon as is practicable, and will in the first instance try to work with site operator to cease any harmful elements of an identified breach.

Where a site operator does not act positively with Fife Council to remedy a breach and formal enforcement action has to be pursued, the level of enforcement has to be proportionate to the breach. Therefore for a minor unacceptable breach the immediate forms of intervention such as a stop Notice or an interdict may be over enforcement of the issue and could potentially open Fife Council to paying costs to the site operator for unreasonable behaviour. Therefore it is more likely that an Enforcement Notice or Breach of Condition Notices would be used in such circumstances.

Such notices are not immediate and generally require 28 days after service on all those who have an interest in the site, before it becomes effective, and thereafter a further reasonable time period for the cessation of the breach has to be given.

A site operator also has the opportunity to appeal a Planning Enforcement Notice which means a final decision on the breach may take up to 6 months or more after service before a final decision is reached.

Fife Council will however continue to liaise with the operator, where they are receptive to such contact to work with them to minimise the effects of the breach if the breach is not ceased.

How will I find out about the outcome of my complaint?

If you have found it necessary to bring a potential breach to the attention of Fife Council, your enforcement investigation will be acknowledged whereby you will be advised of the case officer investigating and

the reference number which will be used in all future correspondence.

Officers will keep you updated at the pivotal points of their investigation and inform you of the outcome of the investigation once it has been fully completed.