

EAST AYRSHIRE COUNCIL
CABINET – 12 JANUARY 2011

**RESPONSES TO THE CONSULTATION ON THE POTENTIAL NEW COAL
EXTRACTION RATE FOR THE MINERALS TRUST FUND**

**Report by Depute Chief Executive/ Executive Director of Neighbourhood
Services**

1. PURPOSE OF REPORT

- 1.1 To inform Cabinet of the outcome of a consultation exercise on the contribution rate and other matters relating to the Minerals Trust Fund under Policy MIN 33 and 34 of the adopted Opencast Coal Subject Plan and to present to Cabinet for approval a set of suggested Council responses to representations received during this consultation process.

2. BACKGROUND

- 2.1 On the 24th March 2010 Cabinet agreed that a consultation exercise be undertaken to examine the potential for a new coal extraction rate for the Minerals Trust Fund. As part of this process, the Head of Planning and Economic Development consulted with coal operators, Members of the Minerals Trust Fund, Local Elected Members and relevant Community Councils. Initial views were also sought on the range of projects that should be funded from contributions, the composition of the receiving body for contributions and the decision making process in advance of the review of the Opencast Coal Subject Plan.
- 2.2 The consultation process undertaken by the Head of Planning and Economic Development commenced on 20 May 2010 and lasted for a period of 10 weeks, finishing on 29 July 2010.

3. CONCLUSIONS OF THE CONSULTATION PROCESS

- 3.1 Appendices 1(a) and 1(b) of this report set out the content of representations received from all parties during the consultation process. Alongside each of these is a suggested Council response. Appendix 1(a) deals specifically with responses on the voluntary contribution rate with Appendix 1(b) covering the range of projects to be funded, the composition of the receiving body for contributions and the decision-making process.
- 3.2 The current arrangements for ingathering funds to the Minerals Trust are set out within policy MIN 33 of the adopted Opencast Coal Subject Plan in the following manner.

The Council, if mindful to grant planning permission for an opencast coal development will encourage applicants to contribute by agreement to a general Minerals Trust Fund which will be used for community improvements, with the contributions being set at a suggested minimum rate of 27.5 pence per tonne of coal removed from the site, linked to the retail price index as of 1 January 1998. Contribution made to the Minerals Trust Fund will not be treated as a material consideration in the Council’s assessment of the particular opencast coal application to which they relate. Applicants will also be encouraged to contribute to an appropriate Fund with regard to any other material/minerals extracted in association with the coal, such as fireclay etc, at a rate to be agreed with the Council.

- 3.3 There is unanimous opposition by the coal operators to an increase in the rate of contribution at the present time. If East Ayrshire Council imposed an increase, there is a risk that some, if not all, operators will refuse to make contributions or make contributions based on the existing rate. Given that the contributions are voluntary in nature, it is suggested that it would be inappropriate for the Council to make any change to current arrangements at this time. It should be noted that the contributions currently received in East Ayrshire are higher than those made in other Council areas where opencast coal mining is prevalent. Like East Ayrshire, the contributions are entirely voluntary within these areas and the table below sets out the current contributions rates in Scotland.

Local Authority	Price Per Ton of Coal Extracted
South Lanarkshire Council	25 pence
Fife Council	25 pence
East Ayrshire Council	27.5 pence

It is important to note that in England and Wales, Mineral Trust Funds, such as we have in Scotland, are not in operation. Community benefits are provided by means of specific contributions for specific projects and are made on a case by case basis. The method of payment towards these projects may take the form of a rate per tonne of coal extracted, but are more likely to take the form of a lump sum.

- 3.4 In terms of the range of projects that should be funded from the voluntary contributions, the composition of the receiving body and the decision making process, the majority of the consultees wish the status quo to remain.
- 3.5 Ordinarily, the Mineral Contribution rate should be reviewed annually on 1st January in line with the retail price index. However, given the terms of the responses that have been received and that Cabinet has already agreed that the Open Cast Coal Subject Plan will be reviewed and will form part of a new, all encompassing Local Development Plan under the

requirements set out in the Town and Country Planning (Scotland) Act 1997 (as amended), it is suggested that all of the above matters be revisited as part of that work. As well as including a review of the Open Cast Coal Subject Plan, the Local Development Plan will examine the types of projects to be funded from contributions received to ensure maximum and long term benefits for those communities affected by opencast coal mining. The Local Development Plan will also examine the level of contributions made by the coal operators, in relation to the extraction of coal, fireclay and other minerals/materials, to ensure that they are of an appropriate level to help fund these community projects.

4 FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications for the Council in this regard. However, if Cabinet is of the view that the contribution rate should be increased, then there may be financial implications for the Minerals Trust, as the coal operators may not wish to enter into a voluntary agreement to pay the increased amount per ton of coal extracted given the terms of the representations received from them. This could lead to a loss of funds being received by the Minerals Trust Fund and distributed to those communities affected most by open cast coal mining.

5 LEGAL IMPLICATIONS

- 5.1 Legal implications arise for the Council in terms of the Minerals Trust Deed. Clause 12 of that deed requires coal operators entering into a planning agreement with the Council, as statutory successor to Cumnock and Doon Valley District Council, to contribute a minimum of 25 pence per tonne of mineral removed to the trust. However, should the coal operators not agree to pay an increased contribution rate then, unless they were willing to agree to voluntarily pay at least 25 pence per tonne of mineral removed to the trust, the Council would require to consider whether or not any lesser contributions could be paid to the Trust.
- 5.2 Further, a contribution to the Minerals Trust Fund is currently voluntary in nature, is not a material consideration and would not affect the Council's ability to continue to determine any open cast planning application. However, should Cabinet seek to increase the contribution rate it should also be noted that this increase could not be enforced through planning policy as it stands at this present time and could not prevent the grant of planning permission for any future open cast coal applications due to the non-payment of increased contributions alone.

6 POLICY IMPLICATIONS

- 6.1 There are no Policy implications arising directly from this report as the current arrangements are entirely voluntary.

7 COMMUNITY PLAN IMPLICATIONS

7.1 There are no Community Plan implications arising directly from this report.

8 RISK MANAGEMENT IMPLICATIONS

8.1 There are no Risk Management implications arising directly from this report for the Council. The potential financial risk to the Minerals Trust Fund is set out in paragraphs 3.3 and 4.1 above.

9 RECOMMENDATIONS

9.1 It is recommended that Cabinet:

- (i) agrees that no change is made to the current voluntary contribution rate of 27.5 pence per ton of coal extracted;**
- (ii) agrees the suggested Council response to representations set out in Appendices 1(a) and 1(b);**
- (iii) notes that a comprehensive review of the Open Cast Coal Subject Plan, including the rate, method and types of projects funded, will be undertaken as part of the preparation of the East Ayrshire Local Development Plan; and**
- (iv) otherwise notes the contents of this report.**

Elizabeth Morton

Depute Chief Executive / Executive Director of Neighbourhood Services

5 January 2011 (AMcG/)

LIST OF BACKGROUND PAPERS

- (i) Report to Cabinet on 24 March 2010 entitled "Consultation on Potential New Coal Extraction Rate for the Minerals Trust Fund"**

For further information on the contents of this report, please contact Antony McGuinness, Planning Officer on (01563) 576757.

Implementation Officer: Alan Neish, Head of Planning and Economic Development

APPENDIX 1 (A):

**REPRESENTATIONS RECEIVED AND COUNCIL'S OBSERVATIONS ON THE REPRESENTATIONS MADE ON THE
NEW COAL CONTRIBUTION RATE FOR THE MINERALS TRUST FUND**

Representation No.	Synopsis of Representation Received	Council's Observations and Suggested Course of Action
001	<p>Confederation of UK Coal Producers, Confederation House, Thornes Office Park, Denby Dale Road, Wakefield, West Yorkshire, WF2 7AN</p> <p>I am writing to you further to the meeting held in your office on 20th May 2010 at which we expressed serious concerns about the suggestion that the Trust Fund payments should be increased. I set out the view of the Confederation of UK Coal Producers (CoalPro) below.</p> <p>The industry's operating costs have increased very considerably in recent years, as they have for the mining industry generally – it is a world-wide phenomenon. This has led to the premature closure of sites on occasions. Examples of such cost increases are set out below.</p> <p>Diesel costs have risen dramatically, exacerbated by fall in the value of the £ vis-à-vis the US\$. The increase has been some 180% over the last five years, an average of 35% a year. The present diesel price is 55p/litre but there have been recent peaks above this level which the industry has had to absorb.</p> <p>The manufacture of earthmoving tyres has now become concentrated into two companies. When combined with a rapid increase in world-wide demand, this has led to an increase of some 40% over the last two years alone. I am advised that sub-standard products are available from Russian and East European suppliers but the reduced life of such products means that costs overall will be the same.</p>	<p>Noted.</p> <p>Noted.</p> <p>The points made by the respondent have been duly noted by the Council.</p> <p>The points made by the respondent have been duly noted by the Council.</p> <p>.</p>

	<p>The phenomenon of a rapid world-wide increase in demand affects the whole range of mining equipment, spares and consumables. An example of this is the increase in the cost of explosives. Explosives manufacture is now an effective monopoly, unfortunately not based in the UK. Over the last four years, the price of ammonium nitrate has risen by some 60% and that of 'high explosive' by some 30%.</p> <p>Against this background, the operating ratio has also been increasing, one (but not the only) reason for this being the restriction in operating sites within 500m of settlements. The industry's costs, by and large, are directly proportional to the amount of material that has to be moved and hence directly proportional to the operating ratio.</p> <p>It is accepted that, over a period of time, the international coal price has risen. This first became apparent in 2003. In the middle of 2008 there was an enormous price spike, as there was for a number of other commodities. Since then, the price has fallen back to the medium term trend. The average price in 2003 was about US\$65 per tonne. It is now about US\$90 per tonne. The increase over the past seven years has thus been of the order of 40% more than some of our costs (e.g. labour) but much less than a whole range of mining equipment and supplies. This has led to some comment from employee representatives that, if any additional money is available, it should go to communities via wages rather than via Trust Funds.</p> <p>Taking an overall view, the industry is a price taker against the international coal price, In fact, for a variety of quality reasons, our product can be expected to suffer a small discount when</p>	<p>The points made by the respondent have been duly noted by the Council.</p> <p>In terms of the comment regarding the restrictions in operating sites to 500m of settlements, the Council would contend that there is a clear requirement to locate opencast sites away from the communities that are affected by opencast coal mining by providing a buffer between them.</p> <p>The Council would not dispute the point made by Coalpro regarding the industry's costs and the operating ratio as the Council understands that the operating rations are directly affected by the amount of coal that is extracted from each site and subsequently sold on.</p> <p>The points made by the respondent have been duly noted by the Council.</p> <p>The points made by the respondent are duly noted by the Council. However, the respondent has not provided any information or hard evidence to quantify their assertions that a</p>
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	<p>compared with international delivered prices. Against that background, any cost increase, however small and from whatever source, must, at some point in time, result in a site becoming uneconomic, and/or it being uneconomic to maximise coal extraction within particular sites. This is as true of an increase in the rate of the Trust Fund voluntary contributions as it is of any other cost increase.</p> <p>In the circumstances, we feel strongly that the Council should not seek to impose any increase of the current rate of 27.5p per tonne at the present time.</p> <p>Nevertheless, we remain open for discussion at the appropriate time. First, this might be once the recession is well and truly behind us. Second, we consider that it might best take place in the context of a review of the way the Trusts are structured and how the monies are spent, and of the Council's review of the Opencast Coal Subject Plan.</p>	<p>small increase in the contribution rate would result in a site becoming uneconomical.</p> <p>The views of the respondent have been duly noted by the Council.</p> <p>The views of the respondent have been duly noted. The Council is of the opinion that a further review of the contribution rate should take place within the context of the East Ayrshire Local Development Plan process, which will incorporate and review the adopted Opencast Coal Subject Plan.</p>
002	<p>Scottish Resources Group, Castlebridge Business Park, Gartlove, Nr Alloa, Clackmannanshire, FK10 3PZ</p> <p>I refer to the letter about the Trust Fund payments and to the meeting which was held in your office on the 20th May 2010. As we explained in the meeting, we have serious concerns about the suggestion that the Trust Fund payments should be increased and would set out our views in some detail below.</p> <p><u>General</u></p> <p>Many years ago, our industry was regularly approached for donations to a huge range of community and charity projects which we were generally happy to do. As with all requests for 'charitable' donations, it can get out of hand and it becomes difficult to say yes to some and no to others. We therefore suggested the setting up of a more structured system into which we offered to pay a fixed sum, based on tonnage. Trusts were</p>	<p>The views of the respondent are duly noted by the Council.</p> <p>The information provided by the respondent has been duly noted by the Council. The Council does not dispute the fact that the contributions are entirely voluntary.</p>

	<p>formally established and the trustees would be responsible for distributing monies to those projects deemed to be of the greatest community benefit. As this proved successful for both giver and recipient, the fixed payment method was widely adopted across our industry. I would stress that it was introduced as a fixed <i>voluntarily</i> payment, as a direct replacement for the variable <i>voluntary</i> payment that preceded it.</p> <p><u>Legal Background</u></p> <p>As you are aware, there are two main sources of guidance.</p> <p>Scottish Planning Policy – SPP</p> <p><i>“Benefits in the forms of new community facilities or community trust funds may be proposed by the developer but such benefits should not be treated as a material consideration unless they meet the tests set out in Circular 1/2010 Planning Agreements. Attempts to secure unreasonable provision not directly related to the proposed development or securing general benefits for the wider community should not be taken into account in decision making on planning applications.”</i></p> <p>Planning Circular 1/2010: Planning Agreements</p> <p>Trust Fund payments cannot be included as planning conditions as they do not relate to the control of development or the use of land. They can only be provided via a Section 75 or similar planning agreements for which there is clear, up to date guidance from the Government (in this Circular) on the circumstances in which planning agreements should be used.</p> <p><i>“4. Section 75(1) of the 1997 Act provides that “a planning authority may enter into an agreement with any person interested in land in their district (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development...”</i></p>	<p>Noted.</p> <p>Noted.</p> <p>The views of the respondent are duly noted and are not disputed.</p> <p>Noted.</p>
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	<p><i>“11. Planning agreements should only be sought where they meet all of the following tests: (my emphasis)</i></p> <ul style="list-style-type: none"> <i>• Necessary to make the proposed development acceptable in planning terms;</i> <i>• Serve a planning purpose;</i> <i>• Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;</i> <i>• Fairly and reasonably relate in scale and kind to the proposed development and be;</i> <i>• Reasonable in all other respects.</i> <p><i>“17. Planning agreements should not be used to extract advantages, benefits or payments from landowners or developers which are not directly related to the proposed development ... planning authorities should not attach any weight to offers made to undertake works, donate monies, or other incentives, including contributions to community trust funds if these do not meet the tests contained in this circular for inclusion within an agreements.”</i></p> <p><i>“19. Planning agreements should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development.”</i></p> <p><i>“21. A planning agreement should be reasonable ... (and) ... should be so directly related to the regulation of the proposed development that it should not be permitted without it. In the case of financial payments, these should contribute to the cost</i></p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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	<p><i>of providing necessary facilities required as a consequence of or in connection with the development.”</i></p> <p><i>“22. In some cases the provision of contributions towards ... community facilities may be acceptable provided the requirements are directly related to the development proposal and the need for them arises from its implementation. Planning agreements should not, however, be used where this connection does not exist or is too remote to be considered reasonable.”</i></p> <p>If a planning application makes it clear that a contribution is being made which will be spent in its entirety on one or more named and relevant projects, in an area where the development is taking place, e.g. a new hall in a village close to the proposed site boundary, then it <u>may</u> meet the tests and may be appropriate.</p> <p>However, this is not the case and is not how the East Ayrshire Trust has been set up. Contributions are paid into a central fund which is distributed by Trustees on the basis of worthy need and often not in the area where the development is taking place and without regard to whether it directly relates to the development. As a result of the way the Trust has been set up, the payments sought can NOT, by any definitions, be compliant with the tests set out in this Circular.</p> <p>Conclusions on Legal Basis</p> <p>As a result, there is a strong argument that Trust Fund payments are inappropriately included as a Planning Agreement obligations. The payments offered by our industry are clearly voluntary (by definitions) and, as they do not meet the statutory tests, they should probably be provided for by other means. Consequently there is no mechanism to review, or impose, new contribution levels, whether or not the Local Plan makes reference to such a possibility. Again, the contributions are</p>	<p>Noted.</p> <p>The views of the respondent are duly noted and not disputed by the Council.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p>
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voluntary and the Planning Agreement cannot be used, as it does not meet the pre-requisite legal tests.

Operating Costs

Costs within the business have increased markedly in recent years for a range of reasons – these range from the ever increasing regulatory burden throughout the supply chain, to international pricing pressures on specialist mining equipment and supplies.

SRG Operating costs: In general terms, our operating costs have increased and despite implementing rigorous cost saving measures across the business, we still have a substantial increase. The cost per tonne sold has increased by 22% from 2008-2010 (as derived from our audited accounts.) Each area of the business has its own pressures with almost all supplies affected by shortage of supply, high demand, semi-monopoly of supplier, high raw material costs and high energy costs. Even UK regulatory costs are increasing at levels above the rate of inflation. However, a number of key examples are identified below.

Operating Ratio: Our costs are directly proportional to the amount of overburden that we have to remove to expose the coal. In recent years, planning policy (of both Central and Local Government) has progressively restricted both the sites we can pursue and the operational area. As a result, we are often unable to extract all the coal within a site and/or we can lose low ration coal because of say the 500m restriction from settlements. We are not arguing against this but merely pointing out that it does affect the economics of operation. this can be seen in our overburden:coal ratio which has increased (worsened) on our East Ayrshire sites by 48% from 2004 to 2010. (*) The dip in 2008/09 was a result of a temporary lowering of the ration at Powharnal. Unlike other costs, which reflect inflation on suppliers' own costs, geology does not

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	<p>change and is not therefore related to inflation. We therefore hope that our operating ratio will not change and should not be a variable cost unless other forces are influencing it. Hence, when planning forces apply, it results in an irrecoverable cost on the business. (* This data is commercially sensitive and is therefore supplied separately to the Council.)</p> <p>Fuel: A graph is attached which shows a summary of the yearly averages from 2002 to 2010. In broad terms, gas/oil price has risen from just over 15p/litre in 2002/03 to approx 55p/litre today. Over the last 5 years, this is an increase of 179% or an average of 35% per year. Note that in 2008/09, the price rose to almost 70p/litre which we had to absorb in order to maintain production and jobs.</p> <p>Tyres: There are only two manufactures of quality earthmover tyres, albeit there are a number of inferior products from Russian and East European suppliers. Such is the worldwide demand for mining equipment to meet society's needs, that equipment, spares and consumables are all in very short supply and at a premium in cost. SRG entered into a long term arrangements for supply of tyres on preferential terms (including price), but even this has had a little effect in protecting us from above inflation price rises of 39% since 2006.</p> <p>Explosives: From 2006 to date, the price of ammonium nitrate has risen by 59% and the 'high explosive' by 31%. This is an essential part of our operation, without which we cannot operate. Unfortunately, explosive supply is now a virtual monopoly which merely adds to the costs which result from their raw material costs.</p> <p>Coal Sales Price</p> <p>It has been suggested that if coal sales price increased by x%, then the Minerals Trust Fund payments should also increase by x%. Notwithstanding the cost increases and the foreign</p>	<p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p>
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	<p>exchange rates, the quoted selling price was a colossal spike, as seen on the attached graph. As was well documented at the time, this reflected the short term rise of oil price, caused by a combination of pre-recession demand and spectacular futures trading and hedging on oil prices. Costs always rise in parallel to the price of energy, but as energy prices fall, the costs never fall to the same degree.</p> <p>Notwithstanding that, it can be seen that the sales price of coal has fallen back to the circa 2007 price and, as referenced above, the costs of production have continued to rise.</p> <p>Did SRG lock in long term sales price contracts when the coal price was at its peak? In general, the answer is 'no' as we were already in contracts at pre-spike prices and the power generators are all massive multi-national utility companies with highly sophisticated teams of forecasters and traders. They knew it was a price spike and we were entering recession and, as a result, it would have been an act of stupidity on their behalf to enter into new long term contracts at a record high price. We did manage to obtain some limited short terms contract cover – the benefit of which was seen in our sales price last year and which was used to drastically reduce our bank debt and so provide future security for the company.</p> <p>Prices have fallen equally quickly and our own sales price is already down 11% on 2009.10 prices.</p> <p><u>Employment</u></p> <p>Our industry is pleased to be able to report that it has been able to maintain employment levels through the recession. SRG has increased employment in the Group from 765 in October 2008 to 1075 in July 2010 – an increase of 41% in 20 months (of recession). In such a fragile economy, we believe that this is of some <u>considerable</u> significance in East Ayrshire and we would hope that the value to the local economy and communities</p>	<p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted. The Council support SRG's efforts to increase employment in the area and the Council understands the position that the company face in the current economic climate. It is important that existing jobs in the industry within East Ayrshire are retained and the Council is committed to helping retain these jobs and support the coal industry within East Ayrshire.</p>
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	<p>would be recognised. Arbitrarily increasing our costs will only have a direct effect on our competitiveness and ability to maintain jobs.</p> <p>We have also received comment from our Union representatives that if 'additional cash' is available then they believe that it should be channelled more directly to the communities via wage levels rather than community trust funds. This could prove difficult in terms of employee relations if the Council seeks to impose an increase as suggested.</p> <p><u>Future Intention</u></p> <ul style="list-style-type: none"> • SRG proposed the original uniform rate of community contribution as a means of fairly and consistently providing support for projects and schemes of significant community importance in the areas where it and its employees operate and live. • The formation of a centralised fund or 'pot' was seen as the best way of providing that support for community projects in a way that can be recognised and budgeted for, by the relevant community. • We do not consider that it should be seen either as a form of local taxation or as a means of Council's '<i>extracting advantage or payments from developers</i>'. • Notwithstanding that, SRG remains fully committed to making these voluntary payments in a manner whereby the receipts can be planned for by the community and their trustee representatives. • SRG will continue to provide clear and unambiguous confirmation that each new or extended site will provide a payment of 27.5p per tonne extracted and sold, into a fund for the community to spend on projects which it 	<p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p> <p>The Council notes SRG's commitment to continue making contributions of 27.5 pence per tonne of coal extracted.</p>
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decides, are most appropriate. On the basis, they can choose projects which may or may not be related to the development or developments which were the source of the funds.

Conclusions

As stated above, SRG is very happy to continue to make tonnage related payments for use on projects which the community choose as being important to them. As we do not believe that there is any difference of opinion between us that such payments are entirely voluntary and, that they do not meet the criteria set out in Circular 1/2010, we do not believe it is appropriate to seek to impose an increase above that voluntarily agreed.

Notwithstanding that, our costs have risen markedly, the sales income has not increased proportionally and we are in the middle of the deepest recession in modern history. We have further substantial costs in the pipeline ranging from planned gas oil duty increases to National Insurance and we must expect further financial pressures from the imminent Budget and Spending Review later in the year. Without regard for any legal or other argument it is wholly inappropriate to seek to impose unnecessary additional costs on an industry which has managed to maintain significant employment levels (SRG has increased employment) at a time of massive unemployment and economic fragility.

Voluntary contributions can always be discussed with a view to change (up and down) and we would suggest that we reconsider when the recession is substantially behind us. This may coincide with the Council's review of the 'Coal Subject Plan' which is probably the most appropriate mechanism to not only provide additional certainty for our industry but also as a means to examine any structural changes to the Trusts and how the monies are spent (local to the site or on more central projects

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The views of the respondent are duly noted. The Council agrees that the voluntary contributions rate should remain at 27.5 pence per tonne of coal extracted, due to the current economic climate. However, that being said, the Council will further review the contribution rate during the preparation of the Local Development Plan.

	<p>with no relationship to the development?)</p> <p>We would therefore respectfully suggest that the Council does not seek to impose any increase on the current payment level of 27.5p/tonne at the present time. (If, after due consideration, it does decide to do so, we would wish to be involved in detailed discussions on how it would be intended to impose an increase without breaching the requirements of the Circular or it appearing that the payment was a pre-requisite to obtaining permission).</p>	<p>The views of the respondent are duly noted. As indicated above the Council agrees that it should not increase the contribution rate at this present time, but will instead, review the matter during the preparation of the Local Development Plan, which will involve further discussions with the coal operators in East Ayrshire and Coalpro.</p>
<p>003</p>	<p>ATH Resources, Aardvark House, Sidlings Court, Doncaster, DN4 5NU</p> <p>I refer to your letter of 12 April 2010 and to the meeting which was held in your office on the 20th May 2010. As we explained in the meeting, we have serious concerns about the suggestion that the Trust Fund payments should be increased and set out our views below.</p> <p>ATH Resources accept the present position of a voluntary trust fund contribution of 27.5 pence per tonne but consider any increase above this figure, particularly in the current economic climate, to be inappropriate and misguided. ATH have been a significant employer and contributor to the local economy in East Ayrshire for 12 years now and as you aware, we want to continue to have a long term business presence in the locality. However, in looking at mining areas, you should be aware that the level of trust fund contribution in East Ayrshire is the highest in Scotland if not the UK and many areas have no such trust fund contribution. This can have a bearing on investment decisions when assessing mining projects in different geographical areas.</p> <p>Costs within the business have increased markedly in recent years for a range of reasons and these have outstripped any increases in coal prices. Not least, the cost implications of the</p>	<p>Noted.</p> <p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted.</p>

	<p>regulatory burdens now imposed on the industry. In general, many of the lower ratio sites in East Ayrshire have now been exhausted or are limited or sterilised through planning and other restrictions. Consequently, mining higher ration sites increases the costs of working coal in East Ayrshire compared to other regions where lower cost reserves exist. One of the main operating costs is fuel and the gas oil price has increased over the period 2002 to 2010 from around 15p/litre in 2002/03 to approx 55p/litre today, an increase of about 180%. In contrast, coal price increases have been much more modest as we are locked into longer term but more stable contract prices. The price spike witnessed in 2008 served only to increase costs with little improvements in coal price due to the long term nature of ESI contracts.</p> <p>We would therefore respectfully suggest that the Council does not seek to impose any increase on the current payment level of 27.5p/tonne at the present time.</p>	<p>The views of the respondent are duly noted. As indicated above the Council agrees that it should not increase the contribution rate at this present time, but will instead, review the matter during the preparation of the Local Development Plan, which will involve further discussions with the coal operators in East Ayrshire and Coalpro.</p>
<p>004</p>	<p>Kier Minerals Limited, Tempsford Hall, Sandy, Bedfordshire, SG19 2BD</p> <p>We refer to your consultation letter and our subsequent meeting on 20 May. We would like to register our serious concerns in relation to the proposal to increase the level of contribution to the Minerals Trust Fund.</p> <p>As you know, all businesses are coming under increasing financial strain in the current economic climate. This includes the mining industry, and represents further pressure on an industry which has, in recent years, had to bear the extraordinary increases to major elements of its cost base, driven by global demand.</p>	<p>Noted</p> <p>The views of the respondent are duly noted</p>

	<p>We detail below some examples of these extraordinary increases, based on our own operations in East Ayrshire, which we as a business have had to bear in the period Jan 1998 – December 2009.</p> <p><u>Mining plant (capital cost of equipment)</u></p> <p>250t Excavator +86% 100t Dumptruck +80%</p> <p>Fuel (Gas/oil) +320%</p> <p><u>Explosives</u></p> <p>ANFO +120% Slurry +75%</p> <p>Labour (Excavator operator) +45%</p> <p>In addition to this, the way in which mining sites are operated has also changed. Far greater emphasis is now, rightly, placed on environmental management and mitigation, both by the regulatory authorities and the operators themselves. We believe that our commitment in this regard is clear. However, in purely financial support. This element of our cost base has also increased dramatically in recent years as standards have improved.</p> <p>Whilst it is recognised that coal prices have risen over the same period, it is important to understand that due to nature of the longer terms supply agreements which are necessary to underpin the investment required to develop new mines, coal producers are rarely able to take advantage of short terms rises in the market place. Whilst there was a well reported spike in 2008, the price fell off again just as quickly and it is worth noting that over the longer term, the price we would achieve for our</p>	<p>The views of the respondent are duly noted</p> <p>Noted</p> <p>Noted.</p> <p>The views of the respondent are duly noted.</p>
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	<p>coal today is very similar to price achievable 3-4 years ago.</p> <p>As a business, our investment decisions have to be guided by commercial viability. With an increasing cost base, there will ultimately be a straw which breaks the camels back. Any cost increase has the effect of reducing the viable economic ration (coal to overburden) of the coal, leading to a point where higher ratio coal in existing sites will not be worked or higher ratio sites will not be developed at all and the investment channelled elsewhere. Either way, a reduced tonnage output will result.</p> <p>We believe that any increase in Minerals Trust contributions at this stage would be detrimental to the industry in East Ayrshire and would only serve to jeopardise the considerable benefits which the area currently enjoys from having a stable, long term mining industry. A perceived short term gain would result in a much longer term adverse economic impact.</p> <p>We would therefore urge the Council not to impose any increase to the current contribution rate.</p>	<p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted. The Council would wish to avoid any loss of benefits that the coal industry brings to East Ayrshire.</p> <p>The views of the respondent are duly noted. As indicated above the Council agrees that it should not increase the contribution rate at this present time, but will instead, review the matter during the preparation of the Local Development Plan, which will involve further discussions with the coal operators in East Ayrshire and Coalpro.</p>
<p>005</p>	<p>Councillor Tom Cook, Council Headquarters, London Road, Kilmarnock, KA3 7BU</p> <p>I refer to your letter of 1st June on the above subject.</p> <p>Having reviewed the information provided and the RPI tables I can see merit in altering the extraction rate for coal. Comparing the RPI index on 1st January 2010 with that of 1st January 1998, I would suggest a revised rate of 35 pence per ton of coal extracted would seem a reasonable figure.</p>	<p>The views of the respondent are duly noted. However, as indicated by the responses from the coal operators and Coalpro, any increase in cost could make the companies uncompetitive and as the contributions are given entirely on a voluntary basis at the present time any increase may result in less funds being received by the Minerals Trust. However, the Council will revisit the contribution rate during the preparation of the Local</p>

		Development Plan
006	<p>Ken Robinson, Secretary, Minerals Trust Fund, PO Box 8553, Troon, KA10 7WE</p> <p>I refer to your letter of 25 May 2010 which was considered by the Trust at a Special Meeting on 15 June 2010.</p> <p>With regard to the royalty rate it is a matter between East Ayrshire Council and the mineral operators provided always that the rate does not fall below the prescribed minimum of 25p per ton.</p> <p>The Trustees would, however, wish the Council to take into account the prevailing economic climate and that the royalties received are on a voluntary basis. It should be noted that the rate in North Lanarkshire and Fife is 25p. The Trustees also have concerns with regard to any impact on jobs within the local mining industry should the rate be increases beyond that which is currently payable.</p> <p>I have been asked to advise you that the foregoing reflects the unanimous view of the Trustees present at the Special General Meeting on 15 June 2010. I trust these comments will be of some assistance during the consultation process.</p>	<p>Noted.</p> <p>The views of the respondent are duly noted. As indicated above the Council agrees that it should not increase the contribution rate at this present time, but will instead, review the matter during the preparation of the Local Development Plan.</p> <p>The views of the respondent are duly noted. The Council are aware of prevailing economic climate and that the royalties received are on a voluntary basis. The Council agree that it is important to safeguard the jobs within the industry.</p> <p>Noted.</p>
007	<p>Katie McNeillie, Secretary, Dalrymple and District Community Council, 4 Glebe Cottages, Dalrymple, KA6 6DP</p> <p>Dalrymple and District Community Council has discussed the document sent to us regarding the above matter. We feel in today's financial climate that the coal companies are contributing enough considering that most are struggling and we feel this would only apply further pressure. All of the communities across Cumnock and Doon Valley have benefited greatly since the trust established.</p> <p>So in summary we feel strongly that the status quo should remain.</p>	<p>The views of the respondent are duly noted. As indicated above the Council agrees that it should not increase the contribution rate at this present time, but will instead, review the matter during the preparation of the Local Development Plan</p> <p>The views of the respondent are duly noted.</p>

APPENDIX 1 (B):

REPRESENTATIONS RECEIVED AND COUNCIL'S OBSERVATIONS ON THE REPRESENTATIONS MADE ON THE RANGE OF PROJECTS TO BE FUNDED AND THE COMPOSITION OF THE RECEIVING BODY FOR CONTRIBUTIONS AND THE DECISION TAKING PROCESS

Representation No.	Synopsis of Representation Received	Council's Observations and Suggested Course of Action
001	<p>ATH Resources, Aardvark House, Sidlings Court, Doncaster, DN4 5NU</p> <p>I refer to your letter of 12 April 2010 and to the meeting which was held in your office on the 20th May 2010.</p> <p>With regard to the issue of how the fund is administered we are of the view that the existing arrangements work well. It is essential that members of the trust include representatives of those communities most affected by surface coal extraction. Likewise, in terms of the types of projects to be supported we consider the existing trust remit to be satisfactory and it is fundamentally important that the funds support projects within the communities/areas affected by surface coal mining.</p>	<p>Noted.</p> <p>The views of the respondent are duly noted. Nonetheless, the Council are of the opinion that there is merit in reviewing the administration of the fund and the types of projects supported through the Local Development Plan process.</p>
002	<p>Kier Minerals Limited, Tempsford Hall, Sandy, Bedfordshire, SG19 2BD</p> <p>We refer to your consultation letter and our subsequent meeting on 20 May.</p> <p>In terms of the composition of the Minerals Trust and the way it operates, we do not believe that any significant changes are necessary. The original intent of the trust was to benefit those communities most affected by mining operations. It should remain the representatives of those communities that oversee the distribution of the funds, independent of any wider political influences.</p>	<p>Noted</p> <p>The views of the respondent are duly noted. Nonetheless, the Council are of the opinion that there is merit in reviewing the administration of the fund and the types of projects supported through the Local Development Plan process.</p>

<p>003</p>	<p>Councillor Tom Cook, Council Headquarters, London Road, Kilmarnock, KA3 7BU</p> <p>I refer to your letter of 1st June on the above subject.</p> <p>With regards to the administration of the fund and the type of projects supported, I would suggest that a similar model to the Renewable Energy Fund be adopted.</p>	<p>Noted.</p> <p>The views of the respondent are duly noted and the Council is in agreement that there is merit in reviewing the administration of the fund and the types of projects that should be supported from the fund through the Local Development Plan process. Various models for the administration of the fund, including existing arrangements, as well as the approach taken with the Renewable Energy Fund, will be considered. The Council intends to consult on these issues through the Local Development Plan process before coming to a settled view on the model to be adopted and the projects that are eligible for funding through this particular mechanism.</p>
<p>004</p>	<p>Ken Robinson, Secretary, Minerals Trust Fund, PO Box 8553, Troon, KA10 7WE</p> <p>I refer to your letter of 25 May 2010 which was considered by the Trust at a Special Meeting on 15 June 2010.</p> <p>With regard to the range of functions to be funded from the contributions the Trustees consider that there should be no change. The Trustees consider adequate discretion is provided by the Trust Deed as presently framed and in any event the Trust is having difficulty satisfying the grant applications made to it at present without a further burden being placed upon it by requiring to consider a wider range of grant applications. Consequently the Trustees consider the range of functions should not change.</p> <p>The Trust has been successfully operating since 1995 during which time it has distributed grants in excess of £10m. The Trustees including the representatives of the mineral operators consider that the geographical basis upon which the Trustees</p>	<p>The views of the respondent are duly noted.</p> <p>The views of the respondent are duly noted. However, the Council are of the opinion that there is merit in examining further the range of projects that the contributions fund. The Council intend to consult on this as an issue through the Local Development Plan process to ensure that the range of projects that the contributions fund has tangible community benefits in the long term.</p> <p>The views of the respondent are duly noted. However, the Council are of the view that there is merit in reviewing the composition of the Minerals Trust. The Council intends to consult on this issue through the Local Development Plan</p>

	<p>are appointed is adequate and as such there should be no change to the Trust's composition.</p> <p>Finally the Trustees expressed the view that the present decision making process regarding grant applications is adequate and accordingly they do not consider that any change in this regard is warranted.</p> <p>I have been asked to advise you that the foregoing reflects the unanimous view of the Trustees present at the Special General Meeting on 15 June 2010. I trust these comments will be of some assistance during the consultation process.</p>	<p>process.</p> <p>The views of the respondent are duly noted. However the Council will review the decision-making process to ensure that it is fair and helps to deliver tangible and long lasting community benefits. The Council also intend to consult on this issue through the Local Development Plan process.</p> <p>Noted.</p>
005	<p>Katie McNeillie, Secretary, Dalrymple and District Community Council, 4 Glebe Cottages, Dalrymple, KA6 6DP</p> <p>Dalrymple and District Community Council has discussed the document sent to us regarding the above matter.</p> <p>The community council feel that the range of projects covered by the trust meets the demand of the communities throughout the Cumnock and Doon Valley area. The composition of the receiving bodies is also adequate. We also feel that the decision making process is also sufficient in making the decisions as to how the funds are expended.</p> <p>Dalrymple Community Council are very happy with the way in which the minerals trust, currently served by local councillors of the Cumnock and Doon Valley area and local community representatives from various Community Councils distribute the funds in the Cumnock and Doon Valley areas to all the communities affected by coal extraction and should not be widened any further.</p> <p>So in summary we feel strongly that the status quo should remain.</p>	<p>Noted.</p> <p>The views of the respondent are duly noted. However, the Council are of the view that there is merit in reviewing the composition of the Minerals Trust. The Council intends to consult on this issue through the Local Development Plan process.</p> <p>The views of the respondent are duly noted. However, the Council is of the opinion that there is merit in examining further the range of projects that the contributions fund. The Council intend to consult on this as an issue through the Local Development Plan process to ensure that the range of projects that the contributions fund has tangible community benefits in the long term.</p> <p>Noted.</p>