

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 25 JUNE 2010

09/0891/PP: PHASED EXTRACTION OF COAL BY SURFACE MINING METHODS WITH PROGRESSIVE RESTORATION AND ANCILLARY WORKS ON LAND AT NETHERTON, OFF NEWFIELD ROAD, NEAR CUMNOCK

APPLICATION BY AARDVARK TMC

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=09/0891/PP>

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought for the phased winning and working of coal by surface mining methods in the application site which the applicant has termed the Netherton development site. This proposal will allow the recovery of approximately 4.1 million tonnes of coal mainly for the power generation industry with also an element for domestic markets. The proposal originally also sought to recover approximately 500,000 tonnes of fireclay that will be encountered in the coaling operations. However, the applicant has now confirmed that following a review of the local market for fireclay there appears to be no economic justification for extracting fireclay from the proposed Netherton site and therefore has withdrawn this aspect from the planning application. The production will be at a rate of up to approximately 700,000 tonnes per annum (approximately 14,500 tonnes per week). The seams of coal present within the Netherton site will be extracted to a maximum depth of approximately 120 metres below original ground level. The coals will be worked in two distinct phases described as follows:

- (i) **Southern Extraction Area (SEA):** The extractive operations would commence at the northern limit of the SEA with extraction progressing in a generally north to south direction. It is envisaged that operations in the SEA would last for approximately 5.5 years (from existing land use to full restoration using backfill material from the Northern Extraction Area), from which approximately 3,000,000 tonnes of coal would be extracted over a period of around 4 years. The predominant vegetation cover over the southern parts of the SEA comprises commercial woodland. The woodland would be felled in liaison with the Forestry Commission using standard forestry practices. The trees would be carried off site and where marketable, used in timber production.
- (ii) **Northern Extraction Area (NEA):** As coal extraction advances towards the southern limit of the Southern Extraction Area, soils and overburden removal would commence in the southern part of Northern Extraction Area and would progress in a south to north direction. Overburden material from the NEA would be used as backfill in the SEA to progress restoration in that area. It is envisaged that operations in the NEA would last for approximately 4 years (from existing land use to full restoration), from which approximately 1,100,000 tonnes of coal would be extracted over a period of around 2 years.

1.2 In total the land take within the application boundary covers an area of 438 hectares, of which approximately 313 hectares will be excavated to mine coal or be used for operational purposes. The NEA extends to 46 hectares and the SEA to 81 hectares. Overburden from the excavation area will be stored in two areas extending to 154 hectares with the larger storage area intended for the permanent surcharge of overburden. The establishment of water treatment areas will extend to a further 11 hectares and the site establishment areas will cover approximately 5 hectares. The remainder of the application area would be used for mitigation screening, soil storage, office and welfare facilities or would not be subject of any operational development. A total of 304 hectares (69%) of the planning application site comprises previously disturbed land from former surface mining schemes in the area.

1.3 The development scheme has been prepared with a view to maintaining the development areas in existing land uses for as long as possible whilst maintaining a sufficient area exposed for overburden removal and coal recovery. It is envisaged that soil stripping would take place when weather conditions are favourable throughout the year. The scheme has also been prepared with an emphasis on maximising the direct placement of overburden and soils for progressive restoration of de-coaled areas, thereby returning the worked out areas to an afteruse as early as is practical and minimising the requirement to store excavated overburden and soils above existing ground levels.

1.4 The surface mine would employ surface mining techniques that are common in East Ayrshire and that have been carried out within the Skares Road Surface Mine previously. The operations can be described in four sequential operational stages comprising:

- (i) removal of vegetation and soil stripping;
- (ii) removal, storage and replacement of overburden;
- (iii) extraction and transportation of coal; and
- (iv) backfilling and restoration of de-coaled areas.

1.5 Overburden encountered within the site is expected to be variable in nature, with some of the component materials likely to be too hard for excavation by mechanical means. Any such materials would be broken and freed from the host rock using blasting techniques. The frequency of blast events would be dependent on the nature of the overburden materials encountered.

1.6 In terms of timescale, following commencement of operations at Netherton, site preparation and start up works will take approximately 5 months while extraction of minerals is estimated to take up to 8 years to complete. This will be followed by approximately 2 years of backfilling and final site restoration works i.e. a total operational life of 10 years. The final timescale will be dependent on a number of factors including the exact rate of production, the coal tonnage recovered and weather experienced during the life of the site.

1.7 The applicant intends to operate the site on a double shift pattern 24 hours per day, commencing at 0700 on Mondays and continuing through to 1300 hours on Saturdays. With the exception of essential maintenance, no operations would take place on Sundays or Bank Holidays. Soil stripping and coaling operations would be undertaken between 0700 and 1900 hours Monday to Friday and between 0700 and 1300 hours on Saturday. Excavation and overburden handling operations would be undertaken 24 hours per day Monday to Friday and between 0700 and 1300 hours on

Saturdays. Blasting will be undertaken between the hours of 1000 and 1600 on Mondays to Fridays and between 1000 and 1200 on Saturdays. The applicant proposes that coal will be transported off site between the hours of 0700 to 1900 hours Mondays to Fridays and between 0700 and 1300 hours on Saturdays.

1.8 As a result of the amended proposals by the applicant to address concerns raised by the Local Planning Committee, there will now be a requirement to maintain and re-establish coal processing facilities within the existing Skares Road Opencast site to serve the Netherton development. This will result in some 25 hectares of land of the existing consented Skares Road site being utilised for the coal processing area, an internal haul road, the existing site administration area and the existing site access road. The applicant now intends to transport coals won from the extraction areas by an existing overland haul route leading the current coal processing area within the Skares Road site. Transportation of coals along the overland haul route to the coal processing area is to be confined between the hours of 0700 to 1900 hours Mondays to Fridays and between 0700 and 1300 hours on Saturdays.

1.9 Coals will then be processed and blended according to markets prior to being loaded onto HGVs. Thereafter the coal will be transported by road via the existing Skares Road site access road onto the B7046 Skares Road travelling west and then travelling north via the U728 Mote Toll road to the junction with the A70 Cumnock – Ayr Road. HGVs will then travel west to either the Killoch Coal Disposal Point or onwards to Ayr Harbour. No coal vehicles associated with the Netherton scheme will travel through Skares or Ochiltree and essentially the applicant will be using the current coal transport route associated with the consented Skares Road site. With the production rate of approximately 14,500 tonnes of coal per week, this will equate to 180 HGV movements per day based on the applicant's proposals for operating hours for dispatch as stated above. Given the nature of the operation, this daily flow would be constant through the working day equating to 9 HGV trips (18 HGV movements) per hour.

1.10 A barrel wash, plant yard, workshops and parking area including welfare facilities are to be established at the eastern boundary of the Netherton site, between the NEA and the internal coal haul road. Available soils would be stripped from this area, and the internal haul route, prior to their formation and used to form mounds off the internal haul road and adjacent to the barrel wash area.

1.11 In terms of staff and delivery / service vehicles, it is intended to access the site via two entrances from the U743 Newfield Road. The western most access would principally be used as an HGV access to the coal stocking area and access to the offices etc., with the eastern access providing an access for employee's cars and light commercial vehicles only. Wheel washing apparatus would be installed within the application site, close to the position of the western access. The existing coal loading area at Skares Road has a wheel wash and weighbridge facilities which will be retained during the life of the Netherton development.

1.12 The proposed Netherton site is planned essentially as a replacement site for the Skares Road surface mine which is currently operational but which is expected to cease coaling during 2011. The proposal will provide or retain approximately 110 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The indirect employment would be in sectors that supply goods, services and support to the surface mining operations including mechanical, engineering and fleet support. In the order of 76% of the applicant's existing employees at the Skares Road surface mine live within East Ayrshire.

1.13 As stated above progressive restoration will be integral to the proposed development, and the applicant proposes a restoration scheme that makes provision for the progressive establishment of agricultural land, a managed water body and woodland areas, together with biodiversity enhancement, habitat creation and public access including provision for:

- mixed and deciduous woodland;
- woodland edge and scrub habitats;
- acid-neutral open pasture;
- species rich wet/marshy grassland;
- riparian habitat;
- ponds and watercourses;
- wetland habitats and water areas; and
- hedgerows and hedgerow trees.

The restoration scheme has been influenced by the environmental studies undertaken in respect of the development, with a particular emphasis on ecological improvement, landscape setting and increased public access.

1.14 The Netherton application has been accompanied by an Environmental Statement, Supplementary Environmental Information and an Addendum to the ES. The information provided suggests that, subject to the implementation of a range of mitigation measures as described in these documents, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

1.15 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community. As far as possible the applicant has taken community comments on board in bringing forward this planning application and this is documented in the Pre-Application Consultation Report which also accompanies the application.

1.16 The amendments brought forward further to the Committee meeting of 30 April 2010 have been the subject of re-neighbour notification, notification to representees and statutory press notices under the Planning Acts and the environmental Impact Assessment Regulations.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet but that the issue of the decision notice should be withheld until:

- (i) the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning**

(Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 8.7 of this report; and

- (ii) a Mining Waste Management Plan in compliance with the provisions of The Management of Waste from Extractive Industries (Scotland) Regulations 2009, has been formally approved by the Planning Authority in consultation with SEPA.**

3. CONCLUSIONS

3.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan, albeit it represents a technical departure from Policy MIN1 of the EAOCSP. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

3.2 The proposals represent the development of a new stand-alone opencast on a site that has been the subject of surface mining in the past. The proposal will involve the extraction of approximately 4.1 million tonnes of coal which in environmental terms is considered to present no long term significant adverse impacts in relation to the proposed operations, and this is essentially borne out by the consultation process.

3.3 The proposed Netherton development is planned essentially as a replacement site for the Skares Road surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Skares Road site, which is expected to cease in sometime during 2011. The proposal will provide or retain approximately 110 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The 110 direct employment positions would generate approximately £4 million in wages annually (at current rates) to go into the local economy. Given that a significant proportion of the staff would continue to reside within East Ayrshire, then there are tangible benefits to the local economy through the proposed development.

3.4 In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. The site is currently considered partly derelict and part of the site is covered with coniferous plantation woodland. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting.

3.5 In considering the environmental acceptability of the proposed surface mining development, planning authorities are guided to consider acceptability in the context of the impact on both local communities and the environment. This can be achieved by weighing up the various benefits and disbenefits that would be likely to arise if the development proceeded. In respect of the proposed Netherton development the benefits and disbenefits are as follows:

Disbenefits

- (i) Proximity to communities: There are no communities within 500m of operational areas of the development. The closest individual property to the development (Mossback) is approximately 150m from the application boundary but in the order of 600m from the proposed extraction areas. The scheme has been prepared to minimise disruption. The ES has included an assessment of the potential effects on the closest sensitive properties to the development in terms of matters such as dust and noise. The ES has identified appropriate mitigation measures and reported acceptability of the scheme at those receptors.
- (ii) Uncertainty for local communities: the planning application would not create any uncertainty for local communities as to future extraction. The planning application would in fact remove such uncertainty by allowing the economically recoverable coal adjacent to the Skares Road Surface Mine to be removed as a direct continuation of those operations. If the development did not proceed, the prospect of the area being worked at some point in the future would remain.
- (iii) Haulage of Traffic: the amended traffic routeing from Netherton, via an overland haul road through the existing Skares Road site and using the current agreed haul route, would avoid passing through Skares and other sensitive locations. There are few residential properties along the route to Killoch Coal Disposal Point and the transport assessment within the ES has identified capacity within the road network to accommodate the development. No significant impacts from haulage have been identified. The applicant has agreed to commit to a routeing agreement within a S75 Agreement. With regard to dispatch hours, it is considered that the applicant's amended proposals are in line with standard dispatch hours applied to all surface mining sites.
- (iv) Other Cumulative Developments in Close Proximity: the ES has included an assessment of likely cumulative effects that would occur from the Netherton development co-existing with other similar developments in the area. The other developments with potential effects similar to the Netherton are the existing surface mining operations at Skares Road, Greenburn and at House of Water and the existing waste disposal operations at Garlaff. The relevant assessments within the ES (including noise, air quality and landscape and visual amenity) have considered the cumulative effects in detail. No significant overriding cumulative effects have been identified.
- (v) Disturbance and Disruption from Noise etc: the ES includes detailed assessments in respect of a wide scope of environmental impacts. Appropriate mitigation has been identified in the ES, that can be secured through planning conditions and/or agreements to control the effects of the development to acceptable levels. These would include restricting operating hours for certain operations, setting noise conditions and setting conditions to control blast events.
- (vi) Loss of Landscape Features, Habitats, Species & Archaeological Features: The ES has taken into account the potential impacts on all of these assets and has identified that, whilst impacts may occur in the short to medium term, no special feature would be 'lost'. As the progressive restoration matures, there would be notable benefits from the scheme, including landscape and biodiversity improvements.

- (vii) Impact of Extraction on other Investment: the development is located in a rural area, with little alternative development apparent and there is not considered to be any reasonable likelihood of detracting investment from the local area. The proposed development would in fact bring about further investment from the applicant in the local area and the likely commitment to the area from other businesses and industries used to service the development.
- (viii) The loss of local Opportunities for Recreation: there are no formal public access routes or ways within the planning application area. The proposed restoration scheme includes a network of paths that should increase opportunities for recreation as restoration of the site progresses.

Benefits

- (ix) Removal of Existing Dereliction and Land Instability: whilst a significant proportion of the application site has been subject of previous mining operations and the beneficial use of the site is generally constrained, there are not significant areas of the site that are derelict or unstable. The restoration will bring about an overall improvements in the character and setting of the application site for local communities and for biodiversity targets.
- (x) Removal of all Coal in one Operation: the planning application is made for the removal of all known economically recoverable coal within the planning application boundary. If planning permission were to be refused, then so long as the coal deposits remained in situ there would be continued uncertainty at the site being revisited and reapplied for extraction at some future date.
- (xi) Distance of the Proposal in Relation to Local Communities: the Netherton development is considered to be sufficiently separated from nearby communities and complies fully with the policy provisions of the EAOCSF in this regard.
- (xii) Sterilisation of Workable Coal Resources is Avoided: the development would see the extraction of approximately 4.1 million tonnes of coal predominantly for the energy generation sector. The development would avoid any risk of sterilisation of that important resource and would negate any increased reliance on imports of foreign coal.
- (xiii) Traffic Routing to Avoid Disturbance: the amended traffic routing from Netherton would avoid direct disturbance to communities. In particular Skares would not require to be accessed by HGVs.
- (xiv) Planned Restoration and Aftercare Arrangements are Clear: the planning application is accompanied by a clear restoration strategy and plan. The scheme would bring about local landscape and biodiversity improvements and in a progressive manner.
- (xv) Restoration will Provide new Landscape and Biodiversity Features: the direct landscape and biodiversity benefits of the scheme are described in the ES. These benefits would include contributions to a number of key Biodiversity Action Plan targets, and would result in notable beneficial effects within the site and at a number of nearby viewpoint locations. The restored scheme would also compliment the pattern and characteristic features of the lowland landscape

across the site. Proposed footpaths would also provide enhancement of recreational access.

3.6 It is acknowledge that there are genuine concerns raised in the letters of objection and in this regard, it is considered that with the imposition of appropriate conditions and delivery of proposed mitigation measures, the impact on local communities and properties in proximity to the site can be minimised to acceptable environmental standards. It is further noted that there has been a considerable degree of support for the proposals in economic and employment terms, albeit that in the main this support derives from existing employees of the applicant.

3.7 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is generally consistent with policy and that there are no significant environmental or community concerns regarding the proposal. Consequently it is considered that the application should be approved but subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

Section 75 Agreement

- (i) The establishment of a Technical Working Group for the Netherton site with the provision that the group shall meet at least bi-annually. The TWG shall generally include representatives from Scottish Natural Heritage, RSPB Scotland, the Scottish Environment Protection Agency, the Ayrshire Rivers Trust, the Planning Authority and the site operator, but may be extended to include other bodies with particular interest in relation to the restoration of the site.
- (ii) The establishment of a Community Liaison Committee for the site in accordance with established practice.
- (iii) The extension of The Protected Mammals Management Plan (PMMP), as approved by the Planning Authority as part of the conditions of the recently consented Skares Road Extension proposals (planning application ref 08/0752/FL), to cover the additional impacts on protected mammals (otters, bats, badgers, red squirrels, water voles) arising as a result of the Netherton development. This PMMP shall be agreed with SNH prior to the commencement of works.
- (iv) The appointment of an Ecological Clerk of Works (ECoW) by the applicant and approved by the Planning Authority in consultation with SNH for the period from commencement of development to the completion of aftercare or such earlier date as may be agreed in writing with the Planning Authority. The scope of work of the ECoW shall be agreed by the Council and will include:
 - agreeing monitoring for the PMMP and reporting results to the TWG;
 - advising and implementing restoration works; and
 - monitoring and reporting during restoration and aftercare period to the TWG.
- (v) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Netherton site following consultation with the Planning Authority and the Environmental Health

Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;

- (vi) The securing of management measures for the natural heritage benefit of the neighbouring Scottish Wildlife Trust (SWT) site known as Glaisnock Moss/Carnivan Hill.
- (vii) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.
- (viii) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;
- (ix) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;
- (x) The securing of necessary off site road improvements identified along the haulage route in conjunction with East Ayrshire Council Roads and Transportation Service and as described in its consultation response dated 17 June 2010, in order to ensure the road is maintained in a safe and serviceable condition.
- (xi) The securing of an ongoing road maintenance contribution of £0.10p per tonne of mineral hauled via the public road system, between the applicant and the Council to repair and continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the routes U728, B7046 and A70;
- (xii) The securing of agreed coal transportation routes in terms of the amended coal transportation route described in the Addendum to the Environmental Statement dated May 2010 (SLR Ref: 413.1908.00002);
- (xiii) The provision of vehicle activated signage on the A70 approach to Killoch Depot from the east side as indicated in the SLR Consulting letter (SLR Ref. TWG/413.1908.00002 dated 15 June 2010), the details of which shall be agreed with the Roads and Transportation Service.
- (xiv) The securing of road safety improvements and access junction improvements as identified the letter by SLR Consulting of 15 March 2010 (SLR Ref. TWG-413.1908.00002) particularly on the B7046 at Humeston Bridge by the incorporation of vehicle activated signage and high friction surfacing material, all at the expense of the applicant;
- (xv) The investigation and implementation of any necessary work identified to stabilise the U743 road where there was a previous mine collapse below the road due to the additional site traffic/staff/deliveries that would utilise this route to the site.

- (xvi) The provision of a Transport Management Plan including the subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Netherton site transported on the public road network within East Ayrshire.
- (xvii) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.
- (xviii) The undertaking of structural surveys of residential properties lying in close proximity to the proposed excavation areas, the identification of properties considered for survey being the subject of discussion and agreement with the Planning Authority, and shall only be required where the property owners give consent for such surveys. Copies of the requisite surveys shall be made available to the Planning Authority and to respective property owners.

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development then the application would not require to be referred to the Full Council as such a decision would not represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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APPLICATION BY AARDVARK TMC

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present again for determination an application for planning permission which is to be considered by the Local Planning Committee under the scheme of delegation because it represents a major application in terms of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 which is not significantly contrary to the Development Plan.

2. APPLICATION DETAILS

2.1 **Background:** A report on this planning application was first presented to the Southern Local Planning Committee at its meeting on 30 April 2010 at which time the Committee agreed to continue the application to enable the applicant to consider alternative suitable vehicle routes for the transportation of coal off site. This was on the basis that the Committee had significant concerns regarding the applicant's proposal to use the B7046 Skares Road as a coal transport route for the proposed development.

2.2 As a result of the decision of the Southern Local Planning Committee, the applicant has now amended the original proposals by submitting further plan information and an addendum to the Environmental Statement promoting an alternative coal transport route to serve the proposed development. The amendments and their implications in policy and environmental terms are described below.

2.3 **Site Description:** The application site, as amended, extends to some 438 hectares in area and lies approximately 1 km south of Skares, 5 km south-east of Ochiltree and approximately 2.5 km south-west of Cumnock. The site lies to the east of the operational Skares Road Surface Mine, separated by the Garlaff Landfill site, approximately 1.2km north-west of the Greenburn Surface Mine and approximately 0.8 km north of the House of Water Surface Mine. As a result of the applicant's alternative coal transportation proposals, some 25 hectares of land within the current approved Skares Road site will form part of the proposed application site.

2.4 The local area is rural in nature, with agriculture, forestry and surface coal mining being the predominant land uses in the surrounding area. Topographically the application site is located on the northern slope of Carsgailoch Hill, having a generally northerly aspect, sloping from approximately 340 metres Above Ordnance Datum (AOD) in the south-east to approximately 210 metres AOD in the north at Garallan Bridge. The northern and eastern areas of the site are largely despoiled comprising of restored mineral workings and semi-improved grassland areas of limited agricultural

value. There are also a number of narrow belts of coniferous plantation in this area. The area of the site immediately to the south of Garlaff landfill site comprises partially restored areas of previous mineral workings associated with the existing Skares Road Surface Mine. The southern and central areas of the site comprise areas of commercial coniferous forestry and some clear-felled areas.

2.5 A small part of the designated Glaisnock Moss/ Carnivan Hill Provisional Wildlife Site (but not the moss habitat itself) is located on the eastern limit of the application site. Glaisnock Moss is described in the site citation as comprising a lowland blanket bog. Measures to preserve current conditions at Glaisnock Moss have been included in the scheme design.

2.6 The Carsgailoch Runner is a burn that runs from the south-western site boundary through the site to the north-east and exits the site at Mossback. There are a number of other watercourses within the site and in the area surrounding the site and also a number of disused water treatment lagoons remaining from previous mineral workings, some of which have been partially restored. There are a number of electricity and water public services located within the northern extremities of the site, running along the route of the U743 Newfield Road.

2.7 It is noted that approximately 279 hectares (representing approximately 68%) of the application site forms part of previously consented surface mining operations. These areas were worked for their coal reserves as part of the Milzeoch (Skares) and Auchingilsie sites and are at various stages of restoration and rehabilitation.

2.8 **Proposed Development:** Planning permission is sought for the phased winning and working of coal by surface mining methods in the application site which the applicant has termed the Netherton development site. This proposal will allow the recovery of approximately 4.1 million tonnes of coal mainly for the power generation industry with also an element for domestic markets. The proposal originally also sought to recover approximately 500,000 tonnes of fireclay that will be encountered in the coaling operations. However, the applicant has now confirmed that following a review of the local market for fireclay there appears to be no economic justification for extracting fireclay from the proposed Netherton site and therefore has withdrawn this aspect from the planning application. The production will be at a rate of up to approximately 700,000 tonnes per annum (approximately 14,500 tonnes per week). The seams of coal present within the Netherton site will be extracted to a maximum depth of approximately 120 metres below original ground level. The coals will be worked in two distinct phases described as follows:

- (i) **Southern Extraction Area (SEA):** The extractive operations would commence at the northern limit of the SEA with extraction progressing in a generally north to south direction. It is envisaged that operations in the SEA would last for approximately 5.5 years (from existing land use to full restoration using backfill material from the Northern Extraction Area), from which approximately 3,000,000 tonnes of coal would be extracted over a period of around 4 years. The predominant vegetation cover over the southern parts of the SEA comprises commercial woodland. The woodland would be felled in liaison with the Forestry Commission using standard forestry practices. The trees would be carried off site and where marketable, used in timber production.
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would commence in the southern part of Northern Extraction Area and would progress in a south to north direction. Overburden material from the NEA would be used as backfill in the SEA to progress restoration in that area. It is envisaged that operations in the NEA would last for approximately 4 years (from existing land use to full restoration), from which approximately 1,100,000 tonnes of coal would be extracted over a period of around 2 years.

2.9 In total the land take within the application boundary covers an area of 438 hectares, of which approximately 313 hectares will be excavated to mine coal or be used for operational purposes. The NEA extends to 46 hectares and the SEA to 81 hectares. Overburden from the excavation area will be stored in two areas extending to 154 hectares with the larger storage area intended for the permanent surcharge of overburden. The establishment of water treatment areas will extend to a further 11 hectares and the site establishment areas will cover approximately 5 hectares. The remainder of the application area would be used for mitigation screening, soil storage, office and welfare facilities or would not be subject of any operational development. A total of 304 hectares (69%) of the planning application site comprises previously disturbed land from former surface mining schemes in the area.

2.10 The development scheme has been prepared with a view to maintaining the development areas in existing land uses for as long as possible whilst maintaining a sufficient area exposed for overburden removal and coal recovery. It is envisaged that soil stripping would take place when weather conditions are favourable throughout the year. The scheme has also been prepared with an emphasis on maximising the direct placement of overburden and soils for progressive restoration of de-coaled areas, thereby returning the worked out areas to an afteruse as early as is practical and minimising the requirement to store excavated overburden and soils above existing ground levels.

2.11 The surface mine would employ surface mining techniques that are common in East Ayrshire and that have been carried out within the Skares Road Surface Mine previously. The operations can be described in four sequential operational stages comprising:

- (v) removal of vegetation and soil stripping;
- (vi) removal, storage and replacement of overburden;
- (vii) extraction and transportation of coal; and
- (viii) backfilling and restoration of de-coaled areas.

2.12 Overburden encountered within the site is expected to be variable in nature, with some of the component materials likely to be too hard for excavation by mechanical means. Any such materials would be broken and freed from the host rock using blasting techniques. The frequency of blast events would be dependent on the nature of the overburden materials encountered.

2.13 In terms of timescale, following commencement of operations at Netherton, site preparation and start up works will take approximately 5 months while extraction of minerals is estimated to take up to 8 years to complete. This will be followed by approximately 2 years of backfilling and final site restoration works i.e. a total operational life of 10 years. The final timescale will be dependent on a number of factors including the exact rate of production, the coal tonnage recovered and weather experienced during the life of the site.

2.14 The applicant intends to operate the site on a double shift pattern 24 hours per day, commencing at 0700 on Mondays and continuing through to 1300 hours on Saturdays. With the exception of essential maintenance, no operations would take place on Sundays or Bank Holidays. Soil stripping and coaling operations would be undertaken between 0700 and 1900 hours Monday to Friday and between 0700 and 1300 hours on Saturday. Excavation and overburden handling operations would be undertaken 24 hours per day Monday to Friday and between 0700 and 1300 hours on Saturdays. Blasting will be undertaken between the hours of 1000 and 1600 on Mondays to Fridays and between 1000 and 1200 on Saturdays. The applicant proposes that coal will be transported off site between the hours of 0700 to 1900 hours Mondays to Fridays and between 0700 and 1300 hours on Saturdays.

2.15 As a result of the amended proposals by the applicant to address concerns raised by the Local Planning Committee, there will now be a requirement to maintain and re-establish coal processing facilities within the existing Skares Road Opencast site to serve the Netherton development. This will result in some 25 hectares of land of the existing consented Skares Road site being utilised for the coal processing area, an internal haul road, the existing site administration area and the existing site access road. The applicant now intends to transport coals won from the extraction areas by an existing overland haul route leading the current coal processing area within the Skares Road site. Transportation of coals along the overland haul route to the coal processing area is to be confined between the hours of 0700 to 1900 hours Mondays to Fridays and between 0700 and 1300 hours on Saturdays.

2.16 Coals will then be processed and blended according to markets prior to being loaded onto HGVs. Thereafter the coal will be transported by road via the existing Skares Road site access road onto the B7046 Skares Road travelling west and then travelling north via the U728 Mote Toll road to the junction with the A70 Cumnock – Ayr Road. HGVs will then travel west to either the Killoch Coal Disposal Point or onwards to Ayr Harbour. No coal vehicles associated with the Netherton scheme will travel through Skares or Ochiltree and essentially the applicant will be using the current coal transport route associated with the consented Skares Road site. With the production rate of approximately 14,500 tonnes of coal per week, this will equate to 180 HGV movements per day based on the applicant's proposals for operating hours for dispatch as stated above. Given the nature of the operation, this daily flow would be constant through the working day equating to 9 HGV trips (18 HGV movements) per hour.

2.17 A barrel wash, plant yard, workshops and parking area including welfare facilities are to be established at the eastern boundary of the Netherton site, between the NEA and the internal coal haul road. Available soils would be stripped from this area, and the internal haul route, prior to their formation and used to form mounds off the internal haul road and adjacent to the barrel wash area.

2.18 In terms of staff and delivery / service vehicles, it is intended to access the site via two entrances from the U743 Newfield Road. The western most access would principally be used as an HGV access to the coal stocking area and access to the offices etc., with the eastern access providing an access for employee's cars and light commercial vehicles only. Wheel washing apparatus would be installed within the application site, close to the position of the western access. The existing coal loading area at Skares Road has a wheel wash and weighbridge facilities which will be retained during the life of the Netherton development.

2.19 The proposed Netherton site is planned essentially as a replacement site for the Skares Road surface mine which is currently operational but which is expected to cease coaling during 2011. The proposal will provide or retain approximately 110 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The indirect employment would be in sectors that supply goods, services and support to the surface mining operations including mechanical, engineering and fleet support. In the order of 76% of the applicant's existing employees at the Skares Road surface mine live within East Ayrshire.

2.20 As stated above progressive restoration will be integral to the proposed development, and the applicant proposes a restoration scheme that makes provision for the progressive establishment of agricultural land, a managed water body and woodland areas, together with biodiversity enhancement, habitat creation and public access including provision for:

- mixed and deciduous woodland;
- woodland edge and scrub habitats;
- acid-neutral open pasture;
- species rich wet/marshy grassland;
- riparian habitat;
- ponds and watercourses;
- wetland habitats and water areas; and
- hedgerows and hedgerow trees.

The restoration scheme has been influenced by the environmental studies undertaken in respect of the development, with a particular emphasis on ecological improvement, landscape setting and increased public access.

2.21 The Netherton application has been accompanied by an Environmental Statement, Supplementary Environmental Information and an Addendum to the ES. The information provided suggests that, subject to the implementation of a range of mitigation measures as described in these documents, the development can take place without significant adverse, long term impacts on the environment or more particularly on local communities.

2.22 As part of the statutory requirements for this major application, the applicant has undertaken pre-application consultation with the local community with regard to the proposed development. The applicant has undertaken a full programme of engagement involving different sectors of the community in order to elicit views on the development proposals and issues which should be considered in the EIA process. Regard has been had to PAN81 and to the Scottish Government's Regulations on planning application consultation in respect of engaging with the community. As far as possible the applicant has taken community comments on board in bringing forward this planning application and this is documented in the Pre-Application Consultation Report which also accompanies the application.

2.23 The amendments brought forward further to the Committee meeting of 30 April 2010 have been the subject of re-neighbour notification, notification to representees and statutory press notices under the Planning Acts and the environmental Impact Assessment Regulations.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Consultations have been carried out both in respect of the Environmental Statement and the planning application. Further consultations have also been carried out in respect of the applicant's amended proposals in respect of coal transportation and the associated Addendum to the Environmental Statement. Where appropriate, the final letters of consultation from some consultees are summarised below, with initial responses available as background papers.

3.2 East Ayrshire Council Roads and Transportation Service, with respect to the amended coal transportation proposals, states that the proposed amended coal haul route would take all coal extracted from the Netherton site via the existing access point for the Skares OCCS onto the B7046 public road at Darntaggart then west to Burnton and northwards to Mote Toll via the U728. At the A70 Mote Toll junction, the coal haulage traffic would turn west on the A70 to Killoch Depot or Ayr Harbour. The Roads Department would have no objection to this proposal with the following conditions attached:

1. All coal traffic generated by the Netherton site will be required to turn west at the A70 junction towards Ayr.
2. Prior to the commencement of any haulage of minerals/coal from the site via the existing public road network, the applicant will require to undertake, at their expense, road improvements identified along the haulage route in conjunction with East Ayrshire Council, in order to ensure the road is maintained in a safe and serviceable condition. The cost of these works has yet to be quantified but initially will consist of patching work in 2010 followed by a structural overlay or re-pave of approx 2.5km of the route in 2011. The applicant must provide a road maintenance contribution of £0.10p per tonne of minerals hauled via the public road system, to repair and continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route A70, U728, B7046. All upfront costs of initial works required would be deducted from the overall level of contribution which would thereafter reduce. This would require to be incorporated into a section 75 agreement.
3. The applicant will be required to provide vehicle activated signage on the A70 approach to Killoch Depot from the east side as indicated in their consultant's letter dated 15 June 2010 (details to be agreed with the Roads Authority).
4. The applicant will also require to complete, at their expense road safety improvements identified in their consultants response of 15 March 2010 (ref. TWG-413.1908.00002) on the B7046 at Humeston Bridge incorporating vehicle activated signage and high friction surfacing material due to the additional site traffic/staff/deliveries that would utilise this route to the Netherton site. This would require to be incorporated into a section 75 agreement.
5. The applicant will be required to fully investigate and carry out any necessary work identified to stabilise the U743 where there was a previous mine collapse below the road due to the additional site traffic/staff/deliveries that would utilise this route to the site.
6. Access junction improvements as identified in the consultant's response of 15 March 2010 (ref. TWG-413.1908.00002) will require to be undertaken at the applicant's expense.
7. A Transportation Management Plan (incorporating the Transport Protocol) must be implemented and observed by the applicant and their hauliers.

The requirements of the Roads and Transportation Service can be secured either by conditions or through obligations within a Section 75 Agreement associated with the Netherton site.

3.3 The Scottish Environment Protection Agency **objects** to this planning application **unless** planning conditions in respect of the issues as noted below are attached to any consent.

(i) There are a number of hydrogeological issues which require further consideration prior to the commencement of any works at this site. In particular, concerns remain relating to groundwater monitoring, recalculation of the radius of influence from likely dewatering, an agreed contingency plan, mitigation measures for any proposed blasting and provision of an additional monitoring borehole up-gradient of the southern excavation area and down-gradient of the northern excavation area. Any planning permission granted at this site should be subject to suitable conditions being attached addressing the following issues:

- A Ground Water Monitoring Plan (jointly with the adjacent Skares site) should be developed. This should be approved by the local authority in consultation with us prior to any operations commencing on site.
- The scope should include the collection and interpretation of baseline data; the on-going collection and interpretation of data; the on-going reporting mechanism of this interpreted data; and an on-going mechanism to secure appropriate mitigation of impacts to ensure protection of the water environment in perpetuity. The impacts of leachate migration from the adjacent Garlaff landfill site should also be investigated.
- Recalculation of the radius of influence from likely dewatering should be undertaken using the aquifer saturated thickness. We consider that the current calculated radius of influence has been underestimated. It is important to recalculate this radius due to cumulative impacts of the whole area.
- A combined contingency plan should be in place for both the Netherton and Skares OCCSs as previously recommended by the applicant, at least 6 months prior to the completion of site works. This contingency plan should consider the Netherton site in relation to its surroundings.
- If blasting is proposed for the site then mitigation measures need to be in place prior to works commencing.
- The arrangement and installation details of monitoring boreholes should be approved by the local authority in consultation with SEPA prior to operations commencing on site. An additional monitoring borehole up-gradient of the southern excavation area and down-gradient of the northern excavation area is recommended as per our previous comments. It should be ensured that other monitoring points have been installed to adequate depths around the site to account for changes in water levels throughout the life of the works. The fate of borehole 7D should also be addressed at this stage.

The conditions proposed by SEPA, to secure its non-objection to the proposed development, can be attached to any consent granted and the applicant has indicated acceptance of the proposed conditions.

SEPA also advocates the development of a Construction Management Plan (CMP). Before producing a CMP, it is essential that baseline information is available for all environmental receptors on and off site considered to be “at risk” from the development. It is important also to identify ephemeral ditches and field drains that tend

only to flow in wetter conditions and which may easily be overlooked during site survey work. The effectiveness of proposed mitigation measure must be assessed through regular environmental monitoring on site and comparison with conditions on site prior to any works commencing. SEPA therefore **objects unless** a condition is inserted into any consent granted which states that that no work can commence on site until a Construction Management Plan is submitted and approved by the determining authority, in consultation with SEPA.

A condition can be attached to any consent granted for the proposed development to meet with the requirements of SEPA.

In terms of air quality SEPA has stated that the proposal would result in a number of potentially significant sources of particulate matter including blasting, fugitive dust from the materials handling, site operations and from transport sources and unpaved haul roads. There are numerous relevant exposure sources within 1km of the site: 560 metres north of the site boundary is Skares village, and in particular the nearest receptor would appear to be approximately 550 m to the north east of site operations and prevailing winds. The Environmental Statement uses national inventory background concentrations to assist in predicting PM10 (particulate matter with a diameter of less than 1 micron) background levels and concludes that site operations would not lead to exceedences of the PM10 Objective level of 18ug/m³. Considering the close proximity of receptors, SEPA welcomes the developer's intentions to conduct ambient background air monitoring using three Osiris units at these receptors to assess likely impact on air quality as a consequence of this development and would request details of the monitoring programme as soon as this is available.

It is considered that if this development is approved, then appropriate air quality and dust monitoring programmes should be secured by means of planning conditions and obligations within a section 75 Agreement.

In further consultation with SEPA on the amended coal transportation route, no objection is made on this issue. SEPA states that the Environmental Statement Addendum would appear to have assessed the impact of dust from the alternative proposal but not the likely impact of suspended particulates which is of greater concern for public health. There are three PM10 monitors on site and SEPA requests that the data from these sites be made available to help establish ambient background concentrations and likely impact of fine particulates on existing air quality. Of greatest concern is residential receptor at The Muir which is within 500 metres of road haulage areas and coal processing operations. It is proposed that this receptor will be protected by the deployment of abatement techniques stated in the report; however SEPA recommends that monitoring be conducted for PM10 at this property to assess likely impact on the receptor.

Comments as above.

3.4 The Ayrshire Rivers Trust (ART) welcomes the inclusion of macro-invertebrate sampling in the three of the watercourses potentially impacted by the development. The results are surprisingly poor, particularly in the Nether-ton Burn where regular sampling by ART has found an abundant and diverse invertebrate population at a site very close to one of the ES sample sites. However, ART do agree that there are unlikely to be any invertebrates of conservation importance within any of the watercourses potentially impacted. The ecology chapter includes a range of relevant species as well as macro-invertebrates; however there is no reference to fish. The burns potentially impacted by

the development are all relatively small and are generally inaccessible to migratory fish such as salmonids. Despite that there will be a fish population in all the burns but there is no data on this important part of the local ecology included in the ES.

In response directly to the ART, the applicant has stated that that survey were carried out for those species groups where presence was likely and potential impact were considered possible. In this case the findings of various surveys undertaken were considered to provide sufficient grounds to scope out the need for detailed fish surveys. However, the applicant accepts that this judgement should have been clearer within the text of the ES. Nevertheless, impacts to all aquatic species, including fish, were considered as part of the ES process.

It is also stated that ATH have “significant experience of dealing with and managing surface water runoff generated at coal surface mines”. ART are aware that there has been a long history of pollution incidents arising from the existing surface mine at the adjacent Skares Road mine with suspended solids contamination of watercourse running from the site, and subsequent impacts on the Lugar Water. ART would like clarification from ATH on the measures that will be taken at the proposed Netherton mine to ensure that the current and historic problems associated with the Skares Road mine do not recur at Netherton, particularly as the staff at Netherton will be the same personal who were involved in operating Skares Road. Due to the past history of pollution events arising from the Skares Road site there is a strong case for the installation of data logging equipment to monitor water quality downstream of the site continuously. The current inspection regime by the site staff and SEPA rely on spot checks which have failed to identify and control water quality problems e.g. in the Ward Burn which drains the Skares Road site.

The applicant has noted the concerns of ART and has provided information in the form of a pollution prevention scheme that is intended to be adopted in the event planning permission is granted. The applicant is also in direct discussions with SEPA regarding water management in order that the site can be designed to ensure that past problems that have occurred at Skares Road OCCS do not recur. It is further noted that the consultation response from SEPA requires the imposition of specific conditions in this regard, in the event that planning permission is granted.

The impact of the proposed works on the headwaters of the Rose and Polcalk Burns are identified in the ES and ART consider that one of the most significant impacts of opencast mining is the perturbation of the solid geology of headwater areas and the consequent effect on water flow. The options for maintaining flows in the affected burns during the proposed works period are discussed. It is important that water arising from the site is allocated to flow down the appropriate natural burn channel downstream of the site. If extra water is diverted down an existing watercourse this will result in further impacts such as erosion on the banks of the existing channel, with downstream impacts.

As indicated above, provided a water management scheme is to be agreed with SEPA and will form part of CAR applications. Provided the scheme is appropriately implemented, the impacts referred to by ART should be able to be mitigated.

Monitoring by ART in the burns draining the hills to the south of the A70 between Ochiltree and Cumnock has consistently found poor fish populations in what should be good habitat for juvenile fish. One of the main factors explaining the consistently poor results is the industrial activity in the headwaters of all the watercourses draining the area i.e. opencast mining and landfill. On the positive side operations at Skares Road are about to end and improvements in water courses in the area are anticipated but improvements there could be negated due to impacts on watercourses draining the proposed Netherton surface mine.

One of the burns draining the proposed area (Carsgailoch Runner) joins the Glaisnock Water in Cumnock. The Glaisnock Water has suffered over the years from a variety of problems including urbanisation, canalisation, diffuse pollution etc although monitoring over the last two years has found an improvement in trout population. It would not be acceptable for the recent improvements in water quality observed in the Glaisnock Water to be set back by problems arising from opencast mining in the headwaters.

ART hopes that future restoration of the burns within the site are sympathetic to fish populations and to a significantly higher standard than the existing restoration measures implemented by previous surface mine reinstatement. Photographs in the ES illustrate the existing and poor state of the Carsgailoch Runner. In conclusion ART considers that unless the proposed Netherton surface mine is designed and operated to a much higher standard than the nearby Skares Road mine there will inevitably be ongoing problems in the watercourses draining the site for the duration of the mine operation and possibly beyond. We remain to be reassured that this will not be the case.

The impact of the proposed development on the watercourses present within the application site is recognised within the ES. Notwithstanding this, it is considered that the input of ART would be helpful in relation to the establishment of a site Technical Working Group, should consent be granted for the proposed development.

3.5 Scottish Natural Heritage initially reserved its position in relation to the proposed development pending the submission of further information on the potential impact of the development on European Protected Species (EPS). The information now provided shows that the habitat in the extension area is not suitable for otters nor is the remaining woodland suitable for bats. The potential holt appears from the information to be in use by a fox. Therefore SNH advice on the potential impacts on bats and otters is that, provided the development is carried out strictly in accordance with the mitigation as described in the document entitled "Netherton Surface Mine, East Ayrshire Otter Activity Survey and Assessment (November 2009)" and a Species Protection Plan is produced by the applicant and agreed by SNH as described in this document, the proposal is unlikely to result in an offence under Regulation 39/43 of the Habitats Regulations 1994 as amended.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of SNH.

SNH advice on the potential impacts on species other than EPS is that, provided the extraction is carried out subject to a number of conditions, the proposal is unlikely to result in an offence under the Wildlife and Countryside Act (1981) as amended. In addition, our advice on the potential impacts upon the landscape and visual resource is that there will be significant adverse impacts during the 8 to 10 year extraction period

and for a period thereafter whilst restoration becomes established. However, in the longer long term impacts will not be significant provided suitable restoration and aftercare programmes are carried out. SNH recommends that the extraction be made subject to a number of additional conditions intended to minimise any natural heritage impacts as follows:

- (i) The range of mitigation measures with respect to badgers and Glaisnock Moss/Carnivan Hill wildlife site, as identified in the ES in sections 5.147 and 8.154 respectively, be adopted in full.
- (ii) No tree felling, vegetation clearance or soil stripping should take place during the bird breeding season (March to July inclusive) or the crossbill breeding season (January to May inclusive), unless preceded by an appropriate breeding bird survey and that steps are taken to avoid disturbance to any nests or breeding crossbills found as a result.
- (iii) The Protected Mammals Management Plan (PMMP), as approved by the Planning Authority as part of the conditions of the recently consented Skares Road Extension proposals (planning application ref 08/0752/FL), should be extended to cover the additional impacts on protected mammals (otters, bats, badgers, red squirrels, water voles). This PMMP should be agreed with SNH prior to the commencement of works.
- (iv) The applicants clarify what watercourses will be affected and provide detailed methodology, mitigation and restoration plans for all those affected.
- (v) Restoration plans are completed as detailed in chapter 3 of the ES, specifically that a Technical Working Group (TWG) is established and that aftercare and monitoring is undertaken as outlined.
- (vi) An Ecological Clerk of Works (ECoW) is appointed by the applicant and approved by the Council in consultation with SNH for the period from commencement of development to the completion of aftercare or such earlier date as may be agreed in writing with the Council. The scope of work of the ECoW shall be agreed by the Council and will include:
 - agreeing monitoring for the PMMP and reporting results to the TWG;
 - advising and implementing restoration works; and
 - monitoring and reporting during restoration and aftercare period to the TWG.
- (vii) In consideration of policy MIN 2, a legally binding agreement should be entered into by the developer, and other relevant parties, for the developer to undertake management for the natural heritage benefit of the neighbouring Scottish Wildlife Trust (SWT) site known as Glaisnock Moss/Carnivan Hill.
- (viii) To address the likely cumulative impacts, consideration should be given to requesting delay in the start of work at Netherton until such time as restoration of surrounding sites is becoming effective in supporting wildlife which will be displaced from the Netherton site.

The requirements of SNH can be secured either by conditions or through obligations within a Section 75 Agreement associated with the Netherton site. While noting the issue regarding minimising cumulative impact, the delaying of the start of works on the Netherton site would have a significant impact on the continuity of employment for the existing staff at the Skares Road site.

3.6 The Royal Society for the Protection of Birds (Scotland) does not believe that the proposed development would result in significant impacts on habitats and bird

populations of conservation importance and therefore does not object to the application. RSPB requests that if the Council is minded to approve this application, then the following measures should be secured through the use of appropriate conditions or by legal agreement:

- (i) The applicant will agree the specification of a bund to prevent dewatering of Glaisnock Moss Provisional Wildlife Site, to be agreed with East Ayrshire Council, SNH and SEPA prior to the commencement of the development.
- (ii) A bund to the specification agreed will be constructed to the satisfaction of these bodies before commencement of soil stripping and excavation adjacent to the bund.
- (iii) Monitoring of changes in the water table and vegetation composition including baseline monitoring prior to the development, will be agreed with SNH prior to commencement of development and implemented by the applicant.
- (iv) Soil stripping and vegetation removal shall only take place outwith the bird breeding season (March to July inclusive) unless with the prior written agreement of SNH following checks for the presence of breeding birds by a suitably qualified ecologist.
- (v) Forest removal shall be carried out in line with standard Forest Guidelines.
- (vi) A bond shall be secured to ensure restoration is delivered.
- (vii) The existing Technical Support Group for ATH sites will approve the restoration and monitoring of this site.
- (viii) The applicant shall prepare and submit a restoration and aftercare plan to East Ayrshire Council, to be agreed with the members of the Technical Support Group, prior to the commencement of the development.
- (ix) The applicant shall implement the agreed restoration and aftercare plan, subject to revisions by the Technical Support Group, to the satisfaction of the TSG

Conditions can be attached to any consent granted for the proposed development, or obligations secured through a Section 75 Agreement, to meet the requirements of RSPB. The establishment of a Technical Working Group for the site can be secured by means of an obligation within a Section 75 Agreement.

3.7 The West of Scotland Archaeology Service states that much of the application area has been subject either to afforestation or to past opencast coal operations which will have damaged or destroyed pre-existing archaeological sites. WOSAS is satisfied that in the remainder of the area the archaeological sites which have been identified in the Environmental Statement, are not of any particular significance and have been sufficiently well recorded already for the purposes of the preparation of the Environmental Statement. WOSA therefore has no further comments to offer on this application and advises that, should the Council intend to grant consent for the proposed development, there is no requirement for any archaeological recording conditions to be attached.

3.8 East Ayrshire Council Environmental Health Division has no objections in principle to the proposed development but indicates that monitoring of noise levels at sensitive receptors should be carried out by the applicant and results submitted on a quarterly basis for scrutiny. No issues are raised in respect of potential contaminated land.

Should consent be granted for the proposed development, an appropriate noise monitoring scheme can be secured by means of a condition and an

obligation within a Section 75 Agreement. No further comments have been received regarding the amended proposals.

3.9 Historic Scotland confirms that it is content to agree with the findings in relation to sites protected at a national level and offers no objection to the proposal.

3.10 The Scottish Government (Climate Change and Water Industry Directorate) has no comments to make on the Environmental Statement.

3.11 Transport Scotland (TRNMD) states that the proposed development represents an intensification of the use of this site; however the percentage increase in traffic on the trunk road is such that the proposed development is likely to have no impact on the trunk road network. On that basis, TRNMD has no comments to make.

3.12 The Ayrshire Joint Planning Unit states that development plans are required to identify areas of search where surface coal extraction would be acceptable. The first Structure Plan for Ayrshire identified a number of broad area of search within the Cumnock area. The details of these areas were subsequently confirmed through the subject plan prepared by the Council. There is a general presumption against extraction out with areas of search identified in the development plan. This area was excluded from the Subject Plan because it conflicted with the landscape character area, Ayrshire Lowlands which is characterised by, natural woodlands, mature hedgerows, shelterbelts and a traditional field patterns which are irreplaceable in the short term and which coal extraction would have an adverse effect.(refer Subject Plan Map; Areas of Landscape worthy of Conservation.). However this application site is located in an area with a long history of mining and this has had consequential impact for the quality and condition of the landscape. The Council should consider whether the proposed measures to safeguard and reinstate landscape features and provide valuable ecological benefit outweigh the loss of features identified in the Environmental Statement.

The response of the AJPU is incorrect regarding the reason why the proposed Netherton development area was excluded from the subject plan. While the site does fall within the Ayrshire Lowlands landscape character area, the site has been the subject of, and substantially affected by, previous surface mining developments. The filter used to exclude areas from designation of Potential Coal Extraction Areas is identified in Figure 5 of the EAOCSP which identifies that the areas in conflict with landscape areas worthy of conservation at this location as lying primarily on the north side of the B7046 Skares Road and the U743 Newfield Road. The Netherton development site lies entirely to the south of these roads.

The analysis undertaken by the applicant highlights (worse case) some impact on the setting of the designed landscape of Dumfries House during the operational phase. The extent and duration of this impact should be clarified and appropriate mitigation measures considered. Advice on the adequacy of the measures sought to safeguard the Annex A habitat to the east of the site, (Glaisnock Moss) should be sought and the precautionary mitigation measures identified in the Environmental Statement to reduce risk should be implemented

The landscape impacts are temporary in nature and again, through the restoration strategy for the site, it is considered that there will be long term positive benefits to the landscape character and visual quality of the area.

It is noted that Historic Scotland and the Garden History Society have not objected to the proposed development.

3.13 East Ayrshire Roads and Transportation Division (Flooding Section) has indicated that it has no comments to make on the proposed development in respect of flood risk and would re-iterate the statements made in the ES that SEPA continues to be consulted on all aspects of re-alignment of watercourses and necessary discharges.

3.14 East Ayrshire Business Development Section notes that the proposed development will create 110 direct jobs and will support numerous other jobs in local suppliers and other businesses. Moreover the project will offer continuity of employment for people currently working at the Skares Road site and the project is projected to operate for 8 to 10 years. On this basis, the proposal is welcomed from an economic point of view, particularly in respect of the significant and long term job opportunities which it will provide in an area that experiences high levels of unemployment.

3.15 Scottish Water has indicated that it has water assets in the area that may be affected by the proposed development and it is essential that these assets are protected from the risk of contamination or damage.

An advisory note can be attached to any consent granted for the proposed development to advise the applicant to make early contact with SW regarding the protection of its interests in the area.

3.16 The Garden History Society has been unable to visit the site but is familiar with the Dumfries House designed landscape from previous visits which is obviously the area of greatest concern. The Society also notes the proximity of Glaisnock House to the proposed development and would advise that, although not included in an Inventory of Garden and Designed Landscapes in Scotland, there are surviving remnants of a designed landscape at this location also which provide a setting for Glaisnock House. To summarise, the Society has no outright objection to the application and accept that the adverse visual impact on the two designed landscapes will be temporary. The Society would advise that further investigation should be undertaken into adverse visual impacts on the wider Dumfries House designed landscape, particularly those areas to which visitors have access. In addition the Society would advise that any development should not proceed until Skares Road restoration has been completed.

The delaying of the start of works on the Netherton site would have a significant impact on the continuity of employment for the existing staff at the Skares Road site.

3.17 The Coal Authority has no objections to the proposed development but make the following comments:

- (i) As owner of the coal the Authority encourages and supports the working of coal in environmentally and socially acceptable ways to meet the market requirements. This forms part of the Government's policy framework for a diverse and secure energy supply and incorporates the principles of sustainable development. This framework was incorporated into SPP which sets out the national planning policy framework for the working of opencast coal. SPP sets out the most challenging standards for surface coal mining in Scotland and the Coal Authority believes that the coal industry can successfully operate within

these principles provided they are applied equitably by all mineral planning authorities.

- (ii) It is essential that the planning process takes account of the occurrence of minerals which can only be worked where they occur. The role of surface mining is critical to the continued supply of good quality coal for the market in the UK and it should be recognised that coal currently provides the basis for up to half of the electricity generated in the UK.
- (iii) The Coal Authority believes that the coal supply in the UK should contain a significant proportion of indigenous production. The electricity generators have made similar statements in their submissions to the Energy Review. Coal supplied from the UK offers security against the volatility of international coal prices, freight rates, exchange rates and a reliance on port capacity. It should, therefore, be recognised that the importation of coal from many thousands of miles away has its own environmental footprint by way of increased transport related carbon and sulphur emissions.
- (iii) The ability of the industry to continue its significant contribution to the energy supply in the UK is dependent equally on success in an extremely competitive energy market place and success through a rigorous planning regime. With site life varying typically between one and five years it is essential to bring environmentally acceptable new sites on stream to replace exhausted sites on a regular basis. There is no shortage of coal in the ground, the ground rules have been laid out in SPP and the Coal Authority believe that the industry can find sites that meet the strict criteria provided that the planning system is conducted fairly and professionally.
- (iv) Surface mining frequently assists in the removal of surface dereliction but the Coal Authority believes that the local benefits of mining go well beyond the removal of this dereliction. Whilst the advantages of removing dereliction on the surface may be obvious, the benefits of treatment of surface and sub-surface contamination and instability may not be so well recognised or understood. In this proposal the removal of shallow old mine workings, shafts and adits with subsequent restoration may also provide a stable platform for future surface developments. Rather than divert investment away from an area, surface mining of coal has often created inward investment particularly with improved transport infrastructure. Other local benefits include reduced hazard from mine gases and spontaneous combustion, improved water quality from treating minewater discharges and the recovery of minerals other than coal which helps to support the fireclay, building and brick clay industries.

3.18 The Health and Safety Executive, Scottish Power Energy Networks, Glasgow Prestwick Airport, The Scottish Wildlife Trust and Scotland Gas Networks have either no objections or comments to make with respect to the proposed development.

3.19 Ochiltree Community Council, Cumnock Landward Community Council, and the River Ayr Salmon Fishery Board have not responded to the consultation letters.

4. REPRESENTATIONS

4.1 A total of 17 letters of representation, from 16 signatories, has been received objecting to or raising concerns regarding the proposed development. One letter of representation is signed on behalf of the Mining and Environment Group: Ayrshire. In relation to the amendment to the Netherton scheme in respect of coal transportation proposals, a further 3 letters of representation have been received from 4 signatories but these are from objectors who have made previous representations on the proposed development. A total of 58 letters of representation from 61 signatories have been received in support of the proposed development. The main points of objection or concern, including additional points made in respect of the amendments to the Netherton, are summarised as follows:

4.2 The extraction areas are NOT identified by EAC as Potential Coal Extraction Areas. The small area in the SW corner of this extensive site at Knockdon Quarry is identified but it is only proposed to fell trees there, to form an overburden.

It is noted that only a small area in the southern part of the Netherton development site falls within a Potential Coal Extraction Area as identified in the East Ayrshire Opencast Coal Subject Plan but this is due primarily to the fact that it represents a re-working of an area which has previously been the subject of surface mining operations (Auchingilsie, Milzeoch and Skares Road).

4.3 The height of this permanent overburden is not known, but expected to be the usual 25m or higher. At this highest part of this site, it will be conspicuous and out of character with the surrounding foothills topography. A land-slip risk assessment should be submitted.

The ES recognises that the overburden storage, particularly that of the temporary storage Area B will present a significant impact on the landscape. However, the overburden management and storage, together with the phased extraction on site, will mean that storage of overburden in Area B following its construction will be limited to a period of approximately 18 months after which it will then be progressively removed as backfilling of the NEA proceeds. It is not considered that a landslip risk assessment is required as the operations will require to be regulated in accordance with Mines and Quarries legislation.

4.4 Our main objection to this application is that the former Milzeoch and Auchingilsie sites were supposedly restored approx. 9 years ago. Yet the E.S. states that 279h (68%) of the current application site are 'at various stages of restoration & rehabilitation. Also the area immediately south of Garlaff landfill site comprises partially restored areas of mineral workings associated with Skares Rd surface mine. It is proposed to dump a temporary overburden mound (Area B) on the latter area thus negating any previous restoration which should have been completed by now. The question needs to be asked, and then answered by the Council: If restoration is signed off as complete and satisfactory, then why should such land be disturbed again, if it is to recover and return to some beneficial use within the previously approved time period?

It is accepted that the proposed Netherton development represent a re-working of coal within former restored and partially restored sites and the point raised by the objector is well made. However, to take this simplistic view denies the opportunity to consider this application on its merits and

furthermore would lead to a sterilisation of coal reserves, previously unworked within the site.

4.5 MIN 35 requires a regular assessment of restoration operations to be carried out by an independent consultant. Is this happening in East Ayrshire?

Should the Netherton development be approved, then the provisions of Policy MIN35 will apply in that this will require independent monitoring of the site in relation to site restoration and its link to restoration guarantees.

4.6 Extensive felling on the higher parts of the site is proposed. Felling of trees before maturity is inconsistent with the Ayrshire Forestry Strategy and ENV5 & ENV1 of the Approved Ayrshire Structure Plan. It will result in the removal of habitats for birds, 7 endangered Red List species, including the rare crossbill recorded on the application site: This is a Schedule 1 species, afforded special levels of protection nationally.

In the main, it is considered that the early felling of trees within the existing areas of coniferous commercial forest is not considered to be contrary to the provisions of the Structure Plan. Policy ENV1 relates to landscape quality and ENV5 relates to proposals for woodland and forestry.

4.7 The amount of timber felled then has to be removed from site, thus adding to the already high HGV traffic volumes on local roads. What is the cumulative impact of this?

The proposed Netherton development will require the felling of trees affected by extraction and operational areas and consequently this will result in timber traffic during removal of material off site. However this would be temporary in nature and it is further recognised that this timber would in any case require to be harvested as part of commercial forestry management.

4.8 The applicant's Env. Statement places great emphasis on the eventual creation of habitats, listing various species identified in Biodiversity Action Plans etc that could take up residence, once all this theoretical restoration occurs. Significantly this restoration is only described as 'a Concept Plan'. MEGA objects strongly to developers who are in the business of digging up habitats and destroying them; altering topography and hydrology. Much of the conceptual restoration is not acceptable.

The comments of the objector are noted. However, as indicated in the ES and in the consultation responses from SNH and RSPB, there are no significant habitat interests within the Netherton development site. On the contrary, these bodies have recognised the potential long term benefit to habitat creation and enhancement that the restoration strategy would provide. SNH, RSPB and the Scottish Wildlife Trust, subject to conditions and legal obligations being imposed on the development, have not objected to it.

4.9 Traffic movements of HGVs (i.e. excluding site traffic, employees, servicing etc) are estimated to average 25,000 such movements annually. If the access/exit roads are considered adequate, which MEGA disputes, then why are passing –places proposed?

As a result of the applicant's amended proposals for coal transportation off site, the existing established coal transportation route for the consented

Skares Road site will be used. Subject to the applicant implementing a series of road infrastructure improvements, the Roads and transportation Service offers no objection to the amended proposals. In essence this point of objection is no longer relevant to the amended proposal.

4.10 If this road is also used by refuse-vehicles, and will also presumably be used to remove the substantial amount of timber to be felled on site, then the cumulative impact of all these vehicles will be unacceptable on such roads. If 15% of coal (and all the fireclay?) is not to be taken by road to Crowbandsgate for onward transmission by rail, a substantial number of HGVs will use the Ayrshire road network.

Comments as per paragraph 4.9 above.

4.11 The ES acknowledges that the public road (U743 Newfield) is also a Core Path on the Coalfield Cycle Route. This will be impossible for walkers & cyclists to use with the number of HGVs also using it.

The Core Path is located to the east of the proposed western access to the Netherton development and this does not form part of the amended coal transportation route. In essence this point of objection is no longer relevant to the amended proposal.

4.12 It is proposed to extract a substantial amount of fireclay, yet it is unclear whether this would be removed during the life of the development: If this fireclay is removed, it would equate to another 18,000 HGV movements, not necessarily over the 8 year period, because the location of its strata. If fireclay has to be extracted during open-casting, then proper arrangements for its storage, transport etc, must be proposed, before any consent is considered. It is of great concern; and lodged as an objection, that fireclay extraction is not subject to a tonnage levy paid to the Minerals Trust, when its removal has exactly the same environmental impact as open-cast coal extraction. Quarried materials are subject to a national levy. We ask that East Ayrshire Council include such by-products as fireclay, in their Mineral Trust receipts. If not, it should publicly state why not.

These points of objection are no longer valid as the applicant has indicated that the removal of fireclay for use in external markets no longer forms part of this application. Fireclay encountered within the site will simply be returned to backfill during site restoration operations.

4.13 Objection is made to the proposed, complicated stream diversions which must have an impact on Glaisnock Moss, as some are fed from it. We also record our concern that ATH have previously demonstrated very poor water management, as evidenced by SEPA prosecutions.

The comments of the objector are noted. In this regard, it is noted that provided certain conditions are attached to any consent granted for the development, SEPA will not object to the proposal.

4.14 The proposed opencast will extend, by at least 10 years, the impact on local residents who have been inflicted with opencasts and landfill for more than a decade already. Surely this goes against Scottish Government Guidelines.

The closest community (or group of dwellings) to the Netherton development is Skares, located approximately 1 km from the closest part of the application site. Whilst the proposed development would in part continue the Skares Road operation beyond a period of 10 years, it is not considered that Skares would have experienced excessive adverse amenity or environmental disruption over the whole period of the development. In this regard, the proposed Netherton development will operate at distance further away from the community of Skares than some parts of previously consented surface mining operations associated with the Skares Road development.

4.15 A legal agreement is in place between the applicant and Skares residents that no further extensions would be sought for the Skares Road site. The fact that a new site name is to be given to this application is obviously just a ploy to break the agreement reached with Skares residents.

The proposed development requires to be determined on its own merits and on the basis of the development plan and other material considerations. The legal agreement entered into between the Skares residents and the applicant is not material to the consideration of this application. It would be for the objector to pursue this alleged breach of agreement through formal legal processes, not through planning processes.

4.16 The planned route for coal haulage traffic from the proposed site to the railhead at New Cumnock is along a narrow B class road from Ayr Road to Newfield Road. This road already has numerous HGV traffic to and from the landfill site together with a bus service. The impact of another 18 lorries per hour on a road not designed for this weight, size and amount of traffic will prove a danger to everyone concerned.

Comments as per paragraph 4.9 above.

4.17 Residents of Skares and surrounding district have experienced the sometimes terrifying effect of blasting. The proposed new site will be blasting nearly every working day and residents have serious concerns. There should be monitoring equipment for dust, noise and blast recordings in the village which could be easily view by residents and independently checked.

Should planning permission be granted for the proposed development, appropriate noise, dust and blast monitoring schemes will be secured by appropriate conditions and obligations secured through a Section 75 Agreement. The appropriate locations for such monitoring will be the subject of discussion and agreement with the Planning Authority in consultation with the Environmental Health Authority.

4.18 There is concern regarding the number of water areas left behind. It is believed that some of these are extremely deep and muddy. What chance would you have if you accidentally fell in?

The comments of the objector are noted and the detailed design of the proposed water bodies will be the subject of discussion and agreement with the proposed Technical Support Group established for the Netherton site should consent be granted. The aspects of public safety can also be considered as part of the discussions on site restoration.

4.19 The proposed development will restrict badly any decision I would make in terms of selling my house. This will be taken away from me as no right-minded person would consider buying my home with this extension if inconvenience continues. The proposals will result in a devaluation of property values.

The potential impact on property values and marketability is not a valid ground of objection to the proposed development and is therefore not material to the consideration of this application.

4.20 The proposal to add heavy HGV movements to an already busy road would not only create untenable traffic, but issues of the safety of people transporting and the risk of the thoroughfare being out of commission for long periods for necessary repairs.

Comments as per paragraph 4.9 above.

4.21 My experience with the applicant, which is only in the last 18 months, is one whereby unless they are checked, they will, as they tried recently with the unauthorised car parking, disregard and disrespect agreements in place which further adds to my concerns of their integrity.

The concerns of the objector are noted.

4.22 The Non-Technical Summary states that our client's property is 600 metres from the development. Our clients calculate that their property is approximately 600 metres from the proposed northerly boundary of coal extraction, 400 metres from the proposed new road and 300 metres from the northernmost soil storage mound.

The Non-technical Summary and the ES itself correctly identifies the objectors' property as lying approximately 600 metres away from the nearest point of the coal extraction areas proposed in the Netherton development but also acknowledges that the property lies closer to other operational parts of the proposed site.

4.23 The high point of the proposed development area, only 2.5 kilometres away, is on the 340 metre contour. Notwithstanding this, all of the proposed soil storage mounds will be visible from and overlook our client's house causing a significant visual impact.

It is accepted that there will be landscape and visual effects during the proposed operations, which is mainly due to the large-scale landform changes involved, and this is particularly relevant in the case of the nearest residential visual receptors such as the objectors' property. However, the impact is temporary and reversible and, in the long-term, the proposed restoration scheme would have a positive effect on the landscape of the site.

4.24 Air quality is likely to be seriously affected given that the prevailing wind direction locally is south-west and blowing over our clients' house from such an elevated position is inevitable.

With the imposition of appropriate mitigation measures to minimise dust nuisance, secured by planning conditions and with appropriate monitoring,

it is considered that the proposed development can meet acceptable environmental standards.

4.25 The noise associated with mineral extraction and blasting will have a significant effect on our clients. The proposal to store overburden on the north-west of the site will do nothing to baffle noise to the north-east.

The ES concludes that subject to the implementation of the specific mitigation measures proposed in the Netherton development, noise levels generated by site operations would meet the criteria derived in accordance with PAN50 Annex A. Noise impacts will be the subject of appropriate monitoring and working practices controlled to ensure that noise levels are likely to be of minor significance for the duration of the project. It is further considered that a right to suspend operations be included in a Section 75 Agreement with the applicant, in the event of statutory noise nuisance arising from the development.

4.26 The proposal to transport extracted coal by public road network to Garleffan does not take account of the applicant's current opencast infrastructure at Darntaggart. In the event that coal extraction is permitted the extracted material should be removed from the site via the existing route and not via Garleffan.

Comments as per paragraph 4.9 above.

4.27 Blasting operations, which are likely to be undertaken during every working day on the site, will have an adverse effect on residential properties.

The proposed Netherton development will require blasting to fracture overburden within the site but it is very unlikely that this will be a daily occurrence. Blasting operations will require to be undertaken in accordance with regulatory requirements, and subject to planning conditions limiting vibration and air overpressure impacts. It is considered that in the interests of establishing baseline conditions, the undertaking of structural surveys of those properties lying within proximity of the excavation areas should be secured by means of a Section 75 Agreement, and where consent is given by the property owners.

4.28 Children walk on this road twice daily because it is the route for them to be picked up with a bus for school.

Comments as per paragraph 4.9 above.

4.29 A burn runs past my client's house and she considers that there is a possibility that this will become polluted in terms of any discharge from the opencast. The burn is used by children during the summer months and there would be concerns of it becoming a safety hazard.

The applicant is also in direct discussions with SEPA regarding water management in order that the site can be designed to meet the discharge standards required as part of any discharge consent applications. It is further noted that the consultation response from SEPA requires the imposition of specific conditions in this regard, in the event that planning

permission is granted and subject to those conditions being imposed, does not object to the proposed development.

4.30 The letter states that the proposed development is within 20 metres of our property. The map does not reflect this and therefore the information is inaccurate.

The objector is referring to the Neighbour Notification letter issued by the Planning Authority. In this instance, due to an administrative error in identifying notifiable properties, a number of properties, lying outwith the 20 metres notification zone, were served notice about the development. In this instance the objector was not, strictly speaking, entitled to formal notification under statutory procedures. However, this factor has not prejudiced the objector in any significant way.

4.31 We do not object to opencast mining and are not hypocritical. Indeed this provides our main household income. We appreciate the site would no doubt offer local employment opportunities and bring a much welcome economic boost to the community. However working on an opencast site and living next to an opencast site are two completely different scenarios and one that our family would find unbearable.

The comments of the objector are noted.

4.32 With the Carsgailloch Runner being diverted, this is our only source of running water to our land and we are concerned over the water quality when it is diverted and also the loss of water after it has been re-instated as this has happened in the past.

The applicant has entered into discussions with SEPA regarding the proposed diversion of this burn and appropriate authorisations are currently being sought in this regard. The proposed works will be monitored by SEPA regarding the methodology and construction of the diversion as well as the quality of any water discharged into it. It is further noted that the applicant has provided evidence that this burn can dry up in summer months.

4.33 The applicant stated in writing to us that they would leave the northernmost tree belt as long as possible which would act as an effective screen of the workshops etc. from our properties. However, work commenced on 18 March on the northern tree belt.

The comments of the objector are noted. It should be noted that the felling of trees in this situation does not require formal planning consent.

4.34 If the proposed extraction of coal at Nethererton goes ahead then this will result in the loss of wildlife in our area, given other opencast and landfill developments in the area.

The comments of the objector are noted. However, it is noted that the Environmental Statement concludes that there would be no significant adverse impacts from a nature conservation perspective and this is effectively born out by the consultation process. Neither SNH nor RSPB Scotland has, subject to the imposition of appropriate conditions in any consent granted, objected to the proposed development.

4.35 In terms of air quality, this site will operate for around 12 years with heavy dust storms. We have had coal mines previously that have mined around our land giving us vast experience with the dust storms that blow heavily onto our land where we graze livestock. The applicant can only dampen down roads and have no control over dust storms coming from the overburden and storage areas. Until the full overburden area is completed then all re-seeded, this will cause high dust levels with no screen to help some of the dust, noise and visual intrusion.

With the imposition of appropriate mitigation measures to minimise dust nuisance, secured by planning conditions and with appropriate monitoring, it is considered that the proposed development can meet acceptable environmental standards.

4.36 Overburden Area A has to be permanent and our concern is what will happen to the final void when mining is finished. Will it be left to fill with water as previous sites have done, causing a health and safety issue or will the hole be used for a landfill?

The final void will arise in the Southern Extraction Area and, as part of the restoration strategy to enhance the biodiversity of the restored site, an area of open water will be created adjacent to the commercial forest, engineered to minimise any public safety issues. The main habitat objective of this water body, in line with the Ayrshire Local Biodiversity Action Plan, is to maintain and enhance the ecological quality of standing waters in Ayrshire. Such habitat would potentially attract wildfowl, particularly over-wintering birds and waders such as Geese, Snipe, Lapwing, Curlew and Red Shank. The restoration strategy proposed has been the subject of pre-application discussions with the appropriate nature conservation bodies including SNH and RSPB Scotland.

The use of this void for landfill operations would be counter to this restoration strategy and the applicant has not indicated any proposals of this nature as part of the proposals.

4.37 The amendment to the coal transportation from Netherton further strengthens the fact that this is an extension to the existing Skares Road site. There was verbal and written statements to Skares residents that there would be no more extension if the Area D extension was granted planning permission.

There is a degree of sympathy with the objectors comments in that the amended proposals to address coal transportation concerns raised by the Local Planning Committee means that existing infrastructure in the Skares Road site will be retained and used for the 10 year life of the Netherton development. In that regard, the Netherton development is now dependent on and linked to these existing operational areas in the Skares Road site.

In relation to the commitments by the applicant given to residents of Skares, it is understood that some legal and financial arrangement was entered into between residents and the applicant regarding the Skares Area D extension. However, that is a matter between those parties to the agreement and is not a material consideration in the determination of this present application that requires to be assessed on its own merits.

4.38 The new extension will extend the disruption to Skares and the surrounding area by approximately 10 years. Having had opencasting in this area for 14 years, surely enough is enough. The internal haul road and associated coal processing plant will impact on the community in terms of noise and dust.

The closest community (or group of dwellings) to the Netherton development is Skares, located approximately 1 km from the closest part of the application site. Whilst the proposed development would continue the Skares Road operation beyond a period of 10 years, it is not considered that Skares would have experienced excessive adverse amenity or environmental disruption over the whole period of the development. In this regard, the proposed Netherton development will operate at distance further away from the community of Skares than some parts of previously consented surface mining operations associated with the Skares Road development.

It is accepted that the amended coal transportation route will result in the retention of an existing overland haul road and the existing coal processing and dispatch facilities at Skares Road. However, the potential environmental impacts associated with this amendment are the subject of further appropriate assessment contained within the Addendum to the Environmental Statement. This concludes that subject to the imposition of appropriate conditions and implementation of proposed mitigation measures, there should be no significant adverse impacts arising in terms of noise or dust.

4.39 The proposed haulage route from the site to Mote Toll, added to the proposed Scottish Coal haulage from Piperhill to Killoch, will turn the road into an HGV conveyor and there are a lot of residents in the area who would be afraid to use that route.

The applicant has provided an assessment of the potential traffic impacts of using the amended coal transportation route as part of the Addendum to the Environmental Statement. The Roads and Transportation Service has assessed this information and is satisfied that, subject to the imposition of appropriate planning conditions or obligations secured through a section 75 Agreement, there would be no significant adverse traffic or public road safety impacts arising from the amended coal transportation route.

4.40 If the coal is now to run to Killoch and lorries are held up on the main road, the lorries will be running in convoy and there will be a back up of lorries. The same problem applies if lorries run to Ayr with the addition of a bigger bottleneck in Coylton.

Comments as per paragraph 4.39 above.

4.41 As indicated above a total of 58 letters of support were received for the proposed development, the majority of these letters being from current employees of the applicant indicating the benefits of the sustaining of local employment for a further 10 year period.

It is recognised that the socio-economic benefits offered in the way of job creation and retention are a material consideration in the determination of this application.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

Ayrshire Joint Structure Plan

5.2 There are no policy changes with regard to opencast coal mining being promoted in the new joint structure plan 2007 and the current provisions of the 1999 approved structure plan remain relevant to this application. The Approved Ayrshire Joint Structure Plan 1999 indicated in its Key Diagram that the Netherton development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states:

Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.

The proposed Netherton site falls within a Preferred Area of Search.

5.3 Policy E13 states that proposals to extend the supply of land with planning consent for the winning and working of minerals shall be considered against the following criteria:

- (i) *impact on the countryside, landscape character, visual amenity and the natural and built environment.*
- (ii) *the impact caused by noise, dust and the contamination of ground and surface water.*
- (iii) *any adverse effect on communities within Ayrshire.*
- (iv) *opportunity to maximise transport by rail or sea.*
- (v) *extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.*
- (vi) *cumulative impact of proposals in one area and the extraction period.*

The Netherton application has been assessed and determined against the stated criteria. The proposals promoted by the application, if approved, can be implemented under appropriate planning controls or under obligations secured by means of Section 75 Agreement for the site and subject to requirements referred to elsewhere in this report. It is considered that the proposed development would not conflict with the stated criteria in terms of its operational conduct.

The current application is therefore considered to be in accordance with the approved Structure Plan.

East Ayrshire Opencast Coal Subject Plan

5.4 Policy MIN1 is pertinent to the application, the policy stating that all future opencast developments will be directed towards the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments

in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

Only a small part of the proposed Netherton development falls within a Potential Coal Extraction Area (PCEA) with the greater part falling outwith. This is due primarily to the fact that in the main, the Netherton development represents a re-working of an area which has previously been the subject of previous surface mining operations. In the identification of PCEAs within the EAOCSP, both existing operations and historic sites of surface workings were excluded from the identification process. Nonetheless the proposed development represents a technical departure from Policy MIN1 although given the circumstances and in light of the previous site history, the departure is not considered to be significant.

5.5 Policy MIN2: There will be a presumption of refusal of applications for new opencast coal development outwith the potential coal extraction areas with the exception of small scale, short term extraction proposals which meet certain criteria.

The proposed Netherton development is not a small scale, short term proposal and assessment against the criteria is not applicable in this case.

5.6 Policy MIN3 states that, subject to detailed consideration, the Council will generally be supportive of any proposal to extend an existing operative opencast site within the Potential Coal Extraction Areas provided that certain criteria are met.

In some respects the proposed Netherton site could be considered as an extension to the existing Skares Road site, since there is a significant area of overlap in terms of application site boundaries. With the proposed amendment to the coal transportation route, there is now a greater degree of linkage to the existing Skares Road operations. The proposal to utilise an existing overland haul road, the coal processing facility and access road will mean that following cessation of coaling at Skares Road, these elements will be retained for the Netherton development. However, as the remaining parts of the Skares Road site will then be restored, Netherton will essentially be a stand-alone site and in this regard, Policy MIN3 is not particularly relevant to the Netherton development.

5.7 Policy MIN6: The applicant is required to provide information which indicates their understanding of the location of coal reserves in land surrounding the application site and information about their interest in any likely future extensions to current applications and sites in which they have an interest.

The applicant has provided information to suggest that there are potential coal reserves to the south and east of Netherton mainly under the Glaisnock Moss. However, there has been no evaluation of this and it is believed that much of this coal is "burnt" and any extension would therefore be dependent on economic and ecological issues. At this time the applicant has no plans for an extension into this area.

5.8 Policy MIN 7: All applicants for opencast coal developments will be required to demonstrate conclusively to the Council that their proposals will not pose a potential risk to the amenity of communities or to the local environment. In order to protect communities and the local environment from the unacceptable consequences of

opencast working, the Council will assess all new applications for opencast developments against the following criteria:

- (i) whether the proposal is environmentally acceptable or can be made so by the use of appropriate planning conditions and/or agreements designed to mitigate any adverse impacts, and if not:
- (ii) whether the proposal provides any local or community benefits related to the proposal which sufficiently outweigh any material risk of disturbance or environmental damage.

See conclusions stated in Section 8 of this report.

5.9 Policy MIN11: The Council will seek, wherever possible, to conserve all areas of active peat bog within the boundaries of an opencast coal development site. All peat that requires to be removed in order to access the coal reserves on site will require to be retained on site for future use in restoration of the area.

There is a limited area of peat bog within the site area that is degraded. The Ecology chapter in the ES covers this issue and concludes that no significant adverse impacts will arise as a result of the proposed operations. Furthermore with the removal of Phase C in the amended proposals, SNH does not object to the proposed development subject to appropriate conditions.

5.10 Policy MIN 12: The Council will seek to ensure that a proliferation of opencast coal sites within close proximity to any one community or within one particular area does not occur. In this context, any proposed new opencast developments may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where that development would:

- (i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or

The proposed Netherton development will lie within 3 kms of the existing Skares Road site, the existing Greenburn OCCS and the House of Water OCCS. The coexistence of 3 surface mining operations already occurs in the local area without unreasonable cumulative effects occurring. The proposed Netherton development would be worked as a direct continuation of the existing Skares Road development and so, in terms of assessing cumulative impacts, would not constitute a new additional operation. There would be a period of unavoidable coexistence of the existing Skares Road operations and the proposed Netherton operations, in order to provide for continuation of coal supplies and employment from the collective operation. That period of coexistence would be limited to approximately 2 years whilst the Skares Road operation was undergoing restoration. Beyond that period the continuing operations at Netherton would be located in excess of 1km from Skares village. Even with amendments arising from the revised coal transportation route, the retained overland haul road, coal processing facility and site access road also lie in excess of 1 km from Skares village.

- (ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or

The closest community (or group of dwellings) to the Netherton development is Skares, located approximately 1 km from the closest part of the application site. Whilst the proposed development would continue the Skares Road operation beyond a period of 10 years, it is not considered that Skares would have experienced excessive adverse amenity or environmental disruption over the whole period of the development.

- (iii) generate volumes of heavy traffic which taken together with the volumes of coal haulage vehicles already using the routes concerned, would cause unacceptable detriment to the amenity of any community or group of dwellings located along proposed haulage routes; or

The proposed Netherton development will result in a significant increase in HGV movements along the proposed amended coal transport route. However, with the fact that there are relatively few residential properties located directly on the amended transportation route between the site and the Killoch Disposal Point, it is considered that there would be no unacceptable detriment to the amenity of any community or groups of dwellings arising as a result of the development. The exception to this would be for coals being transported to Ayr Harbour via Coylton. However, the traffic at this point is on the main A class road network (A70) and it is not considered that there would be any significant capacity or road safety issues arising from this proposal.

- (iv) result in an unacceptable accumulation of adverse impacts on international or nationally designated sites of nature conservation interest over time and place within a particular locality, or an accumulation of individual impacts which collectively have a significant adverse effect on the integrity of such areas.

The proposed development will not result in the any significant adverse impacts upon international or national designated sites of nature conservation interest, as borne out by the consultation process.

5.11 Policy MIN13: Planning applications to contain details of operational procedures including restoration proposals and aftercare.

Full details of the method of working and restoration are contained within the application and supporting documents submission, albeit that it is proposed that the fine detail of the restoration proposals will be developed through the establishment of a Technical Working Group for the site.

5.12 Policy MIN 15: All developers are required to restore their operational sites progressively to the highest possible standards. Developers will be required to provide for the creation of new habitats appropriate to the particular after uses of the site concerned as an integral part of their detailed restoration and aftercare proposals.

The restoration strategy for the proposed Netherton site is aimed at developing and enhancing the visual amenity and setting of the site and the surrounding area, restoring the landscape to a character appropriate to its setting, creating a diversity of habitats to encourage wildlife and enhance the conservation value of the site and the local area, and improving and augmenting existing and retained woodland structure across the site by connecting woodlands of mixed coniferous and broadleaf species. It is recognised that the strategy will be the subject of discussion and agreement with the Technical Working Group for the site

5.13 Policy MIN16: Requirement to re-instate rights of way and provide improved access to restored sites for local communities.

There are no established rights of way within the proposed development area. The applicant however seeks to increase public access to the area once the site is restored.

5.14 Policy MIN 18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets. The Council will also encourage the provision of a network of off-road haulage routes and covered conveyors linking opencast sites with any existing or proposed railhead for the transportation of extracted materials

The amended coal transportation proposal will result in the coals won from the Netherton site being taken to the Killoch Disposal Point or Ayr Harbour for onward dispatch to markets by rail.

5.15 Policy MIN 19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

All coals won from the proposed Netherton site will be taken to the proposed coal processing area at the existing Skares Road site via internal haul roads.

5.16 Policy MIN 21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

- (i) to ensure the highest possible operational standards for the transportation of extracted minerals;
- (ii) to ensure best operational practice regarding road safety and operational matters;
- (iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes
- (iv) to audit and record operational details of the transportation of coal on a regular basis; and
- (v) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council is currently formulating with the co-operation of the opencast operators, a 'Transportation of Coal by Road Protocol' addressing the above issues to which existing and potential opencast operators and their approved sub-contractors will be invited to subscribe.

The applicant is willing to enter into a Section 75 Agreement encompassing the above stated matters.

5.17 Policy MIN 23: In order to ensure that opencast operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council is likely to consider opencast developments unacceptable where:

- (i) a development has a boundary which encroaches within 500 metres of the community concerned.

The proposed Netherton site does not encroach within 500 metres of any settlement.

- (ii) the proposal involves a substantial area for extraction over an extraction period in excess of 10 years.

The Netherton site is essentially a new site with an expected life of 10 years. The amended road transportation proposal results in the retention and use of an existing overland haul road, coal processing facilities and access road for the Skares Road site, which has operated for approximately 14 years. The closest community (or group of dwellings) to the Netherton development is Skares, located approximately 1 km from the closest part of the application site. Whilst the proposed development would continue the Skares Road operation beyond a period of 10 years, it is not considered that Skares would have experienced excessive adverse amenity or environmental disruption over the whole period of the development. In this regard, the proposed Netherton development will operate at distance further away from the community of Skares than some parts of previously consented surface mining operations associated with the Skares Road development. Nonetheless, with the re-establishment of linkages with the existing Skares Road site, albeit for coal transportation purposes, the Netherton development would result in a minor departure from Policy MIN23.

- (iii) the proposal is likely to be the subject of repeated extensions, perpetuating disturbance to local communities for a period substantially longer than 5 years.

It is considered that the current proposal will not, in itself, result in perpetuation of disturbance to local communities, nor be the subject of repeated extensions.

5.18 Policy MIN 25: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where all of the following criteria are met:

- (i) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;

There are no residential properties that lie within 500 metres of the working faces of the proposed excavation areas within the Netherton site.

- (ii) the total period of extraction and restoration within a distance of 500 metres from any sensitive establishment or dwelling does not exceed a period of 12 months.

The Netherton development would not present any conflict with this criterion.

- (iii) the proposed extraction does not involve any blasting operations within a distance of 500 metres from any sensitive establishment or dwelling.

The Netherton development would not present any conflict with this criterion.

- (iv) the extraction or operational area does not encroach within 100 metres of any group of dwellings, individual dwellinghouse(s) or sensitive establishment concerned.

There are no residential properties that lie within 100 metres of the operational areas of the Netherton site.

5.19 Policy MIN27: the Council will ensure that opencast coal proposals do not have unacceptable adverse impact on the natural and built environment. In particular, development proposals will not be supported where they would, amongst other things:

- (ii) cause permanent adverse impact or cause irreparable damage to heritage resources requiring conservation;

The Netherton development does not impact directly on heritage resources requiring conservation.

- (v) result in the destruction of any areas of peat which are considered to be of significant ecological value.

There are no areas of peat within the site considered to be of significant ecological value.

5.20 Policy MIN30: Protection of Landscape and Visual Amenity: the Council will not be supportive of proposals which could be considered to be detrimental to the visual amenity and appearance of an area or which would be visually prominent or create visual intrusion on the skyline when viewed from the area communities or from the main A class road network.

The Netherton development scheme has been prepared to take account of the policy requirements by incorporating measures to safeguard, re-instate or replace existing landscape features and pattern. The proposals also provide where possible for the protection of the local skyline during

operational phases and following final restoration of the site. The scheme also seeks to minimise sky-lining of elements of the proposed Netherton development. Significant effects would affect a limited number of residential receptors and only minor local roads.

5.21 Policy MIN32: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant to enter into an agreement with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997 in order to regulate, by agreement, such matters as cannot adequately be regulated by the imposition of planning conditions.

The applicant has expressed a willingness to enter into a Section 75 Agreement as considered appropriate to the terms of this report.

5.22 Policies MIN33 and MIN34: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

The applicant is currently a contributor to the Mineral Trust Fund and would contribute in respect of the Netherton development.

5.23 Policies MIN35 and MIN36: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

The applicant already provides Restoration Bonds for existing operations in East Ayrshire and it is proposed that should planning permission be granted for this development that a suitable bond will be provided to cover restoration liabilities on the Netherton development.

5.24 Policy MIN38: Establishment of liaison committees.

The applicant already operates Local Liaison Committees, when required, at existing operational sites. Should planning permission be granted for the Netherton development it is proposed to set up a site liaison committee drawing membership from the local community.

It is therefore considered that the proposed Netherton development is generally consistent with the relevant EAOCSP policies pertinent to this application with the exception of the technical departure from Policy MIN1 and the minor departure from Policy MIN23(ii).

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, Opencast Coal, relevant planning history, Scottish Planning Policy and the associated PAN50.

Consultation Responses

6.2 There are no consultation responses that would indicate that the application should be refused.

Representations

6.3 It is considered that the points of objection are not of sufficient weight to merit refusal of the application, on the basis that the points of objection have not been substantiated through the comprehensive consultation process with statutory and non-statutory consultees or can be addressed through the imposition of appropriate planning conditions or by means of a Section 75 Agreement, or are, on balance, not of sufficient weight to justify refusal of the application.

Scottish Planning Policy

6.4 Guidance on surface coal mining has been given in the “Scottish Planning Policy” document (SPP) issued in February 2010 which is the statement of the Scottish Government’s policy on nationally important land use planning matters. Subject policy on surface coal mining is given in paragraphs 239-247 inclusive. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coal mining may take place.

6.5 Many of the provisions of SPP relating to surface coal mining are already addressed within the adopted East Ayrshire Opencast Coal Subject Plan such as the proximity of workings to local communities, repeated extensions, cumulative landscape and visual impacts, protection of natural and built heritage and the preference for rail transport. Nonetheless SPP indicates that Planning Authorities should use their development plans to identify areas where opencast coal extraction may be acceptable. There should be a presumption against development outwith these areas.

While the proposed Netherton development site does not fall within a Potential Coal Extraction Area, it has been excluded primarily due to the fact that it represents a significant re-working of an area which has previously been the subject of surface mining operations arising from the Auchingilsie, Milzeoch and Skares Road sites. In the identification of PCEAs, both existing operations and historic sites of surface workings were excluded from the identification process. In this regard, although there would be temporary adverse effects on this area, it is considered there would be overall benefit and enhancement of the landscape in the longer term. While the proposal is considered to be a departure from policy, this is not considered to be significant given the short / medium term and temporary impacts in the context of the longer term benefits that would be achieved through the restoration strategy.

6.6 SPP also indicates, in applying the principles of sustainable development and environmental justice to opencast coal extraction, that there should be a presumption against development unless the proposal would meet one of two tests:

(i) the proposal is environmentally acceptable or can be made so by planning conditions and agreements; or

The consultation and policy assessment process suggests that the Netherton development can meet this first test subject to the imposition of appropriate planning conditions or legal obligations secured through a Section 75 Agreement.

(ii) the proposal provides local or community benefits which clearly outweigh the likely impacts of the extraction.

Test 2 is also considered to be met as the proposed Netherton development will result in the creation or continuation of 110 direct jobs, which is particularly beneficial in those areas where the extraction takes place.

It is therefore considered that both tests are satisfied in assessing the Netherton development.

Planning Advice Notes

6.7 The proposed operations have also been designed to comply with the advice contained within Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D.

Noted.

Planning History

6.8 The relevant planning history is as follows:

- (i) CD/95/0254/MIN: Winning and Working of Coal by opencast methods at Skares Road approved on 13 March 1997.
- (ii) 97/0596/FL: Revised application for winning and working of coal by opencast methods at Skares Road approved on 15 May 1998.
- (iii) 00/0010/FL: Modification of Consent 97/0596/FL to allow a nightshift operation at Skares Road opencast site approved on 08 June 2000.
- (iv) 00/0685/FL: Proposed extension to existing landfill site in Area B of Skares Road opencast site approved on 22 June 2001 subject to a Section 75 Agreement.
- (v) 01/0459/FL: Proposed modification of conditions 31 and 43 of consent 97/0596/FL to permit coal extraction beneath tips approved on 02 November 2001.
- (vi) 02/0691/FL: Proposed opencast coal mining with restoration to nature conservation uses at Hindsward approved on 07 April 2003.
- (vii) 05//0446/FL: Proposed southern extension to Skares Road opencast site approved on 03 October 2005.
- (vii) 08/0752/FL: Proposed extension of existing surface mine and retention of existing site infrastructure, plant and buildings for duration of extended operations approved on 07 August 2009.
- (viii) It should be noted that the historic workings associated with the Auchingilsie surface mine were approved under an authorisation made at that time by the Secretary of State and carried out by the then National Coal Board.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise through the requirement to conclude a Section 75 Agreement as required by the terms of this report.

7.2 The Management of Waste from Extractive Industries (Scotland) Regulations 2009 came into force on 01 April 2010. The proposed Netherton development falls within the scope of these Regulations which require applications for planning permission for developments comprising extractive waste to be accompanied by a Waste Management Plan (WMP). Regulation 13 preclude a Planning Authority from granting planning permission until it is satisfied that the WMP is appropriate and fulfils the requirements of the Regulations. The applicant has lodged a WMP to the Planning Authority for consideration and approval and this is subject to a statutory consultation process. In order to comply with the provisions of the regulations, should the Committee be minded to approve this application, the issue of a decision notice should be formally withheld until the WMP has been formally accepted by the Planning Authority.

7.3 As the proposed Netherton development does not encroach within 500 metres of the edge of any existing community or sensitive establishment, the application will not require to be notified to the Scottish Ministers in terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of the report, the application is considered to be generally in accordance with the development plan, albeit it represents a technical departure from Policy MIN1 of the EAOCSP. Therefore, given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 above, there are material considerations relevant to this application. However, these material considerations are also generally supportive of the proposed development as it is considered that the objections raised are not of sufficient weight to justify refusal of the application.

8.2 The proposals represent the development of a new stand-alone opencast on a site that has been the subject of surface mining in the past. The proposal will involve the extraction of approximately 4.1 million tonnes of coal which in environmental terms is considered to present no long term significant adverse impacts in relation to the proposed operations, and this is essentially borne out by the consultation process.

8.3 The proposed Netherton development is planned essentially as a replacement site for the Skares Road surface mine which is currently operational. The site is planned to commence to tie in with the completion of coaling within the Skares Road site, which is expected to cease in sometime during 2011. The proposal will provide or retain approximately 110 jobs for directly employed staff, and businesses in the local area will also continue to be supported through its presence. The 110 direct employment positions would generate approximately £4 million in wages annually (at current rates) to go into the local economy. Given that a significant proportion of the

staff would continue to reside within East Ayrshire, then there are tangible benefits to the local economy through the proposed development.

8.4 In landscape and visual amenity terms, the proposed development will have significant, albeit temporary adverse impacts. However, it is considered there would be net benefit to and enhancement of the landscape in the longer term. The site is currently considered partly derelict and part of the site is covered with coniferous plantation woodland. Overall it is considered that the long-term landscape would be enhanced by restoration proposals through the introduction of more native tree planting.

8.5 In considering the environmental acceptability of the proposed surface mining development, planning authorities are guided to consider acceptability in the context of the impact on both local communities and the environment. This can be achieved by weighing up the various benefits and disbenefits that would be likely to arise if the development proceeded. In respect of the proposed Netherton development the benefits and disbenefits are as follows:

Disbenefits

- (i) Proximity to communities: There are no communities within 500m of operational areas of the development. The closest individual property to the development (Mossback) is approximately 150m from the application boundary but in the order of 600m from the proposed extraction areas. The scheme has been prepared to minimise disruption. The ES has included an assessment of the potential effects on the closest sensitive properties to the development in terms of matters such as dust and noise. The ES has identified appropriate mitigation measures and reported acceptability of the scheme at those receptors.
- (ii) Uncertainty for local communities: the planning application would not create any uncertainty for local communities as to future extraction. The planning application would in fact remove such uncertainty by allowing the economically recoverable coal adjacent to the Skares Road Surface Mine to be removed as a direct continuation of those operations. If the development did not proceed, the prospect of the area being worked at some point in the future would remain.
- (iii) Haulage of Traffic: the amended traffic routeing from Netherton, via an overland haul road through the existing Skares Road site and using the current agreed haul route, would avoid passing through Skares and other sensitive locations. There are few residential properties along the route to Killoch Coal Disposal Point and the transport assessment within the ES has identified capacity within the road network to accommodate the development. No significant impacts from haulage have been identified. The applicant has agreed to commit to a routeing agreement within a S75 Agreement. With regard to dispatch hours, it is considered that the applicant's amended proposals are in line with standard dispatch hours applied to all surface mining sites.
- (iv) Other Cumulative Developments in Close Proximity: the ES has included an assessment of likely cumulative effects that would occur from the Netherton development co-existing with other similar developments in the area. The other developments with potential effects similar to the Netherton are the existing surface mining operations at Skares Road, Greenburn and at House of Water and the existing waste disposal operations at Garlaff. The relevant assessments within the ES (including noise, air quality and landscape and visual amenity)

have considered the cumulative effects in detail. No significant overriding cumulative effects have been identified.

- (v) Disturbance and Disruption from Noise etc: the ES includes detailed assessments in respect of a wide scope of environmental impacts. Appropriate mitigation has been identified in the ES, that can be secured through planning conditions and/or agreements to control the effects of the development to acceptable levels. These would include restricting operating hours for certain operations, setting noise conditions and setting conditions to control blast events.
- (vi) Loss of Landscape Features, Habitats, Species & Archaeological Features: The ES has taken into account the potential impacts on all of these assets and has identified that, whilst impacts may occur in the short to medium term, no special feature would be 'lost'. As the progressive restoration matures, there would be notable benefits from the scheme, including landscape and biodiversity improvements.
- (vii) Impact of Extraction on other Investment: the development is located in a rural area, with little alternative development apparent and there is not considered to be any reasonable likelihood of detracting investment from the local area. The proposed development would in fact bring about further investment from the applicant in the local area and the likely commitment to the area from other businesses and industries used to service the development.
- (viii) The loss of local Opportunities for Recreation: there are no formal public access routes or ways within the planning application area. The proposed restoration scheme includes a network of paths that should increase opportunities for recreation as restoration of the site progresses.

Benefits

- (ix) Removal of Existing Dereliction and Land Instability: whilst a significant proportion of the application site has been subject of previous mining operations and the beneficial use of the site is generally constrained, there are not significant areas of the site that are derelict or instable. The restoration will bring about an overall improvements in the character and setting of the application site for local communities and for biodiversity targets.
- (x) Removal of all Coal in one Operation: the planning application is made for the removal of all known economically recoverable coal within the planning application boundary. If planning permission were to be refused, then so long as the coal deposits remained in situ there would be continued uncertainty at the site being revisited and reapplied for extraction at some future date.
- (xi) Distance of the Proposal in Relation to Local Communities: the Netherton development is considered to be sufficiently separated from nearby communities and complies fully with the policy provisions of the EAOCSF in this regard.
- (xii) Sterilisation of Workable Coal Resources is Avoided: the development would see the extraction of approximately 4.1 million tonnes of coal predominantly for the energy generation sector. The development would avoid any risk of sterilisation

of that important resource and would negate any increased reliance on imports of foreign coal.

- (xiii) Traffic Routing to Avoid Disturbance: the amended traffic routing from Netherton would avoid direct disturbance to communities. In particular Skares would not require to be accessed by HGVs.
- (xiv) Planned Restoration and Aftercare Arrangements are Clear: the planning application is accompanied by a clear restoration strategy and plan. The scheme would bring about local landscape and biodiversity improvements and in a progressive manner.
- (xv) Restoration will Provide new Landscape and Biodiversity Features: the direct landscape and biodiversity benefits of the scheme are described in the ES. These benefits would include contributions to a number of key Biodiversity Action Plan targets, and would result in notable beneficial effects within the site and at a number of nearby viewpoint locations. The restored scheme would also compliment the pattern and characteristic features of the lowland landscape across the site. Proposed footpaths would also provide enhancement of recreational access.

8.6 It is acknowledged that there are genuine concerns raised in the letters of objection and in this regard, it is considered that with the imposition of appropriate conditions and delivery of proposed mitigation measures, the impact on local communities and properties in proximity to the site can be minimised to acceptable environmental standards. It is further noted that there has been a considerable degree of support for the proposals in economic and employment terms, albeit that in the main this support derives from existing employees of the applicant.

8.7 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is generally consistent with policy and that there are no significant environmental or community concerns regarding the proposal. Consequently it is considered that the application should be approved but subject to the following obligations that should be secured through an amended Section 75 Agreement covering the following matters:

Section 75 Agreement

- (i) The establishment of a Technical Working Group for the Netherton site with the provision that the group shall meet at least bi-annually. The TWG shall generally include representatives from Scottish Natural Heritage, RSPB Scotland, the Scottish Environment Protection Agency, the Ayrshire Rivers Trust, the Planning Authority and the site operator, but may be extended to include other bodies with particular interest in relation to the restoration of the site.
- (ii) The establishment of a Community Liaison Committee for the site in accordance with established practice.
- (iii) The extension of The Protected Mammals Management Plan (PMMP), as approved by the Planning Authority as part of the conditions of the recently consented Skares Road Extension proposals (planning application ref 08/0752/FL), to cover the additional impacts on protected mammals (otters, bats, badgers, red squirrels, water voles) arising as a result of the Netherton

development. This PMMP shall be agreed with SNH prior to the commencement of works.

- (iv) The appointment of an Ecological Clerk of Works (ECoW) by the applicant and approved by the Planning Authority in consultation with SNH for the period from commencement of development to the completion of aftercare or such earlier date as may be agreed in writing with the Planning Authority. The scope of work of the ECoW shall be agreed by the Council and will include:
- agreeing monitoring for the PMMP and reporting results to the TWG;
 - advising and implementing restoration works; and
 - monitoring and reporting during restoration and aftercare period to the TWG.
- (v) The establishment of noise, air quality, dust and vibration monitoring programmes, including locations to be used for monitoring, for the Netherton site following consultation with the Planning Authority and the Environmental Health Division, such monitoring schemes to be in place prior to the commencement of operations associated with this development;
- (vi) The securing of management measures for the natural heritage benefit of the neighbouring Scottish Wildlife Trust (SWT) site known as Glaisnock Moss/Carnivan Hill.
- (vii) The provision of a Restoration and Aftercare Bond provided and monitored in accordance with the provisions of Policy MIN 36 of the East Ayrshire Opencast Coal Subject Plan 2003, including the establishment and implementation of an appropriate independent monitoring regime.
- (viii) The maintenance of any private water supply or drainage services to private residential properties, which may be affected by the opencast operations, throughout the life of the site, or the provision of alternative supplies or services where appropriate;
- (ix) A contribution to the Minerals Trust Fund at the rate of 27.5 pence per tonne of coal extracted from the development site;
- (x) The securing of necessary off site road improvements identified along the haulage route in conjunction with East Ayrshire Council Roads and Transportation Service and as described in its consultation response dated 17 June 2010, in order to ensure the road is maintained in a safe and serviceable condition.
- (xi) The securing of an ongoing road maintenance contribution of £0.10p per tonne of mineral hauled via the public road system, between the applicant and the Council to repair and continue to maintain the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the routes U728, B7046 and A70;
- (xii) The securing of agreed coal transportation routes in terms of the amended coal transportation route described in the Addendum to the Environmental Statement dated May 2010 (SLR Ref: 413.1908.00002);

- (xiii) The provision of vehicle activated signage on the A70 approach to Killoch Depot from the east side as indicated in the SLR Consulting letter (SLR Ref. TWG/413.1908.00002 dated 15 June 2010), the details of which shall be agreed with the Roads and Transportation Service.
- (xiv) The securing of road safety improvements and access junction improvements as identified the letter by SLR Consulting of 15 March 2010 (SLR Ref. TWG-413.1908.00002) particularly on the B7046 at Humeston Bridge by the incorporation of vehicle activated signage and high friction surfacing material, all at the expense of the applicant;
- (xv) The investigation and implementation of any necessary work identified to stabilise the U743 road where there was a previous mine collapse below the road due to the additional site traffic/staff/deliveries that would utilise this route to the site.
- (xvi) The provision of a Transport Management Plan including the subscription of the applicant to the Council's Transportation Protocol to provide for agreement on routing, timing and marking of vehicles for minerals won within the Netherton site transported on the public road network within East Ayrshire.
- (xvii) The right to suspend operations on site should there be justifiable and actionable noise complaints shown to be in breach of the stipulated day time and night time noise limits, pending the introduction of additional noise mitigation measures.
- (xviii) The undertaking of structural surveys of residential properties lying in close proximity to the proposed excavation areas, the identification of properties considered for survey being the subject of discussion and agreement with the Planning Authority, and shall only be required where the property owners give consent for such surveys. Copies of the requisite surveys shall be made available to the Planning Authority and to respective property owners.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet but that the issue of the decision notice should be withheld until:

- (iii) the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 8.7 of this report; and**
- (iv) a Mining Waste Management Plan in compliance with the provisions of The Management of Waste from Extractive Industries (Scotland) Regulations 2009, has been formally approved by the Planning Authority in consultation with SEPA.**

CONTRARY DECISION NOTE

Should the Committee agree to refuse the application contrary to the recommendation of the Head of Planning and Economic Development then the application would not require to be referred to the Full Council as such a decision would not represent a significant departure from the development plan.

Alan Neish
Head of Planning and Economic Development

17 June 2010
HM/HM
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Environmental Statement, Supplementary Environmental Information and ES Addendum.
3. Statutory Notices and Certificates.
4. Consultation Responses.
5. Letters of representation
6. Adopted East Ayrshire Opencast Subject Plan (2003)
7. Approved Ayrshire Joint Structure Plan (2007)
8. Scottish Planning Policy (SPP)
9. PAN50 and Annexes.
10. Previous planning applications as indicated in Section 6.8

Any person wishing to inspect the background papers listed above should contact Mr Hugh Melvin on 01563 555481.

Implementation Officer: Dave Morris

Location	Land at Netherton, off Newfield Road, Near Cumnock
Nature of Proposal:	Phased extraction of coal by surface mining methods with progressive restoration and ancillary works
Name and Address of Applicant:	Aardvark TMC Aardvark House Sidings Court Doncaster DN4 5NU
Name and Address of Agent	Colin Hume SLR Consulting limited 4 Woodside Place Charing Cross Glasgow G3 7QF

DPO's Ref: [Hugh Melvin]
PPO's Ref: []

The above application for PLANNING PERMISSION should be granted subject to the following conditions:

1. The development hereby permitted shall enure for the benefit of the applicant only, and the approved operations shall be completed within 10 years of the date of commencement of operations on the Netherton site, or by such other time as may be formally agreed in writing with the Planning Authority.

REASON –The development is acceptable only because of the individual circumstances pertaining to the applicant and on a temporary basis.

2. The applicant shall give notice in writing to the Planning Authority of the commencement of operations on site, one month prior to their commencement.

REASON – To ensure that the development is undertaken in accordance with the submitted plans and conditions, and to ensure that appropriate monitoring systems are in place in the interests of environmental protection.

3. Prior to any works commencing on site, the applicant shall prepare a groundwater monitoring plan (jointly with the Skares Road site) developed through prior discussion and agreement with SEPA and submitted to the Planning Authority for approval in consultation with SEPA. The scope of the plan shall include:

- The collection and interpretation of baseline data; the on-going collection and interpretation of data; the reporting mechanism of this interpreted data; and an on-going mechanism to secure appropriate mitigation of impacts to ensure protection of the water environment in perpetuity;
- Investigation of the impacts of leachate migration from the adjacent Garlaff landfill site;
- Recalculation of the radius of influence from likely dewatering using the aquifer saturated thickness.
- A combined contingency plan for both the Netherton and Skares OCCSs at least 6 months prior to the completion of site works. This contingency plan shall consider the Netherton site in relation to its surroundings.
- If blasting is proposed for the site then mitigation measures shall be put in place prior to works commencing.

- The arrangement and installation details of monitoring boreholes shall be approved by the Planning Authority in consultation with SEPA prior to operations commencing on site. An additional monitoring borehole up-gradient of the southern excavation area and down-gradient of the northern excavation area is recommended. It should be ensured that other monitoring points have been installed to adequate depths around the site to account for changes in water levels throughout the life of the works. The fate of borehole 7D should also be addressed at this stage.

REASON – In the interests of environmental protection.

4. Prior to the commencement of operations on site, the applicant shall submit to, and have had approved by the Planning Authority in consultation with the Scottish Environment Protection Agency, a Construction Management Plan for the Netherton site.

REASON – To prevent pollution of watercourses and minimise risk of flooding.

5. Prior to the commencement of operations on site, the applicant shall establish a comprehensive restoration programme and plan for the proposed Netherton site and shall submit the details of this programme and plan to the Planning Authority for approval. The required programme and plan shall be the subject of prior consultation with the Netherton Technical Working Group. Any subsequent revisions to the restoration and aftercare plan as approved shall be the subject of approval of the Planning Authority in consultation with the Netherton Technical Working Group.

REASON – In the interests of environmental protection and to ensure a high standard of site restoration.

6. Prior to the commencement of development, the applicant shall submit details and specifications of a bund to prevent dewatering of Glaisnock Moss Provisional Wildlife Site, for the approval of the Planning Authority in consultation with SNH and SEPA. The bund to the specification agreed shall be constructed to the satisfaction of the Planning Authority before commencement of soil stripping and excavation adjacent to the bund. Monitoring of changes in the water table and vegetation composition including baseline monitoring prior to the development, shall be agreed with SNH prior to commencement of development and implemented by the applicant.

REASON – To prevent dewatering of the Glaisnock Moss Provisional Wildlife Site in the interests of Environmental Protection.

7. The range of mitigation measures with respect to badgers as identified in the Environmental Statement (SLR Consulting - December 2009) shall be adopted and implemented in full to the satisfaction of the Planning Authority.

REASON – In the interests of environmental protection.

8. Prior to the commencement of operations on site, the applicant shall submit details of the watercourses that will be affected and shall submit detailed methodology, mitigation and restoration plans for all those affected to the Planning Authority for approval in consultation with the Netherton Technical Working Group.

REASON – In the interests of environmental protection.

9. Immediately prior to the commencement of operations on site including deforestation, the developer shall carry out protected species surveys including European Protected Species (EPS), these surveys to be undertaken by a suitably qualified ecologist and in accordance with SNH guidelines. The findings of this work will inform the developer as to mitigation and habitat improvements for protected species. The results of these surveys shall be submitted to the Planning Authority for consideration in consultation with SNH.

REASON – In the interests of environmental protection.

10. No operations shall commence on site until a Mining Waste Management Plan, in compliance with the provisions of The Management of Waste from Extractive Industries (Scotland) Regulations 2009, has been formally approved by the Planning Authority in consultation with SEPA.

REASON – To comply with statutory regulations in the interests of environmental protection.

11. Prior to the commencement of operations on site, the applicant shall submit details of the proposed layout of the coal processing area and general site establishment area including the details of any structures to be located within these areas. Details of the means of illumination of this area shall also be submitted and this illumination shall be installed in a manner which minimises any potential nuisance. Operations shall not commence until the Planning Authority has approved the submitted details.

REASON - In the interest of amenity.

12. Prior to works commencing on site, the developer shall submit to and have had approved by the Planning Authority, the layout and a detailed landscaping scheme for the site service area which shall be implemented and thereafter maintained to the satisfaction of the Planning Authority.

REASON - In the interests of amenity.

13. All demolition of buildings, vegetation clearance, tree and forest felling and soil stripping shall be carried out outwith the bird breeding season (March to July inclusive). Where this is not possible, surveys for nesting birds shall be carried out and suitable mitigation measures put in place, as approved by the Planning Authority in consultation with the Netherton Technical Working Group.

REASON – In the interests of environmental protection.

14. Except in the case of emergency and with the prior agreement of the Planning Authority, the hours of operation for the Netherton site shall be confined between 0700 and 1600 hours Mondays through Saturday inclusive (24 hours working). With specific respect to the proposed coal processing area, the hours of operation for the proposed coal processing area shall be confined between 0700 and 1900 hours Monday to Friday and between 0700 and 1300 hours on Saturdays. No works shall take place on Sundays or recognised Public Holidays with the exception of essential site maintenance works.

REASON – In the interest of residential amenity.

15. Except in the case of emergency and with the prior agreement of the Planning Authority, the dispatch of coal from the site by road shall be confined to between the hours of 0800 and 1700 hours Mondays to Fridays inclusive. No transportation of coal by road shall take place on Saturdays or Sundays except in cases of emergency as indicated. The transportation of coal from the excavation area, via the overland haul route to the coal processing area, shall be confined between 0700 and 1900 hours Monday to Friday and between 0700 and 1300 hours on Saturdays.

REASON – In the interest of residential amenity.

16. The site access roads shall, prior to the commencement of operations on site, be constructed to the standards required in the Roads Development Guide 1996, for industrial use.

REASON - In the interest of road safety and to prevent any overcarry of loose material onto the public road.

17. No drainage connection shall be made to the U743 road drainage system without the prior approval of the Roads Authority. No surface water shall be allowed to discharge from the development site on to this public road.

REASON - In the interest of public road safety.

18. Appropriate measures shall be taken to prevent mud, dirt, dust, slurry, coal or stones being carried onto the highway and such steps shall include the provision and use of hardstanding areas and a full wheel and body vehicle wash facility for the cleaning of all lorries, dump trucks, other heavy vehicles and plant leaving the site. The vehicle wheel and body wash shall be installed for operational use prior to the stripping of soils within the excavation area and shall be maintained in effective operation during construction and operation of the site.

REASON - In the interest of road safety.

19. The access road and public road adjacent to the site shall be kept clear of mud or other deposited materials at all times by means of mechanical brushing as appropriate.

REASON - In the interest of road safety.

20. Prior to any road vehicle loaded with coal or other minerals leaving the site, the load shall be suitably hopped to ensure there is no escape of materials. A hardstanding area shall be provided within the coal preparation area to facilitate the hopping of haulage vehicles. Vehicles returning to the site shall also be hopped to minimise traffic noise associated with empty vehicles.

REASON - In the interests of road safety and minimising noise impact.

21. Prior to excavation works commencing on site statutory undertakers' apparatus shall be protected and diverted as required, to the satisfaction of the respective statutory undertakers and at the expense of the developer.

REASON - In the interest of public safety.

22. The developer shall make stock-proof and maintain, until the restoration of the site is completed, all the existing perimeter hedges and fences and shall protect these from damage during operational works. Where the site boundary does not coincide with an existing hedge or fence, then the developer shall provide and maintain stock-proof fencing with gates or cattle grids at every opening. Where the developer has the right to do so, undisturbed hedgerows, within or bounding the site, shall be maintained, the hedgerows to be cut and trimmed at the proper season throughout the period of working and restoration of the site. Where dry stone dykes are to be removed, the stone shall be stored and later re-used in the restoration of these dykes.

REASON - In the interest of preserving the rural landscape.

23. Topsoil and sub-soil shall only be stripped when the soils are sufficiently dry so that when moved no damage will be done to the structure of the soils. Apart from the works required to enclose the site, no operations shall be carried out until the top soil is fully stripped and stored in the designated areas within the site, in accordance with the phased programme of extraction as described in the Project Description which forms part of the planning application.

REASON - To ensure that the top soil and sub-soil will be suitable for the restoration of the site following storage.

24. Topsoil shall be stripped to full available depth from all areas within the site except those areas designated in the approved plans as topsoil dumps. Following topsoil stripping operations from any areas of land, sub-soil shall be stripped as a separate operation to a depth, where possible, to achieve top soil and sub-soil not less than 0.9 metre at restoration.

REASON - In the interests of achieving maximum restoration potential.

25. The developer shall give at least two working days notice to the Planning Authority before work commences on the stripping of topsoil and/or sub-soil. The Planning Authority reserves the right to suspend operations during adverse weather conditions.

REASON - To prevent damage to soils and to ensure that the topsoil and sub-soil to be stored will be suitable for use during restoration of the site.

26. Bind-free soil forming material found during the course of the operations shall be reserved where practicable and stored for later use in the final restoration of the land. This material shall be used to replace shortages of sub-soil or topsoil, or otherwise used to cap overburden mounds.

REASON - To ensure that sufficient soils are available during restoration of the site.

27. Topsoil, sub-soil and overburden shall be carefully stored in separate mounds with appropriate separation of storage mounds to prevent soils from mixing. Topsoil mounds shall not exceed 7 metres in height; sub-soil mounds shall not exceed 10 metres in height respectively above ground level. Topsoil and sub-soil mounds shall be evenly graded and tops shaped to prevent water ponding.

REASON - To prevent damage occurring to soils and in the interests of visual amenity.

28. In the first available seeding season following their formation, all mounds of topsoil, sub-soil and soil making materials shall be seeded in grass and shall be so maintained until the soils are required for use in the restoration of the site except as may be otherwise agreed with the Planning Authority. Overburden mounds shall be seeded in grass until commencement of restoration of the site.

REASON - In the interests of visual amenity.

29. All weeds on the site, particularly those on the topsoil and sub-soil storage mounds, shall be treated with weed killer or cut to prevent spreading within the site or onto adjoining agricultural land.

REASON - To prevent weed contamination of soils in the interests of proper site restoration.

30. The location of baffle embankments shall generally be as indicated on the approved plans. Their specific location shall be chosen to assist in the visual screening of the site and their form should be such as to present a natural looking feature.

REASON - In the interest of visual amenity.

31. Sub-soil and overburden storage mounds shall be so formed as to have minimal visual intrusion on the surrounding landscape.

REASON - In the interest of visual amenity.

32. Where the soils are to be used in the restoration of land to forestry, then the stripping and storage of soils, details of the manner of stripping and storage having been agreed with the Forestry Commission, shall be to the general requirements and specifications of the Forestry Commission.

REASON - In the interests of site restoration.

33. All water treatment areas / settlement lagoons shall be enclosed by a 1.2 metres high stock proof fence.

REASON - In the interest of public safety.

34. Throughout the period of site working, agricultural restoration and after-care, the developer shall protect and maintain or divert any ditch, stream, watercourse or culvert passing through the site so as not to impair the flow nor render less effective drainage onto and from adjacent lands. Any culvert to be constructed on the site shall be designed so as to ensure the free passage of fish, as well as otters.

REASON - To prevent a detrimental effect upon adjacent agricultural and other operations and in the interests of environmental protection.

35. Appropriate provision shall be made at all times to ensure that under drainage is maintained for land outwith the working areas. Standing water must not be allowed to gather in any area where the topsoil and sub-soil has not been stripped.

REASON - To prevent damage to adjacent land and soils.

36. In parallel with the development of the site, alternative arrangements shall be made for any interruption of adjacent drainage systems. New interceptor leaders shall be laid, or ditches cut, where required, to ring the site and bleed in existing lateral drains from adjoining undisturbed land.

REASON - To prevent damage to adjacent land and soils.

37. Prior to commencement of development, details of the steps to be taken to prevent all contaminated drainage and run-off from the site roadways, interception ditches, overburden and other tips, coal handling and stocking areas, the working areas of the excavations and pump mine water shall be submitted to and approved by the Planning Authority in consultation with SEPA.

REASON - To prevent contamination of watercourses.

38. Prior to commencement of development, details of the steps to be taken to prevent the discharge of oil from fuelling, oil, storage plant maintenance and vehicle wash areas within the site, shall be submitted to and approved by the Planning Authority.

REASON - To prevent contamination of watercourses.

39. All fuel, oil or other chemical storage tanks on the site shall be sited on impervious bases and surrounded by tank bund walls. The bunded areas shall be capable of containing 110% of the tank's volume and shall enclose all fill and draw pipes. If the storage tanks are to be sited at a single compound, the bund wall shall be capable of containing 110% of the volume of the largest storage tank. All fill and draw points shall be padlocked when not in use.

REASON - In the interest of public safety and to prevent any pollution of watercourses.

40. All foul drainage from sanitary facilities, canteens, etc. shall be treated prior to discharge to a soakaway system. In the event that percolation tests indicate that the ground is not suitable for discharge to soakaway system then additional treatment will be undertaken prior to any discharge of sewage effluent to any watercourse.

REASON - To ensure proper drainage of the site.

41. No surface water from the site shall be permitted to discharge onto public roads and all surface water from the topsoil, sub-soil and overburden mounds shall be prevented from reaching these roads by cut-off ditches or other means outwith the highway boundary. These cut-off drains and ditches must not connect into the roadside drainage.

REASON - In the interest of road safety.

42. The formation of overburden areas shall be carried out, as far as practicable, behind mounds in order to reduce noise nuisance to a minimum and, whenever possible, during the hours of darkness, warning lights shall be used instead of beepers as a warning device on plant and maintenance vehicles, or other appropriate warning devices the details of which shall be submitted to and approved by the Planning Authority.

REASON - In the interest of minimising noise impact.

43. The operational conduct of the site shall be in accordance with the Project Description / Written Statement which forms part of the approved details of the application.

REASON - To ensure that the development is undertaken in accordance with the details approved.

44. The conduct of the site and method of operation shall comply with British Standards 5228 and Part 3 of the 1984 Code of Practice for Noise Control Application to Surface Coal Extraction by Opencast Methods. Except during the formation and removal of baffle mounds and the stripping and replacement of soils, the noise limit during daytime (0700 to 1900 hours) shall not exceed 55dB Laeq,1h and 42dB Laeq,1h during night-time (1900 to 0700 hours) at noise sensitive properties. During the formation and removal of baffle mounds and the stripping and replacement of soils, the noise limit shall not exceed 70dB Laeq,1h at noise sensitive properties with such works only taking place during daylight hours.

REASON - In the interests of residential amenity.

45. An appropriate noise monitoring programme shall be undertaken during the operational life of the site, using appropriate equipment and recording devices, the details of which shall be agreed with the Planning Authority and the results of which shall be submitted to the Planning Authority on a monthly basis during the operational life of the site. The noise monitoring programme shall be agreed and in place prior to the commencement of works on site.

REASON - To monitor noise levels and ensure that appropriate environmental standards are maintained throughout the life of the site.

46. A dust and air quality monitoring programme shall be agreed with the Planning Authority in consultation with the Environmental Health Authority and undertaken using appropriate equipment and recording devices. The results and records shall be made available to the Planning Authority on a monthly basis during the operational life of the site. The dust monitoring programme shall be agreed and in place prior to the commencement of operations on site.

REASON - To monitor dust emissions and ensure that appropriate environmental standards are maintained throughout the life of the site.

47. Except in cases of emergency or as otherwise may be agreed with the Planning Authority, blasting operations shall be carried out between 1000 to 1500 hours Mondays to Fridays (and between 1000 to 1300 hours on Saturdays). No blasting operations shall take place on Sundays, or on recognised East Ayrshire Public Holidays, during the hours of darkness or during periods of adverse visibility.

REASON - In the interest of amenity and public safety.

48. Blasting operations shall be carried out in such a manner that no component of the peak particle velocity attributable to any blast, measured at any point immediately adjacent to any building outside the boundaries of the site, exceeds a vibration criterion of 6 mm/second at a 95% confidence level.

REASON - In the interests of protecting residential and other buildings from any potential damage.

49. No blasting operations shall take place within 500 metres of any occupied residential property, unless the developer is able to demonstrate a controlling interest in this property or has secured an appropriate legal agreement with respective property owners consenting to such operations.

REASON – In the interests of residential amenity.

50. Any explosives magazine required for the storage of explosives shall be located, designed and bundled to the satisfaction of the Planning Authority.

REASON - In the interests of public safety.

51. An appropriate blast monitoring scheme shall be undertaken during the operational life of the site the details of which shall be agreed with the Planning Authority in consultation with the Environmental Health Authority. The scheme shall allow for the use of appropriate equipment and recording devices, the results from which shall be submitted to the Planning Authority on a monthly basis. The blast monitoring scheme shall be agreed and in place prior to any blast operations being undertaken on site.

REASON - To monitor blasting operations and ensure that appropriate environmental standards are maintained throughout the life of the site.

52. All opencast machinery not in use shall be parked, as far as practicable, in an inconspicuous position and shall not be astride soil or overburden mounds.

REASON - In the interests of visual amenity.

53. Any plant or machinery which becomes redundant from use during the operational life of the site shall be permanently removed from the site.

REASON - In the interests of visual amenity.

54. Any rubbish and scrap materials generated on the site shall, as far as is practicable, be kept in a screened position until disposed of in an approved manner to the satisfaction of the Planning Authority.

REASON - In the interest of visual amenity.

55. The site shall be progressively restored in accordance with the scheme submitted with the planning application. The procedures for replacement of overburden, sub-soil and topsoil shall accord with those indicated in the Project Description / Written Statement and to the satisfaction of the Planning Authority.

REASON - To ensure appropriate restoration of the site.

56. No materials for filling shall be introduced to the site from sources external to it without the formal approval of the Planning Authority.

REASON - To enable the Planning Authority to retain control over development of the site.

57. The restored site shall be progressively landscaped in accordance with the afteruse scheme to be developed in consultation with the Netherton Technical Working Group and approved by the Planning Authority.

REASON - To secure appropriate restoration features and habitat enhancement.

58. The restored site shall be subsequently managed in accordance with the aftercare scheme, the details of which shall be submitted for approval by the Planning Authority in consultation with the Netherton Technical Working Group.

REASON - In the interests of securing appropriate afteruse of the site.

59. There shall be an annual formal review to consider all the operations which have taken place on the site during the previous year, and to consider the programme for the ensuing year. The parties involved in the review shall include the applicant, the Mineral Operator, the owners of the land and the Planning Authority.

REASON - To enable the Planning Authority to be updated regarding the operation of the site in the light of any difficulties encountered and to monitor progress of site operations.

60. Two weeks prior to the annual formal review an updated plan will be forwarded to the Planning Authority indicating the previous year's work on the site and showing the anticipated work programme for the ensuing year.

REASON - To assess and monitor the operational status of the site.

Note to Applicant

1. The applicant should make early contact with Scottish Water and SP Energy Networks regarding the presence of infrastructure within or adjacent to the development site that may be affected by the proposed development.

The Council has granted this consent for the following reasons:

The proposal is generally consistent with the Development Plan and the material considerations relevant to this application also indicate that the application should be approved subject to the imposition of appropriate conditions and subject to the concluding of a Section 75 Agreement in terms of the Town and Country Planning (Scotland) Act 1997.

