

## **EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 30 JUNE 2011**

### **10/1020/PP: DEVELOPMENT OF A DEDICATED COAL HAULAGE ROAD AT CHANGUE FARM, NEWFIELD ROAD TO SKARES ROAD, BY CUMNOCK ADJACENT TO NETHERTON SURFACE MINE BY SKARES**

**APPLICATION BY AARDVARK TMC LIMITED**

#### **Report by Head of Planning and Economic Development**

**Click for Application Details:** <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=10/1020/PP>

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 The planning application makes provision for the development of a 2.2km (1.4 miles) dedicated coal haulage road to run from the Coal Transfer Area at Netherton surface coal mine to a new junction with the B7046 Skares Road. This proposed road is intended to be a private road that has been designed by qualified engineers and in summary comprises:-

- suitably configured junctions with the existing public road network;
- a 4m wide hard surfaced roadway to accommodate HGV traffic;
- a series of passing places along the length of the route;
- surface water run-off management measures; and
- gated security to prevent unauthorised use of the road.

1.2 The proposed road has been designed as single track with passing places. Generally the road is 4m in width, widening to 8m over 20m lengths at the intended passing places. Passing places have been located at the extents of forward visibility, and are large enough to accommodate one or two vehicles travelling in each direction. The road follows existing ground levels as closely as possible, and rises steadily from its northern end with a maximum gradient of 8.75% over a short distance along its length.

1.3 Soils along the route of the proposed road would be stripped in advance of the roads formation. The soils would be lifted and reused in other parts of Changue Farm for ground improvement works and/or used in the restoration of the Netherton site. The road would be constructed wherever possible using materials sourced from Netherton surface mine and would be conventionally constructed in either concrete or asphalt with positive falls to shed water to the edge.

1.4 A bound drainage surface would be provided to ensure traction is maintained, and braking is achievable. A drainage ditch will also be provided along the edge of the route corridor to intercept surface water from the adjacent field, to prevent it from flowing over the road edge.

1.5 The proposed road has been routed as far as possible to follow existing field boundaries with an emphasis on preventing impacts to wildlife. The proposed road has for instance been designed to avoid woodland, mature trees and the unnamed burn, with the result that only very minimal numbers of young trees would be affected by the proposed development.

1.6 The junction with Newfield Road at the southern end of the route would be a priority crossroads, with traffic on Newfield Road having priority and all site traffic giving way. The junction with Skares Road is designed to accommodate traffic heading to and from the north (Cumnock). The junction geometry allows for traffic to turn to and from the south, as this allows for future farm usage and for occasional maintenance vehicles for the Netherton site, however these vehicles would need to use the full width of the junction to make their turn. The junction is located to achieve maximum visibility for all traffic.

1.7 Gates would be provided across either end of the proposed road. These would be located as close as possible to the edge of the minor road, as drivers approaching closed gates will be expected to stop and open both sets prior to continuing. The approaches to the junction would also act as a passing place. The junctions of the proposed road with Newfield Road (but not the route of the road itself) will require to be illuminated. Lighting, signage and road marking requirements will therefore require to be agreed with the Council.

1.8 It is intended that use of the proposed road would be shared with the landowner of Changue Farm, who would routinely use the road for agricultural access. Gated farm crossings will be provided at locations to be agreed with the farmer, with each crossing suitably surfaced to prevent excessive mud being carried onto the road surface by cattle and farm traffic.

1.9 The proposed road would be fenced to prevent cattle straying onto the road; however fences will be set back from the road edge to ensure that any cattle that may have strayed onto the road are not trapped, and would not be inadvertently herded along the road by site traffic.

1.10 Based on a 235 day operational year, the proposed traffic forecast has been calculated. The proposed road would be used for coal traffic during the permitted distribution hours for the Netherton site i.e. 8:00am to 5:00pm (nine hour period) Monday to Friday. No coal traffic would be permitted on Saturdays or Sundays. Vehicular movement would be spread evenly throughout this period reflecting a consistent level of output of material.

1.11 The coal would be distributed from the Coal Transfer Area within the Netherton surface mine by articulated HGV's that typically carry 28 tonnes per load. The transport assessment forecasts that the site would generate in the region of 106 HGV trips per typical weekday, which equates to approximately 12 per hour or one every five minutes. All HGV's would enter and egress the Netherton surface mine via the proposed road.

1.12 The application is accompanied by a planning statement that considers and provides proposed mitigation for a range of issues including natural heritage interests, drainage, impact on amenity, landscape and visual impacts, traffic and transportation impacts, noise impacts, archaeological impacts and air quality.

## **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 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 8.11 of this report.**

## **3. CONCLUSIONS**

3.1 Section 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 (as amended) requires planning applications to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development of the proposed road has been comprehensively appraised against the provisions of the development plan and against other material planning considerations. It has been found that the proposed development would be consistent with the development plan.

3.2 The proposed road would allow operations on the existing transport arrangements through the Skares Road surface mine to cease approximately eight years earlier than would otherwise occur if all coal from Netherton was to be transferred to Skares for processing, thus reducing the number of heavy goods vehicles passing in close proximity to Skares village.

3.3 The introduction of the proposed road would allow the initial stage of the haulage to be carried out on a dedicated private haul road thereby removing HGV's from the local road network and reducing potential impacts on local communities. The main trunk haul stage would be by rail following transportation of extracted coal to the applicant's rail-head at Crowbandsgate. The mode of transport and transport network used in the final delivery stage would be dependent on the customer, but would in most instances involve final delivery by rail to those customers (e.g. power stations) via the dedicated rail access.

3.4 In terms of ecology and biodiversity the development of the proposed road has been designed to avoid impacts to habitats with potential landscape and wildlife value, including the retention of trees, scrub and hedgerows. Retention of such features would ensure that the habitat network largely remains undisturbed. With the inclusion of the avoidance and mitigation measures outlined in the planning statement, the proposed road is not predicted to lead to any residual impacts upon features of ecological value in the long term. In the short term, the proposals to bring forward the restoration of the Skares Road surface mine, would lead to biodiversity and landscape benefits being achieved approximately eight years earlier than the current permitted scheme.

3.5 In relation to landscape and visual amenity, a detailed Landscape and Visual Impact Assessment (LVIA) has been undertaken to examine the potential effects arising from the development of the proposed road on the landscape and visual amenity of the application site and the surrounding area. Although there would be significant effects on landscape and visual receptors, these would be relatively short term, during the lifespan of the mining operations at Netherton. Furthermore, there

would be notable long term benefits in terms of introducing hedgerows, hedgerow renewal, woodland planting and habitat creation which would provide valuable potential for ecological diversification in the local landscape.

3.6 Potential traffic impacts have been assessed in terms of the increase on the B7046 Skares Road link. It has been determined that the increase in vehicular traffic would be minimal i.e. 12 vehicles per hour over the course of a working day, and that the B7046 Skares Road operates with significant reserve capacity. The proposed road has been considered in terms of the level of traffic generated by the extraction scheme. There is certainly a potential for vehicular conflict on the proposed road to occur occasionally, utilising the proposed passing places, however it is unlikely that multiple vehicle conflicts would occur, causing any level of congestion or vehicle stacking onto the highway.

3.7 Accident data has been obtained to inform the access junction design. This data shows that two incidents classified as 'slight' were recorded during the last five year period. Both of the recorded incidents occurred south of Humeston on a stretch of Skares Road which the proposed access would route round. Therefore it is concluded that the proposed northern access road junction is not proposed at a location with an existing accident history, and in fact the proposed route avoids a location with two 'slight' incidents. For the aforementioned reasons, the proposed road is considered to be acceptable in traffic and transport terms and in this regard it is noted that the Roads and Transportation Service has not objected to the proposed development subject to conditions.

3.8 One benefit of the proposed road is that restoration of the Skares Road site can be undertaken once operations have been completed in summer 2011 as opposed to the Processing Area and Internal Coal Road continuing in operation until the cessation of working at the Netherton site. As a result, there would not be a requirement for full processing of the coal as part of the Approved Scheme with the majority of the processing undertaken at the Garleffan site in New Cumnock.

3.9 It is considered that the points of objection have either 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.

3.10 Nonetheless 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 properties in proximity to the site can be minimised to acceptable environmental standards.

3.11 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is 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 securing of the agreed transportation route such that all coal traffic generated by the Netherton site shall follow the route indicated in the submission via the private road and B7046 Changue Road, turn west at the B7046/A70 junction towards Ayr then via the A76 Trunk Road southwards to the Garleffan open cast site at New Cumnock.

(ii) The undertaking, at the applicant's expense and prior to the commencement of any haulage of minerals/coal from the site via the existing public road network, 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. This shall include:

- road safety improvements on the B7046 bends at Humeston Bridge consisting of improved signage to Rural Route Action Plan standards to be submitted and agreed with the Roads Authority due to the additional site traffic/staff/deliveries that would utilise this route to and from the Netherton site;
- the investigation and carry out of drilling and grouting 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; and
- the undertaking of ground surveys/investigations to ensure the integrity of the B7046 at the private road access point and at the U743 crossing point and carry out, at their expense, any works identified as required to ensure the integrity of the public road at these locations;

all as prescribed in the Roads and Transportation Service consultation response dated 21 March 2011.

(iii) The securing of a road maintenance contribution of £0.10p per tonne of minerals hauled via the public road system to repair and continue to maintain the public section of the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route A70, U743 crossing point and B7046.

(iv) The extension of the obligations of the existing Section 75 Agreement for the Netherton site to encompass the current application site insofar as considered relevant to the present application.

## **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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**10/1020/PP: DEVELOPMENT OF A DEDICATED COAL HAULAGE ROAD AT  
CHANGUE FARM, NEWFIELD ROAD TO SKARES ROAD, BY CUMNOCK  
ADJACENT TO NETHERTON SURFACE MINE BY SKARES**

**APPLICATION BY AARDVARK TMC LIMITED**

**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 the Head of Planning and Economic Development considers that it would be appropriate for members to take the decision in respect of the proposed development as it raises a significant new issue in relation to the dispatch and transportation of coal from an existing opencast coal site.

### **2. APPLICATION DETAILS**

2.1 **Background:** Planning permission for the winning and working of coal by opencast methods at the Netherton Site, near Cumnock was approved by the Council on 19 October 2010. In the original planning submissions, It had been the intention of the applicant that coal from the Netherton Surface Coal Mine would be distributed by HGV's to their Garleffan site for processing, blending and onward distribution to market by rail via their Crowbandsgate rail facility, both based at New Cumnock.

2.2 At the Southern Local Planning Committee meeting on 30 April 2010, concern was expressed by members regarding routing of HGV's to Garleffan along Skares Road and as a result, the application was continued for further consideration to allow alternative distribution arrangements as part of the Netherton application to be explored by the applicant.

2.3 At a subsequent meeting of the Southern Local Planning Committee on 25 June 2010, the applicant presented alternative arrangements whereby coal from the Netherton Surface Mine would instead be processed and distributed via their adjoining Skares Road surface mine for onward distribution via the third-party Killoch rail facility and/or Ayr Harbour. The alternative arrangements were considered acceptable and the Netherton application was granted planning permission on that basis.

2.4 The applicant is nevertheless still desirous of distributing coal from Netherton via Garleffan and Crowbandsgate as both these facilities are owned and operated by the applicant. However, in order to address the local HGV routing concerns expressed at the April 2010 planning committee, the applicant is now proposing to develop a new dedicated coal haulage road. Development of the proposed road was not previously

available to the applicant at the time of the Netherton application principally due to land ownership constraints.

2.5 In considering this planning application submission, Members should note that the Netherton surface mine already has the benefit of planning permission and that the application under consideration is not associated with any new mineral development at the site. This planning application submission is solely for the new access arrangements associated with the removal of coal from the Netherton site.

2.6 **Site Description:** The application site extends to approximately 4.1 hectares and principally comprises the route of the proposed road. The application site also includes areas which adjoin the proposed road, within which it is intended to install water management measures associated with the development and undertake junction works connected with the proposed road.

2.7 The proposed road would run from the U743 Newfield Road at Netherton for approximately 2.2 kilometres (1.4 miles) across Changue Farm to join the B7046 Skares Road, north of Humeston Bridge, south of Cumnock. The major road network is thereafter easily accessible from the northern junction of the proposed road.

2.8 The application site is predominately agricultural land used for cattle grazing. The majority of the fields are improved damp grassland. The field boundaries are all fenced and the majority are also lined with sizeable mature beech trees. In places, hawthorn, rowan and birch scrub are also present such that boundaries are better described as linear woodland or shelterbelts.

2.9 An unnamed burn is present at the north of the application site. It is unfenced from the adjacent field, with grassy earth banks and beech trees on the western side. The northern limit of the proposed road crosses a disused railway, which has become dominated with species such as nettles and brambles.

2.10 Topographically, the application site slopes gradually from around 233m Above Ordnance Datum (AOD) near its southern end. The middle stretch of the application site falls relatively smoothly from 230m AOD to 190m AOD near Changue Farm. Thereafter gradients increase and are slightly steeper, falling a further 20m in level over a short distance to the northern end of the route.

2.11 There are no formal footpaths or other formal public rights of way crossing the site but the C10 Coalfield Cycle Route (Cumnock to Dalmellington) is identified as a core path along both the U711 Cairn Road and U743 Newfield Road. There are a number of electricity and water public services running along the route of the U743 Newfield Road and at various positions along the route of the proposed road.

2.12 The nearest settlement to the southern end of the proposed road is Skares which is located approximately 2km (1.25 miles) west of the development. The closest part of Cumnock is located approximately 0.7km (0.4 mile) from the proposed road.

The closest dwellings and other sensitive receptors to the application site are outlined below:-

| <u>Residence</u> | <u>Approximate Distance<br/>From Proposed Road</u> |
|------------------|--|
| • Mossback House | 180m   |

|                                    |      |
|------------------------------------|------|
| • Crofthead Residence              | 200m |
| • Changue Farm                     | 255m |
| • Mossback Farm                    | 275m |
| • Changue Cottage                  | 280m |
| • Cairnlee Residence               | 420m |
| • Cairn Farm Residence             | 430m |
| • Garallan Farm                    | 440m |
| • Glengyron by Cumnock             | 540m |
| • Bankend Cottages, Cumnock        | 560m |
| • Garallan Cottage                 | 575m |
| • Humeston Residence               | 660m |
| • East Ayrshire Community Hospital | 670m |
| • Garallan School House            | 690m |
| • Woodhead Cottage                 | 700m |
| • Glenramskill Avenue, Cumnock     | 800m |

**2.13 Proposed Development:** The planning application makes provision for the development of a 2.2km (1.4 miles) dedicated coal haulage road to run from the Coal Transfer Area at Netherton surface coal mine to a new junction with the B7046 Skares Road. This proposed road is intended to be a private road that has been designed by qualified engineers and in summary comprises:-

- suitably configured junctions with the existing public road network;
- a 4m wide hard surfaced roadway to accommodate HGV traffic;
- a series of passing places along the length of the route;
- surface water run-off management measures; and
- gated security to prevent unauthorised use of the road.

2.14 The proposed road has been designed as single track with passing places. Generally the road is 4m in width, widening to 8m over 20m lengths at the intended passing places. Passing places have been located at the extents of forward visibility, and are large enough to accommodate one or two vehicles travelling in each direction. The road follows existing ground levels as closely as possible, and rises steadily from its northern end with a maximum gradient of 8.75% over a short distance along its length.

2.15 Soils along the route of the proposed road would be stripped in advance of the roads formation. The soils would be lifted and reused in other parts of Changue Farm for ground improvement works and/or used in the restoration of the Netherton site. The road would be constructed wherever possible using materials sourced from Netherton surface mine and would be conventionally constructed in either concrete or asphalt with positive falls to shed water to the edge.

2.16 A bound drainage surface would be provided to ensure traction is maintained, and braking is achievable. A drainage ditch will also be provided along the edge of the route corridor to intercept surface water from the adjacent field, to prevent it from flowing over the road edge.

2.17 The proposed road has been routed as far as possible to follow existing field boundaries with an emphasis on preventing impacts to wildlife. The proposed road has for instance been designed to avoid woodland, mature trees and the unnamed burn,

with the result that only very minimal numbers of young trees would be affected by the proposed development.

2.18 The junction with Newfield Road at the southern end of the route would be a priority crossroads, with traffic on Newfield Road having priority and all site traffic giving way. The junction with Skares Road is designed to accommodate traffic heading to and from the north (Cumnock). The junction geometry allows for traffic to turn to and from the south, as this allows for future farm usage and for occasional maintenance vehicles for the Netherton site, however these vehicles would need to use the full width of the junction to make their turn. The junction is located to achieve maximum visibility for all traffic.

2.19 Gates would be provided across either end of the proposed road. These would be located as close as possible to the edge of the minor road, as drivers approaching closed gates will be expected to stop and open both sets prior to continuing. The approaches to the junction would also act as a passing place. The junctions of the proposed road with Newfield Road (but not the route of the road itself) will require to be illuminated. Lighting, signage and road marking requirements will therefore require to be agreed with the Council.

2.20 It is intended that use of the proposed road would be shared with the landowner of Changue Farm, who would routinely use the road for agricultural access. Gated farm crossings will be provided at locations to be agreed with the farmer, with each crossing suitably surfaced to prevent excessive mud being carried onto the road surface by cattle and farm traffic.

2.21 The proposed road would be fenced to prevent cattle straying onto the road; however fences will be set back from the road edge to ensure that any cattle that may have strayed onto the road are not trapped, and would not be inadvertently herded along the road by site traffic.

2.22 Based on a 235 day operational year, the proposed traffic forecast has been calculated. The proposed road would be used for coal traffic during the permitted distribution hours for the Netherton site i.e. 8:00am to 5:00pm (nine hour period) Monday to Friday. No coal traffic would be permitted on Saturdays or Sundays. Vehicular movement would be spread evenly throughout this period reflecting a consistent level of output of material.

2.23 The coal would be distributed from the Coal Transfer Area within the Netherton surface mine by articulated HGV's that typically carry 28 tonnes per load. The transport assessment forecasts that the site would generate in the region of 106 HGV trips per typical weekday, which equates to approximately 12 per hour or one every five minutes. All HGV's would enter and egress the Netherton surface mine via the proposed road.

2.24 The application is accompanied by a planning statement that considers and provides proposed mitigation for a range of issues including natural heritage interests, drainage, impact on amenity, landscape and visual impacts, traffic and transportation impacts, noise impacts, archaeological impacts and air quality.

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council Roads and Transportation Service has **no objection** to the planning application but provides the following advice:-

- All coal traffic generated by the Netherton site will be required to follow the route indicated in the submission via the private road and B7046 Changue Road, turn west at the B7046/A70 junction towards Ayr then via the A76 Trunk Road southwards to the Garleffan open cast site at New Cumnock.
- 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. This would include the re-surfacing of the U743 Newfield Road from the B7046 junction to the site entrance (due to the traffic generated on this section of the “U” class road), full re-construction of the U743 crossing point and B7046 private road access point as well as works previously identified at the east and west accesses into the site. In addition to this work, the applicant must provide a road maintenance contribution of £0.10p per tonne of minerals hauled via the public road system (reduced due to the reduction in length of public road being utilised for coal haulage) to repair and continue to maintain the public section of the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route A70, U743 crossing point and B7046.
- The applicant will be required to submit details of and complete, at their expense, road safety improvements on the B7046 bends at Humeston Bridge consisting of improved signage to Rural Route Action Plan standards to be submitted and agreed with the Roads Authority due to the additional site traffic/staff/deliveries that would utilise this route to and from the Netherton site.
- The applicant will be required to fully investigate and carry out drilling and grouting work that they have 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.
- The applicant will be required to undertake ground surveys/investigations to ensure the integrity of the B7046 at the private road access point and at the U743 crossing point and carry out, at their expense, any works identified as required to ensure the integrity of the public road at these locations (potentially re-construction of the public road at both these locations).
- At the new access onto the B7046, (drawing CF3/1C) the applicant has indicated visibility splays of 4.5m by 215m with no obstruction over 1m in height. This would appear to be over land outwith the developer’s control which would need to be clarified. Visibility splay of 2.5m by 215m at 1m high would be acceptable with the provision of ‘Works Access Only’ signage to diag. 7306 and 7305 on either side of and at the new private road junction. Signage would also be required to ensure members of the public did not attempt to use the private road. Signage details must be submitted for approval.
- At the new crossing over the U743, (drawing CF3/1C) the applicant has not indicated visibility splays to either side. Visibility splay of 2.5m by 215m with no obstruction over 1m in height would be required to be formed on both sides of

the crossing point with the provision of appropriate signs on the U743 to either side of the new private road junction. Details will require being submitted and agreed with the Roads Authority and provided at the applicant's expense, indicating a road junction where works traffic is crossing.

- Signage will also be required to indicate that the private road is not open to public use and must be gated when not in use by works traffic.
- The private road will require to be bituminously surfaced with an operational wheel wash within the site. No water, mud or other debris must be deposited on to the public road at either access point.
- Both public road access points will require strengthening of the adjacent section of public road to accommodate the proposed traffic. This work must be quantified, agreed and implemented prior to haulage of minerals/coal from the site.
- No surface water must be allowed to discharge from the private road onto the adjacent public road at either access.
- A Transportation Management Plan (incorporating the Transport Protocol) must be implemented and observed by the applicant and their hauliers.

***Should consent be granted for the proposed development, the above matters can be secured either by appropriate conditions or by means of a Section 75 Agreement.***

3.2 The Scottish Environment Protection Agency has **no objection** to the planning application but provides the following advice:-

- We have reviewed the information provided in this consultation and it is noted that, although the site appears to lie outwith the Indicative River and Coastal Flood Map (Scotland), the application site is adjacent to various small watercourses and consequently the site may be at risk of flooding;
- Although we acknowledge that the proposed development may encroach upon the flood plain of the minor watercourses within the site, given the rural location of the structure and that the application involves a commercial flood risk, in this instance, we are satisfied that the proposal is unlikely to materially impact properties or flood risk elsewhere. However, given the uncertainty of flood plain volume lost, we would recommend that any proposed land-raising should be kept to a minimum;
- We acknowledge that a SUDS attenuation pond is proposed, as such, it is recommended that the Flood Prevention Authority (FPA) confirm the acceptability of post development run-off and management for flood control purposes. For information, we generally recommend any proposed mitigation measure should be designed to contain the 1 in 200 year flood to ensure there is no increase in flood risk downstream of the development;
- We would confirm that the provision of two levels of treatment for the road drainage runoff is satisfactory and in compliance with the requirements of The Water Environment (Controlled Activities) Regulations 2005 (as amended)

(CAR);

- The discharge of road drainage from the site to the water environment (after treatment) may require to be authorised under CAR (length of drainage catchment >1km). This activity will require to be covered by a simple licence;
- We would expect current best practice guidance to be used for the construction of the swales, cut off ditches and pond at the site, e.g. CIRIA C697 Design Manual; and
- We would expect the applicant to take all appropriate measures during the construction phase of the project to minimise the pollution risks to the small watercourses in the vicinity of the proposed new roadway.

***The applicant has been advised of the comments of SEPA.***

3.3 Scottish Natural Heritage **does not object** to the development of a dedicated coal haulage road at Changue Farm but indicates that the proposal is likely to have adverse impacts on the natural heritage in this location. These impacts could be avoided altogether if coal derived from the Netherton surface mine is instead carried via the existing Skares road to the processing site at Garleffan and via the A76 trunk road to Crowbandsgate. Whilst the B7047 public road may require some degree of upgrading in order to increase capacity, it is anticipated that this would represent the least expensive option both financially speaking and in terms of environmental cost. SNH also makes the following points:-

- It is understood that the preferred option for the distribution of coal from Netherton for obvious logistical reasons is via the existing processing site at Garleffan and then by rail from the Crowbandsgate rail facility at New Cumnock. The proposal to install a new road at Changue Farm is therefore considered necessary by the developer to facilitate this distribution chain.
- We acknowledge that in avoiding the 'do nothing scenario' which would involve processing the coal at the Skares Road surface mine, the proposal for the installation of a new road allows the habitat and landscape restoration of the Skares Road site to proceed unhindered. We have no interest in delaying this restoration process but we consider that there is an alternative to constructing a new road in this location.
- We welcome the submission of the Planning Statement (dated December 2010) which accompanied this application and subsequent survey work undertaken by SLR Consulting in response to our initial comments. We welcome the comprehensive approach adopted and acknowledge the high standard of work. The report identifies a number of impacts:-
- Woodland: The *Ayrshire & Arran Woodland Strategy 2003* (currently undergoing revision) contains policies specific to the safeguarding of these precious and increasingly fragmented habitats:

NB1 *Safeguard, extend and enhance areas of ancient and semi-natural woodland, in accordance with the objectives of the Ayrshire Local Biodiversity Action Plan.*

- Woodlands and farmland birds are identified as priority habitats by the Ayrshire Local Biodiversity Action Plan (LBAP). The LBAP includes targets which highlight the need to improve semi-natural features on farmland including hedges which provide important corridors for birds and other wildlife by connecting otherwise fragmented habitat.
- On the basis of existing information, the report considers that the study area is unlikely to be critical for populations of any species of fauna or flora of nature conservation importance. However, due to the presence of a network of woodland, trees and hedgerows, some of which are long established the study area is assessed as being of up to local importance.
- SLR acknowledge in the report that the Long Established woodland present at the site is of significant value, and note the targets for woodland habitat improvements that are included within Local BAP and the Ayrshire & Arran Woodland Strategy (2003).
- The Planning Statement estimates that the proposed development would result in the permanent loss of approximately 2.3ha of improved grassland, 0.15ha of plantation broadleaved woodland at the south of the site, 0.15ha of ruderal vegetation at the north of the site and less than 10 linear metres of existing remnant hedgerow. It goes on to conclude that the resulting habitat loss would result in a minor reduction in potential foraging areas for bats and vegetation that may provide cover and breeding habitat for a variety of bird species.
- The report also acknowledges that the site clearance activities would involve unavoidable loss of, or damage to, wildlife that is present in the habitats that are being cleared. In the absence of mitigation, the loss of individuals of the common birds, small mammals, invertebrates and plant, is predicted to lead to a significant impact on individual animals that are likely to form part of wider populations that are of less than local value.
- We consider that the installation of the proposed road is contrary to NB1 (above) and LBAP targets and whilst hedgerow planting is proposed as part of the development we do not consider that this represents satisfactory mitigation for the anticipated habitat loss/disturbance.
- SNH advocates the approach whereby mitigation for impacts however minimal resulting from development is best achieved through avoidance of those impacts altogether. We consider that the natural heritage impacts associated with this proposal and identified as being of local significance could be avoided altogether by allowing the coal haulage traffic from Netherton OCCS to use the B7046 Skares Road access to the A70 thereby facilitating the developers preferred option of processing harvested material at Garleffan and subsequently distribution from the rail hub at Crowbandsgate.
- Consideration of the alternative route: B7046 Skares Road: We note that the proposed new access road via Changue Farm joins the B7046 directly at its northern-most end requiring coal haulage vehicles to travel the Skares Road for approximately 800m before reaching the A70.
- Given that the Changue Farm access road proposal requires that coal haulage traffic uses the Skares road for this distance we can see no reason why the

same vehicles should not be able to travel the additional 1.9km (1.2 miles) along the Skares road in order to access the Netherton site.

- We consider that the Skares road provides an adequate alternative to the construction of an entirely new road less than 1km (0.62 miles) away. If coal haulage traffic is permitted instead to travel from the Netherton access to the Skares road and on for 2.7km (1.68 miles) to the A70 then the natural heritage impacts associated with the installation of the new road can be completely avoided.
- We understand that the developer has offered to undertake the necessary improvements to the Skares road to accommodate the increase in volume and weight of traffic that this would entail. We also understand that the Highways Authority have approved the routing of coal haul vehicles along the Skares road.
- Whilst the use of the Skares road by coal haul traffic will be limited to the lifetime of the mining operations at Netherton the improvements made to the road will provide lasting benefit to the local community long after the mining operations have ceased.
- Given that the new access proposed via Changue Farm is to be a permanent structure with no plans to reinstate the original landscape following cessation of mining operations we are concerned that the road will become attractive to nuisance users such as quad bikes, motocross etc who may be drawn to the new access. In our experience these users rarely confine their use to the road and this may lead to unauthorised off-roading activity on adjacent farmland. Locked gates present little deterrent to off-road users and once mining has ceased the proposed access has potential to generate undesirable activity.
- Should planning permission for this application be granted we request that the following be conditions of planning consent to reduce the adverse impacts anticipated as a result of this development:-
  1. Extend the distance between the canopies of the trees in the shelterbelts and linear woodland and the proposed road from 5m to a minimum of 10m.

REASON – To minimise effects of ground vibration in undermining old/unstable root systems along traditional field boundaries and protection of older trees.

2. Construction of the new road should be scheduled to take place outwith the period between March and August inclusive.

REASON – To avoid damage or disturbance to breeding birds. All wild birds in the UK are protected under the Wildlife & Countryside Act 1981 (as amended).

***Conditions can be attached to any consent granted for the proposed development to meet the requirements of Scottish Natural Heritage.***

3.4 The West of Scotland Archaeology Service states the proposals would require that most of the area applied for will be subject to ground disturbance/site preparation/topsoil stripping etc. A simple watching brief during the main pieces of proposed topsoil stripping on the site is advised. This would allow the on-site

archaeologist to identify whether there are any traces of buried remains surviving on the site and through further excavation, sampling, artefactual content etc, to illuminate the broad dates for any such activity. WOSAS would advise planning authorities to consider attaching an archaeological watching brief condition to any consent they may be minded to grant. A model condition is given in paragraph 35, page 13, of Planning Advice Note 42 (PAN 42); although experience has shown that the wording given in this model is confusing to most applicants and their agents. I would therefore recommend the following draft in its place:-

*"The developer shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to the Planning Authority, during all ground disturbances. The retained archaeological organisation shall be afforded access at all reasonable times and allowed to record, recover and report items of interest and finds. A method statement for the watching brief will be submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority prior to commencement of the watching brief. The name of the archaeological organisation retained by the developer shall be given to the Planning Authority and to the West of Scotland Archaeology Service in writing not less than 14 days before development commences."*

This condition would ensure that if any sensitive archaeological remains or features were encountered during initial topsoil stripping during ground excavation works associated with the development, they could be adequately excavated and recorded by the archaeologist retained by the developer, before their destruction.

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

3.5 East Ayrshire Council Environmental Health Service has **no objection** to the planning application but provides the following advice:-

- Noisy work on the site during construction should be restricted to 7am to 7pm Monday to Friday, 8am – 1pm on a Saturday, and no noisy work on a Sunday;
- Noise from the works during construction should at no time cause the underlying background noise level LA90(1hour) to rise by more than 3dB(A) at the nearest noise-sensitive location;
- Suitable dust suppression measures should be introduced where appropriate during the construction phase;
- All waste arising from the works should be disposed of to the satisfaction of the Waste Management Authority and otherwise than by burning;
- All drainage should be completed to the satisfaction of SEPA and/or Scottish Water; and
- Our Contaminated Land Officer has not identified any specific area of concern but has suggested the inclusion of a general caveat on any conditions of approval to the effect that if any unsuspected contamination is encountered during the proposed works, the Council should be informed accordingly along

with any required remedial measures formulated to address the risk of exposure to key receptors and subsequent confirmation of completion of works.

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

3.6 Scottish Power Energy Networks has **no objection** to the proposed works/development.

3.7 Scotland Gas Networks has advised that they have no gas mains in the area but gas pipes owned by other Gas Transporters and also privately owned apparatus may indeed be present.

***The applicant has been advised of the comments of Scotland Gas Networks.***

3.8 East Ayrshire Roads and Transportation Division (Flooding Section) has advised that as the site has no discernable sources of flooding we would have **no comments** as far as flood risk, other than to require that all drainage discharges to watercourses be approved/sanctioned by SEPA.

3.9 East Ayrshire Business Development Section has **no comments** as this application is solely for new access arrangements for the haulage of coal from the consented Netherton site.

3.10 Scottish Water has **no objection** to the planning application but has provided standard advice regarding its infrastructure and operational requirements.

3.11 Cumnock Landward Community Council and the Royal Society for the Protection of Birds (Scotland) have not responded to the consultation letters.

#### **4. REPRESENTATIONS**

4.1 A total of six letters of representation from six signatories have been received objecting to or raising concerns regarding the proposed development. The main points of objection can be summarised as follows:

4.2 Comment is only passed regarding the visual impact from Cairn Farm. The windows of the Cairn face north and south but the windows of Cairnlea face east and west, presenting a direct view onto this proposed road. Why was no mention made of this?

***As is consistent with Landscape and Visual Assessment (LVIA) methodology, whilst the applicant has made reference to a number of farmsteads, the LVIA is not intended to be a residential amenity survey. The reference to a small number of residential properties is due to their proximity to selected viewpoints on public highways/rights of way.***

***The viewpoint locations were selected to represent a broad range of receptors from varying distances, directions and elevations. The viewpoint location at Cairn Farm was used in the Netherton Coal Mine submission (December 2009) and chosen for the assessment of the coal haulage route***

**at Changue Farm because of its relative proximity to the proposed development. As referenced in our methodology; the viewpoints selected are 'representative' of key sensitive receptors locally (i.e. receptors within close proximity of the viewpoint location, including the properties referred to in the objection letter). Although the applicant has not commented specifically on views from the properties of Cairnlea and the Bungalow at Mossback, they are within close proximity and may therefore experience significant effects.**

4.3 No mention has been made of the new bungalow at Mossback which will be significantly affected by this proposal.

**The applicant has apologised for any inconvenience caused by Mosside not being shown on the planning application drawings. This has occurred as a result of Ordnance Survey mapping data not having recorded the position of the property. The applicant does not agree however that Mosside House would be subjected to significantly increased environmental effects as has been suggested and they have reviewed their assessments in respect of noise and dust in particular to consider this.**

**In respect of noise and vibration, whereas the assessment at Section 8 refers to Mossback, the noise monitoring and the subsequent assessment was in fact undertaken in respect of the Mosside property. The applicant's assessment had (incorrectly) assumed that Mosside formed part of the Mossback holding. It is confirmed therefore that the conclusions of the noise assessment that the Mossback would experience 'a minor, barely perceptible, impact' are applicable to the Mosside property.**

**The air quality assessment (being principally a desk based assessment) did not consider the property at Mosside. The applicant has however undertaken a reassessment of effects at the property. This reassessment has concluded that effective dust control is required to ensure potential dust impacts are not experienced to both the residences at Mosside and Mossback.**

**The mitigation measures that are proposed in Section 8 of the Planning Statement are considered equally suitable for Mosside as they are for Mossback and no significant impacts on local air quality from the development should occur.**

4.4 I have grave concerns regarding the use of the road when operations are complete. I suspect it will become a race track for boy racers and a dumping ground for old cars as has happened at the previous site which ceased production in the 1980's.

**With regards the after-use of the proposed road, it should be noted rather than being abandoned, the road (but not the proposed road junctions) would be retained for agricultural purposes to allow internal access between different parts of the landowner's agricultural landholding. Given that the access will be retained operational, we do not believe that the complainants concerns can be overcome.**

***This issue can be covered by a planning condition requiring the stopping up of each of the access junctions upon completion of the applicant's coal haulage operations.***

4.5 The building of this road is totally unnecessary as good farmland will be lost and damage will be done to woodland and animal habitats.

***It is not considered that the loss of agricultural land is a determining issue in this planning application. The quality of the agricultural land to be occupied is limited and the proposed routeing minimises the disturbance to operations on the farm by following field boundaries wherever possible.***

4.6 I am presently building an extension to our house and our windows will be facing towards this new road.

***There is currently no planning permission granted for the erection of an extension at the complainant's property, although any proposed extension may benefit from 'permitted development rights'. Nonetheless, the proposed extension would require being the subject of a building warrant and it's respectfully suggested that the objector may wish to consider how this proposed development may impact on the views and outlook from any proposed extension before applying for the necessary consent. However, at this time the extension does not exist and therefore this particular point is not considered material in the determination of this particular application.***

4.7 The prevailing wind comes from the direction of the road so noise will be a problem.

***It is not anticipated that adjacent properties would be subjected to significantly increased environmental effects as has been suggested and this is borne out by the environmental assessments that accompany the planning application.***

4.8 I foresee major traffic problems where this road will join the Ayr Road as these lorries will need to take two lanes in order to turn onto the road as is the case at Garlaff landfill site. This will impact on traffic flow and will create unsafe conditions at this junction for other motorists.

***The traffic concerns that are alluded to have not been borne out by the traffic assessment set out in the Planning Statement or indeed by the consultation response from the Council's Roads and Transportation Service. Both the assessment and the consultation confirm that the development can proceed without significant impacts to traffic or road safety.***

4.9 It would be much better to use the money to upgrade the Cumnock to Skares road which is in a dreadful state. This would benefit the whole community and leave a lasting legacy of a decent road to be used by buses, bin lorries etc'.

***This point is noted.***

4.10 Our clients were disappointed that their objection to the Netherton planning application (reference number 09/0891/PP) was not taken into account, but they were relieved to the extent that the coal being extracted from the site was to go west (via the existing Skares infrastructure).

***For operational, coal blending, commercial and logistical reasons it is necessary for the applicant to distribute coal from Netherton via Crowbandsgate and the committee may recollect it had been the applicant's original intention that coal would be distributed by public road. However, at the Southern Local Planning committee meeting on 30th April 2010, members made it clear that they would not support the Netherton planning application where HGVs were intending to be routed via Humeston Bridge and the committee requested alternative distribution arrangements for consideration. Members have also previously expressed concerns about HGV traffic from the development passing through Ochiltree.***

***Alternative routing options from Netherton to Crowbandsgate have been evaluated and discounted on a combination of land ownership, practical, financial and amenity grounds. The need for the coal haulage road is itself established through the requirement for coal to be distributed via Crowbandsgate; however, there are currently no viable public road routes from Netherton to Crowbandsgate that would be practical and economical to construct.***

4.11 The application makes no mention of our client's house which is not shown on the Ordnance Survey map used to prepare the application drawings. Our clients calculate that their house is approximately 180 metres to the east of the proposed road'.

***Comments as per paragraph 4.3 above.***

4.12 Our client's position is that they already have to contend with the opencasting generally to the south of their house. The proposed new road infrastructure will significantly increase the impact of the development on our client's environment in relation to noise, dust, vibration and lighting disturbance'.

***Noise is one of the most contentious issues involved with this application considering the close proximity of the nearby houses and farms. An assessment of noise has been carried out with reference to relevant standards and guidance. The assessment has considered both the potential for the construction and operational proposals to give rise to noise and vibration impacts at the closest noise-sensitive receptors.***

***The assessment has found that site-related traffic movements along the proposed road would have a minor impact at Crofthead and Mossback Farm during the night-time and at Crofthead during the day-time. The assessment has also shown that there would be no impact at any of the other noise sensitive receptors assessed during either day-time or night-time periods.***

***Based on the results of the assessment, noise and vibration is not expected to pose a material constraint for the proposed development.***

***Assessment of potential dust impacts at dust sensitive receptors in proximity to the route of the proposed road has concluded that effective dust control will be required to ensure that cumulative effects are not experienced as a result of the proximity of both the Approved Scheme and the route of the proposed road, particularly in relation to the residence at Mossback Farm.***

***Mitigation measures have been proposed and are in accordance with those recommended within the relevant Planning Advice Note (PAN 50) in order to ensure that all potential dust impacts are reduced to a significant level. The residual impact from the proposed activities is considered to be insignificant at all receptor locations.***

***All potential dust impacts from the proposed development are considered to be reversible i.e. the risk of impact will cease on completion of the extraction and restoration activities at the site. The impacts from the proposed road are considered to be short or medium term (reflecting the eight year phased extraction period) with no significant impacts on local air quality anticipated from the proposed development.***

***During the operational phase, vehicles associated with the Netherton works would be seen entering and exiting the Netherton site, crossing the road to enter the proposed road. Here lighting at the junction to the adjoining Netherton site would be prominent.***

4.13 The applicant has given a timescale of four to five years coaling (Netherton) with 4.7 million tonnes of coal to be extracted. By my calculations, the timescale and tonnage based on these figures is not achievable. I have calculated that it will take up to 13 years to complete moving the coal and not the four to five years stated by the applicant. Either that or it will take three times as many journeys by each lorry to complete it within the original timescale. I am angry and concerned as either way; this development will significantly impact on us, our home and our business. It would appear that ATH are trying to mask the true extent of the work involved and they have either miscalculated the figures or deliberately omitted to provide the true picture'.

***The details provided in the Netherton planning approval (our reference 09/0891/PP) indicated that the company were expecting to produce approximately 700,000 tonnes of coal per annum (14,500 tonnes per week) at the Netherton site. Coaling work is split into two distinct areas, the southern area was expected to yield 3 million tonnes of coal over a four year extraction period and the northern area was expected to yield 1.1 million tonnes of coal over a two year extraction period, thereby giving a total extraction rate of 4.1 million tonnes over an approximate six year period i.e. 700,000 tonnes of coal per annum as detailed in the original planning submission.***

***It is anticipated that there will be 106 HGV trips per day on the proposed section of road (each carrying 28 tonne loads) between the hours of 8am to 5pm, five days a week i.e. Monday to Friday.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (2007), the Adopted East Ayrshire Local Plan (2010) and the 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 Structure Plan includes a commentary and policies on minerals including coal and refers to the East Ayrshire Opencast Coal Subject Plan as providing detailed policies concerning coal extraction.

***The 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 Local Plan

5.3 The East Ayrshire Local Plan was adopted on 26 October 2010 and therefore represents the most up to date planning policy position in East Ayrshire. The Local Plan states at paragraph 4.18:-

*‘Opencast coal extraction is addressed separately in the Adopted East Ayrshire Opencast Coal Subject Plan and the local plan therefore deals specifically with all minerals other than coal’.*

5.4 The Local Plan is therefore not generally considered part of the development plan for opencast coal development in East Ayrshire. However, given that the proposed development is for the provision of a new road, albeit for coal haulage rather than opencast coal extraction, it is considered pertinent to regard the Local Plan to be part of the Development Plan for the purposes of the current proposal.

5.5 Paragraph 4.23 states a prime objective of the Local Plan insofar as minerals are concerned as being:-

- To maximise the economic benefits that could accrue to East Ayrshire through exploitation of the area’s mineral resources whilst protecting local residents and communities from the adverse effects of extractive operations and protecting the landscape and environmental amenity of the area.

5.6 Local Plan Strategic Policies ENV 2, ENV 13, ENV 17 and ENV 18 seek to protect internationally, nationally and locally, designated natural heritage resources. In addition, Policy ENV 13 states that the Council’s support for conservation of *‘existing landscaping features which are of major importance for wild fauna and flora, including linear features such as rivers and existing field boundaries and other features...which are essential for the migration, dispersal and exchange for wild species’.*

***The proposed road has been routed as far as possible to reflect field boundaries, with an overarching driver on wildlife protection. For instance, the requirement to fell trees has been minimised and the long-established woodland located adjacent to the proposed road would be retained. The development would not lead to the fragmentation of existing wildlife corridors.***

5.7 The provision of the proposed road and its intended route is also consistent with the requirements of the East Ayrshire Local Plan which notes at Strategic Policy T2 that the Council will strongly encourage the transportation of freight by rail rather than by road. It further states *'the Council will, where it is considered appropriate, encourage and support the development of 'off-road' haulage routes designed to avoid, where possible, the transportation of bulk freight through the settlement areas'*.

#### East Ayrshire Opencast Coal Subject Plan

5.8 The East Ayrshire Opencast Coal Subject Plan (EAOCSPP) provides detailed guidance relating to sustainable coal extraction throughout East Ayrshire. Section 9 of the EAOCSPP discusses the transportation aspects connected with surface mining developments and makes provision for the associated Policies MIN 18, MIN 19, MIN 20 and MIN 21.

5.9 Policy MIN18: 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.

***In accordance with the thrust of Policy MIN 18, the development of the proposed road would allow the applicant's existing rail facility at Crowbandsgate, New Cumnock to be utilised to distribute coal to market. The route of the proposed road does not pass through any settlement and addresses concerns that had been raised previously in connection with coal traffic using the Skares Road towards Humeston Bridge.***

5.10 Policy MIN20: Any haulage of opencast coal on the public road system will be along clearly defined haulage routes agreed with the Council.

5.11 Policy MIN21: The Council will expect and require potential opencast developers to enter into a Section 75 Agreement with the Council:

- to ensure the highest possible operational standards for the transportation of extracted minerals;
- to ensure best operational practice regarding road safety and operational matters;
- 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;
- to audit and record operational details of the transportation of coal on a regular basis; and

- to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council has formulated 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 currently subscribes to the provisions of policies MIN20 and MIN21 through the existing Section 75 Agreement in place for the Netherton site.***

## **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, 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 have either 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.

### Planning History

6.4 The relevant planning history is as follows:

- (a) CD/95/0254/MIN: Winning and Working of Coal by opencast methods at Skares Road approved on 13 March 1997.
- (b) 97/0596/FL: Revised application for winning and working of coal by opencast methods at Skares Road approved on 15 May 1998.
- (c) 98/0407/FL: Variation of Condition 1 of planning consent 97/0596/FL approved on 01 September 1998.
- (d) 98/0408/FL: Variation of Conditions 36 and 37 of planning consent 97/0596/FL approved on 11 May 1999.
- (e) 98/0694/FL: Temporary access to Skares Road via Ward Farm access approved on 17 December 1998.
- (f) 98/0705/FL: Variation to limit of excavation and increased height of overburden approved on 09 March 1999.

- (g) 00/0010/FL: Modification of Consent 97/0596/FL to allow a nightshift operation at Skares Road opencast site approved on 08 June 2000.
- (h) 00/0117/FL: Variation of Condition 1 of planning consent 97/0596/FL to change operator name from Rackwood to ATH Resources approved on 19 May 2000.
- (i) 00/0685/FL: Proposed extension to existing landfill site in Area B of Skares Road opencast site approved on 22 June 2001.
- (j) 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.
- (k) 02/0691/FL: Proposed opencast coal mining with restoration to nature conservation uses at Hindsward approved on 07 April 2003.
- (l) 04/0210/FL: Extension of coaling area within existing site approved on 25 June 2004.
- (m) 05/0446/FL: Proposed southern extension to Skares Road opencast site approved on 03 October 2005.
- (n) 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.
- (o) 09/0526/PP: Extension of extraction area within permitted site boundary approved on 26 February 2010.
- (p) 09/0891/PP: Extraction of coal with progressive restoration and ancillary works at Netherton by Skares, approved on 19 October 2010.

### Scottish Planning Policy

6.5 The principal planning policy at a national level from the Scottish Governments contained in Scottish Planning Policy (SPP) dated February 2010. The policy contained in the East Ayrshire Opencast Coal Subject Plan is in general terms consistent with the provisions of SPP insofar as it relates to coal developments.

***The Netherton site, now operational, has been assessed in terms of the SPP.***

### Planning Advice Notes

6.6 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.

***Paragraph 62 of PAN 50, Annex C acknowledges that private haul roads can be used to keep heavy vehicles off the public roads thus reducing conflict with other road users, avoiding environmentally sensitive areas and residential areas. Paragraph 63 states that the construction of private***

***haul roads and their subsequent use may result in environmental and/or amenity effects.***

## **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 paragraph 8.11 of this report.

## **8. CONCLUSIONS**

8.1 Section 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 (as amended) requires planning applications to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development of the proposed road has been comprehensively appraised against the provisions of the development plan and against other material planning considerations. It has been found that the proposed development would be consistent with the development plan.

8.2 The proposed road would allow operations on the existing transport arrangements through the Skares Road surface mine to cease approximately eight years earlier than would otherwise occur if all coal from Netherton was to be transferred to Skares for processing, thus reducing the number of heavy goods vehicles passing in close proximity to Skares village.

8.3 The introduction of the proposed road would allow the initial stage of the haulage to be carried out on a dedicated private haul road thereby removing HGV's from the local road network and reducing potential impacts on local communities. The main trunk haul stage would be by rail following transportation of extracted coal to the applicant's rail-head at Crowbandsgate. The mode of transport and transport network used in the final delivery stage would be dependent on the customer, but would in most instances involve final delivery by rail to those customers (e.g. power stations) via the dedicated rail access.

8.4 In terms of ecology and biodiversity the development of the proposed road has been designed to avoid impacts to habitats with potential landscape and wildlife value, including the retention of trees, scrub and hedgerows. Retention of such features would ensure that the habitat network largely remains undisturbed. With the inclusion of the avoidance and mitigation measures outlined in the planning statement, the proposed road is not predicted to lead to any residual impacts upon features of ecological value in the long term. In the short term, the proposals to bring forward the restoration of the Skares Road surface mine, would lead to biodiversity and landscape benefits being achieved approximately eight years earlier than the current permitted scheme.

8.5 In relation to landscape and visual amenity, a detailed Landscape and Visual Impact Assessment (LVIA) has been undertaken to examine the potential effects arising from the development of the proposed road on the landscape and visual amenity of the application site and the surrounding area. Although there would be significant effects on landscape and visual receptors, these would be relatively short term, during the lifespan of the mining operations at Netherton. Furthermore, there

would be notable long term benefits in terms of introducing hedgerows, hedgerow renewal, woodland planting and habitat creation which would provide valuable potential for ecological diversification in the local landscape.

8.6 Potential traffic impacts have been assessed in terms of the increase on the B7046 Skares Road link. It has been determined that the increase in vehicular traffic would be minimal i.e. 12 vehicles per hour over the course of a working day, and that the B7046 Skares Road operates with significant reserve capacity. The proposed road has been considered in terms of the level of traffic generated by the extraction scheme. There is certainly a potential for vehicular conflict on the proposed road to occur occasionally, utilising the proposed passing places, however it is unlikely that multiple vehicle conflicts would occur, causing any level of congestion or vehicle stacking onto the highway.

8.7 Accident data has been obtained to inform the access junction design. This data shows that two incidents classified as 'slight' were recorded during the last five year period. Both of the recorded incidents occurred south of Humeston on a stretch of Skares Road which the proposed access would route round. Therefore it is concluded that the proposed northern access road junction is not proposed at a location with an existing accident history, and in fact the proposed route avoids a location with two 'slight' incidents. For the aforementioned reasons, the proposed road is considered to be acceptable in traffic and transport terms and in this regard it is noted that the Roads and Transportation Service has not objected to the proposed development subject to conditions.

8.8 One benefit of the proposed road is that restoration of the Skares Road site can be undertaken once operations have been completed in summer 2011 as opposed to the Processing Area and Internal Coal Road continuing in operation until the cessation of working at the Netherton site. As a result, there would not be a requirement for full processing of the coal as part of the Approved Scheme with the majority of the processing undertaken at the Garleffan site in New Cumnock.

8.9 It is considered that the points of objection have either 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.

8.10 Nonetheless 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 properties in proximity to the site can be minimised to acceptable environmental standards.

8.11 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is 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 securing of the agreed transportation route such that all coal traffic generated by the Netherton site shall follow the route indicated in the submission via the private road and B7046 Changue Road, turn west at the B7046/A70 junction towards Ayr then via the A76 Trunk Road southwards to the Garleffan open cast site at New Cumnock.

(ii) The undertaking, at the applicant's expense and prior to the commencement of any haulage of minerals/coal from the site via the existing public road network, 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. This shall include:

- road safety improvements on the B7046 bends at Humeston Bridge consisting of improved signage to Rural Route Action Plan standards to be submitted and agreed with the Roads Authority due to the additional site traffic/staff/deliveries that would utilise this route to and from the Netherton site;
- the investigation and carry out of drilling and grouting 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; and
- the undertaking of ground surveys/investigations to ensure the integrity of the B7046 at the private road access point and at the U743 crossing point and carry out, at their expense, any works identified as required to ensure the integrity of the public road at these locations;

all as prescribed in the Roads and Transportation Service consultation response dated 21 March 2011.

(iii) The securing of a road maintenance contribution of £0.10p per tonne of minerals hauled via the public road system to repair and continue to maintain the public section of the haul route in a safe and serviceable condition during the future term of haulage of materials from the site over the route A70, U743 crossing point and B7046.

(iv) The extension of the obligations of the existing Section 75 Agreement for the Netherton site to encompass the current application site insofar as considered relevant to the present application.

## **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 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 8.11 of this report.**

## **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**

22 June 2011  
CG/HM

FV/HM

#### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Letters of representation
5. Adopted East Ayrshire Opencast Subject Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Scottish Planning Policy (SPP)
8. PAN50 and Annexes.
9. Previous planning application history

Any person wishing to inspect the background papers listed above should contact Mr Colin Graham on 01563 576787.

**Implementation Officer: Hugh Melvin**

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 10/1020/PP

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|                                |   |
|--------------------------------|---|
| Location                       | Changue Farm from Newfield Road to Skares Road by Cumnock                                   |
| Nature of Proposal:            | Development of a dedicated coal haulage road  |
| Name and Address of Applicant: | Aardvark TMC<br>Aardvark House<br>Sidings Court<br>Doncaster DN4 5NU                        |
| Name and Address of Agent      | Colin Hume<br>SLR Consulting limited<br>4 Woodside Place<br>Charing Cross<br>Glasgow G3 7QF |

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DPO's Ref: [Colin Graham]  
(01563) 576787

PPO's Ref: [Hugh Melvin]  
(01563) 576753

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

- 1. The development hereby permitted shall ensure for the benefit of the applicant only and the approved operations shall be completed in conjunction with the timescales associated with the consented 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.

- 2. The applicant shall give notice in writing to the Planning Authority of the commencement of operations on site, two weeks prior to their commencement.**

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

- 3. All vegetation clearance, tree felling and soil stripping shall be carried out outwith the bird breeding season (March to August inclusive). Construction of the new road should be scheduled to take place outwith this period. 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 – To avoid damage or disturbance to breeding birds.

- 4. Notwithstanding the plans hereby approved, the distance between the canopies of the trees in the shelterbelts and linear woodland and the proposed road shall be increased from five metres to a minimum of ten metres.**

REASON – To minimise effects of ground vibration in undermining old/unstable root systems along traditional field boundaries and protection of older trees.

5. **Except in the case of emergency and with the prior agreement of the Planning Authority, the dispatch of coal from the site via the new access road shall be confined to between the hours of 8am and 5pm Mondays to Fridays inclusive. No transportation of coal by road shall take place on Saturdays or Sundays except in cases of emergency as indicated.**

REASON – In the interest of residential amenity.

6. **No surface water shall be allowed to discharge from the development site onto the adjacent public road.**

REASON - In the interest of public road safety.

7. **Appropriate measures shall be taken to prevent mud, dirt, dust, slurry, coal or stones being carried onto the adjacent public highway. 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.

8. **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.

9. **The operational conduct of the site shall be in accordance with the Planning Statement (reference number 413.01908.00007 – dated December 2010) which forms part of the approved details of the application.**

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

10. **Noisy work on the site during construction works shall be restricted to 8am to 6pm Monday to Friday, 8am to 1pm on a Saturday, with no noisy work permitted on a Sunday.**

REASON - In the interests of residential amenity.

11. **Noise from the works during construction should at no time cause the underlying background noise level LA90 (1 hour) to rise by more than 3dB(A) at the nearest noise sensitive location.**

REASON - In the interests of residential amenity.

12. **All waste arising from the works shall be disposed of to the satisfaction of the Waste Management Authority and otherwise than by burning.**

REASON - In the interests of residential amenity.

13. **If any unsuspected contamination is encountered during the proposed works, the applicant must inform the Council's Contaminated Land Officer accordingly along with any required remedial measures formulated to address the risk of exposure to key receptors and subsequent confirmation of completion of works.**

REASON - In the interests of residential amenity.

14. **An appropriate noise monitoring programme shall be undertaken during the operational life of the road, using appropriate equipment and recording devices, the details of which shall be agreed with the Planning Authority and the results of which shall be made available to the Planning Authority 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.

15. **Dust and Air Quality Monitoring Programme's 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 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.

16. **Suitable dust suppression measures shall be introduced where appropriate during the construction and operational phases of the development.**

REASON - In the interests of amenity.

17. **Prior to the commencement of operations on site, the applicant shall submit details of the means of illumination proposed at the entrance/exit of the new road and this illumination shall be installed in a manner which minimises any potential nuisance. Operations shall not commence until the Planning Authority has approved such details.**

REASON - In the interests of amenity.

18. **The developer shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to the Planning Authority, during all ground disturbances. The retained archaeological organisation shall be afforded access at all reasonable times and allowed to record, recover and report items of interest and finds. A method statement for the watching brief will be submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority prior to commencement of the watching brief. The name of the archaeological organisation retained by the developer shall be given to the Planning Authority and to the West of Scotland Archaeology Service in writing not less than 14 days before development commences.**

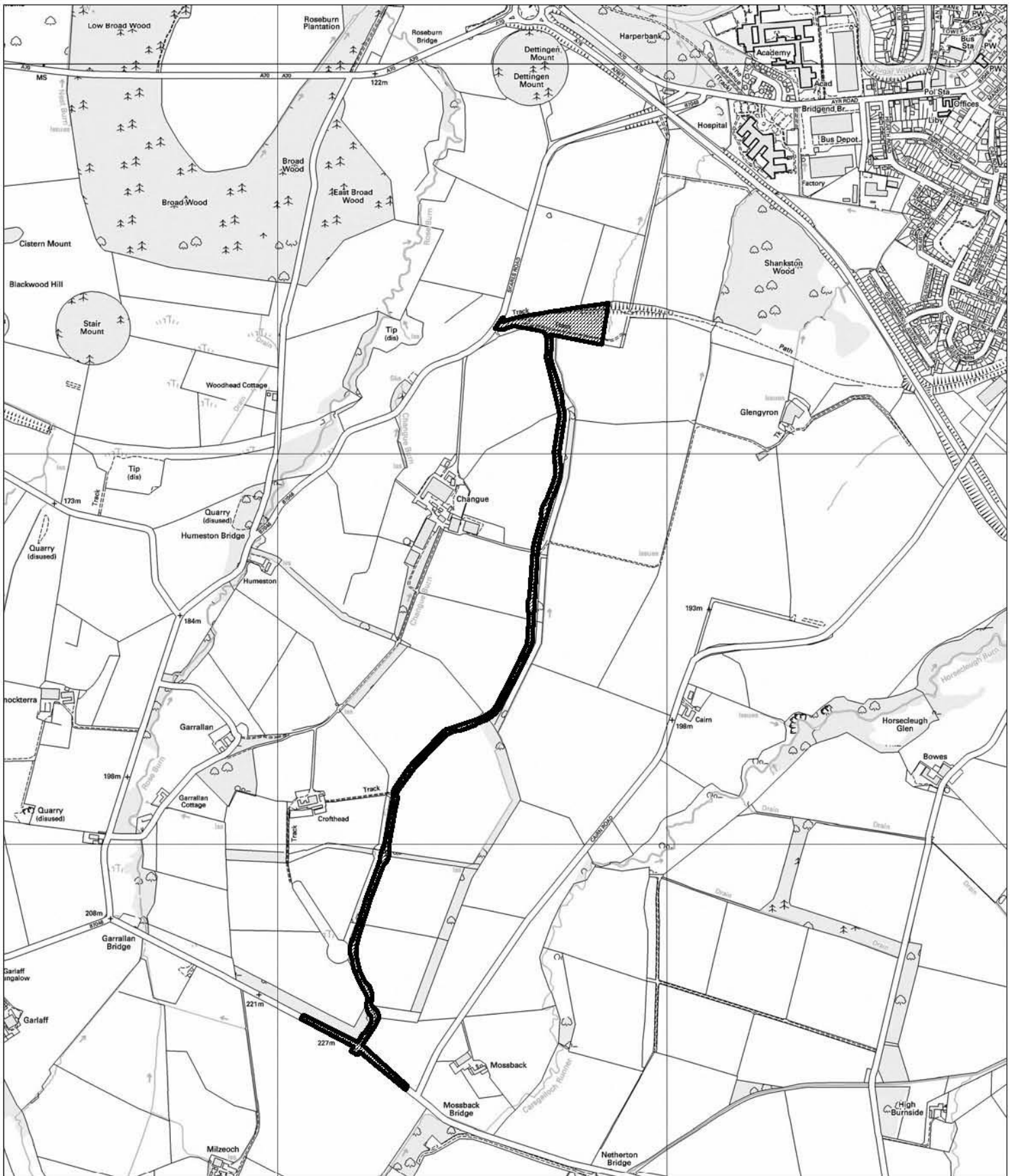
REASON – In order to identify and record any archaeological resource that may be present on site prior to disturbance or destruction by the proposed operations.



#### **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 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.



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| <p>Title/Location     <b>Netherton OCCS, Newfield Road</b></p> <p>                          <b>Cumnock</b></p> <p>                          <b>Application No. 10/1020/PP</b></p> | <p><b>East Ayrshire Council</b></p> <p><b>Department of Neighbourhood Services</b></p> <p>Planning &amp; Economic Development Service,<br/>6 Croft Street<br/>Kilmarnock KA1 1JB<br/>Tel: (01563) 576790    Fax: (01563) 576774<br/>E-Mail : <a href="mailto:Planning@east-ayrshire.gov.uk">Planning@east-ayrshire.gov.uk</a></p> <p><b>Com Date: 26/05/2011</b></p> |
| <p>Key</p> <p> <b>Application Site</b></p>   | <p style="text-align: right;"></p>  |

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