

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 05 AUGUST 2011

11/0293/PP: VARIATION OF CONDITIONS 1, 19 & 20 OF PLANNING PERMISSION CD/95/0058/MIN (AS AMENDED) RELATING TO THE OBLIGATION AND RIGHTS ON, AND RESTORATION OF, THE FORMER DARNCONNER OCCS BY AUCHINLECK

APPLICATION BY VIRIDOR WASTE MANAGEMENT (SCOTLAND) LTD

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=11/0293/PP>

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 This planning application follows on from the earlier application (08/0932/FL) which was refused by the Southern Local Planning Committee at its meeting on 04 September 2009. Since refusal of the application the applicant has been pro-active in engaging with local communities and other stakeholders in order to further develop the restoration proposals to try and find a solution which incorporates the aspirations of all parties which are practical and achievable.

1.2 This liaison has been ongoing throughout 2010 into 2011 and has included site walkovers, meetings, presentations and a one day drop-in event which was held at Auchinleck Community Centre on 03 March 2011. This event was well attended and provided useful feedback to the applicant which has helped inform the finalised restoration proposals.

1.3 The relevant planning conditions which this application seeks to vary relate to planning consent CD/95/0058/MIN (approved on 11 September 1996) and are as follows:-

(1) That the development hereby permitted shall ensure for the benefit of VWM (Scotland) Limited or its legal successor only; that it shall be commenced within six months of the date of the issued decision and that the approved operations shall be completed within 10 years of the commencement of the date of the operations or at such other time as may be agreed with the planning authority.

REASON: In order to retain effective planning control over the site and to ensure that works are commenced and completed to an agreed timescale.

The applicant has requested that Condition 1 be further amended to the effect that the planning permission no longer ensures for the benefit of Viridor Waste Management (Scotland) Limited or its legal successor only.

1.4 Condition 19 states:-

(19) That the site shall be progressively restored in accordance with the scheme submitted as part of the planning application and which is detailed in the Environmental Statement and the supporting letter from S.B. Minerals dated 1st June 1995; that the scheme shall include provision for the service area and civic amenity centre to be restored to a suitable condition; the restoration of the remaining area of the site for agriculture, forestry, nature conservancy and wetland area, or other appropriate uses as approved by the planning authority; that the restoration scheme shall also include the reinstatement of any access roads/rights of way and the procedures for the replacement of sub-soil and top-soil shall generally accord with those indicated in the Environmental Statement and to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation of Condition 19 would remove the provision of the service area and civic amenity centre which were specifically related to the development of the site for waste management. The restoration of the site would maintain areas of wetland and nature conservation (including woodland and grassland) but does not include forestry or agriculture. The scheme includes provision for improving the surface of the access road into the site from Common Farm and maintaining access across the site to the Tarmac Loch to the east. The placement of some top and sub soils has been undertaken previously, however, a more detailed assessment of the soil resources on site has concluded that, whilst it is possible to utilise some of the soil within the mounds alongside the access road to Darnconner Farm, due to access and safety constraints associated with the stockpile to the west of the farm, this mound should be retained in situ. Condition 19 should therefore be varied according to the restoration proposals which are achievable and practicable at this point in time.

1.5 Condition 20 states:

(20) That the restored site shall be progressively landscaped in accordance with the scheme submitted as part of the planning application and which is detailed in the Environmental Statement and the supporting letter from S.B. Minerals dated 1 June 1995, and that the landscaped areas shall be subsequently managed to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation of Condition 20 is required because it is no longer possible to restore the site in accordance with the detailed schemes previously submitted. There has been no importation of waste and therefore the surcharged restoration contours identified in the consented scheme have not been achieved. The former opencast void area created within the site to accept waste has filled up with water and is now considered to be an attractive feature. This water body or loch has become assimilated into the landscape and offers wildlife, visual amenity and informal recreational benefits. The

variation of extant planning conditions is therefore required to provide a scheme that is based on the landform currently existing at the site.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and that the issue of the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded an amended agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant in respect of the matters indicated in Section 8.11 of this report.

3. CONCLUSIONS

3.1 As indicated in Section 5 of this report, there are no specific policies within the Development Plan which relate to the suitability of restoration and aftercare proposals associated with a former mineral extraction site, although it is considered that the application is consistent with the spirit of the policies within the EAOCSPP relating to restoration. In such circumstances, greater weight should be attached to the material considerations relevant to the application. As is indicated in Section 6 above, there are material considerations relevant to this application and in many respects the material considerations insofar as planning history and nature conservation interests are concerned would tend to be supportive of a scheme which would reclaim former mineral surface workings to after-uses that fall into the broad category of amenity.

3.2 The reclamation of surface mineral workings can often provide substantial opportunity to improve landscapes and habitats, expose earth science interest and enhance access and recreation provisions for local communities. This can involve the creation of:-

- formal and informal recreational areas;
- woodland;
- grassland;
- geological exposures;
- reed beds;
- open water; and
- watercourses.

3.3 Whilst it is noted that the proposed development has attracted objections and concerns from Auchinleck Community Council, the current approved (and therefore the only enforceable) restoration scheme (i.e. in accordance with planning application reference 95/0058/MIN) cannot be achieved without landfill taking place given the present condition of the site.

3.4 The area of land associated with the landfill void equates to approximately 12.1 hectares and has the capacity to accept approximately 1 million cubic metres of waste. The applicant originally had consent to fill this

void with solid, controlled, domestic, commercial and industrial waste at a rate of 100,000 tonnes per year over a 10 year period. Overburden would be used for cell engineering, haul roads etc. required to develop the void for land-filling and the soils would be used for the final restoration over the engineered cap of the landfill.

3.5 Given the height and footprint of the available soil and overburden mounds, it is estimated that on site at present there is approximately:-

- 190,000 cubic metres of overburden; and
- 35,000 cubic metres of soils

On this basis it is clear that there is insufficient available material stored above ground to produce an effective dry land restoration scheme as the volume of available material would only provide 22% of the material required to fill the void. Taking account of the deficit of materials and assuming that the available soils would be used for final restoration, it is estimated that a minimum of 800,000 cubic metres of material would have to be imported to the site to achieve an alternative to the wetland scheme proposed by the applicant. If this comprised of imported inert materials, it is anticipated that infilling would take a minimum of 15 years to complete and would result in associated impacts similar to that associated with the original scheme for landfill reclamation.

3.6 In addition, at this stage it is not known whether there are risks associated with surface water contamination from using overburden to fill the water void. In terms of soil mounds it is not considered good practice to place soils in surface water due to the potential for depletion of oxygen in the water and therefore, this material should only be used for restoration to dry land.

3.7 Since members refused the previous application to extend the life of the landfill site, the applicant has been pro-active in appointing Environmental and Legal Consultants to come up with solutions for achieving the restoration of the site. After refusal of planning consent to allow the site to be used for landfill purposes, the applicant did not exercise the right of appeal to the Scottish Ministers, but instead sought further meetings with the planning authority to discuss an alternative restoration scheme that would see the void being retained as a water feature to an after-use that is in keeping with the area and involves minimal disruption to the environment, whilst maintaining habitats that are establishing naturally. This proposal therefore builds upon the existing areas that have naturally re-colonised.

3.8 There now appears to be conflict within the representations /consultations received concerning site restoration where some objectors wish to see the site fully restored while others would wish the waterbody being retained and the site left to 'naturalise' further. The submitted scheme represents a good and reasonable practical solution to returning this site to beneficial after-uses without causing major disruption in the area, given the circumstances of the temporary consent for landfill, and that, with the implementation of restoration and aftercare, the site can be improved for wildlife and nature conservation. The restoration scheme therefore provides a

solution to guarantee the restoration of this site, which should in time make a positive contribution to the environment and nature conservation interests in the area.

3.9 The applicant has agreed to provide a contribution to match grant funding from the Central Scotland Green Network Development Fund in order to enable the implementation of a number of advanced restoration measures. These will include replacement fencing and hedgerow planting along the access track to Darnconner Farm, and replacement fencing around the existing settlement lagoon.

3.10 Refusal of this present application would have significant consequences for the restoration of the site and may potentially impact on the ability of the Council to call in the restoration bond.

3.11 In respect of all relevant matters and material considerations to be taken into account, it is considered that the revised proposals for restoration of this site are acceptable and 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 existing legal agreement will require to be discharged to the effect and intent that it shall be deemed 'pro non scripto' as from the date when a new minute of agreement comes into effect.

(ii) Viridor Waste Management (VWM) shall obtain and deliver to the Council, a new performance bond from Barclays Bank PLC or another recognised financial institution, which shall remain in force until the restoration obligations have been complied with or discharged, or such other time as may be agreed between the Council and VWM.

(iii) The new restoration bond shall be in the sum of two hundred and fifty thousand pounds (£250,000) or such other sum as may be agreed in writing between the Council and VWM. The new performance bond shall provide for the sum to be reduced to seventy two thousand pounds (£72,000) at the start of the five year aftercare period and will further decline by fourteen thousand four hundred pounds (£14,400) after each year of aftercare. The new performance bond will formally be discharged on the fifth anniversary following completion of the restoration obligations to the satisfaction of the Council as planning authority.

(iv) In the event of a failure by VWM to perform the restoration obligations within one year of the date of planning approval, the Council shall, by written notice, intimate such failure to VWM. The notice shall describe the nature of the breach of the obligations, the steps required to remedy the breach and the timescales within which the remedial steps require to be taken.

CONTRARY DECISION NOTE

Should the Committee decide to refuse the application contrary to the recommendation of the Head of Planning and Economic Development, there will be no requirement to refer the application to the full Council for consideration as this would not represent a significant departure from policy.

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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Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation as the Head of Planning & Economic Development, under Section 43A (6) of the Planning etc Act 2006, considers that the application raises significant issues for the treatment and restoration of the site as well as financial implications; collectively meriting determination at committee.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies approximately 3.5 km north of Cumnock, 3 km south-east of Auchinleck and is located immediately west of Darnconner Farm. The application site accesses directly onto the C22 Commonloch Road which in turn accesses onto the A70 Cumnock – Muirkirk Road.

2.2 The site at present is split into two main areas which are separated by the access track to Darnconner Farm. The larger of the two, the 'west site' (22.9 hectares) which lies to the west of the track comprises the former opencast void (approximately 12.1 hectares) is currently full of water and represents a significant water body in the locality. The portion of the site to the east of the track, the 'east site' (8.3 hectares), is for the most part opencast backfill, this area also incorporates an overburden storage mound which is approximately 20 metres high.

2.3 **Background:** Planning permission for a landfill waste disposal site for controlled waste and the formation of a civic amenity centre was previously approved by East Ayrshire Council on 11 September 1996 under planning application CD/95/0058/MIN. This approval was subject to a Section 50 Agreement under The Town and Country Planning (Scotland) Act 1972 including a site restoration bond in the sum of £875,000. The consent granted for the development was also personal to the applicant at that time, S.B. Minerals. Although the planning permission for the landfill site was effectively commenced in March 1997 through the carrying out of engineering works at

the site in preparation for the reception of waste, no landfill operations have taken place, with no formal waste management licence having been obtained for deposition of controlled waste.

2.4 Planning permission (reference number 00/0228/FL) for a variation of Condition 1 of this consent to allow a transfer of the personal consent from S.B. Minerals to VWM (Scotland) Limited was approved on 12 April 2006. The Council currently holds a replacement restoration bond for the site from Viridor Waste Management in the sum of £875,000.

2.5 Planning permission (reference number 06/0480/FL) to amend condition one of planning consent CD/95/0058/MIN to extend the life of the planning consent to allow for a further 10 year period for landfill operations to take place was refused by the Council on 13 June 2008 for the following reasons:-

- *There is sufficient approved landfill capacity within East Ayrshire at this time;*
- *That with the drive to reduce waste to landfill through the National Waste Strategy, it is the view of the Council that the completion of landfill operations, with no presently identified waste streams, could not be undertaken to secure final restoration of the Darnconner site within 10 years; and*
- *That as the Darnconner site has been disturbed and has remained un-restored for a period in excess of 20 years; a further 10 year period of potential landfill operations would represent an unacceptable further delay in the restoration of the site.*

2.6 Planning permission (reference number 08/0932/FL) for a variation of conditions 1, 19 & 20 of planning permission CD/95/0058/MIN (as amended) relating to the obligations and rights on, and restoration of the site was refused by the Council on 04 September 2009 for the following reason:-

- *The Council considers that, having particular regard to the current condition of the site and the potential for future use, the proposed restoration works as set out in the application do not offer sufficient provision for development either in environmental terms, or for the benefit of the community as a whole, including the need for appropriate arrangements to ensure public health and safety within the site.*

2.7 **Existing Site:** The existing site was part of a much larger opencast coal site within which the final void was retained and in part re-engineered for landfill of non-hazardous wastes. Title plans show a narrow strip of land along the southern boundary of the eastern part of the site (between Auchinleck Burn to the east and the access track to Darnconner Farm to the west) as being land over which third parties can exercise rights of access. Fencing along the Darnconner access track, which runs alongside a remnant hedgerow and drainage ditch, and an area of marshy grassland suggest that

any access rights which do exist have not been enforced for a long period of time.

2.8 Vehicular access in to the eastern site is via a strip of land connecting to the public road passing Common Farm. This is shown on title plans as within which the applicant has a servitude right of access. Access, however has in recent times been restricted by the fishing club based at nearby Tarmac Loch which holds the keys to the vehicle gate in the bell mouth off the public road. This gate is usually kept locked. The access track to Tarmac Loch shares its first 100m with land within the Viridor right of access, before diverting to the north-east.

2.9 **Proposed Development:** This planning application follows on from the earlier application (08/0932/FL) which was refused by the Southern Local Planning Committee at its meeting on 04 September 2009. Since refusal of the application the applicant has been pro-active in engaging with local communities and other stakeholders in order to further develop the restoration proposals to try and find a solution which incorporates the aspirations of all parties which are practical and achievable.

2.10 This liaison has been ongoing throughout 2010 into 2011 and has included site walkovers, meetings, presentations and a one day drop-in event which was held at Auchinleck Community Centre on 03 March 2011. This event was well attended and provided useful feedback to the applicant which has helped inform the finalised restoration proposals.

2.11 The relevant planning conditions which this application seeks to vary relate to planning consent CD/95/0058/MIN (approved on 11 September 1996) and are as follows:-

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REASON: In order to retain effective planning control over the site and to ensure that works are commenced and completed to an agreed timescale.

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2.12 Condition 19 states:-

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restoration of the remaining area of the site for agriculture, forestry, nature conservancy and wetland area, or other appropriate uses as approved by the planning authority; that the restoration scheme shall also include the reinstatement of any access roads/rights of way and the procedures for the replacement of sub-soil and top-soil shall generally accord with those indicated in the Environmental Statement and to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation of Condition 19 would remove the provision of the service area and civic amenity centre which were specifically related to the development of the site for waste management. The restoration of the site would maintain areas of wetland and nature conservation (including woodland and grassland) but does not include forestry or agriculture. The scheme includes provision for improving the surface of the access road into the site from Common Farm and maintaining access across the site to the Tarmac Loch to the east. The placement of some top and sub soils has been undertaken previously, however, a more detailed assessment of the soil resources on site has concluded that, whilst it is possible to utilise some of the soil within the mounds alongside the access road to Darnconner Farm, due to access and safety constraints associated with the stockpile to the west of the farm, this mound should be retained in situ. Condition 19 should therefore be varied according to the restoration proposals which are achievable and practicable at this point in time.

2.13 Condition 20 states:

(20) That the restored site shall be progressively landscaped in accordance with the scheme submitted as part of the planning application and which is detailed in the Environmental Statement and the supporting letter from S.B. Minerals dated 1 June 1995, and that the landscaped areas shall be subsequently managed to the satisfaction of the planning authority.

REASON: To ensure that the site is restored in a satisfactory manner.

The variation of Condition 20 is required because it is no longer possible to restore the site in accordance with the detailed schemes previously submitted. There has been no importation of waste and therefore the surcharged restoration contours identified in the consented scheme have not been achieved. The former opencast void area created within the site to accept waste has filled up with water and is now considered to be an attractive feature. This water body or loch has become assimilated into the landscape and offers wildlife, visual amenity and informal recreational benefits. The variation of extant planning conditions is therefore required to provide a scheme that is based on the landform currently existing at the site.

2.14 Proposed Restoration and Aftercare: The restoration proposals aim to utilise the existing resources and opportunities found on site wherever possible. It is intended to plant tree and scrub species which occur naturally in the area to improve the setting and visual amenity of the site and to speed

up the process of natural colonisation. The main water body is an established feature on the site and adds interest and variety to the site in terms of amenity and biodiversity.

2.15 Though there are certain health and safety risks associated with the site in its current form, a low-key approach has been incorporated into the restoration proposals with the emphasis on steering any potential visitors away from danger with strategic planting of appropriate species, rather than excluding them with measures such as security fencing which would be inappropriate in this rural location.

2.16 **Proposed restoration to the east site:** the construction and quality of the existing access track varies along its length. It is proposed to improve vehicular access by undertaking some remedial works such as localised infilling of hollows and potholes. This will be achieved by taking fill material from within the site and where possible adjacent to the track. It is envisaged that stone of a similar specification to Type 1 sub-base material will form the bulk of the fill, with the final 80mm thick surface course being formed from stone size 20mm down. Thereafter, any loose-tipped material lying on the line of the access track will be bladed and spread onto the adjacent land lying to the north of the track.

2.17 As groundcover on the existing overburden mound has established naturally and a varied flora is developing, the applicant proposes to retain this feature and to allow natural colonisation to continue. There was a request from a nearby resident at the public event that the overburden mound be removed. Two possible methods for carrying this out were put forward and these have been looked at again in detail. One suggestion was to place the overburden material into the former opencast void in the west site, and the other was to spread the material out over the east site. Aside from practical issues and potential impacts which would arise from the physical movement of the estimated 190,000 cubic metres of overburden material, a number of significant problems have been identified with both options.

2.18 At present the Dippol Burn flows into and out of the flooded former opencast void within the West Site. Dewatering the void would substantially affect the Dippol Burn, at least in the short term, and could not be done at all without a further diversion of the burn away from the void. Such a diversion could not be located within land within Viridor's ownership, and any such proposals would require consent from SEPA. If dewatering could not be achieved beforehand, overburden material would have to be loose-tipped into the water body. This would sink to the bottom of the deep water and spread out along the bottom. It is known that there are fish and therefore other aquatic fauna within the water body and such action would, through creation of silts and suspended solids, be likely to have an adverse affect upon them and the water environment within the downstream section of the Dippol Burn. It is unlikely that this operation would be acceptable in terms of water quality. Comments contrary to the above suggestion were received from people residing close to the Dippol Burn, whose main concern was that nothing should be done within the site which might affect the flow or quality of water within the Dippol Burn.

2.19 The second suggestion of spreading the overburden material over the east site would, due to the likely nature of the overburden, result in a requirement to import and spread a large amount of soil. Overburden mounds typically contain a wide variety and size of material including large blocks of stone such as those which have been placed as 'standing stones' within the east site. When spread out over the east site, the overburden would leave an uneven surface with many humps and hollows which would be required to be filled to provide an even surface and sufficient depth for rooting. Large stones within the spread-out overburden would create localised patches of impermeable material which could affect drainage and establishment of any planting within this area.

2.20 In order to address the visual impact of the landform feature it will be mitigated initially by extending the recent plantations of Duncan's Wood so that woodland cover on the northern side of the overburden mound extends onto the outer slopes and wraps around the eastern side as well. Scrub planting will help to create both visual and floral diversity as well as creating a diverse habitat and adding value for wildlife. Following the public event, the planting to the overburden mound has been reconsidered and the amount of planting around its base has been increased, together with additional scrub planting on the outer slopes.

2.21 Some woody species have begun to establish on the uneven western slope of the overburden mound. Here an informal series of benches provide opportunities for scrub planting. Such bench planting will be used in combination with planting on the shallower lower slopes of the overburden and pocket planting of scrub in clumps, where possible, on the remaining slopes. This will have the effect of providing some screening of the overburden mound whilst helping to break up its outline and soften its appearance. It is envisaged that planting on slopes and benches will be undertaken using forestry planting techniques such as inverted turves and notch planting of young stock such as plugs and transplants.

2.22 Natural colonisation of the overburden mound has been allowed to occur as a result of the exclusion of sheep from the site. Maintaining this regime will allow the natural colonisation to continue and with time further establishment of woody species will help to break up the shape of the tip.

2.23 **Earthworks:** Loose tipped parts of the site, along the southern boundary and adjacent to the line of access, will be graded to provide a more regular even surface.

2.24 Broad land reclamation 'rigg and furrow' features will be created within the low-lying compacted area to the south-east of the overburden mound. Such riggs will typically be a minimum of 30m wide and 1.5m high at the centre. Side slopes will therefore be approximately six degrees from the horizontal. Once soil has been added to these features, they will allow a greater depth for rooting and drainage than would otherwise be achievable by other techniques such as forestry planting.

2.25 Soils taken from the storage mounds within the west site will be placed and spread within the riggs. This will provide suitable planting substrate for woodland and scrub planting.

2.26 **Proposed restoration to the west site:** Some modification would be undertaken to round-off and sweeten the contours of two angular landforms within the west site. The principal area where this would be undertaken would be the former subsoil and overburden tip adjacent to the centre of the northern site boundary. Minor grading would also be undertaken to round-off the angular landform close to the former settlement lagoon at the south-western corner of the site. Care would be taken here to retain the small hawthorn trees which have established.

2.27 To the southern half of the eastern side of the main water body, the steep banking above the immediate shore shows signs of instability and erosion along its length. Here it is proposed to re-grade the edge to a more stable angle by using a long-arm 360 degrees excavator to place material onto the lower, gentler slopes and reduce the surcharge on the slope. This would add soil to the lower slopes which would improve conditions for proposed scrub planting. This scrub planting would in turn aid in stabilising and consolidating these slopes.

2.28 **Woodland and scrub planting:** Within the west site, planting will serve several purposes. The most important of these will be to prevent access to, and to deflect pedestrians away from, steep slopes and deep water. Such planting will include woodland planting on the engineered slope along the southern shore, scrub planting on the lower slopes along the southern half of the eastern shore, woodland and scrub planting at the north-eastern corner of this part of the site, and woodland planting at the south-western corner of the site. The latter will wrap around the former settlement lagoon to both hide it and to form a physical barrier to block access to it.

2.29 Woodland planting around the outer slopes of the landform adjacent to the southern end of the site will help to break-up and soften the appearance of this feature.

2.30 Woodland and scrub planting within the west site will form links with off-site planting and increase the diversity within, and value to wildlife of, the site.

2.31 New post and wire fencing will be used in conjunction with planting on both the north and south sides of the main water body in order to reinforce the physical barriers between steep slopes and deep water and to deflect pedestrians away from such areas.

2.32 **Soil mounds:** The three soil storage mounds along the eastern boundary of the west site have a well established ground cover of grasses, rushes and forbs. Since the submission of the restoration proposals accompanying the November 2008 application, a re-appraisal of potential access to these mounds for the potential recovery of their soils for use in other areas has been made.

2.33 The northernmost soil mound is still thought to be too difficult to access safely with machinery, this being sited between a steep slope over deep water (to the west), and the boundary of Darconner Farm to the east. These boundaries 'pinch' the soil mound at the southern end to prohibit access from this direction, while access from the northern end is made difficult by the presence of soft boggy sloping ground.

2.34 It is anticipated however, that the southernmost and middle soil mound, can be accessed in sequence from the south, and soil from these will be removed and utilised within the proposed planting areas within the east site. A minimum of 150mm soil will be left in situ. This area would require cultivation to alleviate compaction and prepare a seed bed to establish grassland. New post and wire fencing will be erected running close to the re-contoured edge of the steep slope down to the main water body. This will provide a physical barrier to keep people away from the dangerous slope and deep water.

2.35 **Grassland to the south of the main water body:** The land to the south of the main water body within the west site has a well established groundcover of grassland, marsh and rush species; however, there is some evidence of grazing by sheep here. It is proposed to retain existing groundcover habitats, allow natural regeneration to continue and to encourage establishment of new woodland and scrub planting by repairing existing boundary fences and field gates to control areas available for sheep grazing.

2.36 **Land to the north of the main water body:** Following the contouring earthworks described above, it is proposed to allow natural colonisation to continue in the shallow lying area to the north of the main water body. This will retain the slowly vegetating stony habitats within this area which add to the overall biodiversity of the site. The better quality substrate on the re-contoured landform will allow colonisation by different plant species which will add to the diversity on this part of the site.

2.37 **Water features:** The main water body outflows into the Dippol Burn at a small rounded promontory approximately halfway along its western shoreline. It is proposed to undertake minor clearance works along the short section between the water body and the nearby culvert in order to prevent further encroachment by grasses and weeds to ensure that the outflow is free flowing.

2.38 In line with stakeholder feedback, the applicant will liaise with SEPA with regard to a limited diversion of the Dippol Burn where it diverts from its north-south route at the north-western corner of the west site.

2.39 The two small hollows which form seasonal water features to the south of the main water body will be retained, as will the former opencast water settlement lagoon in the south west corner of the site. The latter may contain contaminants and the physical processes and permitting requirements involved in its remediation may be prohibitive. This feature has however, been identified as a primary health and safety concern and a number of measures will be taken to prevent access and to provide a warning of its

dangers. New post and wire fencing will be erected around the perimeter of the lagoon, with signage warning of deep water and presence of silt and sludge's. Woodland planting will wrap around the northern, eastern and southern sides of the lagoon to form a physical barrier which will also serve to hide it from most viewpoints. In addition, a lifebelt will be provided on the side adjacent to the Dippol Burn on the western boundary of the site.

2.40 Despite the presence of a number of drainage channels, the area of land between the main water body and the southern boundary of the site is wet in nature with a high proportion of rushes. The main drainage channel which runs east to west through this area provides the potential to create new water features. As the restoration masterplan indicates, two new pools with a combined surface area of 1000 metres squared will be formed. These will be constructed by forming shallow dams within the existing drainage channel which will cause localised flooding whilst maintaining the flow of water along the channel. The applicant will liaise with SEPA with regard to the design and construction of the wetlands.

2.41 **Health and safety issues:** A number of health and safety issues were identified during the determination of the previous planning application (our reference 08/0932/FL) in relation to the site in its current form, specifically:-

- The steep slopes on the east of the main water body are a potential health and safety risk due to extensive slippage and erosion;
- Mitigation measures must be taken during works to ensure that potential pollutants do not enter adjacent water-courses;
- No materials should be used during restoration which could give rise to nuisance conditions; and
- Signage indicating the presence of deep water should be erected at suitable points to highlight any danger to persons having access (both authorised and unauthorised) to the site.

2.42 A site walkover was held on 12 October 2010 and included representatives of Auchinleck and Cronberry, Lugar & Logan Community Councils, East Ayrshire Woodlands, Wardell Armstrong LLP and the applicant. During this meeting the former settlement lagoon, located to the west of the water body, was identified as being a primary health and safety concern. This was due to its accessibility, the presence of deep water with the potential for the presence of silts and sludge's, and the absence of safety warning signs and life-belts or other safety measures. In addition, existing fencing surrounding this feature was noted as being old.

2.43 The Community Councillors requested that no fencing or other measures be used during restoration works which would hinder possible access along the western shore of the water body. This has been superseded by a subsequent request from the adjacent landowner, which has been agreed by the applicant, that their mutual boundary be fenced.

2.44 The local knowledge of the Community Councillors was useful in establishing that the two soil mounds located alongside the access road to Darnconner Farm were located on a firm footing. These are sited along one of the former opencast site haul-roads, which mean that they could be accessed for use within site restoration works with relative ease despite the adjacent steep slopes on their western sides.

2.45 Health and safety issues were, however, identified with relation to the third and northernmost soil mound which is located to the immediate west of Darnconner Farm. This was considered to be difficult to access due to steep slopes on the west and south sides, its proximity to the boundary of Darnconner Farm on its east side and sloping and boggy ground to the north.

2.46 Following the October site meeting draft restoration proposals were presented to the Community Council representatives during a meeting held at Council Offices, Lugar on 11 November 2010. These new proposals incorporated the removal of soil mounds along the Darnconner access track and use of the soils in site restoration. It was noted at the meeting that following removal of these soil mounds, access to the shoreline of the main water body would be made easier. Auchinleck Community Council therefore requested that proposed scrub planting be extended further to the north along the eastern shore of the water body in order to help keep people away from the water.

2.47 A revised restoration scheme was presented at the public event held on 03 March 2011. Feedback on the day revealed few new health and safety concerns. There were some comments regarding the stability of the slopes on the eastern side of the main water body and concern that if unchecked, erosion could continue and perhaps eventually threaten the stability of the access road to Darnconner Farm. These concerns were allayed when it was explained that mitigation measures to alleviate this erosion had been incorporated into the proposals. Removal of soil from the storage mounds alongside the road would reduce surcharge loading on the ground, trimming of the steep upper slopes would create shallower and more stable slopes and planting on the terrace adjacent to the water would increase stability through rooting.

2.48 The need to address health and safety issues associated with the existing site has been integral to the design of the restoration proposals. The overall approach has been one of implementing unobtrusive measures which will steer the public away from potential danger areas whilst complementing the existing rural situation. This approach was thought to be much more appropriate to the location than alternatives such as installing security fencing in order to totally exclude the public from certain areas. In addition, safety warning signs and life-belts are fundamental requirements which will be installed as part of these proposals.

2.49 **Proposed health and safety measures – east site:** The integrity of the site boundaries is important and so it is proposed to repair, and if necessary replace, any sections of fencing which coincide with, or lie within the boundaries of the site, and is in poor condition. This will also reduce the

potential for fly-tipping which has occurred on the site in the past. Existing fly-tipped material presents a potential health and safety risk and will be removed from the site.

2.50 Potholes along the access track will be in-filled to provide a safer surface for both pedestrians and vehicles. Similarly, uneven ground within the site boundaries adjacent to the access track will be graded to produce a more level and safer surface.

2.51 Planting of native trees and shrubs will be used to discourage access to some of the steeper slopes which can be found on the overburden mound, whilst it is proposed to replant the roadside hedgerow on the access track to Darnconner Farm. This runs along the western boundary of the east site and will strengthen the physical barrier of this part of the site.

2.52 Proposed health and safety measures – west site: Any existing fences within the site and particularly those which form boundaries to the west site, which are found to be in a poor state of repair will be repaired or replaced as required. Within the fence-line adjacent to the Darnconner farm access track there are three field gates which offer access into the western site and which are in a poor state of repair. These will be replaced in order to strengthen the integrity of the barrier along the eastern side of the west site. Safety warning signs will be located within the site at these potential points of access. One further measure which will strengthen the physical barrier along this side of the site is the replanting of the remnant hedgerow along the Darnconner Farm access track.

2.53 New post and mesh stock fencing will be installed at the following key locations in order to deflect pedestrians away from and to discourage access to steep slopes and deep water, specifically:-

- Fencing at the top of the steep slopes above the eastern shore of the water body where soil mounds have been removed;
- Fencing at the top of the engineered slopes down to the southern shore of the water body;
- Replacement fencing around the settlement lagoon at the south-western corner of the site; and
- Fencing at the northern side of the lake to deflect pedestrians away from deep water at the north-eastern corner of the water body.

2.54 Safety warning signs will be installed at regular locations around the northern, western and southern shores of the water body, as well as on the new fencing around the settlement lagoon in the south western corner of the site. In addition, such signs will be placed at strategic locations where established and any future pedestrian routes enter or pass through the northern site.

2.55 Life-belts will be installed at regular and strategic intervals around the water body including:-

- On new fencing above the slopes on the eastern shore where soil mounds have been removed;
- On new fencing around the settlement lagoon at the south-west corner of the site;
- On the western shore of the water body (where this falls within the site boundary); and
- On the northern and southern shores of the lake where proposed fencing meets the water's edge.

2.56 Fly-tipping, including the vehicle parts and corrugated iron at the northern side of the water body, will be removed from the site.

2.57 Earthworks in the form of trimming and limited re-contouring will be undertaken to stabilise steep and loose slopes as follows:-

- Unstable steep slope above the southern half of the eastern shore of the main water body;
- Angular landform formed from overburden on the northern side of the water body; and
- Angular landform adjacent to the settlement lagoon at the south-west corner of the site

2.58 As well as being used to enhance the visual amenity and biodiversity of the site, scrub and woodland planting will be used to improve health and safety within the site. Planting will be used to form physical barriers to, to discourage access to, and to deflect pedestrians from, existing steep slopes and deep water. Such planting will include:-

- Scrub planting along the shelf along the southern half of the eastern shore of the main water body;
- Scrub woodland planting on the engineered slopes on the southern shore of the water body;
- Planting at the base of the steep slopes on the landform at the southern end of the main water body;
- Woodland planting to screen, block access to and deflect pedestrians away from the settlement lagoon at the south-west corner of the site; and
- Planting to the north-east of the water body to deflect pedestrians following the existing track into the site away from deep water and to strengthen the physical barrier created here by proposed new fencing.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Scottish Natural Heritage has **no objection** to the proposal and confirms that they have been consulted on various aspects of the restoration of the site.

3.2 The Scottish Environment Protection Agency has **no objection** to the proposal but provide the following guidance:-

- We have no objection in principle to the proposal to retain and enhance this feature. If the applicant is intending to further embellish the biodiversity options of the pond we would refer them to the SEPA guidance document "Ponds, Pools and Lochans".
- We would recommend that discussions with EAC's biodiversity officer takes place in respect of any proposed planting at the site to ensure the proposals are suitable for this landform.
- Any proposal to divert, modify or dam the site surface waters should be discussed with local team as these works may have implications with regard to The Water Environment (Controlled Activities) (Scotland) Regulations 2011(CAR).
- We would welcome any proposals by the applicant to open up any existing culverts on site.
- We would also advise the applicant of the need comply with all CAR GBRs, especially GBRs 20 & 23 on cultivation and herbicide use.
- If there are any contaminated acid rock discharges from overburden storage or from anywhere else on site, please note that this drainage should be collected and treated prior to discharge to water environment in accordance with CAR and again we would encourage contact with the Ayr Ops team on this matter.
- We would expect all necessary mitigation measures to ensure that pollutants do not enter the watercourses during any planned restoration works.

3.3 Auchinleck Community Council is of the view that:-

- (i) There is not enough information regarding the depth of the void as to whether or not there is enough material on site to infill the void. Consequently, they cannot make a realistic judgement, nor they feel can anyone else, and believe a site visit should be made by the Planning Committee prior to any decision being taken; and
- (ii) They have concerns about the road from Roundshaw Cottage to the Common/Cronberry Road as this road has not been included in the

proposals, and, as this was a condition of the original planning consent, consideration should be given to this detail as the road seems to have disappeared and been forgotten about by the Council.

A representative from Auchinleck Community Council has been involved in the pre-application discussions between the Council and the applicant, attended several meetings to discuss ways to try and improve the original restoration proposals refused by the Council in September 2009 and took part in the walkover held at the Darnconner site on 12 October 2010.

The final void at the site has been partially engineered to provide a slope for landfill construction, and this is evident on the south-west margin of the waterbody where there are beached/shallow water areas. However, within the remainder of the void, the original opencast final void has been left unaltered. Opencast sites are typically worked using a series of benches, each bench being 5m wide and a height of 15m below the adjacent bench. During the site walkover, the representative from Auchinleck Community Council walked along the eastern shore of the loch and reported to the other participants that he was able to see the first bench below the water with deeper water beyond. So, allowing for seasonal fluctuation in the depth of the water in the void, it can be assumed that the maximum depth of the waterbody would certainly be in excess of 15m.

A previous estimate of the volumes of overburden and soil stored within the site placed these at 190,000 cubic metres of overburden and 35,000 cubic metres of soils. The previous landfill consent for the site related to a capacity of 1 million cubic metres of waste at a rate of 100,000 tonnes per year over a 10 year period. Overburden stored on site would have been used for cell-engineering and creation of haul roads etc which would be required to develop the void for land-filling. Soils would have been used to cap the landfill and in final restoration. The volume of overburden and soils on site together would have provided only 22% of the material required to infill the void and a minimum of 800,000 cubic metres of fill material, top and sub-soils would have to be imported to bring the void up to final restoration levels consented for the landfill scheme.

Importing such a huge quantity of fill material and soils would be prohibitively costly, and the only financially viable way of doing this i.e. through landfill, is not an option as the Council refused an earlier application by the applicant for an extension of time of landfill operations at the site. Using the overburden and soils within the site to infill the void would be ineffective, and would significantly increase the risk of environmental impact. It would also be logistically difficult as the overburden material would have to be moved from the eastern part of the site across the access road to Darnconner Farm before being tipped into the loch.

There is also a concern that materials tipped into the water would form suspensions which would affect the quality of the waterbody and the Dippol Burn. This would have a detrimental effect upon the wildlife in the waterbody and watercourse. In addition, suspended and dissolved particulate loading would almost certainly have an effect on the amenity of the Burn. SEPA has stated that they have no objection to the planning application, but also indicate that any proposal to divert, modify or dam the site surface waters may have implications with regard to the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) and would expect all necessary mitigation measures to ensure that pollutants do not enter the watercourses during any planned restoration works.

In relation to the comments pertaining to the public road from Roundshaw Cottage to Common/Cronberry Road, it is assumed that the Community Council is referring to the stopping-up of part of the Commonloch Road between Coal Road and Darnconner Farm access road by the former Cumnock and Doon Valley District Council in February 1988 to enable the winning and working of minerals at the site (our reference CD/87/153/Q). Correspondence from the applicant at the time (SB Minerals) confirmed at that time “that the existing access road into Darnconner Farm will be excavated out, removed and not replaced, with alternative private access being provided during the contract on our existing access road and at the end of the day, a private road formed for permanent access to Darnconner Farm”. The formation of this private access was not covered by any planning conditions or associated Section 50 legal agreement at the time and the Council, as Planning Authority, is therefore not in a position to initiate any action to regularise this matter. From the information available, it is understood that this proposed private access road would have followed the route of the existing access into the site for an approximate length of 320 metres before heading west/north-west around the former fireclay stocking area to meet the existing access road to Darnconner Farm. This area of land is for the most part outwith the red-line boundary associated with this current application and therefore is not within the control of the applicant. Reinstatement of this private access road is therefore not part of the applicant’s proposals for the restoration of the Darnconner site.

3.4 East Ayrshire Woodlands have been involved in this project from an early stage and have provided the applicant with advice and guidance on the advanced restoration techniques which will be required in a project of this nature. East Ayrshire Woodlands will also be involved in the tree/hedgerow planting works which have been programmed for the site should permission be granted.

3.5 East Ayrshire Environmental Health Service has no comment to make on the proposal.

3.6 Cronberry, Lugar & Logan Community Council has not responded to the consultation letter but a representative has been involved in the pre-application discussions between the Council and the applicant, attended several meetings to discuss ways to try and improve the original restoration proposals refused by the Council in September 2009 and has taken part in the walkover held at the site on 12 October 2010.

4. REPRESENTATIONS

In addition to the points raised by Auchinleck Community Council (Section 3.3) a further letter of representation has been received from an adjacent landowner. The main concerns raised are as follows:-

4.1 I don't see how a few more trees are going to make much difference.

The restoration proposals have been designed to retain the waterbody whilst improving the visual and ecological amenity of its setting and the immediate surrounding area through increased native and scrub plantings. The applicant has been working closely with East Ayrshire Woodlands whose knowledge and experience has been invaluable when designing and developing the restoration and planting proposals.

4.2 Viridor say they can't fill-in the void without landfill, this is rubbish. Other opencast sites have been filled in without being a landfill site. There is plenty of stone and boulder lying around to put in the void.

As detailed in Section 3.3 of this report, the volume of overburden within the applicants ownership would represent only 22% of the total volume of the existing void, leaving 78% (approximately 800,000 tonnes of material) to be sourced from elsewhere. Importing such a huge quantity of fill material would be prohibitively costly, and the only financially viable way of doing this i.e. by landfill, is not an option, as the Council refused an earlier application by the applicant for an extension of time of landfill operations at the site.

4.3 When I look out my window the view I get is a large mound of earth. This came out of the hole and Viridor admit they own it.

As detailed in Section 3.3 of this report, there is a concern that materials tipped into the water would form suspensions which would affect the quality of the waterbody and the Dippol Burn. This would have a detrimental effect upon the wildlife in the waterbody and watercourse and be contrary to the advice provided by SEPA.

4.4 If they want this to become their site for people to visit there is going to be new traffic on the road. My husband and his brother have to maintain this road and they are getting older. If this plan is passed, will Viridor or the Council maintain this road – I don't think so.

The applicant is not proposing any formal recreational after-uses for the site so there should be no adverse impact on the access road which leads to Darnconner Farm.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. 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 applicable policies within the structure plan relating to the suitability of restoration and aftercare proposals associated with a former mineral extraction site.

East Ayrshire Opencast Coal Subject Plan (EAOCSPP)

5.3 There are no specific development plan policies relating to the amendment of conditions on planning consents. However, as the site relates to a former opencast coal site, it is considered reasonable and appropriate to assess the proposals against relevant provisions of the EAOCSPP. There are various policies in the plan pertinent to the application and relating to restoration activities which are summarised below.

5.4 Policy MIN 15: All developers are required to restore their operational sites progressively to the highest possible standards. The use of restored land for specific agricultural, forestry, recreational and nature conservation purposes will be acceptable to the Council and applicants are encouraged to create wildlife habitats and wetland areas, if appropriate, within their restoration proposals. 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. Professional advice from Scottish Natural Heritage and other appropriate nature conservation bodies should be sought in this regard.

It is considered, albeit that the original approved restoration scheme cannot be implemented, that the applicant's amended proposal will deliver the opportunity for habitat improvement and enhancement, in line with the spirit of Policy MIN15.

5.5 Policy MIN 16: Developers are required, wherever possible, to divert and re-route any existing rights of way affected by proposed opencast operations and to ensure that any Rights of Way or other public footpaths disrupted by opencast operations are fully reinstated as an integral part of site restoration proposals. Improved public access and the provision of additional facilities for local communities in the restoration of opencast sites is also strongly advocated by the Council

It is the applicant's intention, to re-instate the former right of way that passes through the application site, as part of the amended restoration proposals.

5.6 Policy MIN 17: The Council will require all developers, as an integral part of a submitted planning application to submit detailed restoration and aftercare plans for the development site, including:

- The identification of those areas to be restored to particular end uses such as agriculture, forestry, wildlife purposes etc.
- An assessment of the existing landscape of the development site and its wider surrounding area.
- A detailed scheme showing how the restored site will be assimilated into the landscape.
- Details of the phasing, programming and implementation of the restoration scheme.
- Measures to enhance the environment, recreate landscape features, wildlife habitats and public access.
- Measures to treat surface and groundwater run-off.
- Detailed arrangements for effective aftercare of the site.

Detailed design of restoration features and implementation of the restoration and aftercare proposals will be made the subject of conditions attached to any issued consent and any other arrangements as may be considered appropriate.

The applicant has provided the details of the restoration scheme including aftercare. Furthermore, conditions can be attached to any consent granted for the proposed development to address some of the concerns raised by the consultees.

5.7 Policy MIN 35: The Council will require all applicants for opencast coal developments to provide appropriate financial guarantees prior to the issue of any planning consent in order to ensure full restoration, reinstatement and aftercare of the site should, for any reason, works be abandoned prior to completion. A financial guarantee, provided by a recognised financial institution and reassessed at regular intervals will be considered appropriate

with the amount lodged being calculated on the basis of a realistic assessment of the total costs of restoration of the individual site concerned at any particular time, the amount of disturbed land, the cost of providing for the detailed after-uses agreed for the site and appropriate costs of aftercare. The costs in meeting any shortfall in the agreed restoration requirements will require to be met in full by the developer through an appropriate insurance scheme or other method of funding as may be agreed with the Council. It will also be a pre-requirement of any agreement entered into in respect of the restoration of the site, that the Council is absolved of any liability if problems in the restoration of the site occur.

5.8 Policy MIN 36: On completion of all reinstatement, earth moving and engineering works associated with the restoration of the site and subject to all such works being carried out to the satisfaction of the Council, the Council will release the restoration financial guarantee. However, an appropriate guarantee will be retained by the Authority under the arrangements agreed for the lodging of restoration guarantees described in Policy MIN 35 above, to cover a five year period within which the operator will be required to carry out any prescribed aftercare works including the provision of site drainage, landscaping, seeding, reinstatement of Rights of way, public footpaths etc. and the enhancement of the site for nature conservation purposes. The aftercare arrangements will be reassessed on a rolling basis as and when aftercare works on any particular section of the restored site are completed to the satisfaction of the Council.

Please refer to Section 7 (Financial and Legal Implications) below.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The material considerations relevant to the determination of this application are the consultation responses, the representations received, legislative provisions, National Planning Policy Guidelines, Planning Advice Notes and the relevant planning history of the site.

Legislative Provisions

6.2 The legislative provisions covering the reclamation of mineral workings have been introduced incrementally since the Town & Country Planning (Minerals) Act 1981. These have now been consolidated within the Town & Country Planning (Scotland) Act 1997, schedules 3, 8, 9 & 10. This confers powers to impose conditions on planning permission for surface mineral workings where the land is to be used for agriculture, forestry or amenity purposes, and details how the conditions may be imposed and assessed.

National Planning Policy Guidelines

6.3 Policy on the reclamation of mineral workings is contained in Scottish Planning Policy SPP4 (Mineral Workings) and Scottish Planning Policy SPP16 (Opencast Coal) which advise that land should be reinstated to a standard suitable for other agreed uses or an after-use which brings about environmental or community benefits.

Consultation Responses

6.4 There are no consultation responses that would indicate that the application should be refused, although it is acknowledged that the two Community Councils have concerns relating to the issues associated with the restoration bond and the retention of the overburden/water-body.

Representations

6.5 It is considered that the representations received can either be appropriately addressed through the imposition of appropriate conditions in any planning consent for the proposed development or the points of objection are not considered to be valid in this instance.

Planning Advice Notes

6.6 PAN64: Reclamation of Surface Mineral Workings states that reclamation of surface mineral workings can enhance derelict and degraded areas, remove ground instability caused by old mineral workings, create habitats, improve countryside access and provide community facilities and geological sites of interest. Reclamation can therefore bring environmental and community benefits, although the restored landscape can take several years to mature.

6.7 In the past, land was typically returned to agriculture or forestry use. In recent years it has been shown that reclamation operations can create or enhance a wide range of habitat types and landscape features including, woodland, hedgerows, wet grassland, reed beds, open water and watercourses. Reclamation can thereby contribute to targets in UK and Local Biodiversity Action Plans.

Planning History

6.8 There have been as number of previous planning applications relating to the Darnconner opencast coal site, more pertinent of which are as follows:

- (i) CD/ 84/81/Q – Winning and working of coal and fireclay, approved by the Secretary of State on appeal in March 1985.
- (ii) CD/85/148/Q – Proposed 12 hectare extension to Darnconner opencast site, approved in January 1986.
- (iii) CD/87/153/Q – Proposed 27 hectare extension to Darnconner opencast site approved in September 1987.
- (iv) CD/89/241/Q – Proposed 187 hectare extension to Darnconner opencast site, approved in November 1991.
- (v) CD/91/169/Q – Proposed 40 hectare extension to Darnconner opencast site. Approved in November 1991.

- (vi) CD/95/0058/MIN – Proposed use of existing opencast site for infill with controlled waste and associated Civic Amenity Centre at Darnconner, approved on 11 September 1996.
- (vii) CD/95/0230/DPP: Restoration of existing opencast site, Darnconner Opencast Coal Site, by Auchinleck, approved 11 December 1995.
- (viii) 00/0228/FL – Variation of Condition 1 of planning consent CD/95/0058/MIN to transfer to VWM (Scotland) Ltd, approved on 12 April 2006.
- (ix) 06/0480/FL – To amend condition one of planning consent CD/95/0058/MIN to extend the life of the planning consent to allow for a further 10 year period for landfill operations to take place, refused on 13 June 2008.
- (x) 08/0932/FL – To vary conditions 1, 19 & 20 of planning permission CD/95/0058/MIN (as amended) relating to the obligations and rights on, and restoration of the site, refused by the Council on 04 September 2009.

6.9 Under planning application CD/95/0230/DPP listed above, restoration of the Darnconner site was amended essentially to approve two distinct restoration options. Option 1 promoted a scheme which covered full restoration of the opencast site. Option 2 promoted a scheme of restoration which also allowed for landfill operations to take place within the opencast void (i.e. the development being simultaneously pursued at the same time under application CD/95/0058MIN). Option 2 would only apply, under the conditions attached to the planning consent, if the applicant at that time was able to enter into a Section 50 Agreement in relation to the proposed landfill operations.

As the requisite Section 50 Agreement was subsequently secured, the approved restoration scheme to be implemented on the site was Option 2. Due to the fact that the planning consent was legally commenced in March 1997, the approved Option 2 scheme remains as the only current enforceable restoration scheme for the Darnconner site, and this scheme wholly depended on the current void being restored by landfill operations.

Since the landfill permission has effectively expired with the refusal of that particular application, the applicant is now attempting to resolve matters by promoting a scheme to restore the site in a practicable and sensitive manner, through the submission of the current application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 Legal implications would arise through the requirement to secure site restoration with the potential for enforcement action and the possible calling in of the restoration bond, should the Committee be minded to refuse the application. This could lead to financial implications as under the provisions of the existing bond; the Council would require undertaking restoration works and then seek to recoup the costs by calling on the restoration bond.

7.2 The restoration bond relates to the requirements of a legal agreement (Section 50) that can be called upon if the landfill development, originally approved (CD/95/0058/MIN) defaulted in terms of restoring the site. Viridor were not responsible for the opencast mining and leaving the site in its present condition; the opencast coal extraction was carried out by LAW Mining (who are now in liquidation) prior to Viridor's involvement in the site.

7.3 Advice has been sought from the Council's Legal Section and in its view the restoration bond for the site remains valid and enforceable. Members should however note that the Bond is essentially an insurance policy, and if this application is refused, the Council would be required to make a claim on this Bond by contacting the Bond Provider to advise that that Viridor did not infill the site with waste within the life of their planning consent and that they have failed to secure an extension of the time limit for use of the site for waste disposal purposes.

7.4 The Bond Provider (Barclays Commercial) has confirmed that the Bond issued by the Bank in this instance is a surety bond rather than a demand guarantee and if the Council was minded to call it in, the authority would have to provide evidence that Viridor had defaulted (as described above). Should the Committee agree to refuse this application, then this would be the only viable way in which the site could be restored but would involve invoking a process where the outcome would be uncertain given the planning history of the site.

8. CONCLUSIONS

8.1 As indicated in Section 5 of this report, there are no specific policies within the Development Plan which relate to the suitability of restoration and aftercare proposals associated with a former mineral extraction site, although it is considered that the application is consistent with the spirit of the policies within the EAOCSPP relating to restoration. In such circumstances, greater weight should be attached to the material considerations relevant to the application. As is indicated in Section 6 above, there are material considerations relevant to this application and in many respects the material considerations insofar as planning history and nature conservation interests are concerned would tend to be supportive of a scheme which would reclaim former mineral surface workings to after-uses that fall into the broad category of amenity.

8.2 The reclamation of surface mineral workings can often provide substantial opportunity to improve landscapes and habitats, expose earth

science interest and enhance access and recreation provisions for local communities. This can involve the creation of:-

- formal and informal recreational areas;
- woodland;
- grassland;
- geological exposures;
- reed beds;
- open water; and
- watercourses.

8.3 Whilst it is noted that the proposed development has attracted objections and concerns from Auchinleck Community Council, the current approved (and therefore the only enforceable) restoration scheme (i.e. in accordance with planning application reference 95/0058/MIN) cannot be achieved without landfill taking place given the present condition of the site.

8.4 The area of land associated with the landfill void equates to approximately 12.1 hectares and has the capacity to accept approximately 1 million cubic metres of waste. The applicant originally had consent to fill this void with solid, controlled, domestic, commercial and industrial waste at a rate of 100,000 tonnes per year over a 10 year period. Overburden would be used for cell engineering, haul roads etc. required to develop the void for land-filling and the soils would be used for the final restoration over the engineered cap of the landfill.

8.5 Given the height and footprint of the available soil and overburden mounds, it is estimated that on site at present there is approximately:-

- 190,000 cubic metres of overburden; and
- 35,000 cubic metres of soils

On this basis it is clear that there is insufficient available material stored above ground to produce an effective dry land restoration scheme as the volume of available material would only provide 22% of the material required to fill the void. Taking account of the deficit of materials and assuming that the available soils would be used for final restoration, it is estimated that a minimum of 800,000 cubic metres of material would have to be imported to the site to achieve an alternative to the wetland scheme proposed by the applicant. If this comprised of imported inert materials, it is anticipated that infilling would take a minimum of 15 years to complete and would result in associated impacts similar to that associated with the original scheme for landfill reclamation.

8.6 In addition, at this stage it is not known whether there are risks associated with surface water contamination from using overburden to fill the water void. In terms of soil mounds it is not considered good practice to place soils in surface water due to the potential for depletion of oxygen in the water and therefore, this material should only be used for restoration to dry land.

8.7 Since members refused the previous application to extend the life of the landfill site, the applicant has been pro-active in appointing Environmental and Legal Consultants to come up with solutions for achieving the restoration of the site. After refusal of planning consent to allow the site to be used for landfill purposes, the applicant did not exercise the right of appeal to the Scottish Ministers, but instead sought further meetings with the planning authority to discuss an alternative restoration scheme that would see the void being retained as a water feature to an after-use that is in keeping with the area and involves minimal disruption to the environment, whilst maintaining habitats that are establishing naturally. This proposal therefore builds upon the existing areas that have naturally re-colonised.

8.8 There now appears to be conflict within the representations /consultations received concerning site restoration where some objectors wish to see the site fully restored while others would wish the waterbody being retained and the site left to 'naturalise' further. The submitted scheme represents a good and reasonable practical solution to returning this site to beneficial after-uses without causing major disruption in the area, given the circumstances of the temporary consent for landfill, and that, with the implementation of restoration and aftercare, the site can be improved for wildlife and nature conservation. The restoration scheme therefore provides a solution to guarantee the restoration of this site, which should in time make a positive contribution to the environment and nature conservation interests in the area.

8.9 The applicant has agreed to provide a contribution to match grant funding from the Central Scotland Green Network Development Fund in order to enable the implementation of a number of advanced restoration measures. These will include replacement fencing and hedgerow planting along the access track to Darnconner Farm, and replacement fencing around the existing settlement lagoon.

8.10 Refusal of this present application would have significant consequences for the restoration of the site and may potentially impact on the ability of the Council to call in the restoration bond.

8.11 In respect of all relevant matters and material considerations to be taken into account, it is considered that the revised proposals for restoration of this site are acceptable and 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 existing legal agreement will require to be discharged to the effect and intent that it shall be deemed 'pro non scripto' as from the date when a new minute of agreement comes into effect.

(ii) Viridor Waste Management (VWM) shall obtain and deliver to the Council, a new performance bond from Barclays Bank PLC or another recognised financial institution, which shall remain in force until the restoration

obligations have been complied with or discharged, or such other time as may be agreed between the Council and VWM.

(iii) The new restoration bond shall be in the sum of two hundred and fifty thousand pounds (£250,000) or such other sum as may be agreed in writing between the Council and VWM. The new performance bond shall provide for the sum to be reduced to seventy two thousand pounds (£72,000) at the start of the five year aftercare period and will further decline by fourteen thousand four hundred pounds (£14,400) after each year of aftercare. The new performance bond will formally be discharged on the fifth anniversary following completion of the restoration obligations to the satisfaction of the Council as planning authority.

(iv) In the event of a failure by VWM to perform the restoration obligations within one year of the date of planning approval, the Council shall, by written notice, intimate such failure to VWM. The notice shall describe the nature of the breach of the obligations, the steps required to remedy the breach and the timescales within which the remedial steps require to be taken.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions indicated on the attached sheet and that the issue of the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded an amended agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant in respect of the matters indicated in Section 8.11 of this report.

**Alan Neish
Head of Planning and Economic Development**

CONTRARY DECISION NOTE

Should the Committee decide to refuse the application contrary to the recommendation of the Head of Planning and Economic Development, there will be no requirement to refer the application to the full Council for consideration as this would not represent a significant departure from policy.

CG/HM/CG
27 July 2011

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 Local Plan (2003)
6. Approved Ayrshire Joint Structure Plan (2007)
7. Previous applications as described in Section 6.7
8. PAN 64: Reclamation of Surface Mineral Workings

Any person wishing to inspect the background papers listed above should contact Mr Colin Graham on 01563 57 67 87.

Implementation Officer: Hugh Melvin

TP24

EAST AYRSHIRE COUNCIL
TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 11/0293/PP

Location	Former Darnconner Opencast Site by Auchinleck
Nature of Proposal:	Variation of Conditions 1, 19 & 20 of planning permission CD/95/0058/MIN (as amended) relating to the obligation and rights on, and restoration of, the former Darnconner OCCS by Auchinleck.
Name and Address of Applicant:	Viridor Waste Management (Scotland) Ltd. Harrison House Blackbrook Park Avenue TAUNTON TA1 2PX
Name and Address of Agent	Wardell Armstrong LLP Suite 2/3 Great Michael House 14 Links Place EDINBURGH EH6 7EZ

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

The above planning application is granted subject to the following conditions:

1. Conditions 1, 19 and 20 of planning consent CD/95/0058/MIN dated 11 September 1996, as amended by planning application 00/0228/FL dated 12 April 2006, are hereby deleted.

REASON: The original conditions are no longer applicable and are now superseded by this consent.

2. The site shall be progressively restored in accordance with the scheme submitted along with this planning application.

REASON: To ensure appropriate restoration of the site.

3. No materials for filling shall be introduced to the site from sources external to it without the formal written approval of the planning authority.

REASON: To enable the planning authority to retain control over development of the site.

4. All necessary mitigation measures must be taken during the restoration works to ensure that pollutants typically associated with works of this nature e.g. silts; concretes etc do not enter the watercourses adjacent to the site.

REASON: To prevent pollution of watercourses and to minimise the risk of flooding.

5. Prior to works commencing on site the applicant shall submit details of an environmental protocol in the event that protected species are encountered during site restoration. In this regard, no works shall commence on site until appropriate advice has been sought from Scottish Natural Heritage.

REASON: To ensure that protected species are guarded from disturbance.

6. Notwithstanding the submitted plans the applicant shall increase the proportion of alder and birch (including silver birch) in the overall mix of tree planting and, if the pH is not particularly acidic, substitute the ash species for aspen.

REASON: In the interests of environmental enhancement and visual amenity.

7. Notwithstanding the submitted plans the applicant shall increase the stocking density of trees to a minimum of 2,500 per hectare in order to promote earlier canopy and hasten the build-up and recycling of leaf litter in the soil.

REASON: In the interests of environmental enhancement and visual amenity.

8. Broad land reclamation 'rigg and furrow' features shall be formed to facilitate woodland establishment on the compacted flat landscape of the east site. The 'rigg' must be at least 30m wide and 1.5m at the centre, to give a side slope gradient of no more than six degrees.

REASON: To ensure that the reclamation strategy will deliver environmental benefit.

9. The applicant shall ensure that spot-weeding with herbicide shall be undertaken for five growing seasons upon completion of site restoration and during the period of aftercare. A residual herbicide such as 'propryzamide' must be applied in the winter following the first growing season and with a translocated herbicide such as 'glyphosate' being used in the summer.

REASON: To ensure a proper aftercare specification for woodland areas.

10. Notwithstanding the submitted plans the scrub/thicket type planting shall be used more extensively to tie-in soil and spoil mounds with the planned and surrounding landscape of woodlands and naturally regenerated hawthorn on bings.

REASON: In the interests of environmental enhancement and visual amenity.

11. The banking on the eastern shore of the main water body shall, insofar as is practical on safety grounds) be graded to a more stable profile in order to prevent erosion or collapsing.

REASON: In the interests of public safety.

12. The applicant shall erect appropriate signage to highlight the presence of deep water. Details of this signage shall be submitted in writing to the planning authority within one month of the date of this consent, for approval by the authority and shall thereafter be implemented on site within one month of such approval being granted.

REASON: In the interests of public safety.

13. Where possible, wetland habitats should be assisted in their development by transplanting appropriate established vegetation from existing wetlands to the others.

REASON: In the interests of environmental enhancement and visual amenity.

14. The applicant shall make stock-proof and maintain, replace or repair (until the five year aftercare period is over) all fences around the perimeter of the site and along the access track to Darnconner Farm and shall protect them from damage during restoration of the site.

REASON: In the interests of protecting the rural landscape.

15. Any rubbish and scrap materials generated or discovered in the course of restoration works on site shall, as far as is practicable, be kept in a screened location until disposed of to the satisfaction of the waste management authority and otherwise than by burning.

REASON: In the interests of visual amenity.

16. The right of way which runs through the centre of the site shall be reinstated on completion of the restoration works.

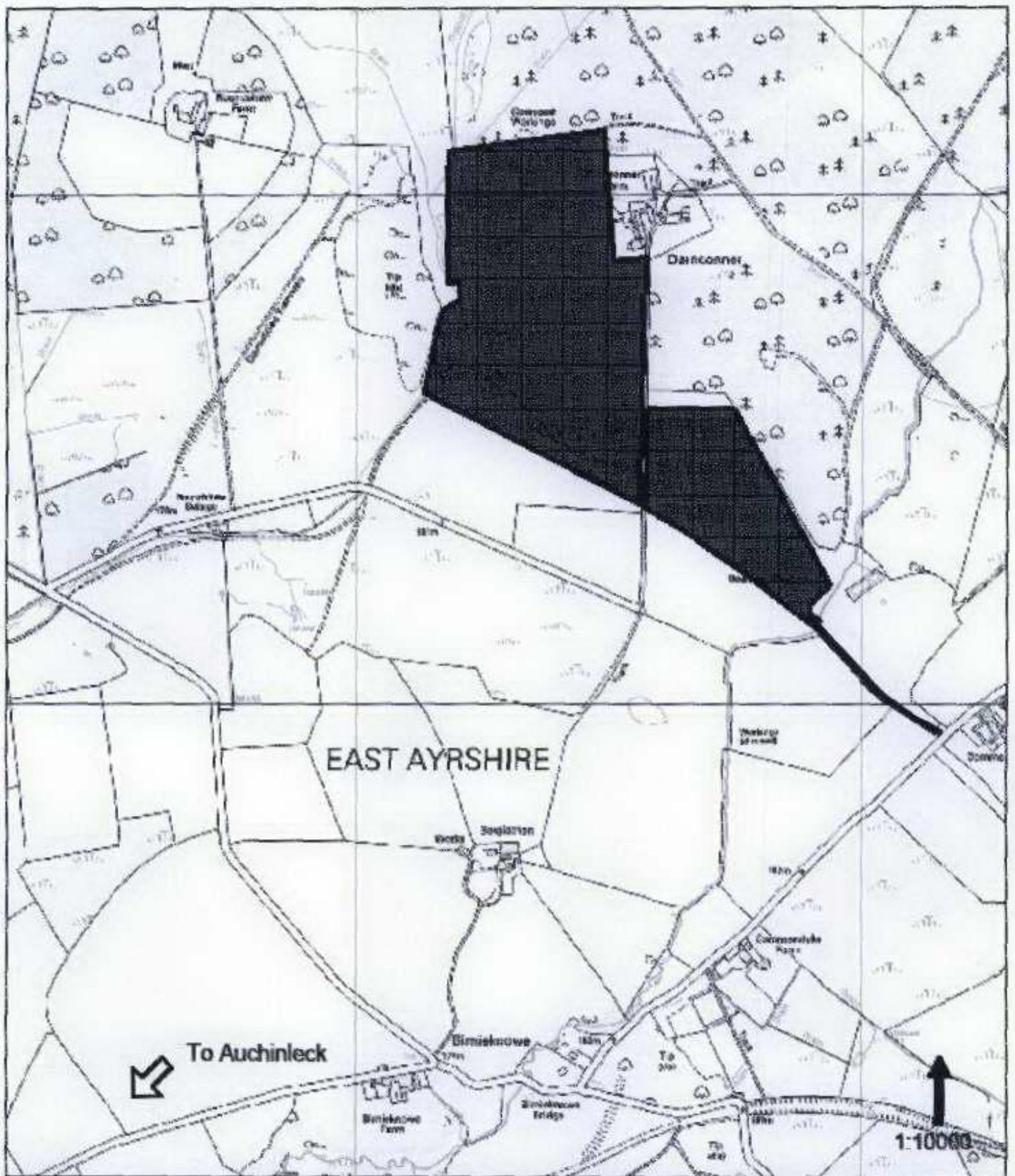
REASON: To encourage active leisure and recreational use of the site.


17. The restored site shall be subsequently managed for a period of five years in accordance with the aftercare scheme submitted along with the planning application. This aftercare period shall commence once the Council confirm in writing that the site has been restored to the satisfaction of the planning authority.

REASON: In the interests of securing appropriate after-uses of the site.

REASON FOR THE DECISION

The proposed development is in accordance with the provisions of the development plan and there are no material considerations in this case that would justify a refusal of the application contrary to the provisions of the development plan.



Title/Location	<p>Darnconner Auchinleck, Cumnock KA18 3JN Application No. 11/0293/PP</p>	<p>East Ayrshire Council Department of Neighbourhood Services Planning & Economic Development Service The Johnnie Walker Bond 16 Strand Street Kilmarnock KA1 1HU Tel: (01563) 576799 Fax: (01563) 554592 E-Mail: Planning@east-ayrshire.gov.uk Com Date: 05/05/11</p>
Key	 <p>Application Site</p>	

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